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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari
To the Court of Appeals

Appeal From Dillon County
Paul M. Burch Circuit Court Judge

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S.C. Supreme Court

THE STATE,

Petitioner,

vs.

BENTLEY COLLINS,

Respondent.

APPENDIX

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Bentley Collins, Appellant.

Appeal From Dillon County
Paul M. Burch, Circuit Court Judge

Opinion No. 4941
Heard November 2, 2011 – Filed February 15, 2012

REVERSED AND REMANDED

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Jr., of Bennettsville, for Respondent.

FEW, C.J.: Bentley Collins was convicted of involuntary manslaughter and three counts of owning a dangerous animal after his dogs killed a ten-year-old boy. Collins appeals the convictions claiming the trial court erred by (1) admitting seven autopsy photographs of the boy's partially eaten body and (2) denying his directed verdict motions as to both crimes. Because we find the trial court abused its discretion in admitting the photos, we reverse and remand for a new trial.

I. Facts

At around 7:00 p.m. on November 3, 2006, the boy's mother returned from a trip to find her son had not come home for dinner. After looking for him at neighbors' houses, she called the sheriff's department. The responding officers searched the neighborhood with her. They found the boy's body in Collins' yard surrounded by at least three dogs.^[1] The boy's mother later testified "he was torn to pieces. Pieces."

Collins was indicted for involuntary manslaughter and three counts of owning a dangerous animal under the Regulation of Dangerous Animals Act. S.C. Code Ann. §§ 47-3-710 to -770 (Supp. 2011). After a jury convicted him of all charges, the trial court sentenced him to five

years in prison, followed by five years of probation.[2]

II. Admissibility of the Photographs

The State offered into evidence ten photos of the boy's body. The photos were taken by a forensic pathologist before he performed an autopsy. Collins objected to the admission of the photos under Rule 403, SCRE, arguing that the danger of unfair prejudice substantially outweighed their probative value. After a hearing outside of the jury's presence, the trial court admitted seven of the photos.

A. Standard of Review

"The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion." State v. Dickerson, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011). A trial court has particularly wide discretion in ruling on Rule 403 objections. See State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003) ("A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. We . . . are obligated to give great deference to the trial court's judgment [regarding Rule 403]." (internal citation omitted)). We nevertheless hold that in this case the trial court abused its discretion.

B. Probative Value

Rule 403 provides that, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." "Probative" means "[t]ending to prove or disprove." Black's Law Dictionary 1323 (9th ed. 2009). Probative value is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues. "[T]he more essential the evidence, the greater its probative value." United States v. Stout, 509 F.3d 796, 804 (6th Cir. 2007) (internal quotation marks omitted). Thus, a court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates. As our supreme court stated in State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010), "[p]hotographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are . . . not necessary to substantiate material facts or conditions." 390 S.C. at 623, 703 S.E.2d at 228 (emphasis added). The evaluation of probative value cannot be made in the abstract, but should be made in the practical context of the issues at stake in the trial of each case. See State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008) ("When [balancing the danger of unfair prejudice] against the probative value, the determination must be based on the entire record and will turn on the facts of each case." (citing State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007))).

Understanding the practical context of the trial of this case begins with the elements of the crimes charged. A person is guilty of owning a dangerous animal when the State proves (1) he owned or had custody or control of an animal; (2) he knew or reasonably should have known the animal had a propensity, tendency, or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings; (3) the animal made an unprovoked attack; (4) the attack caused bodily injury to a human being; and (5) the attack occurred while the animal was unconfined on the owner's premises. S.C. Code Ann. §§ 47-3-710(A) (1)-(2)(a), (D); -720; -760(B) (Supp. 2011).

To convict a defendant of involuntary manslaughter, the State must prove one of the following: "(1) the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others." State v. Crosby, 355 S.C. 47, 51-52, 584 S.E.2d 110, 112 (2003).

On the dangerous animal charges in this case, the trial focused almost exclusively on issues relating to the second and third elements. Importantly, the fourth element—that the dogs' attack caused bodily injury to a human being—was never in dispute. In the hearing regarding admissibility of the photos, the State argued they would be important for the testimony of both the pathologist and the dog behavior expert. The State then explained how the photos were important, arguing only that they were probative of the third element. The State did not argue the photos were probative of any other element of the dangerous animal charges or any element of involuntary manslaughter.

The State thus argued the probative value of the photos was primarily to establish that the dogs' attack on the boy was unprovoked. The State's theory on this point was that Collins underfed the dogs, and because the dogs were hungry, they became aggressive and attacked the boy for food. On appeal, the State makes two specific arguments as to how the photos support its theory: the pathologist needed the photos to explain that the dogs ate the boy, and the photos corroborate the testimony of its dog behavior expert.

As to the State's first argument, the photos do show that the dogs ate a significant portion of the boy's flesh. Prior to the introduction of the photos, however, the State presented convincing testimony to prove the same thing. The pathologist testified:

There were extensive traumatic injuries consisting of loss of skin and soft tissue in a tearing fashion about the face, the ears, the eyes, the neck, the chest. There was loss of skin and soft tissue with exposure of the bones of both shoulders.

Essentially, the humeral bone in the upper arm, both right and left, was exposed from the shoulder to the elbow.

The State also put the autopsy report into evidence prior to the photos. The pathologist testified to the contents of the report as follows:

I described it as extensive traumatic injury, loss of skin to the face to include the nose, the ears and all soft tissues around the lips with exposure of the mandible, which is the lower jaw, teeth, and the underlying bony part of the skull. . . . The ears and nose were completely eaten away.

The State asked the pathologist what led him to conclude the ears and nose were "eaten away." He responded: "There was a virtual complete absence of the ear structures on the right side and just remnants, shredded remnants of skin and what were probably portions of the ear on the left. They were essentially gone." Finally, the pathologist said he normally does not take photos of an autopsy, but did so in this case because "[t]his autopsy showed tremendous traumatic injury to this young man. This degree of injury was [as] significant [a] traumatic injury as I've seen. I've never seen an attack by animals of this type" Thus, before the photos were admitted, the pathologist's testimony conclusively established that the dogs ate the boy. The photos add very little to the jury's ability to understand the pathologist's testimony on this point.

The State's second argument relates to its dog behavior expert, who testified the dogs attacked the boy out of hunger, not provocation. The expert used photographs of the dogs to describe physical features that showed they were malnourished. The officers who responded to the scene testified there were no visible food bowls for the dogs. Based on this evidence, the dog behavior expert gave an opinion that the dogs attacked the boy because they were hungry.[3]

The State argues the photos corroborate the dog behavior expert's testimony and thus tend to prove the attack was unprovoked. However, the photos relate to the expert's opinion only to the extent they show the same fact testified to by the pathologist, that the dogs ate the boy. As discussed above, the photos add little to the pathologist's testimony. Moreover, the expert hardly mentioned the photos of the boy. The assistant solicitor asked this expert only one question regarding the photos: "Could you tell the jury what you found significant in reviewing those particular photos . . . as it relates to the level of aggression with the dogs[?]" The witness's response to the question did not relate the photos to his opinion or to how he arrived at it. Rather, the response highlights the unfair prejudice in the photos.

Based on ~ in ten years going back on reports that I've noted on dog bites and dog attacks and deaths caused by dogs this is the worst case I've ever seen. I worked for the sheriff's office for over a decade, and I have never seen something so gruesome.

The photos add little to the jury's ability to understand the dog behavior expert's testimony.

Finally, we address the trial court's statement that the photos are probative of the cause of the boy's death. In explaining his ruling to admit the photos, the trial court stated "we've got to keep in mind . . . involuntary manslaughter, which involves cause of death." We find the photos add very little to the pathologist's ability to explain or the jury's ability to understand the cause of death. The pathologist testified the boy "died as a result of extensive traumatic injury secondary to being mauled by dogs." In particular, the pathologist testified the dogs "lacerated, basically transected the jugular vein on the left side." When the pathologist discussed the photos, however, he had already completed his explanation of the cause of death. The only mention the pathologist made of the cause of death during his discussion of the photos was his description of one of the photos as "an enlarged view showing the degree of injury to the left neck of this young man." As to that photo, he stated that the torn jugular vein was "very hard to see in this picture." Other than to discount the importance of the photos with this statement, the pathologist did not use any of them to explain the cause of death.

We agree that the photos have some probative value in helping the jury understand each of the three points argued by the State: (1) the pathologist's testimony that the dogs ate the boy, (2) the dog behavior expert's opinion that the dogs' attack on the boy was unprovoked, and (3) the pathologist's testimony that the dogs' attack in general and the torn jugular vein in particular caused the boy's death. However, the photos add little to the testimony of the witnesses on these three points. Referring to the supreme court's statement in Torres that "[p]hotographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are . . . not necessary to substantiate material facts," the photos in this case are hardly "necessary." 390 S.C. at 623, 703 S.E.2d at 228.

More importantly, the issues the State argues the photos relate to are hardly "material." The

three points argued by the State relate to the conduct of the dogs. As to the elements of the crimes, the focus of the trial should have been on Collins' conduct and whether his conduct was criminal in nature. The conduct of the dogs is important, but only to the extent the dogs' conduct shows Collins' conduct. The photos are far removed from Collins' conduct, and even farther removed from whether Collins' conduct was criminal. The photos show the boy's body after the dogs attacked and killed him. The condition of the boy's body circumstantially shows the conduct of the dogs on the day of the attack—they ate the boy. From the conduct of eating the boy, the State argues the jury should infer the dogs were hungry, from which in turn the State argues the jury should infer that Collins starved them. At this point in the chain of inferences that the State asks the jury to draw from these photos, Collins has not violated the Dangerous Animals Act. At least two more steps are required. From the fact that he starved the dogs, the State argues Collins must have done so knowingly, and from this he reasonably should have known the dogs "had a propensity, tendency, or disposition to make an unprovoked attack" on a child to get food. In the practical context of the issues at stake in the trial of this case, these photos are of little significance.

For these reasons, we find the probative value of the photos is minimal.

C. The Danger of Unfair Prejudice

The probative value of the photos must be balanced against "the danger of unfair prejudice." Prejudice that is "unfair" is distinguished from the legitimate impact all evidence has on the outcome of a case. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting United States v. Bonds, 12 F.3d 540, 567 (6th Cir. 1993)). "All evidence is meant to be prejudicial; it is only unfair prejudice which must be [scrutinized under Rule 403]." Id. (quoting United States v. Rodriguez-Estrada, 877 F.2d 153, 156 (1st Cir. 1989)); see also United States v. Mohr, 318 F.3d 613, 619-20 (4th Cir. 2003) ("Rule 403 only requires suppression of evidence that results in unfair prejudice—prejudice that damages an opponent for reasons other than its probative value, for instance, an appeal to emotion . . .").

Photographs pose a danger of unfair prejudice when they have "an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one." State v. Holder, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009) (internal quotation marks omitted). This definition of unfair prejudice was taken originally from the Advisory Committee Notes to the formerly identical federal rule 403.[4] See State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991) (adopting the definition of unfair prejudice recited in the Notes of the Federal Rules Advisory Committee). Regarding this definition, the Supreme Court of the United States stated: "The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." Old Chief v. United States, 519 U.S. 172, 180 (1997). Like probative value, unfair prejudice should be evaluated in the practical context of the issues at stake in the trial of the case. See State v. Wilson, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001) ("The determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case.").

The seven photos admitted are graphic and shocking. They depict a ten-year-old boy's body on an autopsy table after being partially eaten by dogs. The photos are in color. One photo

provides an encompassing view of what remains of the boy's upper body. Three close-up photos show the remains of his face. The exposed skull and jaw bone are plainly visible in these photos. Two of these close-ups also show the exposed arm, shoulder, and rib bones, where the flesh was eaten away from the middle of his chest, across his shoulder and down to his elbow, on both sides. One photo shows the left side of the boy's face from the back, again with the exposed jaw bone visible. The remaining two photos are of the body from the waist down, showing his blood-stained shorts and the bite marks on his legs. The pathologist described what the photos show, but seeing the photos draws an intense emotional response and a level of sympathy for the dead child that does not come from the testimony. It is difficult to look at each photo, and the combined effect of all seven is disturbing. The photos that show what remains of the child's face are chilling. The danger of unfair prejudice of the admitted photos is extreme.

D. Balancing Probative Value and Unfair Prejudice

We have noted that a trial court has particularly wide discretion in ruling on Rule 403 objections. Adams, 354 S.C. at 378, 580 S.E.2d at 794. In this case, however, we find the danger of unfair prejudice in these photographs substantially outweighs their probative value, and the trial court abused its discretion in ruling otherwise.

Our analysis depends heavily on the capacity of these photos to draw the jury's attention away from the elements of the crimes charged, which are framed to focus the jury primarily on the conduct of the defendant. Seeing the photos of the child's partially eaten body lying on the autopsy table prompts an intense emotional response. The photos evoke sympathy for the boy and also for his mother for what she must have endured when she saw her son in this condition in Collins' yard. Consequently, the photos have precisely the effect contemplated by the definition of unfair prejudice: "an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one." Holder, 382 S.C. at 290, 676 S.E.2d at 697 (internal quotation marks omitted). As stated in Old Chief, the photos "lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." In Old Chief, the improper ground for declaring guilt was the defendant's propensity to commit crimes. 519 U.S. at 180-81. Other courts have identified additional improper grounds, such as when the evidence "appeals to the jury's sympathies [or] arouses its sense of horror." United States v. Thompson, 359 F.3d 470, 479 (7th Cir. 2004) (internal quotation marks omitted).

These gruesome photos have an overwhelming capacity to lure the jury into declaring guilt on the emotional basis of sympathy for the boy and his mother and horror at the sight of the boy's body. This is the unfair prejudice that substantially outweighs the probative value of the photos. We recognize that the photos add a visual element not present in the testimony of the witnesses. However, this visual element does far more to create a danger of unfair prejudice than it does to add probative value. These photos are beyond "the outer limits of what our law permits a jury to consider." See Torres, 390 S.C. at 624, 703 S.E.2d at 229. For this reason, we find the trial court abused its discretion in admitting the photos.^[5]

E. The Probative Value of Corroboration

The State argues, however, that the photos corroborate the testimony of the pathologist and the dog behavior expert, and thus have sufficiently high probative value that it is not substantially outweighed by the danger of unfair prejudice. The State is correct that the

extent to which an autopsy photograph corroborates other evidence or testimony increases its probative value. However, the probative value from a photograph's tendency to corroborate will vary depending on the facts of an individual case. In some cases, photographs that corroborate important testimony on issues significant to the case may have very high probative value. As we have already explained, however, the photos in this case have minimal probative value, even considering the limited extent to which they corroborate the testimony of the witnesses.

This conclusion is supported by our opinion in State v. Jarrell, 350 S.C. 90, 564 S.E.2d 362 (Ct. App. 2002). In Jarrell, we stated: "A test to determine whether the trial court abused its discretion is whether the photographic evidence serves to corroborate the testimony of witnesses offered at trial. 'If the photograph serves to corroborate testimony, it is not [an] abuse of discretion to admit it.'" 350 S.C. at 106, 564 S.E.2d at 371 (quoting State v. Rosemond, 335 S.C. 593, 597, 518 S.E.2d 588, 590 (1999)). As our opinion in Jarrell indicates, however, the photographs admitted in that case corroborated important testimony on significant issues to such an extent that their probative value was very high.

Jarrell was charged with homicide by child abuse, accessory before and after murder, criminal sexual conduct, and unlawful conduct towards a child. 350 S.C. at 95, 564 S.E.2d at 365. Like the photos in this case, the photographs admitted in Jarrell showed the extent of the child's injuries. Unlike this case, however, the child's injuries in Jarrell were essential to the State's ability to prove the crimes of homicide by child abuse, criminal sexual conduct, and unlawful conduct towards a child. This is because the elements of those crimes require the jury to focus on the effect the defendant's conduct had on the child. Thus, we placed importance on the fact that the Jarrell photographs "corroborated the testimony about the condition of the child." 350 S.C. at 106, 564 S.E.2d at 371. Further, the time of the child's death was an important issue in Jarrell. The fact that the baby had been dead long enough for rigor mortis to set in and decomposition to begin, as shown by the photographs, "corroborated the pathologist's testimony about the time of death" and "support[ed] the charge against Jarrell of accessory after the fact." Id.

Most importantly, the Jarrell photographs corroborated testimony supporting the State's theory of motive. Jarrell discussed the abuse and death of the child with inmates while she was in jail awaiting trial. "She . . . stated that she and Father planned to kill the baby . . . because the baby had an upcoming doctor's appointment and the abuse would be readily apparent to anyone examining the baby." 350 S.C. at 96, 564 S.E.2d at 366. We explained the significance of the photos to Jarrell's motive as follows:

We agree that the photographs were necessary to corroborate the testimony presented at trial. A photograph displaying the anal injuries due to the sexual abuse corroborated both the pathologist's testimony regarding the extent of those injuries and the witnesses' testimony that Jarrell's motive for planning to kill the baby was because the sexual abuse was readily apparent.

350 S.C. at 106, 564 S.E.2d at 371.

The supreme court has also placed importance on the fact that autopsy photographs corroborate the testimony of witnesses. In Holder, the court stated: "'If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.'" 382 S.C. at 290, 676 S.E.2d at 697 (quoting State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996)).

Holder was also a homicide by child abuse case. Thus, as in Jarrell, the injuries to the child were critical to the State's ability to prove the elements of the crime. The supreme court explained: "The photographs corroborated the pathologist's testimony about the extensive bruising on the child, which was in various stages of healing, and showed that even internal organs manifest signs of bruising. This is particularly helpful to jurors who are unversed in medical matters." 382 S.C. at 290-91, 676 S.E.2d at 697. The photos also corroborated the pathologist's testimony refuting Holder's testimony.

Although Holder testified she was unaware of any marks on her son prior to his death and thought he was suffering from simple food poisoning, it is abundantly clear from the extensive bruising on the child, which was in various stages of healing, and the torn internal organs, that he had been seriously injured. These photographs demonstrate that the damage to the child would have been difficult to ignore.

382 S.C. at 291, 676 S.E.2d at 697.

Because the photographs in Jarrell and Holder strongly corroborated important testimony on significant issues, the photographs were found to have very high probative value. The supreme court explained this in Holder: "We find the photographs clearly demonstrate the extent and nature of the injuries in a way that would not be as easily understood based on the testimony alone." 382 S.C. at 290, 676 S.E.2d at 697.

Depending on the facts of a specific case, there may be other ways in which evidence challenged under Rule 403 corroborates evidence. See Black's Law Dictionary 636 (9th ed. 2009) ("[C]orroborating evidence" is "[e]vidence that differs from but strengthens or confirms what other evidence shows (esp. that which needs support)"). Trial courts should consider the corroborating effect of evidence when analyzing its probative value. However, the limited extent to which these photos corroborate the testimony of the witnesses does not significantly increase the minimal probative value of the photos. A photograph of the partially eaten body of a child is not necessary to demonstrate that the dogs killed the boy and ate a significant portion of his flesh. These facts are readily understood based on the pathologist's testimony alone. Thus, we disagree with the State that these photos sufficiently corroborate the testimony of the pathologist or the dog behavior expert such that the probative value of the photos is not substantially outweighed by the extreme danger of unfair prejudice.

F. Deference to the Trial Court's Analysis

The State also argues the trial court's exclusion of several photographs indicates it did exercise discretion, and we should not disturb that exercise. The State correctly points out that both the supreme court and this court have deferred to the judgment of the trial court when the record reveals the trial court actually exercised its discretion. See, e.g., Jarrell, 350 S.C. at 106, 564 S.E.2d at 371 ("Significantly, the trial court did not admit all the photographs, giving the State a choice between two photographs depicting the same injury. . . . [T]he trial court's exclusion of photographs demonstrates it exercised its discretion."); see also Torres, 390 S.C. at 624, 703 S.E.2d at 229 ("[T]he trial judge did exercise his discretion by excluding three of the State's photographs, ruling that they were duplicative and prejudicial.").

The record in this case, however, shows that the trial court did not independently analyze the probative value of the photos. Therefore, the trial court did not properly exercise its

discretion. See State v. Mansfield, 343 S.C. 66, 86, 538 S.E.2d 257, 267 (Ct. App. 2000) ("The failure to exercise discretion, however, is itself an abuse of discretion."). The State called the pathologist to testify during the admissibility hearing. The court began its examination of the pathologist by telling him the State wanted to admit the photos at issue because they were "necessary for you to explain your findings." The court then asked the pathologist to "confirm" whether or not he "need[ed]" each photo. The pathologist answered the question in conclusory fashion: "Your honor, these would certainly enable me to describe the degree of injury and show the extent of it. . . . [T]hese I think would be very beneficial to explain exactly what happened to this young man." The court then asked the pathologist: "Are there some in there that we could pull out that are merely repetitious?" The pathologist identified three photos, which were not admitted. The court then stated:

Okay, based on [the pathologist's] testimony [that] he needs it in his scientific explanation I'm allowing those in

After counsel for Collins and the State questioned the pathologist, the trial court ruled:

It is an unusual case, however, we've got to keep in mind that we've got involuntary manslaughter which involves death, cause of death. You've got [the pathologist] here who is one of the best, and he's informed the Court that he needs it. All right. I'm standing by what I've done. I'm overruling the objections . .

Without evaluating the probative value of the photos, the trial court was unable to balance that probative value against the danger of unfair prejudice, as required by Rule 403. The trial court's failure to independently make that evaluation is particularly significant in this case because, as we discussed earlier, the pathologist's explanation of the importance of the photos does not withstand scrutiny. Moreover, while the pathologist is fully capable of understanding the importance of the photos to medical considerations such as cause of death, the pathologist is not the person charged with the responsibility of relating that importance to the legal issues in the case. The trial court is charged with that responsibility.

The danger of unfair prejudice is so high that it required little analysis. The probative value, on the other hand, required careful analysis. In Jarrell and Torres the appellate court deferred to the judgment of the trial court when it admitted some autopsy photographs but excluded others. The deference in those cases, however, was not simply to the trial court's decision. Rather, the appellate court deferred to the trial court's analysis. We do not defer to the trial court's decision in this case because the record reflects it was not based on the court's own analysis.

III. Harmless Error

We have considered whether the admission of the photographs was harmless beyond a reasonable doubt. See State v. Myers, 359 S.C. 40, 48, 596 S.E.2d 488, 492 (2004) (declining to reverse for error under Rule 403 because the error was harmless). In making the determination that the error was not harmless, we have considered the fact that the other evidence of the condition of the child's body also has potential to cause a similar emotional reaction we find constitutes the unfair prejudice in these photographs. Thus, we have evaluated whether the additional emotional impact of the photographs over and above that caused by other evidence in the case is such that the erroneous admission of the

photographs is harmless. Given the intense emotional reaction caused by viewing these photos, we cannot say that their admission into evidence was harmless beyond a reasonable doubt. Accordingly, we reverse the trial court's decision to admit the photos and remand for a new trial.

IV. Directed Verdict

Collins argues the trial court erred in denying his motions for directed verdict as to both crimes. We find evidence in the record to support each element of both crimes. Therefore, the trial court ruled correctly in denying Collins' motions for directed verdict. See State v. Phillips, 393 S.C. 407, 412, 712 S.E.2d 457, 459 (Ct. App. 2011) ("An appellate court may reverse the trial court's denial of a directed verdict motion only if no evidence supports the trial court's ruling.").

Accordingly, the decision of the trial court to admit the photos is **REVERSED** and the case is **REMANDED** for a new trial.

THOMAS and KONDUROS, JJ., concur.

[1] Collins was not home at the time of the incident or when the officers and the boy's mother arrived.

[2] The specific sentences were five years for involuntary manslaughter and three years concurrent for two of the dangerous animal convictions. On the third dangerous animal conviction, the sentence was three years consecutive suspended on five years' probation and the payment of \$8,000 in restitution to the boy's family for funeral expenses.

[3] The dog behavior expert also testified the dog bites on the lower part of the boy's body indicated "the dogs had bitten the ten-year-old in the legs taking him down first. . . . They would go for the legs first and take him down which shows from the bites and the tissue loss."

[4] Rule 403 and other federal rules of evidence were amended on December 1, 2011, "as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules." Rule 403, FRE, advisory committee's note. The changes to Rule 403, FRE, are "stylistic only," with "no intent to change any result in any ruling on evidence admissibility." Id.

[5] See Old Chief, 519 U.S. at 182-83 ("If an alternative [is] found to have substantially the same or greater probative value but a lower danger of unfair prejudice, sound judicial discretion would discount the value of the item first offered and exclude it if its discounted probative value were substantially outweighed by unfairly prejudicial risk.").

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Dillon County
Hon. Paul M. Burch, Circuit Court Judge

The State,

Respondent,

v.

Bentley Collins,

Appellant.

PETITION FOR REHEARING

On February 15, 2012, this Court reversed Appellant's conviction and sentence and remanded for a new trial. The Court's opinion reversed the discretion of the trial court in admitting photographs used by the forensic pathologist and the State's expert in dog handling to explain the injuries to the child, the fact the dogs attacked unprovoked, and to corroborate the State's theory the dogs consumed the child out of hunger and not because the child wandered too close to a female dog in heat. This Court overlooked or misapplied the applicable law indicating the discretion with the trial court, as well as the probative value of the photographs for use in explaining the extent of the damage and the type of attack by the animals and providing proof of multiple elements of the crime of owning a dangerous animal. The Court should grant the petition for rehearing, find the trial court did not abuse its considerable discretion in admitting the photographs, and affirm Appellant's conviction and sentence.

"The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." State v. Holder, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009). "A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 177, 460 S.E.2d 368, 370 (1995) (emphasis added).

In Kelley, the South Carolina Supreme Court found two photographs of the victim's nude body lying on the living room floor with her face and body visibly swollen from the beating by the defendant, as well as photographs showing blood smeared on the walls and floor were admissible to demonstrate the crime scene and the "excess nature of the killing." Id. at 178, 460 S.E.2d at 370-371. In the instant case, just like in Kelley, the photographs are admittedly graphic but so was the attack. The jury needed to see the "excess nature of the killing" by the dogs in this case to truly understand the pathologist testimony, and the fact the child was eaten and not just attacked to be driven away as if the dogs were provoked.

In State v. Todd, 290 S.C. 212, 349 S.E.2d 339 (1986), the defendant maintained a photograph of the victim with her breast exposed was inflammatory and unfairly prejudicial because he was on trial for assault with intent to commit criminal sexual conduct in addition to murder. Id. at 213, 349 S.E.2d at 340. The South Carolina Supreme Court found: "The photograph at issue here corroborated the pathologist's testimony regarding the location of the bullet wound. The appellant was not prejudiced by its introduction because there was explicit testimony that the victim's blouse and brassiere had been removed by medical personnel when they arrived at the scene in order to administer medical aid." The Court found it was the corroborative effect as well as the fact other testimony explained what was in the photographs that allowed them to be admissible without constituting unfair prejudice. The same is clearly demonstrated in this case.

This Court relies on the recent case of State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010), for the correct holding that “[p]hotographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions.” Id. at 623, 703 S.E.2d at 228. This Court, however, overlooks the remainder of the opinion in Torres. As a matter of fact, the basis for admitting the photographs in this case, as well as the fact the trial court excluded some as duplicative, are very similar to the facts of Torres.

In Torres, the Supreme Court specifically held: “[i]f the photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.” Id. at 623, 703 S.E.2d at 229. The Court continued: “autopsy photographs may be presented to the jury in an effort to show the circumstances of the crime and character of the defendant.” Id. The Court explained:

The doctor who performed the autopsy used the introduced photographs during his testimony to illustrate the number of injuries, location of the injuries, and manner in which the injuries were committed. We do not suggest that these autopsy photographs are mild and easy to view; some of the photographs are close-ups of the victims’ injuries and are graphic in nature. However, the purpose of the close-ups was to help identify the nature of each particular injury. The net effect of the photographs was to show what Torres did to the Emerys, which goes straight to circumstances of the crime.

Id. at 624, 703 S.E.2d at 229 (emphasis added).

As in Torres, the photographs in this particular case were not mild and were definitely graphic depictions of the injuries to this child. The photographs, however, were used to show the nature of the attack by the dogs as well as the extent of damage done by starving dogs who used the child as a meal. The photographs clearly showed the jury the dogs did not merely bite or even attack out of provocation or to protect a female, but instead did so in order to consume the flesh and soft tissue of the child as food. These material facts were necessary to demonstrate to the jury Appellant

starved the dogs and kept the dogs in such a condition that they had to attack, bring down, and consume a ten year old boy for food.

This Court states the photographs are "hardly 'material'" to the crime committed because they demonstrate the conduct of the dogs. The State submits the photographs are highly "material" because the conduct of the dogs was set in place by Appellant, and should have been known and expected by Appellant given the fact he was clearly starving the animals. Further, the photographs depict a child that was attacked at the legs solely for purpose of bringing him down, not out of provocation.

The photographs demonstrate three of the elements of the crime of owning a dangerous animal and further corroborate testimony from the pathologist and the dog expert regarding the three elements. They demonstrate 1) Appellant knew or reasonable should have known the animals had a propensity, tendency, or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings; 2) the animals made an unprovoked attack; and 3) the attack caused bodily injury to a human being.

The photographs in this case were admitted to assist the forensic pathologist, Dr. Proctor, in his testimony and explanation of how the child victim died. The trial court, *in camera*, specifically questioned Dr. Proctor regarding the various photographs and his reason for needing the photographs during his testimony. (T.176-179; R.48-51). Dr. Proctor testified: "Your Honor, these would certainly enable me to describe the degree of injury and show the extent of it. . . . But these I think would be very beneficial to explain exactly what happened to this young man." (T.178; R.50). The parties then questioned the doctor in regards to the photographs and their use in his testimony. (T.179-182; R.51-54). The trial court excluded some photographs because Dr. Proctor admitted they

were not necessary for his testimony. However, those photographs Dr. Proctor sought to use to explain his findings were properly included and admitted into evidence. (T.182-188; R.54-60).

During Dr. Proctor's testimony, he indicated significant amounts of the child victim's soft tissue were removed or "eaten away" by the dogs. (T.239-240; R.93-94). The forensic pathologist then detailed the significance of the autopsy photographs. (T.242-245; State's Exhibits 27, 30, 32, 33, 34, 35; R. 96-97).¹ The photographs also corroborated Dr. Proctor's findings as detailed in his autopsy report. (T.238; State's Exhibit 10; R.92; Supp ROA. 1-7). Defense counsel further explored the injuries to the child victim, and Dr. Proctor again referenced the pictures showing the bite marks on the legs and the damage to the neck and shoulders. (T.249-250; State's Exhibits 27, 33, 35; R.103-104).

In addition, the extent of the injuries served to demonstrate the nature of the attack by the dogs and corroborated the State's expert witness' testimony that the dogs attacked out of hunger. The pictures corroborated the State's expert witness who testified these dogs were aggressive and not merely protective. (T.302-303; 314-315; R.146-147; 158-159). The State maintained the dogs were not attacking solely because they were protecting a female dog in heat, but attacked because they were malnourished and had been mistreated. The extent of the attack was demonstrated in the amount of devastation done to the body of the child victim, and the fact the dogs attacked out of hunger was further exemplified by the areas of the body the dogs consumed. (T.306-307; 309; 328; R.150-151; 153; 172). As a result, this Court clearly overlooked or misapprehended the highly probative value of the photographs.

¹These State's Exhibits have been transported to the Court of Appeals and are filed as an Exhibit separate from the Record on Appeal.

Another similarity between this case and Torres is further explored by the Court: “Moreover, the trial judge did exercise his discretion by excluding three of the State’s photographs, ruling that they were duplicative and prejudicial. While the admitted photographs graphically depict the injuries of the victim, this was a particularly horrific crime, and the admission of the photographs did not unduly prejudice the jury.” Id. at 624, 703 S.E.2d at 229 (emphasis added).

This Court also relies on its previous opinion of State v. Jarrell, 350 S.C. 90, 564 S.E.2d 362 (Ct. App. 2002). This Court misapprehends or overlooks the importance of Jarrell. In Jarrell, this Court specifically stated: “A test to determine whether the trial court abused its discretion is whether the photographic evidence serves to corroborate the testimony of witnesses offered at trial. ‘If the photograph serves to corroborate testimony, it is not abuse of discretion to admit it.’” Id. at 106, 564 S.E.2d at 371 (quoting State v. Rosemond, 335 S.C. 593, 596, 518 S.E.2d 588, 589-90 (1999)). In Jarrell, the pathologist clearly testified to the extent of the baby’s anal sexual trauma. Other witnesses testified the anal trauma from the sexual abuse was readily apparent. This Court found the photographs of the same anal trauma described by a pathologist and other witnesses were admissible because they sought to corroborate that testimony. Id. The photographs in that case were graphic and emotional, just as the photographs in this case. The photographs, just as in this case, demonstrate the extent of the injuries testified to by the pathologist and make it clear for the jury the type and extent of injury involved. The graphic nature of the photographs, while clearly present to anyone who viewed them, was not sufficient to prevent their admissibility in Jarrell, and it should not be sufficient to prevent admissibility in this case because the underlying facts and circumstances were very graphic, emotional, and disturbing. See also, State v. Holder, 382 S.C. 278, 291, 676 S.E.2d 690, 697 (2009) (finding photographs graphically displaying the beaten and abused body of a child corroborated testimony and were properly admitted: “Although the photographs were graphic,

the facts in this case were graphic, and there is no suggestion that their admission had an undue tendency to suggest a decision on an improper basis.”).

This Court further errs in failing to give proper deference to the trial court and in finding the trial court failed to properly exercise discretion in the admission of the photographs. As noted above, the trial court’s discretion is considerable in the admission of photographs. See Kelley, 319 S.C. at 177, 460 S.E.2d at 370. The trial court exercised his discretion in the exact same way the Supreme Court commended the trial court for exercising discretion in Torres, 390 S.C. at 624, 703 S.E.2d at 229. The trial court allowed explanation of the photographs and how they were to be used to assist the pathologist, along with argument by counsel regarding their probative value and prejudicial impact prior to making a final ruling. (R.49-59). Additionally, the court excluded several photographs based on their duplicative nature. (R. 51; 53-54).

Appellant’s counsel was able to fully argue the prejudicial nature of the photographs outweighed their probative value. Counsel for the State provided argument in support of admitting the photographs. The trial court, in deferring to the pathologist, in considering all the arguments of counsel (He specifically stated prior to ruling: “I appreciate y’all very able argument.”), and in removing those that were unnecessary or duplicative clearly exercised his discretion in allowing the photographs. The trial court, in ruling in favor of the State, clearly considered both sides of the argument and found the photographs probative and not unduly prejudicial. As a result, this is certainly not a case where the trial court abused his discretion by failing to exercise his discretion as this Court erroneously held.

This Court overlooked or misapplied the applicable law indicating the discretion with the trial court, as well as the probative value of the photographs for use in explaining the extent of the damage and the type of attack by the animals and providing proof of multiple elements of the crime

of owning a dangerous animal. The Court should grant the petition for rehearing, find the trial court did not abuse its considerable discretion in admitting the photographs, and affirm Appellant's conviction and sentence.

CONCLUSION

For all of the foregoing reasons, Respondent requests the panel grant the petition for rehearing, find the trial court did not abuse its considerable discretion in admitting the photographs, and affirm Appellant's conviction and sentence.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

March 1, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Dillon County
Hon. Paul M. Burch, Circuit Court Judge

The State,

Respondent,

v.

Bentley Collins,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Petition for Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 1st day of March, 2012.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
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The South Carolina Court of Appeals

The State,

Respondent,

v.

Bentley Collins,

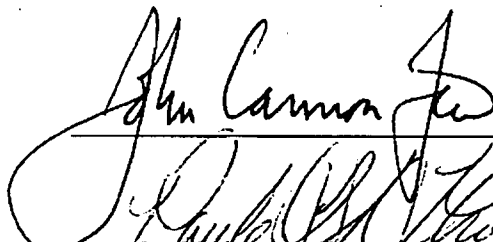
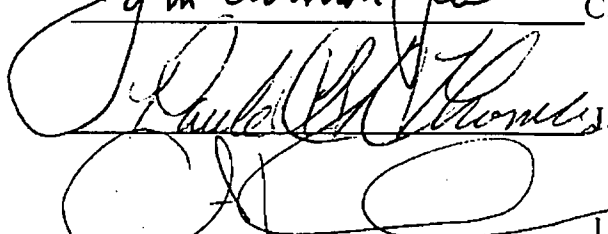
Appellant.

The Honorable Paul M. Burch
Dillon County
Trial Court Case No. 2007-GS-17-00009

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.


C. J.

J.

Columbia, South Carolina

cc: Appellate Defender Susan B. Hackett
Assistant Attorney General William M. Blich, Jr.

FILED

15 March 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari
To the Court of Appeals

Appeal From Dillon County
Paul M. Burch Circuit Court Judge

THE STATE,

Petitioner,

vs.

BENTLEY COLLINS,

Respondent.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Appendix on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record,

Susan B. Hackett, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 13th day of April, 2012.



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Legal Assistant
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(803) 734-3727

In The Court of Appeals

APPEAL FROM DILLON COUNTY

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BENTLEY COLLINS,

APPELLANT

SUPPLEMENTAL
RECORD ON APPEAL

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ANATOMICAL PATHOLOGY RESULTS

Patient: DAVIS, JOHN MATTHEW
DOB:
Patient SSN:
Acct#: F01016464695
Unit#: F000526757

ACCESSION: FA-06-229
Location: F.MORGUE
Room/Bed:
Status: REG REF
Discharge:
Date of Procedure: 11/03/06
Date of Receipt: 11/05/06

Physician: PROCTOR, EDWARD

AUTOPSY PROTOCOL

AUTOPSY NUMBER: FA-06-229

NAME: DAVIS, JOHN MATTHEW
RACE: Caucasian
AGE: 10
SEX: Male

DATE OF DEATH: November 1, 2005
TIME OF DEATH: Unknown

DATE OF AUTOPSY: November 5, 2006
TIME OF AUTOPSY: 11:00 a.m.

AUTHORIZING AUTHORITY: Dan Grimsley
Dillon County Coroner

PROSECTOR: Edward L. Proctor, Jr., M.D.

ASSISTANT: Leroy Rush



CASE HISTORY

This 10-year-old Caucasian male was noted to be missing. A search several hours later revealed his body in the vicinity of a pack of dogs. The body had been badly mangled. The child was subsequently pronounced dead and permission for autopsy was granted by the Dillon County Coroner, Mr. Dan Grimsley.

EXTERNAL DESCRIPTION

The body is currently identified as John Doe with the last name probably being "Davis". The body is that of a well-developed, well-nourished thin Caucasian male appearing approximately 10 years of age. The body measures 59 inches in length and has an estimated weight of 100 pounds. The head is covered by brown hair. The eyes are brown and the pupils measure 0.5 cm bilaterally. The sclerae and conjunctivae are pale. Inspection reveals extensive traumatic injury with loss of skin of the face to include the nose, the ears, and all soft tissues around the lips with exposure of the mandible, teeth, and underlying skull. The ears and nose are completely eaten away. The mouth shows complete loss of the lips with exposure of the maxilla and mandible. The teeth are in good repair. The neck shows extensive traumatic laceration of the neck with extensive loss of skin, subcutaneous tissue and muscular tissue of the submental area and the right and left neck areas. There is more damage on the

ANATOMICAL PATHOLOGY RESULTS

PATIENT: DAVIS, JOHN MATTHEW

ACCESSION #: FA-06-229

EXTERNAL DESCRIPTION

(Continued)

left side with complete destruction of the left jugular vein and open exposure of the left carotid artery. The chest is flat. There is extensive loss of skin and soft tissue about the shoulders with exposure of shoulder joints. The abdomen is flat. The genitalia are those of a prepubertal male. The penis is circumcised and the testes are descended. The lower extremities show extensive bite marks on the lower legs below the knee. The upper extremities show complete loss of skin and soft tissue with exposure of the humeri from the shoulder to the elbow joints. The back shows extensive abrasions and bite marks.

Multiple photographs were taken to document the extensive degree of loss of skin and soft tissue.

INTERNAL DESCRIPTION

The body is opened in the usual manner to reveal the thoracic and abdominal organs to lie in their usual anatomic positions. There is no fluid in either pleural cavity. The pericardial sac contains approximately 5 ml of a clear fluid. The peritoneal cavity contains no fluid.

Complete inspection of the body cavity reveals no evidence of penetrating injury into the chest cavity or peritoneum.

SYSTEMS DESCRIPTION

HEART: The epicardium contains minimal fat. The myocardium is firm and tan. The endocardium is smooth.

LUNGS: The pleural surfaces are smooth and glistening. Sections reveal a soft pink parenchyma. The trachea is hyperemic with no evidence of penetrating bite injury.

LIVER: The capsule is intact and the edge is sharp. Sections reveal a firm parenchyma. The gallbladder is small and contains minimal bile.

GASTROINTESTINAL TRACT: The esophagus, stomach, small and large bowels appear grossly normal.

KIDNEYS, URETERS, BLADDER, SPLEEN, PANCREAS: Examination reveals normal appearing organs.

BRAIN: The scalp is reflected to reveal scattered subcutaneous contusions of the scalp area. The calvarium is intact. The brain weighs 1,300 gms. The covering meninges are pale and translucent. The sulci and gyri are of normal prominence. The blood vessels at the base of the brain appear unremarkable. Serial sections of the brain and cerebellum appear unremarkable.

ANATOMICAL PATHOLOGY RESULTS

PATIENT: DAVIS, JOHN MATTHEW

ACCESSION #: FA-06-229

ADDITIONAL PROCEDURES

Blood was obtained and transferred to the investigators for submission to the State Law Enforcement Division.

Head, chest, and abdomen radiographs were obtained and showed no evidence of fracture.

As stated, extensive photographic documentation was obtained to show extensive traumatic injury to this body as well as patterned abrasion across the back indicating the body was dragged on the ground. Investigators from Dillon County also took multiple photographs as well as retained all items of clothing.

BLOCK SUMMARY

- A. Heart, liver, pancreas.
- B. Kidneys, spleen, thymus.
- C. Lungs.

MICROSCOPIC INTERPRETATION

HEART: Sections reveal intact myocardial fibers.

LIVER: Sections reveal an intact lobular architecture. Portal areas show minimal fibrosis. Central veins are intact.

PANCREAS: Sections reveal intact islet and acinar areas.

KIDNEYS: Sections reveal intact glomeruli. The tubules and interstitium appear unremarkable.

THYMUS: Sections reveal intact Hassall's corpuscles and lymphoid areas.

SPLEEN: Sections reveal an intact red and white pulp.

LUNGS: Sections reveal intact alveoli and bronchial areas. There are no inflammatory infiltrates present.

CASE SUMMARY

At autopsy, examination revealed extensive traumatic injury sustained when this young boy was attacked by a pack of dogs. There were extensive laceration and maceration of the neck muscular tissues with transection of the left jugular vein. There was extensive loss of skin and soft tissues of the face to include the nose, ears, and soft tissue about the lips. There was exposure of the underlying mandible and maxilla. There was extensive traumatic injury to the underlying tracheal tissues of the anterior neck as well as extensive loss of skin and soft tissue with exposure of bones and joints about the right and left humeri as well as the shoulder and elbow joints. There were numerous bite marks

ANATOMICAL PATHOLOGY RESULTS

PATIENT: DAVIS, JOHN MATTHEW

ACCESSION #: FA-06-229

CASE SUMMARY

(Continued)

on the upper back, forearms, and lower legs. Additional findings revealed minimal congestive changes with in visceral organs.

Toxicologic samples were forwarded to the Dillon County Coroner, for submission to SLED.

These findings are consistent with extensive traumatic injury as the result of being attacked by a pack of dogs. As stated, there was extensive tearing and loss of skin, subcutaneous tissue, and muscular tissues with exposure of the internal neck structures, bones about the face, as well as complete loss of flesh from the bones of the shoulder joints, humeri, and elbows.

In summary, this 10-year-old Caucasian male died as the result of extensive trauma with massive hemorrhage sustained when he was attacked by a pack of dogs. The manner of death is homicide.

FINAL ANATOMIC DIAGNOSES:

- I. EXTENSIVE TRAUMA INJURY SUSTAINED WHEN ATTACKED BY PACK OF DOGS.
 - A. EXTENSIVE LACERATION AND MACERATION OF NECK MUSCULATURE WITH TRANSECTION OF LEFT JUGULAR VEIN.
 - B. EXTENSIVE LOSS OF SKIN AND SOFT TISSUES OF FACE TO INCLUDE NOSE, EARS, AND SOFT TISSUE ABOUT LIPS WITH EXPOSURE OF UNDERLYING MANDIBLE AND MAXILLA.
 - C. EXTENSIVE LOSS OF SKIN AND SOFT TISSUE WITH EXPOSURE OF SHOULDER JOINTS AND RIGHT AND LEFT HUMERI TO ELBOW.
 - D. EXTENSIVE BITE MARKS UPPER BACK, FOREARMS, AND LOWER LEGS.
- II. SIGNIFICANT FINDINGS:
 - A. BLOOD - SUBMITTED TO STATE LAW ENFORCEMENT DIVISION.
 - B. INTERNAL ORGANS WITH MINIMAL CONGESTIVE CHANGES.

CAUSE OF DEATH

EXTENSIVE TRAUMA WITH MASSIVE HEMORRHAGE SUSTAINED WHEN ATTACKED BY PACK OF DOGS.

MANNER OF DEATH

HOMICIDE.

Entered: 01/14/07 - 1626
T: 11/12/06 - 2252 FLAB.KKM
01/14/07 - 1626 FLAB.KKM

ANATOMICAL PATHOLOGY RESULTS

PATIENT: DAVIS, JOHN MATTHEW

ACCESSION #: FA-06-229

I certify that I personally conducted the diagnostic evaluation of the above specimen(s) and have rendered the above diagnosis(es).

Signed <Signature on File>

EDWARD JR PROCTOR

01/22/07

Diagnostic Imaging Report
GRAND STRAND REGIONAL - 809 82ND PARKWAY - MYRTLE BEACH, SC 29577
Phone #: 8436921550 Fax #: 8436921555
Name: DAVIS, JOHN MATTHEW Loc: F.MORGUE Radiology No:
DOB: 04/12/1996 Age: 10 Sex: M Status: REG REF Unit No: P000526757
Phys: PROED - PROCTOR, EDWARD Acct: F01016464695
Reason For Exam: AP CHEST, AP SKULL Exam Date: 11/05/2006

Exams: 001010928 PORTABLE SKULL REASON FOR EXAM: AUTOPSY

Single AP skull radiograph November 5, 2006 at 1204 hours.
Indication: Autopsy film.

Findings:
Single AP view of the skull and facial bones demonstrates air within diploic venous channels, as well as the superior sagittal sinus. There is no definite evidence of fracture, however, lateral skull film may be useful. Limited visualization of the facial bones shows no abnormality.

Impression:
Dural venous sinus and diploic venous air.
No definite evidence of fracture, lateral skull radiograph may be useful.

** Electronically Signed by BRIAN J FORTMAN on 11/14/2006 at 1348 **
Reported and Signed by: BRIAN J FORTMAN

CC: EDWARD PROCTOR

Dictated Date/Time: 11/14/2006 (0803)
Technologist: JENNIFER BYRD RT
Transcribed Date/Time: 11/14/2006 (1348)
Transcriptionist: FRAD.SKS
Electronic Signature Date/Time: 11/14/2006 (1348)
Printed Date/Time: 11/14/2006 (1346)

Diagnostic Imaging Report

GRAND STRAND REGIONAL

Phone #: 8436921560

809 62ND PARKWAY

MYRTLE BEACH, SC 2957

Fax #: 8436921555

Name: DAVIS, JOHN MATTHEW

Loc: P.MORGUE

Radiology No:

DOB: 04/12/1996 Age: 10

Sex: M Status: REG REF Unit No: F000526757

Phys: PROED - PROCTOR, EDWARD

Acct: F01016464595

Reason For Exam: AP CHEST, AP SKULL

Exam Date: 11/05/2006

Exams:

001810927 PORTABLE CHEST

REASON FOR EXAM:
AUTOPSY

Portable chest radiograph November 5, 2006 at 1204 hours.

Indication: Autopsy film.

Findings:

Supine portable view of the chest demonstrates ill-defined opacity over both lung fields. There is a 20% right pneumothorax and a very small left apex pneumothorax. There is scattered subcutaneous emphysema present. There is no evidence of fracture. The patient is skeletally immature.

Impression:

Autopsy film with findings as above.

** Electronically Signed by BRIAN J FORTMAN on 11/14/2006 at 1343 **
Reported and Signed by: BRIAN J FORTMAN

CC: EDWARD PROCTOR

Dictated Date/Time: 11/14/2006 (0807)

Technologist: JENNIFER BYRD RT

Transcribed Date/Time: 11/14/2006 (1348)

Transcriptionist: FRAD.SKS

Electronic Signature Date/Time: 11/14/2006 (1348)

Printed Date/Time: 11/14/2006 (1346)

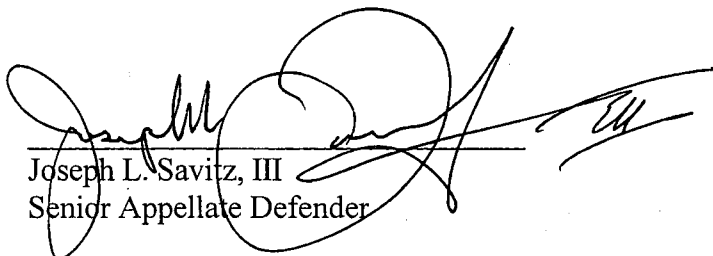
PAGE 1

Signed Report

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Supplemental Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 10, 2010



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Senior Appellate Defender

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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DILLON COUNTY

Paul M. Burch, Circuit Court Judge

18707

THE STATE,

RESPONDENT,

V.

BENTLEY COLLINS,

APPELLANT

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1 now going to turn the case over to counsel for their
2 presentation. And once again they may make opening
3 statement or they may waive. Solicitor Redmond.

4 OPENING STATEMENT BY

5 MR. REDMOND: Thank you, Your Honor. May it please
6 the Court, Mr. Lee, ladies and gentlemen. My name is
7 Kernard Redmond. I am Deputy Solicitor here in Dillon
8 County. Now, assisting me by way of introduction at this
9 time I have Mr. Shipp Daniel and Mr. Lee Hayes. They are
10 Assistant Solicitors also assigned to Dillon County.
11 However, we cover four countyies in this circuit: Dillon,
12 Marlboro, Chesterfield and Darlington.

13 However, we are all headquartered here in Dillon, and
14 it is a pleasure to serve the people of Dillon. I can
15 tell you what's not a pleasure sometimes, though, and that
16 is the subject matter that we as prosecutors have to deal
17 with. And this I would dare say is easily one of the most
18 unpleasurable circumstances that I've had to face in
19 almost 16 years.

20 Let me, before I get more into that, let me talk
21 about what our job is. We have to prove to you beyond a
22 reasonable doubt that the defendant is guilty of
23 involuntary manslaughter sand three counts of being an
24 owner of dangerous animals. First, let me talk to about
25 involuntary manslaughter. He is charged with that because

1 of what happened on the 3rd of November of 2006.

2 We allege that through his criminal negligence, and
3 you will be instructed on those things at the conclusion
4 of the case, but due to his criminal negligence and the
5 way those dogs were treated which caused them to attack in
6 such a way as I would also dare say that you would find
7 hard to believe; that that constituted a willful disregard
8 for the safety of others.

9 Now Your Honor instructed you a few minutes ago that
10 the victim in this case, Young John Matthew Davis, who was
11 only 10 years-old at the time. Ten years old. Had
12 implied consent to be on that premises. I would submit to
13 you that that makes the circumstances here even more
14 egregious because the Defendant knew that children would
15 be on that property. Yet, you will see the manner of
16 those dogs and what they did, more importantly, what these
17 dogs did.

18 Then we get to the owner of dangerous animals, and
19 what we have to prove to you is that the Defendant was the
20 owner and we will have evidence to attest to that; that it
21 was an unprovoked attack. Now, the only person that was
22 out there that night was Matthew at the time of the actual
23 initiation of the attack. You will hear from witnesses
24 who were actually -- who did come upon the scene during
25 the course of this grizzly occurrence.

1 I submit to you that the nature of the injuries
2 inflicted are not indicative of provocation. They've
3 indicative of something else and I'll get into that
4 briefly later on. I also have to prove to you that these
5 dogs again were unrestrained. You will hear testimony, no
6 chains for these dogs, no dog pen, no fence around the
7 yard. So these dogs were able to run wild and free. You
8 will also here from witnesses who talk about the fact that
9 they had previous encounters with these particular dog.

10 I also have to prove to you that there was an injury
11 that resulted from the actions of these dogs, and let me
12 stress that again, that injury. I don't have to show you
13 that each of the dogs caused the death of John Matthew
14 Davis. All I have to show you is that each of those dogs
15 were involved in the infliction of injuries.

16 And I submit to you that once the case proceeds and
17 evidence is presented that you will more clearly see the
18 nature of those injuries. And how multiple dogs were
19 involved in that attack. We say at least three, and you
20 will hear from witnesses and explain why we say at least
21 three. There were six dogs that Mr. Collins had that we
22 were able to get after this grizzly incident. And you
23 will hear from testimony concerning the significance of
24 that.

25 When you look at the evidence that we're going to

1 present to you, ladies and gentlemen, there are several
2 things that I'll submit to you will be readily apparent.
3 One, that these dogs were dangerous. But let me just stop
4 there for a second. One of the things that I am not going
5 to do, because I've owned dogs in the past and hope to own
6 more in the future, and I noticed yesterday when we were
7 doing what we call the voir dire, asking you questions
8 that most of you own dogs.

9 My purpose here today, this week, during the course
10 of this trial, is not to demonize dogs because one of the
11 things that I think we each all know is that we play a
12 hand in ultimately what those dogs become or what they
13 become capable of. And that is why the Defendant, Bentley
14 Collins, is the person responsible for the death of John
15 Matthew Davis. You will hear testimony regarding the
16 nature and condition of those dogs.

17 But here is the thing, and this is what I skipped
18 over earlier. The reason I said that this was -- we would
19 submit that the evidence would show that this was not a
20 provoked attack. It wasn't an attack out of anger, ladies
21 and gentlemen. I think you will see clearly from the
22 evidence that it was an attack out of hunger. These dogs
23 did not kill out of anger to protect property. They
24 killed for pray.

25 And if y'all don't remember anything else I tell you

1 during the course of this trial I want you to keep that in
2 mind because everything you hear, these dogs killed for
3 pray. They ate John Matthew Davis. A ten year old child.
4 A ten year old child. In advance I apologize because
5 there are going to be exhibits that will be presented that
6 quite frankly may be hard to view. But it is necessary
7 for me to show you the extent of what happened to show you
8 just how dangerous, how desprite these dogs had become.
9 And why is that? Because of the treatment that they
10 received from the Defendant, Bentley Collins.

11 And I'll submit to you that any of us that have ever
12 been dog owners could even imagine some of the things that
13 you're going to see and hear during the course of this
14 trial. Again, I'm not here to demonize the dogs. I'm
15 not. Those dogs had been rightfully put down in
16 accordance with the law. But they are also victims
17 because of the treatment that they got from the owner.

18 Unfortunately, dogs don't pick their owner. And the
19 owners are ultimately responsible for how those dogs act
20 especially when you choose to have those dogs unrestrained
21 in a neighborhood with plenty of children that come and go
22 around in that neighborhood. So it is ultimately, ladies
23 and gentlemen, on the Defendant. That is the instrument
24 of the demise of John Matthew Davis, and I would sibmit to
25 you that once you've heard all the testimony that you will

1 agree.

2 My opening statement just that. It's a statement.
3 At the conclusion of the case I will have an opportunity
4 to come back before you and wrap everything up. But I
5 would submit to you that I've never seen a case like this
6 before in 16 years. I submit to you -- I will submit to
7 you that once you've had a chance to see everything there
8 really isn't that much convincing that I'm going to have
9 to do. I thank you for your attention in advance answer
10 and I look forward to addressing you again at the
11 conclusion of the case. Thank you very much.

12 THE COURT: Thank you, Solicitor. Mr. Lee.

13 OPENING STATEMENT BY

14 MR. LEE: Please the Court, Mr. Redmond, ladies and
15 gentlemen of the jury. Good morning. I'm Robert Lee. I
16 practice law in Marion County, and I'm Mr. Bentley's
17 appointed lawyer. I know some of you are wondering, after
18 Mr. Redmond's open, why we're here. Why don't we just
19 pack it up and go home if it's so clear.

20 I did this in another court where I said I'm like
21 Paul Harvey and half the jury looked at me and didn't know
22 who Paul Harvey was. I realized that I was showing my own
23 age. But Paul Harvey was a commentator on the radio who
24 would always tell the rest of the story. That's my job is
25 to help you get the rest of the story because the State is

1 THE WITNESS: Caroline Michelle Davis. D-A-V-I-S.

2 DIRECT EXAMINATION

3 BY MR. REDMOND:

4 Q. And Ms. Davis, I'm going to ask you to speak loud so
5 I can hear you because if I can hear you that means the
6 jurors can hear you?

7 A. Okay.

8 Q. Mrs. Davis, where do you now live? Do you live in
9 Dillon County now?

10 A. Yes, sir.

11 Q. And tell me about your family. Do you have any
12 children?

13 A. Yes, sir.

14 Q. How many children do you have?

15 A. I have two boys and one girl.

16 Q. How many of those children are still alive?

17 A. Three.

18 Q. Okay, do you have any other children that are now
19 deceased? I guess that's what I'm trying to ask.

20 A. Yes, sir, a little boy.

21 Q. And who was that?

22 A. John Matthew Davis.

23 Q. And how old was he when he was deceased?

24 A. Ten.

25 Q. Do you remember what occurred on November 3rd 2006

1 that ended his life?

2 A. He was mauled by some dogs.

3 Q. Now, let me go back for just a moment. Did you live
4 out near where you found Matthew?

5 A. Yes, sir.

6 Q. And where did you live at that time?

7 A. 231 Mannyville Loop Road.

8 Q. And who was living there with you?

9 A. It was me, my kids and my Aunt and Uncle, Nancy and
10 David Davis.

11 Q. Did you know the Defendant, Bentley Collins?

12 A. No, I didn't.

13 Q. Now, Matthew. Let's talk about Matthew. Do you know
14 whether Matthew ever went over to Bentley Collins' house?

15 A. I can't say that he did or didn't.

16 Q. And why is that?

17 A. Because I don't know that he didn't.

18 Q. Did Matthew go around the neighborhood and different
19 places in the neighborhood?

20 A. Yes, sir.

21 Q. Okay, was that an unusual thing for Matthew to do?

22 A. No, sir.

23 Q. Where were you on November 3rd 2006, Caroline?

24 A. Sanford, North Carolina.

25 Q. Okay, and why were you up there?

1 A. My and my fiancée now were up there to get his check
2 and it got delayed.

3 Q. How long were you up in Sanford?

4 A. A week.

5 Q. Okay, and who was staying -- who was Matthew with
6 during the time?

7 A. My aunt and uncle, Nancy David.

8 Q. And did they live -- did y'all live ---

9 A. They lived with me.

10 Q. Okay, did you come home on November 3rd 2006?

11 A. Yes, sir.

12 Q. And I want you to tell the jury about once you got
13 home. Tell the jury what happened from that point
14 forward?

15 A. I got home about seven o'clock. I was talking to my
16 aunt asking where the kids were at. She said Matt was
17 supposed to be home around 5:30. He never missed supper.
18 So he was always there. So I started looking at the
19 neighbor's house, his friend's house. And went to the
20 where he played pool at and he was -- he wasn't at any of
21 the places.

22 So we went to the big white house where they were
23 having like a Halloween thing. It was call Halleluiah
24 thing. He wasn't there so we come back and I called the
25 cops.

1 Q. Okay, and did law enforcement respond? Did the
2 Sheriff's Department respond?

3 A. Yes, sir.

4 Q. What happened once they responded? Did you go off
5 with them?

6 A. Yes, sir, we went back to the same places that I had
7 went previously.

8 Q. Okay, at some point did y'all go to a residence on
9 Home Light Road?

10 A. Yes, sir.

11 Q. Okay and could you tell the jury what occurred once
12 you got to that particular residence?

13 A. We pulled up and I saw my little boy laying in the
14 yard. He ---

15 Q. When you say, 'pulled up' were you with the officers?

16 A. Yes, sir.

17 Q. And did you say you saw him laying in the yard?

18 A. Yes, sir.

19 Q. And, Caroline, what did you do?

20 A. Fell to the ground.

21 Q. And then what happened?

22 A. I don't remember who it was. They pulled me away
23 from him.

24 Q. And what happened after that, Caroline?

25 A. They took me to the house where I lived.

1 Q. Did you stay out there at the scene that day?

2 A. Did I stay?

3 Q. Did you stay? In other words did you stay for any
4 long period of time or did they take you pretty fast?

5 A. Yes, took me.

6 Q. Do you remember about what time this was, Caroline?

7 A. 9:30, ten o'clock.

8 Q. Do you remember whether or not there were any dogs
9 out there ---

10 A. Yes.

11 Q. --- when y'all found Matthew?

12 A. Yes.

13 Q. Tell the jury about that?

14 A. They were around him. When I got out I saw them
15 around him, but after that I just ran to him.

16 Q. Okay, and did the dogs ever come towards you and the
17 officers at any point?

18 A. I have no idea. I went straight to my baby and
19 that's it.

20 Q. Okay, but did you say one of the officers pulled you?
21 I think you said at some point somebody pulled you?

22 A. Yes, sir.

23 Q. Did you ever see the Defendant at the house when
24 y'all pulled up and found Matthew's body?

25 A. Uh Uh.

1 Q. How far away would you say you got from your son?
2 How close did you get to your son as he lay there in the
3 yard?

4 A. Okay.

5 Q. Do you remember, best you can, the condition that you
6 saw him in.

7 A. Yeah, I remember.

8 Q. And what, to the best that you can remember, what
9 condition did you find your son as he lay there? Was he
10 bloody?

11 A. Yeah, he was tore to pieces. Pieces.

12 Q. Did you have any conversation with the Defendant?

13 A. No, sir.

14 Q. After this incident?

15 A. No, sir.

16 MR. REDMOND: That's all the questions I would have
17 at this time, Your Honor. One more question. I'm sorry.

18 Q. Was this -- did you live in Dillon County?

19 A. Yes, sir.

20 Q. And was the location that you found your son's body
21 was that also in Dillon County?

22 A. Yes, sir.

23 Q. And was that on Home Light Drive?

24 A. Yes.

25 MR. REDMOND: Be all the questions I have at this

1 time.

2 THE COURT: Your witness, Mr. Lee.

3 CROSS-EXAMINATION

4 BY MR. LEE:

5 Q. Caroline?

6 A. Yeah.

7 Q. Can you please look at me, please. What time of
8 night was this did you find him?

9 A. Around 9:30, ten o'clock.

10 Q. Was it dark outside?

11 A. Yes, sir.

12 Q. When you pulled up when did see? When did you see
13 the body?

14 A. When I pulled up.

15 Q. Okay, could you see it as you were pulling up?

16 A. Yep.

17 Q. Okay, could you see it because of the headlights or
18 why could you see? I'm trying to understand how dark it
19 was?

20 A. Yeah, I saw when they pulled in.

21 Q. Okay, the other question I had is your testimony is
22 you were only in North Carolina for a week. Weren't you
23 there for two weeks?

24 A. No, I sure wasn't.

25 Q. Okay, and the Davis' live with you?

1 A. They sure did.

2 Q. That's your aunt, and your son was left in her
3 custody and care?

4 A. Yes, sir.

5 Q. Okay. Thank you?

6 MR. LEE: If Your Honor please, we have her on cross
7 subpoena and we would ask that she be excluded under the
8 rules, your earlier ruling, until our case is concluded.

9 THE COURT: All right.

10 MR. REDMOND: And, Your Honor, I would like to, not
11 at this time, but I would like to address that. I guess
12 that issue a little bit later on if I could. At this time
13 I have no further questions and with that I guess she
14 would have to go back out. I'll just instruct her to go
15 back up to my office until the next break. Next witness
16 would be Bobby Chavis.

17 BOBBY CHAVIS, after being duly sworn, testified
18 as follows:

19 CLERK OF COURT: Be seated in the witness box and
20 state your full name for the Court, please.

21 THE WITNESS: Bobby Dean Chavis the Third.

22 DIRECT EXAMINATION

23 BY MR. REDMOND:

24 Q. And, Mr. Chavis, how old are you, sir?

25 A. Seventeen.

1 Q. And if I could ask you to speak loudly. I usually
2 tell my witnesses to speak loudly that if I can hear you
3 then I know the jurors can hear you, okay?

4 A. Yes, sir.

5 Q. How old are you, again?

6 A. Seventeen.

7 Q. And where do you live now?

8 A. North Myrtle Beach.

9 Q. Where did you live in November, 2006?

10 A. 939 South Long Street, I believe was the address.

11 Q. Okay, was that in or near Emmanuelville?

12 A. Yes, sir, it's right by it.

13 Q. Okay, and are you in school at this time?

14 A. Yes.

15 Q. What grade are you in?

16 A. Eleventh.

17 Q. And where do you attend school?

18 A. North Myrtle Beach High School.

19 Q. Congratulations for being in school.

20 A. Thank you, sir.

21 Q. You know the defendant?

22 A. Yes, sir. Just a little bit.

23 Q. Okay, do you recall where he lived?

24 A. Yes, sir.

25 Q. Okay, and do you remember not the address, but do you

1 remember what road he lived on?

2 A. I think it's Moonlight Road.

3 Q. Okay, or Homelight Road?

4 A. Yeah, yeah.

5 Q. Okay, now, did you know John Matthew Davis?

6 A. Yes, sir.

7 Q. How old well did you know John Matthew?

8 A. He stayed at my house all the time, we were pretty
9 good friends.

10 Q. Now, do you know or did you know, excuse me -- at
11 that time did the defendant own any dogs?

12 A. Yes, sir.

13 Q. Okay, and how did you know about the defendant owning
14 dogs?

15 A. Cause we used to ride the four wheelers around the
16 triangle there. And we always saw the dogs.

17 Q. And did you ever have any encounters with those dogs?

18 A. Yes, sir, all the time.

19 Q. And could you tell the jury some about the encounters
20 that you would have with those dogs?

21 A. Me and my buddy used to ride the four wheeler around
22 the triangle. They use to come out and try to attack the
23 four wheelers and all. And all the times, and when my mom
24 she walked around he triangle they would come out and
25 bother her.

1 MR. LEE: Objection.

2 THE COURT: You can't get into what you were told.
3 Now, if you were present and saw it, it's okay, but don't
4 get into anything if it was told to you.

5 THE WITNESS: I was with her.

6 THE COURT: Okay.

7 BY MR. REDMOND:

8 Q. Was it something you observed?

9 A. Yes, sir.

10 Q. Well, continue. If you observed it tell the jury
11 what you observed?

12 A. Me and like I said me and my Buddy, Joe, we had dirt
13 bikes and we always ride and whenever we go on that street
14 they would come out and try to attack to four wheelers,
15 whatever, pants legs. And then my mom and me tried to
16 walk around the triangle you know to try to lose a little
17 bit of weight, and we had to stop cause every time we went
18 around there the dogs would come out in the road and try
19 to bite our legs and stuff.

20 Q. Now, let me ask you this, Bobby. When, and I think
21 you answered it already, but would y'all be walking or
22 riding dirt bikes on Bentley Collins' property?

23 A. No, sir.

24 Q. Would the dogs come off of his property to try to
25 attack y'all?

1 A. Yes, sir.

2 Q. Were those dogs during the times that you were around
3 there did you ever notice those dogs on any chains?

4 A. No, sir, not at all. Ever.

5 Q. Did you ever notice any fence around the property?

6 A. No, sir.

7 Q. Did you ever notice that any dog pins?

8 A. No, sir.

9 Q. Did you also see an encounter involving those dogs on
10 November 3rd 2006?

11 A. I don't remember.

12 Q. Involving -- well, let me ask you like this. Was
13 there a time that you and Joey Pope were together and
14 observed an incident involving the dogs?

15 A. Yes, sir.

16 Q. Okay, and could you tell the jury about that?

17 A. Okay, me and my buddy, Joey Pope, we were looking for
18 his dog, Oscar cause we couldn't find him. We heard like
19 growling and stuff like dogs do. So we walked around and
20 tried to follow the noise. And when we got around there
21 we walked up in his yard by the two cinder block posts he
22 had right there at the driveway.

23 I stayed there, and as soon as we entered there two
24 dogs came outside a blue truck. They came out and started
25 growling and barking at us. Joey, I tried to stop him but

1 he went ahead forward. And one dog came out from up under
2 an RV. He was a bigger dog. And as soon as he came out
3 those three bigger dogs attacked Joey, and we tried to get
4 him off. And as soon as we got him off we ran, but
5 whatever they were -- there were three dogs eating
6 something. I could not tell what it was, but it looked
7 familiar to a bloody piece of meat.

8 And then we went back home and told my mom and dad
9 and they said that we would go the next morning and look
10 at whatever it was.

11 Q. Now, did you talk to law enforcement the next day?

12 A. Yes, sir.

13 Q. And did you give them a statement about what you saw?

14 A. Yes, sir.

15 Q. And did you have a chance to review that statement
16 before you testified?

17 A. Yes, sir.

18 Q. And was that statement dated November 4th 2007?

19 A. Yes, sir.

20 Q. 2006. Excuse me?

21 A. Yes, sir.

22 Q. About what time, to the best if you can recall a
23 time, was it dark?

24 A. Yes, sir, it was about, between like sunset and
25 darkness is what time we were over there.

1 Q. And I think you said that the dogs or at least one or
2 more of the dogs attacked Joey I think you said?

3 A. Three.

4 Q. Okay.

5 A. Or two were just barking. The big one came out and
6 attacked Joey.

7 Q. But Joey was closer than you were?

8 A. Yes, sir.

9 Q. Had you have been to Mr. Collins' property or seen
10 the dogs at any point ---

11 A. Yes, sir.

12 Q. --- in your time out there?

13 A. Yes, sir.

14 MR. REDMOND: If I could ask you to step down with
15 the Court's permission.

16 (WHEREUPON, the witness steps down from the witness
17 stand.)

18 BY MR. REDMOND:

19 Q. I'd like to show him what's been marked as State's
20 Exhibits 37, 38, 39, 40 and 41. I'm going to ask you,
21 Bobby, to stand about right here in the middle. And I'm
22 going to hold these pictures like this and I want you to
23 answer me a few questions. Do you recognize the dog in
24 State's Exhibit 37?

25 A. It looks familiar, but not really.

1 Q. Okay, do you recognize the dog in State's 38?

2 A. Yes, sir.

3 Q. And whose dog do you recognize that as being?

4 A. Bentley's.

5 Q. Okay, how about State's Exhibit 39?

6 A. Yes, sir.

7 Q. Whose dog is that?

8 A. Bentley's.

9 Q. State's Exhibit 40?

10 A. Yes, sir.

11 Q. And whose dog?

12 A. Bentley.

13 Q. And how about State's Exhibit 41?

14 A. Yes, sir.

15 Q. And whose dog is that?

16 A. Bentley.

17 Q. And you can have a seat.

18 (WHEREUPON, the witness returns to the witness
19 stand.)

20 BY MR. REDMOND:

21 Q. Thank you, Bobby. Are these the dog when you
22 testified earlier are these among the dogs that you
23 indicated you had had previous encounters with?

24 A. Yes, sir.

25 Q. Do you recall whether or not Mr. Collins had ever

1 been outside when any of these encounters took place?

2 A. Yes, sir, at least two time.

3 Q. I'm sorry. Could you repeat that?

4 A. At least two times.

5 Q. Okay, do you remember what those two times were?

6 A. Me and my buddy were racing our four whellers to see
7 how fast they would go, and the dogs came out. And I
8 remember that he just let the dogs come after us. He did
9 not say anything to them.

10 Q. Oh, he did not say anything to them?

11 A. No, sir.

12 Q. Did the dogs come after you out in the road?

13 A. Yes, sir.

14 MR. REDMOND: Beg the Court's indulgence. That will
15 be all the questions I have at this time.

16 CROSS-EXAMINATION

17 BY MR. LEE:

18 Q. Mr. Chavis?

19 A. Yes, sir.

20 Q. Let me -- how about if you would come back down like
21 you did Mr. Redmond to help the jury understand some
22 things?

23 A. All right.

24 (WHEREUPON, the witness steps down from the witness
25 stand.)

1 MR. LEE: Thank you, Judge.

2 MR. REDMOND: Your Honor, State is ready to proceed.

3 THE COURT: All right, sir. We need the jury back.

4 (WHEREUPON, the jury panel enters the courtroom at
5 11:46 a.m.)

6 THE COURT: Solicitor.

7 MR. REDMOND: May it please the Court. Your Honor,
8 State would next call Joey Pope.

9 JOEY POPE, after being duly sworn, testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. REDMOND:

13 Q. Mr. Pope, where do you live now?

14 A. 529 Mott Street.

15 Q. Okay, is that here in Dillon County?

16 A. Yes, sir.

17 Q. And is that near the area known as Emmanuelville in
18 Dillon County?

19 A. Yes, sir, it is.

20 Q. And how old are you, Mr. Pope?

21 A. Eighteen.

22 Q. Eighteen. And are you in school at this time?

23 A. Yes, sir.

24 Q. Where are you in school?

25 A. Dillon High.

1 Q. What grade?

2 A. Eleventh.

3 Q. And let me ask you this. Do you know Bentley
4 Collins?

5 A. No, sir.

6 Q. Okay, however, did you know Matthew Davis?

7 A. Yes, sir.

8 Q. Now, did you ever have occasion to go down Home Light
9 Road?

10 A. Yes, sir.

11 Q. Okay, was that an often occurrence?

12 A. Often.

13 Q. Do you ever recall a residence on Home Light Road?

14 Well, let me ask you this. Let me go straight to the 3rd
15 of November 2006. Was there a date or a time that on that
16 date that you were looking for I believe your lab puppy?

17 A. Yes, sir, I was.

18 Q. And could you tell the jury about the circumstances
19 that occurred at this time?

20 A. I was in my yard with Bobby Chavis and we heard some
21 dogs barking and I discuss with him ---

22 Q. And let me -- I'm going to stop you right here
23 because I forgot to tell you as I tell most witnesses. I
24 need you to speak up so I can hear you so that way we will
25 know that the juror can hear you, okay. All right. Go

1 ahead?

2 A. I was in my yard and I heard some dogs barking and
3 bobby Chavis was with me in my yard. And we were
4 discussing it might be my dog. So we went down there, and
5 it was getting kind of dark. We -- I went in the yard.
6 Bobby Chavis was in the road and a dog came after me. He
7 latched on to me and I got him off of me and we left.

8 Q. Okay, did you see anything? Well, let me ask you
9 this. What exactly did you see when you got into the
10 yard? How far into the yard would you say you came to the
11 best that you can guess?

12 A. I'm not certain.

13 Q. Okay, did you see any dogs? What did you see as it
14 relates to the dogs? What did you see some dogs doing?

15 A. It looked like they were eating.

16 Q. Okay, and what is it that it looked like they were
17 eating?

18 A. Looked like a raw piece of meat.

19 Q. And let me ask you this. Did -- how close to the dog
20 would you say that you got?

21 A. Maybe 10 feet.

22 Q. Okay, in that range. Somewhere that are 10 foot
23 range. Now, how many of the dogs did you see eating what
24 looked like a piece of meat?

25 A. It would be three.

1 Q. Okay, and tell me after that point that you saw these
2 dogs -- first of all, did you find your lab puppy in that
3 yard?

4 A. No, sir.

5 Q. Okay, where did you happen to find you lab puppy?
6 Did you ever find you lab puppy?

7 A. I found him.

8 Q. Okay, where did you find him?

9 A. He was at one of the neighbors.

10 Q. Okay, but when you went in the yard and saw these
11 dogs eating did you see them eating before you were
12 attacked?

13 A. Yes, sir.

14 Q. Okay, did one of those dogs attack you? In other
15 words one of the three dogs that you saw eating did one of
16 those three dogs attack you or was it another dog or some
17 other dog?

18 A. I believe it was another dog that came after me.

19 Q. Okay, and what happened when that dog came after you?
20 Tell me about what happened while you were up in the yard?

21 A. I got closer to the body. Another dog came at me. I
22 didn't see him and he jumped on me and knocked me down.
23 And I knocked him off of me and another one proceeded to
24 come after me and he didn't -- I got further down the
25 road. He didn't even mess with me. He just went back.

1 Q. Okay, so you said you got further down the road. Did
2 you get up and run at that time?

3 A. Yes, sir.

4 Q. Okay, and were you still being chased as you were
5 running away from the dog?

6 A. No, sir.

7 Q. Okay. Now, had you ever been in that yard before?

8 A. No, sir.

9 Q. Okay, is there any question in your mind that you saw
10 three dogs, at least three dogs eating something?

11 A. It was three.

12 Q. Okay, and are you sure that they seemed to be eating
13 something?

14 A. Most definitely.

15 Q. Okay, and I believe didn't you give a statement to
16 law enforcement on the 4th of November, the next day?

17 A. Yes, sir, I did.

18 Q. And I think you gave a written statement. Do you
19 remember that?

20 A. Yes, sir.

21 Q. And did you at that time indicate to them what you
22 saw?

23 A. Yes, sir.

24 Q. Okay, and in fact do you recall indicating that what
25 they saw looked to be -- what you saw looked like a body?

1 A. I believe I did. I'm not too certain.

2 Q. Without seeing a copy of your statement; is that
3 correct?

4 A. Yes, sir.

5 Q. All right. Let me refresh your recollection.

6 MR. REDMOND: If I could approach?

7 THE COURT: Yes, sir.

8 BY MR. REDMOND:

9 Q. It's a copy of your statement. I'm just going to let
10 you look over that statement, and let me know when you
11 read it and when you have a chance to answer a couple of
12 questions.

13 A. I read it.

14 Q. In your statement does it indicate that you -- that
15 what you saw looked like a body?

16 A. Yes, sir

17 Q. After you got -- after you left the scene -- after
18 KWROUFR left that scene what did you do after that?

19 A. I went home and looked at where the dog bit me.

20 Q. And where did the dog bit you, by the way?

21 A. He bit me somewhere behind my neck.

22 Q. Okay. And this was while on that property with those
23 dogs you described?

24 A. Yes.

25 Q. And then tell us what else did you do the evenings,

1 A. It would.

2 Q. And it was roaming free then?

3 A. Not roaming free. Went to the next door neighbor's.

4 Yes, sir, he was roaming free.

5 MR. LEE: Okay, thank you now.

6 THE COURT: You may step down. Thank you, sir.

7 THE WITNESS: You're welcomed.

8 MR. REDMOND: State would next call Vickie Hallman to
9 the stand.

10 VICKIE HALLMAN, after being duly sworn,
11 testified as follows:

12 THE WITNESS: Vickie Hallman, H-A-L-L-M-A-N.

13 DIRECT EXAMINATION

14 MR. REDMOND: If the Court would indulge me just a
15 moment?

16 BY MR. REDMOND:

17 Q. Ms. Hallman, by whom are you employed?

18 A. I'm employed by the South Carolina Law Enforcement
19 Division which is also known as S.L.E.D.

20 Q. How long have you been employed be S.L.E.D.?

21 A. Been at S.L.E.D. about two months shy of five years.

22 Q. And what law enforcement experience do you have if
23 any?

24 A. I started in law enforcement in 1991 with the
25 Lexington County Sheriff's Department. I spent

1 approximately nine years working the road there as a
2 patrol officer. I then transferred into the crime scene
3 unit there where I spent the last four years with them in
4 the crime scene unit working crime scene at Lexington
5 County and then I came to S.L.E.D.

6 Q. As a crime scene investigator could you tell us what
7 training that you went through in your capacity as a crime
8 scene specialist?

9 A. I attend numerous up-to-date trainings for the areas
10 that I am considered proficient in. That would be crime
11 scene processing, latent print examination, footwear and
12 tire tread and blood and spatter analysis.

13 When you first start at S.L.E.D. in the crime scene
14 unit there is actually a two year in house training
15 program that will you go through with other court
16 qualified examiners. You are deemed competent in each
17 area and signed off where you're actually given case work
18 to work as your -- on your own.

19 And I also yearly perform proficiencies in all those
20 areas to maintain may level of competency.

21 Q. Okay, and have you ever been qualified as an expert
22 in the field of crime scene investigations?

23 A. Yes, sir, I have.

24 Q. Okay, and do you recall to the best that you can if
25 you can how many times you have been so qualified as an

1 expert?

2 A. In crime scene, probably two or three times.

3 MR. REDMOND: And at this time, Your Honor, I would
4 move to introduce Miss Hallman as an expert in the field
5 of crime scene analysis?

6 THE COURT: Any questions or.

7 MR. LEE: Your Honor, I just have this one
8 clarification. Mr. Redmond, is she being general crime
9 scene? Is it reconstruction? Is it blood stain,
10 specifically?

11 MR. REDMOND: I can ---

12 THE COURT: Can you narrow it down?

13 MR. REDMOND: I can narrow it down.

14 BY MR. REDMOND:

15 Q. As a part of your education did you as far as crime
16 scene analysis did you have the opportunity to learn and
17 be trained regarding blood pattern and things of that
18 sort?

19 A. Yes, sir, that's one of the areas I'm trained in.

20 Q. And also do you have any training as it relates to
21 being able to determine whether someone has been dragged
22 or something on a particular crime scene? Is there any
23 training in that area?

24 A. That all ties in with the brood stain pattern. So,
25 yes, sir, that is part of what I'm trained in.

1 MR. REDMOND: So, Your Honor, I move that she be an
2 expert in that particular area if that suits the Defense.

3 MR. LEE: It suits the Defense.

4 MR. REDMOND: Thank you, Judge.

5 THE COURT: So qualified with no objection.

6 BY MR. REDMOND:

7 Q. Now, in your role let's talk generally about what you
8 do at S.L.E.D. Do y'all get called out to crime scenes in
9 different areas of the State?

10 A. Yes, sir, up until about a month ago, and since then
11 S.L.E.D. has regionalized that their crime scene agents
12 they were all assigned to specific areas in the State.
13 But up until that point I ran calls across the entire
14 state.

15 Q. Any what area are you assign to at this time?

16 A. I'm currently assigned to the Pee Dee region.

17 Q. Okay, now, on November 3rd 2006 were you with
18 S.L.E.D. at that time?

19 A. Yes, sir, I was.

20 Q. And were you a crime scene specialist for lack of a
21 better term?

22 A. Yes, sir, I was.

23 Q. And were you called out to Dillon County on that
24 particular evening?

25 A. Yes, sir.

1 Q. Now, was the location 1812 Home Light Road in Dillon
2 County based on your records?

3 A. Yes, sir.

4 Q. Before we get into what you saw there give the jury
5 an idea when you go to a crime scene what is it that y'all
6 do in your capacity at S.L.E.D. when you get to a crime
7 scene what do y'all usually do?

8 A. We're usually called in as an assisting agency for
9 whatever local agency. In this case it was Dillon County
10 Sheriff's Department that requested our assistance in
11 processing of a crime scene. We're usually briefed. I
12 usually make phone contact with someone at that agency
13 before I arrive so I know if there is any type of special
14 equipment I may need or if there is any other concerns
15 that they can take care of while we're on our way to the
16 scene.

17 We are basically briefed when we arrive on the scene
18 with any up to date information that they might come
19 across while we were on our way cause usually it takes an
20 hour or so to get where we're going. I was briefed once
21 we got there. There were a couple of issues that we
22 discussed on the way.

23 We usually document the scene with photographs. We
24 go back in and anything that we think is pertinent
25 evidence that we've been advises of or that we see as

1 we're processing the scene we usually mark it.

2 And then the scene is rephotographed with those
3 markers in it. Those items are collected and sent to
4 their respective areas either in the S.L.E.D. lab of, if
5 it's a homicide, with things that need to go with the body
6 to the autopsy. After that's done there is usually a
7 briefing after the scene to make sure that everybody's
8 basically as I say on the same sheet of music.

9 That we've done everything that they would like for
10 us to do and we feel like we've done everything, and
11 that's usually the essence of a crime scene.

12 Q. Now, let's direct our attention to the 3rd of
13 November 2006 here in Home Light Road in Dillon County.
14 Did you respond to a crime scene at that location?

15 A. Yes, sir, I did.

16 Q. And do you recall or do you have records indicating
17 about what time you arrived at that crime scene?

18 A. I was notified at approximately 11:15 at night and I
19 arrived on scene at approximately 1:15 in the morning.

20 Q. When you arrived on the scene could you tell the jury
21 what your observations were once you arrived at the crime
22 scene?

23 A. The scene was actually secured with crime scene tape.
24 There were numerous people from the Dillon County
25 Sheriff's Office present on the scene. And I did notice

1 that there was a body lying in the yard that was covered
2 with a white sheet.

3 Q. And with that when you noticed the body in the yard
4 covered with the sheet did you at any point -- was the
5 sheet ever removed while you were there?

6 A. Yes, sir, it was.

7 Q. And let me ask you this. Did you take photographs of
8 this particular crime scene?

9 A. Yes, sir, we did.

10 Q. Okay. Now, once you started your work on the scene
11 why don't you tell the jury once y'all arrived on the
12 scene what did you start doing? What did you do pursuant
13 to your investigation?

14 A. One of the first things that we did we actually work
15 all of our crime scenes basically with two people. The
16 gentleman who was with me actually took most of the
17 photographs. I was attempting to gather some information
18 about the victim and some other items that I needed from
19 the personnel that were on the scene.

20 A -- I believe he's a lieutenant or a captain with
21 Dillon County had actually taken pictures of the body
22 before they had covered him with a sheet, and I was able
23 to see those before he was actually uncovered. We also
24 made an attempt to get animal control in route to try to
25 detain the dogs.

1 Q. And let's talk about some of your specific
2 observations. Well, let me ask you this. Did you do a
3 diagram of the crime scene?

4 A. Yes, sir, I did.

5 Q. And let's, before we got into the diagram, let's talk
6 about whethere or not there were any dogs. Were there any
7 dogs on the scene?

8 A. Yes, sir. There were -- I believe there were six all
9 together. For the most part they were sitting on the
10 porch. I believe when I arrived and they were there. For
11 some point in time throughout the scene they were actually
12 on the porch.

13 Q. Okay, were there any times during that, during your
14 period out there, that the dogs seem to get aggressive in
15 any way?

16 A. Yes, sir.

17 Q. Okay, did you in your investigation look around the
18 yard of the residence?

19 A. Yes, sir, I did.

20 Q. And, specifically, what were you looking for?

21 A. One of the things that we were looking for was to see
22 if there was -- I tried to see if I could find any food or
23 water that might have been left for the dogs.

24 Q. And, were you able to find any food or water left for
25 the dogs?

1 A. No, sir, not in the areas that I searched.

2 Q. And based on it -- have you worked many homicide
3 scenes or death scenes?

4 A. Yes, sir, that's primarily what we work at S.L.E.D.

5 Q. Okay, and you did have an opportunity to observe the
6 body of John Matthew Davis?

7 A. Yes, sir, I did.

8 Q. And based on your observations and based on your
9 experience what was your -- how would you describe what
10 you saw? Let's me just put it that simply. How would you
11 describe what you saw with John Matthew Davis' body?

12 A. I'm not sure what you're ---

13 Q. In other words how would you describe his condition.
14 What did it look like had occurred?

15 A. It was very, and I don't know how to -- it's been a
16 very difficult crime scene for me to have to worked. It
17 was very -- that was something I've never seen in all my
18 years of working crime scenes.

19 Q. Okay, and when you say 'that was something' are you
20 referring to the extent of injuries?

21 A. Yes, sir.

22 Q. Okay, did you see any dog penned out there?

23 A. I don't recall seeing any.

24 Q. Did you see any chains out there?

25 A. I don't recall seeing any of those either.

1 Q. Was the yard fenced in? Did you have to enter in
2 through a fence to get into the Defendant's yard?

3 A. No, sir.

4 Q. And the dogs, I think you said the dogs were still
5 running loose in the yard?

6 A. Yes, sir.

7 Q. Let me ask you if you could what has been marked as
8 State's Exhibit.

9 MR. REDMOND: With the Court's permission, if you
10 could step down.

11 (WHEREUPON, the witness steps down from the witness
12 stand.)

13 MR. REDMOND: I want to have Agent Hallman discuss
14 what has been marked as State's Exhibit 3. I think -- is
15 there any objection to it being introduced?

16 MR. LEE: No objection.

17 MR. REDMOND: State would so move that it be
18 introduced at this time.

19 THE COURT: In without objection.

20 (WHEREUPON, State's Exhibit No. 3 was admitted into
21 evidence.)

22 MR. REDMOND: Could you step right here.

23 THE COURT: Y'all swap sides.

24 BY MR. REDMOND:

25 Q. And speak as loudly as you can so both the jury, of

1 course, and court reporter can pick up what you're saying.

2 A. Okay.

3 Q. Now, is this the diagram that you produced?

4 A. Yes, sir, it is.

5 Q. Okay, and could you explain if you could -- if you
6 would, could you explain what this diagram represents that
7 you prepared.

8 A. Usually at S.L.E.D. it's one of our policies if we
9 respond to a death investigation that we complete a crime
10 scene sketch. One of the first things is it's not drawn
11 to scale. It's not required by our policy to do that.
12 What I've basically notated are the basic buildings that
13 are on the property that were in close proximity to
14 everything.

15 There was also an abandoned bus or appeared to be an
16 abandoned bus parked beside the residence. The victim is
17 denoted, of course, by the drawing here and there is also
18 several other items that I've marked. There are marked as
19 A, B, C and D on the sketch.

20 Q. If you would go ahead. Please continue. What do A,
21 B, C and ,D, what do they represent?

22 A. A denotes to be a bloody piece of a shirt. B denotes
23 another piece of a bloody shirt. And A would be here. B
24 would be here. C denotes a piece of the shirt that is not
25 bloody and D would actually denote the victim's left shoe.

1 Q. All right. Now, are these items that you saw right
2 there at the scene and did this diagram sketch based on?

3 A. Yes.

4 Q. If I could have you sit back down for just a moment.
5 (WHEREUPON, the witness returns to the witness
6 stand.)

7 BY MR. REDMOND:

8 Q. I want to ask you if you took any notes as far as
9 distance were concerned. First, I ask you about how far
10 from the pillar entering the driveway, I think according
11 to your notes, about how far was the victim?

12 A. He's approximately 87 feet into the yard from the
13 brick pillars at the edge of the road.

14 Q. And that left shoe, about how far was that left shoe
15 from the victim?

16 A. We measured approximately 17 feet, 4 inches.

17 Q. And I think Piece A, about how far was that?

18 A. Piece A is located approximately 19 feet, 1 inch from
19 the body.

20 Q. And Piece B?

21 A. It's located approximately 8 feet, 6 inches from the
22 body.

23 Q. And finally Piece C?

24 A. It's approximately -- excuse me. 11 feet, 2 inches
25 from the body.

1 Q. And, actually, I don't know what the next
2 corresponding number is, but if the Defense won't mind
3 I'll just put this in as the next State's exhibit number,
4 and I don't know what number that would be. That would be
5 State's 43, Your Honor.

6 MR. LEE: No objection.

7 THE COURT: In without objection, 43.

8 (WHEREUPON, State's Exhibit No. 43 was marked for
9 identification and received into evidence.)

10 MR. REDMOND: I now show you what's been marked as
11 State's 43. Let me know when you've had a chance to
12 review it. Is that an accurate representation of your
13 diagram?

14 A. Yes, sir.

15 Q. Does it accurately depict the distance that you just
16 testified to?

17 A. Yes, sir.

18 Q. Okay, thank you. Now, we talked about dragging. Let
19 me discuss that a little bit. Were you able to come to
20 any determination as -- or opinions as to whether or not
21 the victim, Young John Matthew Davis, had been dragged at
22 any point while in the yard?

23 A. Yes, sir, he had.

24 Q. All right. Could you tell the jury the basis for
25 your conclusions in that regard?

1 A. There were several larger pools of blood around in
2 the same general area where most of the clothing was
3 picked up which indicates to me that there had to be some
4 kind of incident that occurred at those locations in order
5 for blood to be deposited on the ground.

6 Q. And, do you have pictures that reflect what you just
7 testified to?

8 A. Those are in the crime scene photos, yes, sir.

9 MR. REDMOND: Beg the Court's indulgence. At this
10 point, Your Honor, may we approach.

11 (WHEREUPON, a bench conference was held off the
12 record in the presence of the jury, but out of the
13 hearing of the jury.)

14 COLLOQUY

15 THE COURT: We're going to stop here for lunch.
16 Madam Clerk has arranged lunch for the jury. So if y'all
17 will step back to your room. I'm going to turn -- just a
18 second before we go off the record. State and Defense
19 waive any oaths for the bailiff staff and the Sheriff's
20 Office to carry them to lunch?

21 MR. REDMOND: The State waives.

22 MR. LEE: Your Honor, we waive.

23 THE COURT: Thank you. Okay, if y'all will step back
24 to the room. They will take care of you all. We need to
25 stay on the record though.

1 (WHEREUPON, the jury was excused from the courtroom
2 at 12:40 p.m.)

3 THE COURT: All right. We're going to recess until
4 2:00. We will come back a little ahead of time and go
5 through these photographs, and then, Madam Clerk, we need
6 to have the jury ready to go at 2:20 in case somebody
7 needs to make some calls or run an errand or something,
8 okay. All right. We're in recess for lunch.

9 (WHEREUPON, Court is in recess at 12:41 p.m.)

10 THE COURT: We're back on the record outside the
11 presence of the jury for me to review and rule on the
12 admissibility of the photographs.

13 MR. REDMOND: Okay, if it please the Court. First,
14 first set of photos are going to be photos that, and I
15 actually need to mark if the Court would indulge me since
16 we have the court reporter here. I need to mark these
17 four photos. I think this would be State's 44, 45, 46 and
18 47.

19 (WHEREUPON, State's Exhibit Nos. 44 THROUGH 47 were
20 marked for identification only.)

21 MR. LEE: If Your Honor please.

22 MR. REDMOND: Your Honor, I can just go through.
23 First, we have State's 21 which is a picture of the scene
24 which shows blood. The blood trail and the distance from
25 the body of John Matthew Davis. Also shows the picture of

1 the front of the bus which had -- something had been
2 testified to as it relates to the location of the body in
3 the yard.

4 State's 22 is a picture of a closer shot of the
5 victim but it shows again the blood and also coincides
6 with some of the testimony of our witnesses.

7 State's 23 is -- and these -- I'm sorry. The
8 pictures that I'm going through now are going to be shown
9 to Ms. Hallman, Vickie Hallman. State's 23 is a picture
10 from the victim's right side which at that the scene which
11 also shows an area of blood that's been testified to.

12 State's 24 is a picture of one of the dogs in the
13 cage.

14 State's 25 is a picture of a dog in a cage. I cannot
15 tell whether it's the same dog. I don't think so.

16 And then we have State's 26 which is a picture which
17 is a picture which is a little further away, and actually,
18 the picture of the body is somewhat obscured, but in this
19 picture the significance it shows the distance of the
20 shoes away from the body which has been testified to.

21 State's 44 is a picture of two dogs in a cage at the
22 scene that were captured.

23 State 44 is a -- I'm sorry. State's 45 is a picture
24 of a piece of clothing which has been testified to by
25 Ms. Hallman as are State's 46 and State's 47. Those are

1 pieces of clothing as testified by Ms. Hallman.

2 The State would move to introduce those as it relates
3 to Ms. Hallman once she testifies. I'll have her come
4 down and go through those pictures and authenticate them.
5 And at the appropriate time, since I've got my pathologist
6 here prepared to testify this afternoon, there are some
7 autopsy photos I want to address as well.

8 THE COURT: All right. Let's go ahead and do it
9 while we have the jury outside.

10 MR. LEE: State's 27 is a picture of the lower body.
11 That will actually be important both for Dr. Proctor's
12 testimony based on his report and my animal trainer who
13 will be testifying tomorrow. State's 30 -- and these may
14 be out of order, Your Honor, because they got mixed up and
15 I apologize. But State's 36 is a closer picture from the
16 autopsy of the victim's face which is also going to be
17 important in Dr. Proctor's testimony as it relates to what
18 occurred in his opinion at that time.

19 State's 35 is a further picture of the torso which
20 shows both arms being eaten away, shoulders exposed and
21 frontal picture of the face. And, again, all of these
22 Dr. Proctor did indicate would assist him in his
23 recitation of his findings.

24 State's 34 is a picture of the back of the neck which
25 shows what appears to be an ear eaten off and some other

1 areas that we would assert had been actually eaten by the
2 dogs.

3 State's 33 is a picture of the left side of the
4 victim's neck area where it shows again we would allege
5 the extent that it was eaten away, the victim's neck was
6 eaten away.

7 State's 32 is a picture of the left side of --
8 specifically, the left torso with looks like some ribs and
9 tissue exposed and shoulder down to the elbow exposed that
10 we would assert had been eaten away.

11 State's 31 is a picture from the right side of the
12 same thing that's represented in the previous exhibits.

13 State's 30 is a picture of the back of the leg
14 reflecting what we would allege to be bite marks from the
15 dogs in the lower body.

16 State's 28 is a picture of the -- and I believe
17 that's the left leg. Is one of the legs that the shoe was
18 removed -- that the shoe was actually not on the young --
19 poor young man's body. And that also reflects bite marks
20 as well.

21 And, finally, State's 29 is a picture of the leg with
22 bite marks where the shoe was still on the victim's foot.
23 And those exhibits would be for the purpose of
24 Dr. Proctor's testimony for the autopsy.

25 THE COURT: All right.

1 MR. LEE: Judge, you want me to take them one by one?
2 Let me start with State's Exhibit 44. We would not have
3 an objection to that.

4 State's Exhibit 26, we have no objection to that, and
5 Your Honor, I point out this is a photograph where it does
6 show blood on the ground. It does show the victim, but
7 doesn't show the necessary all the graphic details that
8 some of the later photographs you will see does.

9 State's Exhibit 45, already been testified to. We
10 have no objection to that.

11 46, we would have no objection to.

12 State's 47, no objection to. Of course, Your Honor,
13 subject to the appropriate foundation.

14 State's 24, we would have no objection to.

15 State's 25, we would have no objection to.

16 State's 22, the Defense would object to.

17 State's 23, we object to.

18 State's 21, we object to.

19 THE COURT: All right. I'm allowing 21 and 23 in
20 based on the argument by the State that it gives the
21 location to the bus perspective there. I see no use to
22 have 22 in with 23 coming in. Twenty-two is out.

23 All right. Twenty-one, 23 in subject to objection.

24 MR. REDMOND: If Your Honor please, just for purposes
25 of the record I previously file a motion in limine which

1 sets out the law as it applies and would ask the Court to
2 take notice of that and exception to your ruling for
3 purposes of the record.

4 THE COURT: Make sure we have that in the record.
5 Yeah, that can be a Court's exhibit however he wants to do
6 it. Mr. Lee.

7 MR. LEE: Yes, sir.

8 THE COURT: Court's Exhibit.

9 (WHEREUPON, Court's Exhibit No. 1 was marked for
10 identification and received into evidence.)

11 MR. LEE: Your Honor, we would object to State's 31,
12 32, 33, 34, 35, 36, 30, 29, 28, and 27.

13 THE COURT: Is Dr. Proctor here?

14 MR. LEE: He is here, Your Honor. He is sequestered,
15 but he is present today. Would you like me to bring him
16 in for purpose of a proctor?

17 THE COURT: Doctor, if you will come on up, please.
18 Come up and place you left hand on the Bible.

19 EDWARD PROCTOR, after being duly sworn,
20 testified as follows:

21 CLERK OF COURT: Have a seat in the witness box and
22 state your full name for the Court, please, sir.

23 THE WITNESS: I am Edward Leroy Proctor, Jr.

24 THE COURT: We can do this two ways. It's for a
25 limited purpose. Proffer, I can explain to him what the

1 process we're doing now or preferably I would allow that
2 after that you question him. I don't want to invade your
3 province, Solicitor, nor yours.

4 MR. REDMOND: Your Honor. However the Court. The
5 State has no preference. Either way is fine.

6 MR. REDMOND: Your Honor, I just assume, ultimately,
7 under the law the decision is yours and you decide whether
8 it's relevant or not relevant. And you make the
9 appropriate value versus prejudicial effect of the weight.
10 I just assume you question him.

11 EXAMINATION BY THE COURT

12 BY THE COURT:

13 Q. All right. Dr. Proctor, I've got a set of
14 photographs before me that the State is seeking to
15 introduce. And their statement to the Court the reason
16 that they want these photographs introduced was stated
17 that it was necessary for you to explain your findings.
18 Very generic statement there; that these would be useful
19 to you in doing so.

20 I'm going to ask you to look through these
21 photographs and confirm that on all of them. If you feel
22 that you do not need any of them please let the Court
23 know.

24 A. Yes, sir.

25 Q. And those that you certainly feel that you need

1 please any comments you have concerning that.

2 A. Your Honor, these would certainly enable me to
3 describe the degree of injury and show the extent of it.
4 There are a couple of them that are the close up of one of
5 those that probably could be excluded. But these I think
6 would be very beneficial to explain exactly what happened
7 to this young man.

8 Q. That was going to be my first question. Are there
9 some in there that we could pull out that are merely
10 repetitious? Maybe another one that you could get by
11 with.

12 A. This is an illustrative picture here and these two,
13 Number 28 and 29, are more or less close ups of this
14 picture here which this one to me certainly would be
15 sufficient.

16 Q. All right. With that said unless the State wants to
17 be further heard?

18 MR. REDMOND: No, sir.

19 MR. LEE: Go ahead, Your Honor. I'll let you rule.

20 THE COURT: Unless you want them in for some reason
21 I'll pulling those, but also realize by these coming in
22 there may be some reason you may want those in. I don't
23 want to cut you off.

24 MR. LEE: That's what I'm trying to decide. Can I
25 have this one if you're going to allow that and that would

1 take 23, 28 would be out, cumulative.

2 MR. REDMOND: That's fine.

3 THE COURT: Any questions from the State?

4 MR. REDMOND: None from the State, Your Honor.

5 THE COURT: Mr. Lee, you certainly have a right.

6 MR. LEE: Your Honor.

7 THE COURT: This limited purpose.

8 MR. LEE: Your Honor, which are we allowing? We're
9 allowing 30? Have you ruled on this group?

10 THE COURT: Based on ---

11 THE WITNESS: That was part of this group which I
12 feel is very important.

13 THE COURT: Okay, based on his testimony and he needs
14 it in his scientific explanation I'm allowing those in,
15 but you certainly may.

16 MR. LEE: Okay, may I.

17 THE COURT: You certainly may try to convince me
18 differently through any cross that you have.

19 MR. LEE: Let me get them in order, Doc. I'm sorry.
20 Judge, in light of 30 I don't need 29. It's just ---

21 THE COURT: Twenty-nine is out.

22 DIRECT EXAMINATION

23 BY MR. LEE:

24 Q. Dr. Proctor, my name the Robert Lee. How about let's
25 talk about 31. Could you please tell me what you intend

1 to testify regard that photograph?

2 A. What I intend to testify regarding that photograph is
3 to show the degree of injury with loss of the soft
4 tissues, the outline of the wound and just the degree of
5 injury that's been inflicted upon this child.

6 It also includes bite marks here, the bite marks
7 here, as well as just the ripping injury from the attack
8 of these dogs. And that would be the right side in that
9 photograph, and it shows the same on the left side just
10 showing the extent of injury.

11 Q. That being State's Exhibit 32?

12 A. Thirty-two; that is correct.

13 Q. Okay, State's Exhibit 33?

14 A. State's Exhibit 33 shows a massive injury to the left
15 side of the face to include virtual loss of the ears,
16 exposure of the bones and complete loss of the neck
17 musculature to include the vascular tissues of the neck
18 which would have resulted in massive bleeding.

19 Q. State's Exhibit 34?

20 A. State's Exhibit 34 shows an extent to that from the
21 back to the left side again showing the degree of injury,
22 tearing of the skin and bite marks to the body.

23 Q. State's Exhibit 35?

24 A. This is an overview showing both the ride and left
25 side injuries as well as the extensive trauma to the face

1 to show virtual complete loss of the nose, loss of all the
2 tissue around the upper and lower jaw, exposure of the
3 teeth, and loss of the left eye.

4 Q. Okay, what is there in 35 that is not in 36?

5 A. Thirty-five is an overview. Thirty-six is a closer
6 view showing the extent of the injuries.

7 Q. Can you give the same testimony using 35 that you
8 would give for 36?

9 THE WITNESS: I can give essentially the same
10 testimony.

11 MR. LEE: Your Honor, subject to argument I would
12 move to exclude 36.

13 THE COURT: Let me take a look at these.

14 MR. LEE: One is the face and torso and arms. The
15 other is just the close up of the face.

16 MR. REDMOND: Based on that I would have one or two
17 questions as it relates to possible differences in
18 testimony.

19 THE COURT: All right.

20 CROSS-EXAMINATION

21 BY MR. REDMOND:

22 Q. If I could, whatever numbers those were, in looking
23 at State's 36, Dr. Proctor, did your report indicate that
24 there was a loss of an ear? In other words an ear being
25 eaten away?

1 A. Yes, sir.

2 Q. Could you show me on State's Exhibit 36 where that is
3 visible?

4 A. There is are remnant -- which appears to be a remnant
5 of the left ear here and virtual loss of everything on the
6 right side.

7 Q. Okay, and in looking at State's 35 which one of those
8 two exhibits are you better able the illustrate the
9 particular point regarding the ears? Would that be
10 State's 36 or State's 35?

11 A. Thirty-six. The blow up certainly shows a more
12 direct view of the lost of those.

13 Q. Okay, then Exhibit 35?

14 A. Yes, sir.

15 Q. Okay.

16 MR. REDMOND: That would be all I have, Your Honor.

17 COLLOQUY

18 THE COURT: Let me see. I'll pulling this one.

19 Anything else?

20 MR. LEE: Not for Dr. Proctor.

21 THE COURT: Are we clear on the record, now, on the
22 ones that you have objection to?

23 MR. LEE: Yes, sir.

24 MR. REDMOND: And just to make sure I'm clear 35 that
25 is in, and 36 is out.

1 THE COURT: That is correct.

2 MR. REDMOND: And do I have -- I've got 29 being out.
3 Am I correct on that?

4 THE COURT: Madam Clerk?

5 MR. REDMOND: I see 22. I've got that marked, but do
6 you have 29 down there as being out?

7 CLERK OF COURT: Yes.

8 MR. REDMOND: Twenty-nine is out. All right, Judge.
9 At this point, Your Honor, I would move to save time go
10 ahead and move to admit those since we've got the proffer.

11 THE COURT: Any other angle of this that you want to
12 ---

13 MR. LEE: Your Honor, I'd like to be heard on this
14 argument on the record.

15 THE COURT: All right.

16 MR. LEE: If you want to excuse Dr. Proctor.

17 THE COURT: Doctor, if you will step back from whence
18 you came. We'll try to get back to you in a few minutes.

19 THE WITNESS: Yes, sir.

20 MR. LEE: If Your Honor please, we would move to
21 exclude those. I've cited the argument that you can
22 develop and decide what's relevant and what's irrelevant.
23 I think these are designed to stir the passion and
24 prejudice of the jury, and I don't think they're necessary
25 for the State to prove its case.

1 And the reason I say that is because I know
2 Mr. Redmond is going to state the Marchelli Case, and in
3 citing the Marchelli Case that is a murder by child abuse
4 case. And murder by child abuse one of the elements the
5 State has to prove is abuse. And what happened in the
6 Marchelli Case was that you had the Defense raised as a
7 defense prior accident or injury by some other means.

8 So internal organs of the autopsy photographs were
9 shown to prove an essential element which was in fact
10 abuse. Because what the defense said was this child
11 was -- this injury that you claim are abuse and caused the
12 death were either accident or caused by some other means
13 or prior injury. And so with the State allowed the
14 autopsy report in -- the autopsy photographs for purposes
15 of establishing that essential element.

16 In this case the State has to establish on 47-3-720
17 that the animals were dangerous animals and they weren't
18 penned, and it defines what penned is. Then if you turn
19 over to 47-3-710 what the State has to prove is set out
20 here.

21 "(A) as used in this article "dangerous animal" means
22 an animal of the canine or feline family." So first of
23 all they're not being offered for that purpose. "(1)
24 which the owner knows or reasonably should know has the
25 propensity, tendency or disposition to attack unprovoked."

1 Not simply attack, but to attack unprovoked.

2 Nothing about those photographs go to the thought
3 processes of the owner. It says, "Attack unprovoked,
4 cause injury other otherwise endanger the safety of human
5 beings or domestic animals." So proving that these dogs
6 didn't fight, these aren't necessary to prove any of those
7 essential elements.

8 And if you go through this statute the second part
9 talks about these animals making unprovoked attacks and
10 the focus seems to be on that. Your Honor, I don't think
11 the photographs are needed to present -- to get an
12 essential element of the crime as they were needed in the
13 Marchelli Case. Of course, that case is easily
14 distinguishable. But, however, Your Honor, I would
15 concede that the law is the law. You have to do the
16 prejudicial effect versus the probative value, and that
17 how Your Honor rules will ultimately be how it's decided.

18 But I think in looking at the statute that these
19 photographs are not needed to establish an essential
20 element of the crime and therefore should be excluded.

21 THE COURT: All right. Solicitor.

22 MR. REDMOND: I would just simply say that actually
23 Mr. Lee has actually addressed my argument in the sense
24 that as to why they do. One, the nature of the attack is
25 something based on the fact that provoked and unprovoked.

1 And as you recall in my opening statement one of the
2 things that I specifically mentioned was the fact that the
3 nature of the attack was such that it was an attack out of
4 hunger not out of provocation.

5 I think with that the autopsy talking about, and it
6 is in the report, 'eaten away' by Dr. Proctor's expert
7 analysis. He's going to need these pictures to explain
8 and it does have a probative effect that this was a
9 situation where this child was eaten. I think that goes
10 to a material part of our analysis, and further as he
11 testified to given the nature of the circumstances these
12 pictures will aid in his presentation to the jury to
13 entitle them to understand what he's testifying to.

14 So with that, Your Honor, and plus citing the
15 Marsuchi Case, and I think I'm pronouncing that right. I
16 would say that the standard is such that the Court clearly
17 has discretion. And with the proffer that's been made I
18 think the State met that standard and being able to allow
19 these pictures to be presented to the jury?

20 THE COURT: Anything else?

21 MR. LEE: And, finally, Your Honor, I think in the
22 probative value versus the prejudicial effect I think
23 these photographers in light of the tender age of the
24 child, in light of what I think we're talking about, I
25 think the prejudicial effect clearly outweighs the

1 probative value. I rise to his case law that says just
2 because something is cumulative doesn't make it
3 prejudicial, but I do think that this becomes -- that
4 these photographs carry us into another realm.

5 THE COURT: All right. I appreciate y'all very able
6 argument. It is an unusual case, however, we've got to
7 keep in mind that we've got involuntary manslaughter which
8 involves death, cause of death. You've got Dr. Proctor
9 here who is one of the best, and he's informed the Court
10 that he needs it. All right. I'm standing by what I've
11 done. I'm overruling the objections, and we'll stand
12 where we were with the ones I've pulled and the ones we
13 left in.

14 MR. LEE: Your Honor, note my objection.

15 THE COURT: Yes, sir.

16 MR. REDMOND: And with that, Your Honor, I would move
17 to introduce the exhibits. Just the autopsy photos as
18 highlighted by the Court. And for the record those
19 numbers are State's 27, State's 30, State's 31, State's
20 32, State's 33, State's 34 and State's 35. And as it
21 relates to the S.L.E.D. photos I will wait until I've had
22 a chance to finish my examination of -- unless there is no
23 objection to these. I couldn't remember if there wasn't.

24 THE COURT: He didn't.

25 MR. LEE: There is no objection subject to a

1 foundation.

2 (WHEREUPON, Court's Exhibit Nos. 3, 4, 5, AND 6 were
3 marked for identification and received into
4 evidence.)

5 MR. REDMOND: Well, I'll go ahead and do that with
6 Agent ---

7 THE COURT: That's right. That's right.

8 MR. REDMOND: So State is ready to proceed, Your
9 Honor.

10 MR. LEE: If Your Honor please, are you going to
11 admit those photographs, the autopsy photographs?

12 THE COURT: He just moved. You've already entered
13 your objection. I'm going to allow them in subject to
14 your objection, of course.

15 MR. LEE: Exception is noted. Thank you very much,
16 Judge.

17 MR. REDMOND: And the State is ready to proceed.
18 Your Honor.

19 THE COURT: See if we've got the jury back there yet.
20 Should be.

21 (WHEREUPON, State's Exhibit Nos. 27, 30, 31, 32, 33,
22 34 and 35 were admitted into evidence.)

23 (WHEREUPON, the jury enters the courtroom at
24 2:43 p.m.)

25 THE COURT: All right.

1 MR. REDMOND: May it please the Court.

2 VICKIE HALLMAN, having being previously sworn,
3 testified as follows:

4 FURTHER RIRECT EXAMINATION

5 BY MR. REDMOND:

6 Q. I think we were at the point, Agent Hallman, and I
7 didn't ask you this but I want to before I have you look
8 at some pictures. I want to ask you according to your
9 report how long -- what was the temperature out there that
10 night?

11 A. Approximately 32-degrees.

12 Q. It was freezing?

13 A. Yes, sir.

14 Q. And in the -- is your recollection such -- well, let
15 me ask you this. Did the victim have on a shirt at that
16 time that you arrived on the scene and actually viewed the
17 victim?

18 A. No, sir.

19 Q. Okay, thank you. Now, if I could ask with the
20 Court's permission you to step down. I just have a few
21 photos that I would like for you to take a look at.

22 (WHEREUPON, the witness steps down from the witness
23 stand.)

24 MR. REDMOND:

25 Q. Okay, first and I think we need to switch up again.

1 And these are smaller photos, but I just want you -- I'm
2 going to hand you what's been marked as State's Exhibit
3 21. Could you tell me if that picture accurately reflects
4 what you saw at that time?

5 A. Yes, sir, it does.

6 Q. Okay, and could you tell the jury what that picture
7 represents?

8 A. This would be a picture of the victim lying on the
9 ground. You can see where his position is in relation to
10 the bus they mentioned earlier and you can also see
11 several areas around him where there appears to be blood
12 on the ground.

13 Q. Thank you. And I'm going to show you now what's been
14 marked as State's Exhibit 23, and I'll just ask you does
15 that picture accurately depict the scene that you recall
16 seeing that evening?

17 A. Yes, sir.

18 Q. And could you tell the jury what the significance of
19 that picture is and what it shows?

20 A. It's another picture of the victim. It's actually
21 taken from a different angle. In the upper left hand
22 corner you can see kind of where the porch of the house
23 is, but it's basically a shot of the victim.

24 Q. Okay, actually, what I'm going to show you is --
25 thank you. I'm going to show you what's been marked as

1 State's Exhibit 34. Could you tell me to the best of your
2 recollection what that picture represents?

3 A. That's one of the dogs that was captured by animal
4 control that night.

5 Q. And show you what's been marked as State's 44. Could
6 you tell us what that picture represents?

7 A. That's a photograph of two of the dogs in the cages
8 that animal control used that night.

9 Q. Now, I'm going to show you what's been marked as
10 State's Exhibit 26. Could you tell the jury what that
11 scene represents?

12 A. It's basically about the same as the other two
13 photographs that I spoke about earlier with the picture of
14 the victim. This is just a shot that's a little bit
15 further off in the distance. You can actually see the
16 victim's left shoe and the bottom left hand corner of the
17 photograph. So you can see where his shoe is in relation
18 to the body.

19 Q. And now I'm going to show you State's 45?

20 A. Forty-five depicts a portion of the shirt that we
21 discussed earlier that I have marked on the chart, and
22 this is one of the larger portions that it appears to be
23 saturated with blood.

24 Q. And I actually forget State's 25?

25 A. That would be a photograph of one -- of another one

1 of the dogs. That's a different one than the other.

2 Q. And let me show you what's been marked as State's 46.
3 What does the picture represent?

4 A. That's another photograph of one of the other pieces
5 of shirt that had -- that was in the yard that was bloody.

6 Q. And, finally, State's 47?

7 A. Forty-seven actually depicts the piece that I marked
8 as the one as not being bloody, but it's also a piece of
9 what appears to be a shirt.

10 Q. And if you could have a seat.

11 (WHEREUPON, the witness returns to the witness
12 stand.)

13 MR. REDMOND: And with that, Your Honor, I'd move to
14 so introduce these pictures at this time.

15 MR. LEE: No objection.

16 THE COURT: All right.

17 (WHEREUPON, State's Exhibit Nos. 21, 23, 24, 25, 26,
18 34, 44, 45, 46, and 47 were admitted into evidence.)

19 BY MR. REDMOND:

20 Q. Agent Hallman, when y'all looked around the property
21 did you find any other evidence, clothing or anything,
22 other than what you represented and taken pictures of?

23 A. No, sir.

24 MR. REDMOND: That would be all the questions I have
25 at this time, Your Honor. With the Court's permission I'd

1 like to publish these for the jury at this time.

2 CROSS-EXAMINATION

3 BY MR. LEE:

4 Q. Let me ask you about this. It's State's 43.

5 Correct? And you've already identified that this is a
6 copy of a drawing?

7 A. Yes, sir.

8 Q. I actually did this. I color coded what's around
9 him. Specifically, the distance from the two pillars and
10 where the body was found?

11 A. I believe we got it marked as 87 feet.

12 Q. Did you measure how far it was from the residence to
13 the -- to him?

14 A. I don't believe we did that.

15 Q. Okay, how about to the bus?

16 A. No, sir, I don't believe we did that either.

17 Q. Any reason you didn't do those things?

18 A. No, sir.

19 Q. Okay, to your knowledge -- let me show you one other
20 thing. This Mr. Collins house during the daytime. These
21 the two posts?

22 A. Yep, thank you. Okay.

23 Q. Do your notes reflect whether anyone was found inside
24 any of the residences?

25 A. I'm sorry. I'm not sure what you're asking, e.

1 Q. Do your notes reflect whether or not anyone was found
2 inside one of these houses or buildings?

3 A. I don't know that it's in my note, per say, but I
4 know that the Dillon County Sheriff's Office did knock on
5 the door and nobody responded to the door at the house
6 cause that was done while we were there.

7 Q. Yes, ma'am. Thank you. You have your notes there in
8 front of you?

9 A. Yes, I do.

10 Q. I'd like to talk with you about them if I can?

11 A. Okay.

12 Q. You received a call from the on duty officer?

13 A. Yes, sir.

14 Q. What time did you receive this call?

15 A. 11:15 or 2315 or 11:15 p.m.

16 Q. And you were dispatched here to the Dillon County?

17 A. Yes, sir.

18 Q. And you were dispatched with Agent Seals?

19 A. Yes, sir.

20 Q. I believe your testimony was that he mainly took the
21 photographs?

22 A. Yes, sir.

23 Q. What was your -- he was the photographer. What was
24 your specific role?

25 A. Well, we kind of work everything in pairs, and it's

1 not necessarily that one person has one specific thing.
2 We usually work in conjunction with each other. Usually
3 as -- I was considered the primary agent because I'm the
4 person who issued the report. So I would have been
5 getting the basic information like the victim's
6 information and whatever information.

7 And he usually -- the second person usually does the
8 documentation of the scene. We work together for the
9 evidence collection, and then I would actually submit
10 whatever items we took back to the lab for analysis.

11 Q. Okay, would you have been primarily collecting that
12 evidence or would Mr. Seals?

13 A. It would have been something that we would have done
14 together. I don't want to say one or the other because it
15 just depends on what the scene is.

16 Q. Okay, you're the primary agent. Does that mean
17 you're in charge or what does that really mean?

18 A. That means that I would be the person responsible for
19 issuing all the reports and for coming to Court and
20 testifying and things along those lines.

21 Q. Okay, and I believe that on your way to Dillon County
22 you talked with Chief Deputy Pernell?

23 A. Yes, sir.

24 Q. Who was actually running the crime scene? Isn't
25 there an officer kind of designated from the local law

1 enforcement to run the crime scene?

2 A. I wouldn't know. I mean we work with so many
3 different agencies. I'm usually given a contact person
4 and I make phone contact with them to find out some of the
5 details, but I don't usually know is specifically in
6 charge of each scene within that agency.

7 Q. Within yours you would have been, correct?

8 A. Yes, sir.

9 Q. All right. If you would look at your crime scene
10 data sheet?

11 A. Okay.

12 Q. You're left handed?

13 A. Yes, sir.

14 Q. I noticed the reverse check mark?

15 A. Yes, sir.

16 Q. You told Mr. Redmond it was 32-degrees?

17 A. Yes, sir.

18 Q. And this child did not have a shirt on?

19 A. Not at the time he was found, no, sir.

20 Q. Yes, ma'am. Can you tell the jury what kind of pants
21 he had on?

22 A. He had on shorts. I believe like a light color or
23 kaki color.

24 Q. Okay. If you would let me ask you about your notes,
25 specifically. You made specific measurements to where he

1 was located, correct?

2 A. We measured the distance in from the edge of the
3 driveway or the pillars at the front. Yes, sir.

4 Q. That's reflected. And then the location of all the
5 items and the blood?

6 A. Yes, sir.

7 Q. And it's clear from just the location of the evidence
8 that this child was drug?

9 A. Yes, sir.

10 Q. Okay, you testified that the dogs became aggressive
11 towards you?

12 A. Yes, sir.

13 Q. In other words can you tell me how they acted? What
14 is your definition of aggressive?

15 A. The body was covered when we arrived on the scene. I
16 approached the body to remove the sheet, and the dogs
17 started growling and coming off the porch at me.

18 Q. Okay, when they came off did they lower themselves?

19 A. I really didn't pay that much attention to what
20 position they were getting in because I was trying to make
21 sure that I didn't -- they didn't charge or come at me.

22 Q. Okay.

23 A. I was looking for an avenue to get away.

24 Q. Did that reveal their teeth?

25 A. I couldn't tell.

1 Q. Okay, did they raise their hackles?

2 A. I couldn't tell about that either.

3 Q. Do you know what hackles are?

4 A. Yes, sir.

5 Q. Okay, what are they?

6 A. It's the hair on the back of their neck.

7 Q. But those are not things you observed?

8 A. No, sir, I wasn't paying that much attention. Like I
9 said I was looking for an avenue that I could go that I
10 knew would be safer if they did come at me.

11 Q. Okay? Did you (inaudible) sheet?

12 A. Yes, sir.

13 Q. Okay, why didn't y'all shoot them?

14 A. Because once I backed up they left us alone, and we
15 knew animal control was on the way to collect them.

16 Q. So once you backed away from the body they would
17 stop?

18 A. Yes, sir.

19 Q. Did they, once you backed away, did stay come to the
20 body or did they then retreat back to the porch?

21 A. They basically stayed in the same location.

22 Q. Which was?

23 A. Yes, sir, somewhere near the porch or on the porch.

24 Q. Okay, let me show you a photograph that was taken.

25 Is that what you mean?

1 A. Yes, sir.

2 Q. So in other words your testimony is that when you
3 approached the body, which would have been somewhere here?

4 A. Yes, sir.

5 Q. They would come from under here towards you?

6 A. Yes, sir.

7 Q. However, when you retreated they would retreat?

8 A. Yes, sir.

9 Q. And they retreated here in this gap?

10 A. Or in that general area up close to the porch. I
11 can't say specifically that they went back on the porch,
12 but they did not advance if I backed off.

13 Q. You were scared, in order words?

14 A. Slightly, yes, sir.

15 Q. I understand. Who decides -- was there a discussion
16 on the crime scene as to what evidence to collect? Is it
17 you know what evidence to pursue? Is it collaborative?
18 How does that work?

19 A. In a lot of instances if it's things that I'm aware
20 of that there is something that S.L.E.D. can do, one of
21 the other labs, then it's usually discussed between us and
22 the agency that requested us, I usually tell them, "Well,
23 with this evidence we can do this, and it needs to be
24 submitted." It's a collaborative thing, but a lot of
25 times we'll take the lead because we know what all is

1 offered.

2 Q. Okay, I assume that one of the techniques that y'all
3 talk about is collection of D.N.A.?

4 A. Yes, sir.

5 Q. And I assume that it was D.N.A. that you would find
6 out which of those animals had the victim's blood there?
7 This young boy's blood on it. Correct?

8 A. You could do that, yes, sir.

9 Q. And did that in fact take place?

10 A. Three of the dogs were captured that night, and
11 because of the aggressiveness that we all felt they had
12 towards us it was determined that the collars would be
13 taken at a later date in a more secured location and no
14 swabs were take that night.

15 Q. Okay, but ultimately swabs were taken?

16 A. Honestly, I could not tell you. If they were I did
17 not participate in that part of it.

18 Q. They weren't taken by you?

19 A. No, sir.

20 Q. Or Agent Seals?

21 A. No, sir.

22 Q. Okay, how many crime scenes have you worked?

23 A. You mean?

24 Q. In your five year career?

25 A. In my five year career at S.L.E.D. probably 300.

1 Q. Okay, one of the techniques that can be used is when
2 the footprints -- you can take impression of footprints,
3 can't you?

4 A. Yes, sir.

5 Q. S.L.E.D. has the capacity to do that, doesn't it?

6 A. Yes, sir.

7 Q. And if they can't do that they can send it to Quanico
8 to the F.B.I.?

9 A. Yes, sir.

10 Q. Okay, fingerprints. Y'all do fingerprints?

11 A. Yes, sir.

12 Q. Fiber?

13 A. One of our other divisions in the lab does fiber,
14 yes, sir.

15 Q. But S.L.E.D. can do fiber analysis?

16 A. Yes, sir.

17 Q. Did y'all discuss, for instance, if you noticed the
18 sand around these -- this body. Did y'all discuss doing
19 impressions of paw prints?

20 A. No, sir.

21 Q. At any point in time did y'all discuss taking
22 impressions, dental impressions from the dogs?

23 A. That was discussed at a later date, yes, sir.

24 Q. It was?

25 A. Yes, sir.

1 Q. How about D.N.A. of the dogs?

2 A. After a discussion with the lieutenant who run the
3 D.N.A. Unit at S.L.E.D. we were advised that it would not
4 be probative to do that because of the bacteria that dogs
5 carry in their mouth. So it would have alleviated
6 whatever D.N.A. would have been present from the child.

7 Q. How about the covering of the child with the sheet?

8 A. I'm sorry?

9 Q. What about the covering of the child with the sheet?
10 Wouldn't that have produced a foreign substance that could
11 have removed this D.N.A.

12 A. I don't know about that.

13 Q. Okay, this child was sent on for an autopsy?

14 A. That was my understanding, yes, sir.

15 Q. To your knowledge were the dogs autopsied?

16 A. I don't have no idea.

17 Q. Okay, to your knowledge was any of their fecal matter
18 examined?

19 A. I don't have any idea on that either.

20 Q. None of that was submitted -- collected by you?

21 A. No, sir, it wasn't collected by me.

22 Q. Your testimony is that there were six dogs, correct?

23 A. I saw six out there that night, yes, sir.

24 Q. Okay, you testified earlier about the food and the
25 water?

1 A. Yes, sir.

2 Q. Did you go up where -- behind where the dogs were
3 retreating? Did you -- let me show you again. Your
4 testimony before the jury was that you checked around for
5 water and food?

6 A. Yes, sir.

7 Q. Did you come back behind these dogs where they were
8 retreating and check behind them?

9 A. I did not check there, but there were other people on
10 the scene who were also looking. I checked around -- more
11 so around the side of the house and other areas.

12 Q. But you did I understand come in behind where these
13 dogs were?

14 A. I don't recall checking that specific location, no,
15 sir.

16 Q. Yes, ma'am. Agent, let me ask you this. This is a
17 photograph, and again, taken in the day at a different
18 time and place, but was the light on this pole working at
19 the time?

20 A.. I honestly don't recall.

21 Q. Okay, what lights were y'all working from?

22 A. We had flashlight and there were numerous vehicles on
23 the scene from Dillon County personnel, so we were working
24 with whatever light was availability.

25 Q. Okay, one last thing. Your notes indicate that there

1 were two males captured and one female?

2 A. Yes, sir.

3 Q. Do you know the sexes of the remaining dog?

4 A. No, sir, I don't have any idea.

5 Q. Thank you very much. I appreciate it.

6 MR. REDMOND: That would be all. No redirect.

7 THE COURT: Thank you. You may step down.

8 MR. REDMOND: Your Honor, with the Court's permission
9 if Agent Hallman can be excused.

10 MR. LEE: That's fine, Your Honor.

11 THE WITNESS: Thank you.

12 MR. REDMOND: Next witness would be Douglas Pernell.
13 Now, Judge, and I know I hadn't been -- this next witness
14 may be a little longer, but I think that he is here and
15 ready to go forward. So I'll leave that up to the Court
16 whether or not to take a break or go straight into it.

17 THE COURT: Everybody okay? Counsel, y'all step
18 around here.

19 (WHEREUPON, a bench conference was held off the
20 record in the presence of the jury, but out of the
21 hearing of the jury.)

22 THE COURT: Come around and be sworn, please.

23 DOUGLAS PERNELL, after being duly sworn,
24 testified as follows:

25 CLERK OF COURT: Have a seat in the witness box.

1 State your full name for the Court spelling your last,
2 please, sir.

3 THE WITNESS: Douglas Brian Pernell, P-E-R-N-E-L-L.

4 DIRECT EXAMINATION

5 BY MR. REDMOND:

6 Q. Okay, and let me ask you. Where are you employed at
7 this time?

8 A. I'm retired at this time.

9 Q. And where did you retire from?

10 A. Dillon County. Dillon County Sheriff's Office.

11 Q. How long did you spend at the Sheriff's Office?

12 A. Twenty-two years.

13 Q. And in what capacity were you in November of 2006?

14 A. Chief Deputy.

15 Q. Okay, and in that time would you be safe to say you
16 worked many crime scenes?

17 A. Yes, sir.

18 Q. Now, did you become involved in an investigation
19 that -- on an incident occurring on the 3rd of November of
20 2006?

21 A. Yes, sir, I did.

22 Q. And how did you become involved in that particular
23 situation?

24 A. I received a call from Officer Charles Smith asking
25 me to come down to Emmanuel Loop in reference to a missing

1 child.

2 Q. Okay, and did you talk with Caroline Davis at that
3 time -- during that time?

4 A. Yes, sir, did.

5 Q. Was the missing child John Matthew Davis?

6 A. Yes, it was.

7 Q. What did y'all do once you got up -- involved in the
8 investigation tell me what you did pursuant to your search
9 for Matthew?

10 A. I arrived at the home probably ten -- five minutes
11 after 10:00. Had a discussion with Officer Smith, and he
12 stated to me that Matthew had been to a residence and had
13 left the residence around 5:30. So at that time I advised
14 him to go back to the residence try to obtain some more
15 information. He did that. He later radioed me and I met
16 him on Home Light Road which is also in the Emmanuelville
17 community. We had a short conversation. In that
18 conversation I said to him, "Well, I'm going to go to the
19 preacher's house and find out if he saw anything."

20 Q. Who are you referring to?

21 A. Bentley Collins.

22 Q. Do you see him in the courtroom?

23 A. Yes, sir.

24 Q. And proceed?

25 A. And when myself and officer Smith along with

1 Miss Davis -- she was in the car with Officer Smith. We
2 drove up into the yard and that's where we discovered
3 Matthew laying out there.

4 Q. And when you discovered -- talk us through what
5 occurred at that point once y'all pulled up and discovered
6 Matthew laying there. What took place next?

7 A. Well, when we pulled up into the yard we could see an
8 object laying in the yard, and the closer we got you can
9 see that it was a body. Ms. Davis got out of Officer
10 Smith's car and went on up to it, tried to get to the
11 body.

12 Some dogs came out. We had to -- I had to take my
13 flashlight and holler at them to get them to go back. We
14 were able to get her away from the crime scene, take her
15 off in another vehicle, and at that time we taped off the
16 crime scene. At that time I called Sheriff Grice and
17 Investigator Campbell. He was in route as well. We taped
18 it off and S.L.E.D. came out and processed the crime
19 scene.

20 Q. Now, where were the dogs located when you first
21 pulled up to the scene when they came out at the point
22 that you indicated?

23 A. Right in the front yard near the porch or the door,
24 front door.

25 Q. Who processed -- did S.L.E.D. come process the crime

1 scene?

2 A. Yes, sir.

3 Q. Now, during that time did you stay out there on the
4 scene during the time that S.L.E.D. was out there
5 processing the crime scene?

6 A. Yes, sir.

7 Q. Now, tell the jury what actions you took while this
8 was going on?

9 A. Well, at that time while we was waiting on them, and
10 someone would try to go up to the body to either take
11 pictures or whatever the dogs would keep coming at us and
12 keep coming. And the only way we could actually keep them
13 off was shining the light on them and making noise. We
14 were able to retreat them back in the areas they were at
15 whenever we first got there.

16 Q. Now, did you have a chance to look around the
17 premises during that time?

18 A. Not during that time.

19 Q. Okay, at some point were you able to look around?

20 A. After we were able to get the dogs captured we were
21 able to get to the front door, knock on the door which we
22 did not get an answer.

23 Q. And then -- I didn't ask you. About what time did
24 y'all get out there, best that you can recall?

25 A. Probably about 10:20.

1 Q. Okay. Now, so then where we were before. You
2 knocked on the door. Nobody answers?

3 A. No, sir.

4 Q. And tell us what you did as far as looking around the
5 premises. What were you looking for around the premises?

6 A. Well, actually we saw five dogs.

7 Q. Okay.

8 A. We was able to capture three of them. They ran up
9 under the house, whatever. We wasn't able to get them.
10 We kept trying to find them, but we wasn't able to find
11 two of them. Later on the next day we were able to get
12 the other two. And then there is another one came up that
13 afternoon which actually was six all together.

14 But during that time we knocked on the door trying to
15 get someone to come to the door if anyone was in the home.
16 We just looked around trying to figure out what happened.

17 Q. Did you look -- during that time did you see -- well,
18 let me ask you this. Did you see any dogs restraints? In
19 other words did you see any chains, dog chains?

20 A. No, sir.

21 Q. Did you see any dog pens? Fenced in dog pen?

22 A. No, sir.

23 Q. Did you see -- was the house, the residence itself
24 fenced in?

25 A. No, sir.

1 Q. Okay, and did you see -- did you go around the house
2 to see if there was any food or water available for those
3 dogs?

4 A. We didn't see any.

5 Q. Did you look for any?

6 A. Yes, sir.

7 Q. And could you tell us what was the extent of your
8 search?

9 A. That night or the next day?

10 Q. Both. That night.

11 A. That particular night we were able to just go within
12 the yard. We left a note for Mr. Collins to call the
13 Sheriff's Department as soon as he arrived at his
14 residence. He called. I got -- I received a phone call
15 approximately 8:30 a.m. the next morning from Central
16 Dispatch that Mr. Collins was at his residence and he was
17 wanting me to come to his residence.

18 Q. And did you go to his residence that next morning ---

19 A. Yes, sir?

20 Q. --- when you got that call?

21 A. Yes, sir.

22 Q. Tell us what happened once you got to the residence.
23 Tell the jury what occurred at that time?

24 A. I got to the residence, started talking with
25 Mr. Collins and pretty much asking him -- telling him what

1 we had found and asking him where was he at during that
2 time. Mr. Collins stated to me that he was out riding
3 around in a pick up truck with a friend of his from
4 Tennessee.

5 Q. Was that friend at the house with him when you went
6 to talk to him?

7 A. No, sir.

8 Q. Do you recall who else was at the house when you got
9 -- when you were out there?

10 A. His two boys and a lady.

11 Q. Okay. Now, and where did this conversation take
12 place again?

13 A. At his residence.

14 Q. Okay. Now, during the course of that conversation
15 did y'all talk and then move on or did anything else
16 transpire? Did y'all discuss anything else at that time?

17 A. Yes, later on that day or that morning, we're still
18 in the morning hours, Mr. Collins stated to me that he had
19 a surveillance camera and everything should be on that
20 camera. So at that time myself and him went to the
21 Sheriff's Office. It was actually Investigator's Office.
22 We spent probably three hours looking through the tapes,
23 but that wasn't on there.

24 Q. Okay, so let me stop you. You spent three hours
25 looking through the tapes, but there was no tape

1 reflecting the incident from the night before?

2 A. That is correct, that day was not on there.

3 Q. Okay. Now, did you actually -- and was the defendant
4 present while y'all were looking at these?

5 A. Yes, sir, and later on we went back to his residence
6 and looked at it. No luck.

7 Q. Okay, so did you look at them twice that day?

8 A. Yes, sir.

9 Q. The tapes twice that day?

10 A. Yes, sir.

11 Q. And would those be tapes that he provided?

12 A. Yes, sir, that's the tape he provide.

13 Q. Now, did -- were you able to take these tapes in
14 evidence?

15 A. No, sir.

16 Q. Okay, could you explain that?

17 A. Well, he made a statement that he needed to keep
18 them; that a lawyer told him that he needed to keep them.

19 Q. Okay. Now, let me ask you this. After that was that
20 your last contact with the defendant?

21 A. No, sir. During that week he called back and forth
22 having conversations on the phone.

23 Q. Okay, let me back you up. Were there, on that
24 particular day, was that the last time that you saw him or
25 did you and he go anywhere else other than the Sheriff's

1 Office?

2 A. Approximately, around 5:00 p.m. that afternoon we
3 went out to the Dillon County Dog Pound where the dogs were
4 being held at.

5 Q. Now, how many dogs were being held out there at that
6 time?

7 A. At that time we had all six of them.

8 Q. Okay, but was there some point in time when one of
9 them become missed?

10 A. Yes, sir.

11 Q. And, do you recall when that was?

12 A. It was that Sunday.

13 Q. Okay, and we'll get to that in a minute. So on
14 Saturday y'all are at the dog pound?

15 A. Yes, sir.

16 Q. All the dogs are there?

17 A. Yes, sir.

18 Q. What happened when y'all got to the dog pound? Take
19 us through that process?

20 A. Well, we went out to the dog pound. He wanted do
21 make sure that they were his dogs. We went out to the dog
22 pound and he saw the six dogs that we had and he stated
23 that they were his dogs. And we, Officer Steven Howell
24 with S.L.E.D, at that time he was working for the
25 Sheriff's Office. He's now with S.L.E.D. He processed

1 the dog collars, took photographs of the dogs while they
2 were at the dog pound.

3 Q. Now, there is a sixth dog that went missing, was that
4 dog missing? At what point did that dog become missing to
5 the best that you can recall?

6 A. I can say when we went back that Sunday and the dog
7 was missing.

8 Q. Okay, why did y'all go back that Sunday?

9 A. Take the photographs again, and also we had to go out
10 to feed the dogs.

11 Q. And was that dog later located?

12 A. Yes, sir.

13 Q. Okay, and do you recall what the circumstances were
14 with that?

15 A. He was out near the Highway Nine East right at the
16 dog pound at the Chain Gang Camp, laying beside the
17 highway, and I got Mr. Collins and he identified him and
18 said that was his dog as well.

19 Q. Do you recall about when that was where you found the
20 dog that had gone missing? You remember about when that
21 was?

22 A. It was Monday; that Monday morning.

23 MR. REDMOND: Beg Court's indulgence.

24 BY MR. REDMOND:

25 Q. I'm going to show you what is already in evidence and

1 for the record I'm going to show you State's Exhibit 21,
2 State's 23, State's 24, State's 25, State's 26, State's
3 44, State's 45, State's 47, and State's 46. I'm almost
4 got it in order.

5 If you could take a look at those pictures and let me
6 know when you're ready to answer a few questions.

7 A. I reviewed it.

8 Q. Okay, and can you tell me whether or not those
9 pictures to the best of your recollection truly represent
10 what you saw that evening?

11 A. Yes, sir, they do.

12 Q. At the crime scene?

13 A. Yes, sir.

14 Q. Okay, I'll also at this time want to show you what's
15 been marked as State's Exhibit 38, 39, 40, 41, and,
16 actually, 37. Want you to take a look at those pictures
17 and let me know when you've reviewed them and when you're
18 ready to answer a few questions.

19 A. I reviewed them.

20 Q. And if you'll tell the jury what these pictures --
21 what are they pictures of?

22 A. The dogs.

23 Q. Okay, are those the dogs that Mr. Collins identified
24 as being him with the exception of one?

25 A. Yes, sir.

1 Q. Mr. Collins identified it?

2 A. Yes, sir.

3 Q. And to the best of your recollection it had a collar
4 on that was green?

5 A. I know we found the dog dead, and I know he
6 identified it as being the dog we had captured from his
7 residence.

8 Q. Thank you very much.

9 MR. REDMOND: No redirect, Your Honor.

10 THE COURT: You may step down. Let's take ten
11 minutes.

12 (WHEREUPON, the jury was excused from the courtroom
13 at 3:58 p.m.)

14 (WHEREUPON, Court was in recess at 3:58 p.m. and
15 reconvened at 4:11 p.m.)

16 THE COURT: State ready?

17 MR. REDMOND: State is ready, Your Honor.

18 THE COURT: We need the jury back.

19 (WHEREUPON, the jury panel enters the courtroom at
20 4:12 p.m.)

21 MR. REDMOND: State next calls Dr. Ed Proctor.

22 EDWARD PROCTOR, after being duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. REDMOND:

1 Q. Dr. Proctor, where are you employed at this time?

2 A. I am self-employed with an office at Grand Strand
3 Regional Medical Center at Myrtle Beach.

4 Q. And what is your specialty, Dr. Proctor?

5 A. I am a pathologist and I practice clinical pathology,
6 anatomic pathology and forensic pathology.

7 Q. And what is forensic pathology?

8 A. Forensic pathology is the medical, legal
9 investigation of death, and as a forensic pathologist I
10 work with law enforcement, coroners, any over
11 investigative authority and will perform a post mortem
12 examination based upon the information we have. And then
13 I do a complete external exam, internal exam, microscopic
14 exam, toxicology if necessary, and using all the
15 information to formulate a cause and manner of death.

16 Q. And let me ask you about your education to have you
17 qualified as an expert. Could you tell us first of all
18 are you a medical doctor?

19 A. Yes, sir, I am.

20 Q. And would you tell us your education background?
21 Tell the jury, please.

22 A. Yes, sir. I received my college degree at Clemson
23 University. My medical degree and the Medical University
24 of South Carolina. I did a pathology residency and
25 anatomic and clinical pathology at Walter Reid Army

1 Medical Center in Washington, D.C. I served as chief of
2 clinical pathology at Womack Army Hospital at Fort Bragg.

3 I've been at Grand Strand Hospital since 1986, and as
4 process of my training and education I am board certified
5 in clinical and anatomic and forensic pathology.

6 Q. Wow.. And as it relates to your experience could you
7 tell the jury and the Court your experience in the medical
8 field?

9 A. Well, I have been in the practice of pathology as a
10 trained pathologist since 1982 when I went to Fort Bragg,
11 and i have practiced my specialty just for the past --
12 since 1982 which is about 26, 27 years.

13 Q. And as a former Navy man and Carolina grad I will
14 overcome those two little things and ask that at this
15 time -- let me with you one other thing. How many times
16 have you had to testify as an expert to the best you can
17 guestimate in Court regarding forensic pathology?

18 A. About three or 400 times.

19 MR. REDMOND: Your Honor, at this time if there is no
20 objection I would like to quality Dr. Proctor in the field
21 of forensic pathology.

22 MR. LEE: No objection.

23 THE COURT: So qualified.

24 MR. REDMOND: May it please the Court.

25 BY MR. REDMOND:

1 Q. Dr. Proctor, did you perform an autopsy on John
2 Matthew Davis in November of 2006?

3 A. I performed this autopsy in 2006. Yes, sir.

4 Q. Okay, and what was the date of the autopsy that you
5 performed?

6 A. Okay, this autopsy was performed on the 5th, I
7 believe.

8 Q. Now, could you tell the Court, and I'll just ask you
9 when you do an autopsy was it done here in Dillon County
10 or is the body transported to you through Myrtle Beach?

11 A. On cases from Dillon County the Coroner, Mr. Grimsley
12 usually contacts me and we arrange to have an autopsy
13 performed. And it was transport to me in Myrtle Beach,
14 yes, sir.

15 Q. And would you tell the jury your findings regarding
16 the autopsy? In other words could you tell the jury what
17 were the results of that autopsy on John Matthew Davis?

18 A. Yes, sir. This autopsy revealed a young male
19 approximately ten years of age. There were extensive
20 traumatic injuries consisting of loss of skin and soft
21 tissue in a tearing fashion about the face, the ears, the
22 eyes, the neck, the chest.

23 There was loss of skin and soft tissue with exposure
24 of the bones of both shoulders. Essentially, the humeral
25 bone in the upper arm. Both right and left was exposed

1 from the shoulder to the elbow. Lots of bite marks on the
2 back of the neck, the upper torso, as well as bite marks
3 on the lower legs.

4 These injuries exposed all of the soft tissue of the
5 neck as well as lacerated, basically transected the
6 jugular vein on the left side.

7 Q. What was your determination as to the cause of
8 Matthew -- John Matthew Davis' death?

9 A. Mr. Davis died as a result of expensive traumatic
10 injury secondary to being severely mauled by dogs.

11 Q. And let's talk about that mauling. Let me show you
12 what's been marked as State's Exhibit Number Ten. Before
13 we go further I'd ask you to review that copy and let us
14 know when you've read it whether or not that's an accurate
15 copy of your autopsy report?

16 A. Yes, sir, this is a copy my of autopsy report plus
17 the x-ray reports.

18 MR. REDMOND: At this time I would move to introduce
19 the autopsy report as State's Exhibit -- I believe that's
20 Number Ten if I'm not mistaken.

21 MR. LEE: Without objection.

22 THE COURT: In without objection.

23 (WHEREUPON, State's Exhibit No. 10 was admitted into
24 evidence.)

25 BY MR. REDMOND:

1 Q. Now that the report is in evidence, Dr. Proctor, in
2 that report I notice that there was some language
3 concerning what you felt happened to this child that -- by
4 those dogs. And could you tell the jury at this time what
5 is your opinion as to how these injuries resulted with
6 these dogs as a result of the attack?

7 A. He was attacked by this pack of dog resulting in
8 extensive traumatic injury with associated massive
9 hemorrhage. The actual wounds, the tearing of the flesh,
10 and the ripping of the blood vessels in the neck resulted
11 in the massive hemorrhage. So the hemorrhage with the
12 degree of injury to the young man killed him.

13 Q. And in looking at Page One of your report the ears
14 and the nose you specifically tell us what your opinion is
15 as it relates to those. Could you publish that part for
16 the jury, please?

17 A. Yes, sir. I described it as extensive traumatic
18 injury, lost of skin to the face to include the nose, the
19 ears and all soft tissues around the lips with exposure of
20 the mandible, which is the lower jaw, teeth, and the
21 underlying bony part of the skull.

22 Q. And the next sentence?

23 A. The ears and nose were completely eaten away.

24 Q. Let's talk about that for a little while. Eaten
25 away. In your opinion as an expert or is it your opinion

1 that the injuries suffered ---

2 MR. LEE: Objection. Leading.

3 MR. REDMOND: I'll rephrase.

4 BY MR. REDMOND:

5 Q. When you say, 'eaten away' what leads you to that
6 conclusion?

7 A. There was a virtual complete absence of the ear
8 structures on the right side and just remnants, shredded
9 remnants of skin and what were probably portions of the
10 ear on the left. They were essentially gone.

11 Q. Is it your opinion as to whether or not, and I'll ask
12 you. Could you determine whether or not Matthew would
13 have been alive at any point during the attack?

14 A. This young man would have been alive until the
15 injuries to the neck that transected the blood vessel in
16 the neck allowing him to bleed enough until he either
17 became unconscious or expired.

18 Q. And did he suffer significant blood loss from your
19 determination with the autopsy?

20 A. Yes, sir, he did.

21 Q. Before we get to the pictures let me show you what's
22 been marked as State's Exhibit 11. And I will show this
23 to you and I'll ask you a couple of questions once you've
24 had a chance to review it.

25 A. Okay.

1 Q. Dr. Proctor, pursuant to your autopsy do you
2 collect -- did you collect any blood samples?

3 A. Yes, I did.

4 Q. And in particular in this matter were those samples
5 that you collected have been placed -- were they placed in
6 that particular envelope.

7 A. They were placed in an orange and clear orange
8 envelope. I do not see a label on this one, but usually
9 when the tubes are labeled the labeled tubes are placed in
10 an envelope. And in this case they were placed in this
11 envelope and were directly handed to one of the
12 authorities from Dillon, Mr. Grimsley.

13 Q. Okay, and would that be Donnie Grimsley?

14 A. Yes, sir.

15 Q. And from the point forward you don't know -- you
16 can't testify to what happened after that?

17 A. No, sir, I cannot.

18 Q. I mentioned that you had taken pictures. Did you
19 take pictures of this particular autopsy?

20 A. I took pictures of the autopsy, yes, sir.

21 Q. Dr. Proctor, do you normally, and you and I have
22 known each other for 12 years at least. Do you normally
23 take pictures of autopsies?

24 A. No, sir.

25 Q. What made you take pictures of this autopsy?

1 A. This autopsy showed tremendous traumatic injury to
2 this young man. This degree of injury was a significant
3 traumatic injury as I've seen. I've never seen an attack
4 by animals of this type, and I actually left the autopsy
5 and went to my home and brought my camera back and took
6 pictures for the documentation purposes.

7 Q. Let's talk about those purposes?

8 MR. REDMOND: If I could ask Dr. Proctor to step down
9 with the Court's permission.

10 THE COURT: Yes, sir.

11 (WHEREUPON, the witness steps down from the witness
12 stand.)

13 BY MR. REDMOND:

14 Q. Dr. Proctor?

15 A. Yes, sir.

16 Q. I'm going to stand here I believe, and I'm going to
17 have you stand over here.

18 A. Whatever you like.

19 Q. And, Dr. Proctor, first I'm going to show you what
20 has been marked as State's Exhibit 27. Would you tell the
21 jury what that picture represents and the significance of
22 that picture?

23 A. Yes, sir. State's Exhibit 27 is a picture of the
24 lower torso. This being the waist. This being the legs
25 showing two things: Significant dirt and grime about the

1 body where this body been drug around. And, secondly, but
2 probably most important but not -- but most importantly
3 you can see actual bite marks all over the lower legs up
4 to the knees.

5 Q. Thank you, Dr. Proctor. Let me now show you State's
6 Exhibit 30. If you could do the same in that exhibit?

7 A. All right. This is a posterior view of the legs from
8 the bottom of the trousers, underwear or shorts that were
9 on the body showing a tremendous number of bite marks.
10 This area right here just posterior to the knee. You can
11 see it from the knees down towards the feet.

12 Q. Showing you what's been marked as State's Exhibit 31,
13 Dr. Proctor?

14 A. State's Exhibit 31, it shows the right side of this
15 young man. Starting at the head you can see a complete
16 loss of all the skin around the mouth. That's the
17 mandible that's fully exposed. The right ear is
18 essentially gone. There is loss of tissue in the neck.
19 There is exposure of the bones and the shoulder which is
20 the humerus. And you can see exposure of the bone all the
21 way to the elbow.

22 Q. Thank you, Dr. Proctor. I'm going to show you now
23 what's been marked as State's Exhibit 32. Could you
24 explain that?

25 A. This is the left side of this young man showing

1 essentially the same pattern of injury about the upper
2 torso, shoulder and complete exposure of the long bone of
3 the left upper arm which is the humerus from the shoulder
4 to the elbow. Also again showing from the left side
5 exposure of the bone, complete lost of soft tissue around
6 the mouth, as well as a large, gaping injury, lost of
7 tissue in the neck.

8 Q. Thank you, Dr. Proctor. State's Exhibit 33?

9 A. State's Exhibit 33 is an enlarged view showing the
10 degree of injury to the left neck of this young man. This
11 is complete loss of all of the muscular tissues in the
12 left side of the neck. And in the midst of this, which is
13 very hard to see in this picture, but at the time of
14 autopsy the jugular vein was essentially transected, torn
15 in half.

16 We could find portions of the left corotid artery
17 which runs adjacent to the jugular vein. So this injury
18 here essentially severed the vascular tissues going to the
19 head resulting in massive hemorrhage of this young man.
20 And again on the left side that's just fleshy tissue
21 hanging here which had partial remnants of the ear we
22 think.

23 Q. State's Exhibit 34?

24 A. Thirty-four is a posterior view showing the back of
25 the neck, bite marks on the back of the neck as well as

1 portions of the wound on the left neck with real jagged
2 edges, irregular edges to the wound resulting in the
3 extensive laceration to the neck which is basically a
4 traumatic injury resulting from just the sheer pulling of
5 the flesh away.

6 Q. And finally, Dr. Proctor, I'm going to show you
7 what's been marked as State's Exhibit a 35?

8 A. State's Exhibit 35 is an overview prior to the
9 autopsy showing the significant degree of injuries.
10 Again, complete loss of all the skin about the upper and
11 lower jaw, exposure of the mandible, the teeth, loss of
12 the nose, loss of the left eye, loss of the right ear,
13 maceration of the left ear as well as extensive injury to
14 the shoulder with exposure of the bones.

15 Q. Thank you, Dr. Proctor. And you can take your seat.
16 Thank you, sir.

17 (WHEREUPON, the witness returns to the witness
18 stand.)

19 MR. REDMOND: Beg the Court's indulgence, Your Honor.
20 Your Honor, with that I have no further questions. Ask
21 permission to publish to the jury?

22 THE COURT: Okay.

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

1 THE COURT: Y'all step back to the room. We need to
2 take about a five minute recess. We'll have you back in
3 just a few minutes.

4 (WHEREUPON, the jury was excused from the courtroom
5 at 4:32 p.m.)

6 THE COURT: Everybody stretch about five minutes.

7 (WHEREUPON, the jury panel enters the courtroom at
8 4:39 p.m.)

9 CROSS-EXAMINATION

10 BY MR. LEE:

11 Q. Dr. Proctor, I'm Robert Lee. I'd like to just ask
12 you a few brief questions. You are a medical doctor?

13 A. Yes, sir.

14 Q. You completed four years of medical school?

15 A. I did.

16 Q. You did a fellowship?

17 A. I did a residency.

18 Q. Okay, a residency. A child of this size, five -- he
19 was what? Ten years, a hundred pound? Has three liters
20 of blood?

21 A. He has probably pretty close to the adult complex.

22 Q. And an adult would be 3.5?

23 A. Three to 3.5.

24 Q. And your testimony is that he died of massive
25 hemorrhage?

1 A. He died as a result of traumatic injury and massive
2 hemorrhage.

3 Q. You made the comment, it might be just a
4 misstatement, but as a result of the attack of this pack
5 you made a statement that talk about this pack I believe
6 your testimony is. My question is this: Did you actually
7 come to the scene?

8 A. I did not.

9 Q. Did you -- so your testimony is based on what you
10 were reflected by the police?

11 A. Based on what you see written in that autopsy report
12 and what was related to me by investigators of the
13 authority; that is correct.

14 Q. Your testimony is that he died from massive dog
15 bites, but you don't know from which dog?

16 A. I did not see the attack. No, I cannot tell you
17 which dogs. No, sir.

18 Q. Doctor, if I could ask you. Are you familiar with --
19 is there a science called forensic odontology?

20 A. Forensic what?

21 Q. Odontology?

22 A. There is a science called forensic odontology, yes.

23 Q. I mispronounced it. Could you tell the jury what
24 that is?

25 A. Forensic odontology is where there is a study of

1 odontology is the study of bones, an a lot of people use
2 it to survey teeth marks and markings on bones to
3 determine exactly what inflicted an injury.

4 Q. That's not your speciality?

5 A. It is not.

6 Q. Thank you. I believe you said the jugular and the
7 artery in the neck were severed?

8 A. The jugular was essentially shredded. The artery, we
9 could see the artery, and there was damage to the artery.
10 Yes, sir.

11 Q. Was it actually severed?

12 A. It was not. It was damaged but it was still -- we
13 could see it.

14 Q. Okay, how about the arteries that run in our legs?

15 A. Yes, sir.

16 Q. In our arms?

17 A. Um hum.

18 Q. And our neck. So the neck one wasn't severed?

19 A. The neck artery was not severed, no, sir.

20 Q. About what the arms?

21 A. The vessels to the arms to include the arteries and
22 veins from the brachial plexus up under both arms to the
23 elbows was gone. It was missing.

24 Q. You performed and x-rayed this child's skull?

25 A. Yes, sir.

1 Q. That's done so you can make sure he didn't have any
2 kind of close head trauma and kind of your know if he
3 wasn't let's say killed by some means of blow to the head
4 and fed to those animal?

5 A. The x-ray of the head for multiple purposes. Number
6 one, to determine if there is any injury to the head
7 either by external traumatic injury and basically for
8 documentation purposes. If you will note at the time of
9 the autopsy this young man was a John Doe tentatively
10 identified as Mr. Davis.

11 And, of course, we have the x-rays which can be used
12 to match you ever dental x-rays if necessary.

13 Q. Okay, one of the things I was wondering is there any
14 way you can tell us the order of injury?

15 A. No, sir.

16 Q. So you can't tell us, for instance, if the neck --
17 the veins in the neck were severed before the arms were?

18 A. I can't tell you that, no, sir.

19 Q. Whether the arms and then the neck?

20 A. The neck and the arms I cannot tell you whether one
21 came prior to the other or if they came essentially at the
22 same time.

23 Q. How about the legs?

24 A. The legs, unless this young man was on his hands and
25 knees, I would surmise that the initial injury would have

1 been to the legs to put the kid on the ground.

2 Q. Okay, the injuries to his legs were below me knees,
3 correct?

4 A. They -- based on the pictures that I showed they
5 started, basically, at the bottom of the pant line which
6 was just above the knees, and they went from the knees
7 down towards to ankles; that is correct.

8 Q. And then the arms, they would have been the moving
9 parts of the arms and around the shoulder portion?

10 A. That is correct.

11 Q. And the neck?

12 A. And the neck.

13 Q. There was no tearing of the internal organs or
14 stomach?

15 A. Correct.

16 Q. Or the hips?

17 A. There was no tearing, no, sir.

18 Q. There was some bruising from drags?

19 A. That is correct.

20 Q. Dr. Proctor, is it possible to autopsy an animal?

21 A. Yes, sir.

22 Q. And if you autopsy an animal, just as with a human,
23 you can examine their entrails?

24 A. It can be done; that is correct.

25 Q. That's not what you do either?

1 A. I have never done a forensic examination on an
2 animal. No, sir, I have not.

3 Q. But you learned in medical school, you did dissect an
4 animal?

5 A. No, we dissected a human but not an animal.

6 Q. But it can be done?

7 A. Oh, yes.

8 Q. Well, the people like yourself who specialize in
9 autopsying of an animal?

10 A. There are veterinarians who I assume are specialized
11 in doing post mortems on animals. I can only assume. I
12 don't know any, but I assume that their specialty does
13 have those.

14 Q. As a physician you are aware that humans have blood?

15 A. Absolutely.

16 Q. Dogs have blood?

17 A. That is correct.

18 Q. And do dogs -- do you know if dogs have a blood type?

19 A. I don't know.

20 Q. But their D.N.A. can be typed from their blood, can't
21 they?

22 A. Certainly.

23 Q. Can the D.N.A. of a human be typed from their blood?

24 A. Yes, it can.

25 Q. Okay, finally, Doctor, as a physician can you examine

1 fecal matter and find out what's been digested?

2 A. I assume it can be done. I have never been asked to
3 do that nor have I done any reading or research into that.
4 So to give you an honest answer I can only say I assume
5 that it probably can be done.

6 Q. One final question from your report as to the time of
7 death. You have unknown?

8 A. Time of death, that -- from what I was given by the
9 coroner's office in Dillon County that's where that came
10 from.

11 Q. You weren't asked to make a determination?

12 A. Based on my autopsy I can tell you there was no
13 decomposition of the body itself. So it -- I -- from that
14 standpoint probably from the time that the body was found
15 and placed in refrigeration to prevent any decomposition
16 or if it was very cold outside I would say from the time
17 of the injury and based upon what I have seen at autopsy
18 probably less than 24 hours.

19 Q. Okay, Dr. Proctor. Thank you very much.

20 MR. REDMOND: Nothing further and I'd ask that Dr.
21 Proctor be excused.

22 MR. LEE: Without objection.

23 MR. REDMOND: At this time I yield to Assistant
24 Solicitor Lee Hayes for the next witness.

25 MR. HAYES: Your Honor, I would like to call Dr.

1 Hooker to the stand.

2 THE COURT: All right.

3 ROBERT HOOKER, after being duly sworn, testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. HAYES:

7 Q. State your name for the record, please?

8 A. Robert Hooker. H-O-O-K-E-R.

9 Q. And could you tell me your occupation?

10 A. I'm a veterinarian.

11 Q. And I'm going to ask you to speak loudly so the jury
12 can hear you. And could you briefly discuss your
13 educational background. Where you went to undergraduate
14 school?

15 A. I undergraduate in Orton State.

16 Q. What degree did you obtain?

17 A. Bachelor of Science in Biology.

18 Q. And that was at Francis Marion?

19 A. I finished it at North Carolina State.

20 Q. And post graduate, was it North Carolina State?

21 A. North Carolina State in Raleigh.

22 Q. And, again, what degree did you obtain from there?

23 A. Doctor of Veterinary Medicine.

24 Q. While you were at North Carolina State did you have
25 to do any clinicals or internships?

1 A. Yes, sir, the last year of school was clinical
2 rotations.

3 Q. What is a clinical rotation?

4 A. Well, you rotate through the different departments,
5 surgery, medicine.

6 Q. Is clinical more of a hands on?

7 A. Yes, sir.

8 Q. What if anything do have to have to practice in the
9 State of South Carolina? Do you have to have a license?

10 A. Yes, sir, I have to pass the national boards and
11 obtain a South Carolina license.

12 Q. And do you have a license in the State of South
13 Carolina?

14 A. Yes, sir.

15 Q. When did you obtain a license from the State of South
16 Carolina?

17 A. 1993.

18 Q. And so you have been practicing in this State since
19 1993?

20 A. Yes, sir.

21 Q. Do you have any other licenses from any other states?

22 A. Yes, sir, I have a license in North Carolina.

23 Q. Now, are you practicing in Dillon County currently?

24 A. Yes, sir.

25 Q. And how long have you been practicing in Dillon?

1 A. About five years.

2 Q. Do you have any other branches or offices besides
3 Dillon?

4 A. I own and operate the emergency clinic in Myrtle
5 Beach as well as the clinic in Mullins.

6 Q. And do you have any other training to gain expertise
7 in the field of veterinary medicine?

8 A. You have to complete seminars every year, 21 hours of
9 continuing education.

10 Q. So you have to go to seminars?

11 A. Yes, sir.

12 Q. Are you affiliated in any other area or organizations
13 related to the field of veterinary medicine?

14 A. Member of the South Carolina Veterinary Association.

15 Q. And have you ever testified in Court?

16 A. No, sir.

17 Q. As an expert witness?

18 A. No, sir.

19 MR. HAYES: Your Honor, at this time we would move to
20 qualify Mr. Hooker -- Dr. Hooker in the field of
21 veterinary medicine subject to Mr. Lee's cross.

22 MR. LEE: Your Honor, my question is does he tender
23 in general veterinary medicine or with regards to a
24 specialty?

25 THE WITNESS: General. I don't hold any specialized

1 degree.

2 MR. LEE: I have no objection.

3 BY MR. HAYES:

4 Q. Could you go ahead and tell the jury how you became
5 connected in this case?

6 A. The county contacted my Veterinary Assistant, Monroe
7 Coward, and indicated that the dogs that were housed at
8 the county pound one had gone missing. And they asked me
9 if I could house them at my facility that -- where it was
10 more secured.

11 Q. Okay, what were -- what were your instructions in
12 regards to this case?

13 A. I was requested to house the animals until further
14 notice.

15 Q. Okay, what ultimately happened to the dogs while they
16 were at your office?

17 A. I received a Court order from Judge Lockemy to have
18 them euthanised.

19 Q. While that were present at your office did you feed
20 the dogs?

21 A. Yes, sir.

22 Q. And given time how long were they at your office?

23 A. Estimated time only about three or four days.

24 Q. About three or four days. Could you tell the jury in
25 general what breeds of dogs they were?

1 A. Well, appeared to be boxers, pit bulls and mixed
2 shepherds.

3 Q. Okay, could you tell the jury in general how old the
4 dogs were, like a range?

5 A. They were young adult dogs. One to two years-old.

6 Q. Okay.

7 A. Estimated.

8 Q. Okay. Given that could you tell the jury to a
9 reasonable degree of medical certainty in your field of
10 veterinary medicine were the dogs of normal weight?

11 A. Body condition score ranging from one to five. One
12 being emaciated, five being obese, and three being normal.
13 The dogs were, two, underweight but not emaciated.

14 Q. Two at the low end?

15 A. Yes, sir.

16 Q. Now, did you prepare a report dealing with the age or
17 were there any forms that you prepared in dealing with the
18 age of the dogs?

19 A. No, sir. Not beyond the information document on the
20 euthanasia certificate.

21 Q. All right. Then you would know about those forms
22 that would have the weight and the age?

23 A. Yes, sir.

24 Q. And the type of dog?

25 A. Well, it was estimate breeds. I mean it is certainly

1 not a certain thing.

2 Q. Do those type of forms indicate male or female?

3 A. Yes, sir.

4 Q. I'm going to show you what's been marked at Exhibits
5 Five, Six, Seven, Eight, and Nine. I'm going to let you
6 review them, and once you've finished reviewing them give
7 them back to me. And would you tell me what you just
8 reviewed?

9 A. These were the consent form that were -- a
10 description of the animal, and Sheriff Grice signed for me
11 to euthanise the animals.

12 Q. And while you mentioned description of the animals
13 how do you describe the animals?

14 A. Well, we have the animal's name. We used numbers
15 because we didn't have a name. Something about the breed
16 of dog. I mean the species of dog. The guesstimation of
17 the breed, the sex, age and color and any markings or
18 particular identifying characteristics.

19 Q. Do you have the dog numbers?

20 A. Yes, sir.

21 Q. All right. Now, are those your numbers that you've
22 given the dogs?

23 A. Yes, sir.

24 Q. And those numbers are given when they are brought to
25 your office?

1 A. I really don't recall whether we identified them
2 immediately when they came in, if different numbers or
3 just when we were documenting the euthanasia and the
4 photographs.

5 Q. But those are your names you give them?

6 A. Yes, sir.

7 MR. HAYES: Your Honor, if it please the Court. I'd
8 like to have this mark as -- admitted as State's Exhibits
9 Five, Six, Seven, Eight and Nine. I'd like to have those
10 admitted into evidence.

11 MR. LEE: Without objection.

12 THE COURT: In without objection.

13 (WHEREUPON, State's Exhibit No. 5, 6, 7, 8 and 9 were
14 admitted into evidence.)

15 BY MR. HAYES:

16 Q. And were there any photographs taken?

17 A. Yes, sir.

18 Q. And what were those photographers of?

19 A. Took several photograph of each dog prior to
20 euthanasia.

21 Q. Okay.

22 MR. LEE: Your Honor, I have no objection to these.

23 BY MR. HAYES:

24 Q. I'll let you take a look at those photographs, and
25 once you've finished with them just tell me what you

1 reviewed.

2 A. Photographs of the dogs that I euthanised on
3 November 10th.

4 Q. And these are the same dogs that were present at your
5 office?

6 A. Yes.

7 Q. And has these pictures been altered or changed in any
8 way?

9 A. Not to my knowledge.

10 Q. Do you know or do you remember if you or a staff
11 member took these photographs?

12 A. I don't recall who took them. Whether it was myself
13 or whether or not -- I really don't recall.

14 Q. As -- Your Honor, at this time I'd like to go ahead
15 and admit these.

16 THE COURT: In without objection.

17 MR. HAYES: And for the record those are State's
18 Exhibit Number 37, 38, 39, 40, and 41.

19 THE COURT: All right.

20 (WHEREUPON, State's Exhibit Nos. 37, 38, 39, 40 and
21 41 were admitted into evidence.)

22 MR. HAYES: All right. Your Honor, a couple more
23 questions.

24 BY MR. HAYES:

25 Q. Briefly, I noticed on some of those, especially

1 State's Exhibit Number 39, State's Exhibit Number 40, I
2 notice that the -- that there is collars around -- the way
3 the dog's head is turned, there is a collar on their neck
4 labeled with numbers?

5 A. Yes, sir.

6 Q. Are those the same numbers that are on the euthanasia
7 form?

8 A. I believe that to be correct, sir.

9 Q. They're the same groups that they correlate? They're
10 the same, One through Five?

11 A. Yes, sir.

12 Q. Okay.

13 A. I mean they were supposed to to my knowledge.

14 Q. I'll let you look at them again.

15 A. I mean they were identified as One through Five.
16 Unless there was an error on the euthanasia form then
17 they're the same animals.

18 MR. HAYES: At this time I'd like to go ahead and
19 publish the photographs to the jury?

20 THE COURT: All right.

21 MR. HAYES: Your Honor, that's all the questions I
22 have at that time.

23 CROSS-EXAMINATION

24 BY MR. LEE:

25 Q. Dr. Hooker, I'm Robert Lee. You and I have met and

1 talked several times, correct?

2 A. Yes, sir.

3 Q. You've got the euthanasia forms there and the
4 photographs. And I want to go through those in more
5 detail with you if I can, okay. Let's take the Dog Number
6 One. This is a two year old dog?

7 A. There is not a definitive aging pattern in a dog. I
8 mean once they get beyond a year it's difficult to
9 estimate their age, but based on teeth wear.

10 Q. Okay, who told you me belonged to Bentley Collins?

11 A. That was presented to me. That was presented to me
12 by the County of Dillon.

13 Q. And that would be the sheriff that signed the forms?

14 A. Yes, sir.

15 Q. Mr. Collins didn't sign the forms himself?

16 A. No, sir.

17 Q. Then this is a dog who is a -- who looks like a
18 pit/shepherd mix?

19 A. Yes, sir.

20 Q. And he is a male?

21 A. In tact. Not neutered.

22 Q. And then your estimation of age is?

23 A. Approximately two years.

24 Q. And he weights 47 pounds?

25 A. Yes, sir.

1 Q. Took 6 c.c -- what you use?

2 A. Euthanasia solution is a different brand of
3 Euthathol.

4 Q. Okay.

5 A. Barbiturates.

6 Q. And you did on the 10th, any questions as this is an
7 accurate copy of your form?

8 A. Yes, sir.

9 Q. And you did this after examining the dog yourself?

10 A. Yes, sir, I filled those out at the time. Yes.

11 Q. And I believe -- and our conversation with you or my
12 investigator that you identified to him? You took
13 photographs of the dogs?

14 A. Yes, sir.

15 Q. This is taken on your examining table?

16 A. Yes.

17 Q. That would be Monroe Coward?

18 A. Probably.

19 Q. And is this taken prior to the dog being euthanised?

20 A. Yes, sir.

21 Q. Immediately?

22 A. Yes, sir.

23 Q. Okay, and after this dog was euthanised his head was
24 severed?

25 A. Yes.

1 Q. What y'all do with the body?

2 A. It was picked up by the animal control agent, I
3 believe which at that time would be Fred Jackson.

4 Q. Any idea what he did with it?

5 A. Well, to my -- I assume taken to the County Land
6 Fill, the animal burial within the County Land Fill.

7 Q. Okay, what happens to this dog's head?

8 A. It was submitted to D.H.E.C. in Columbia or via
9 D.H.E.C. to I think Clemson Diagnostic in Columbia to test
10 it for rabies. Any dog could have bitten somebody and
11 euthanised within 15 days has to be done.

12 Q. Okay, were you asked at any point to draw blood from
13 this dog?

14 A. I never -- I was never requested to. We did draw
15 blood samples and we did have them, but by the time
16 they -- I no longer have them.

17 Q. Who severed the head from the dog?

18 A. Monroe Coward.

19 Q. And did Mr. Coward -- was Mr. Coward asked to do
20 dental impressions of this dog?

21 A. No, sir.

22 Q. Were any impressions made of this dog's maw prints?

23 A. No, sir.

24 Q. Okay, he was simply euthanised, head went to
25 Columbia, body to the dump?

- 1 A. Right.
- 2 Q. Okay. Let's go to Dog Number Two. This is another
3 of the dogs. There is the form you filled out?
- 4 A. Yes, sir.
- 5 Q. And I believe you identified this photograph for me
6 as being from your records as Dog Number Two?
- 7 A. Yes, sir.
- 8 Q. All right. That's Dog Number Two.
- 9 A. I don't have -- I mean that was all on the
10 photographs. I assume that's accurate.
- 11 Q. You didn't bring your set of photographs with you
12 today? This again Bentley Collins indicated as the owner?
- 13 A. Yes, sir.
- 14 Q. But that was provided to you by law enforcement?
- 15 A. Yes, sir.
- 16 Q. Signed by the sheriff?
- 17 A. Yes, sir.
- 18 Q. This is a -- you said boxer?
- 19 A. Boxer. Question mark. Certainly looks like a boxer,
20 but I can't say it.
- 21 Q. No pedigree records so we don't know. It's a male,
22 intact?
- 23 A. Yes, sir.
- 24 Q. Approximately two years old?
- 25 A. Yes, sir.

- 1 Q. Brown and white. Black muscle. Took 6 c.c. again?
- 2 A. Yes, sir.
- 3 Q. And this dog weighed 44-pounds?
- 4 A. Yes, sir.
- 5 Q. Again if you could tell me with regards to this dog,
- 6 head severed again?
- 7 A. Yes, sir.
- 8 Q. Body to the dump, to the best of your knowledge.
- 9 A. Picked up by the animal control to the best of my
- 10 recollection, presumably.
- 11 Q. Head went to Columbia?
- 12 A. Yes, sir.
- 13 Q. As required by law?
- 14 A. Yes, sir.
- 15 Q. Were y'all -- y'all draw brood from this dog, too?
- 16 A. Yes, sir.
- 17 Q. Dental impressions made from this dog?
- 18 A. No, sir.
- 19 Q. Nobody asked you to?
- 20 A. No, sir.
- 21 Q. Paw prints?
- 22 A. No, sir.
- 23 Q. Let's go to Dog Number Three. Again, Bentley Collins
- 24 indicated to be the owner by law enforcement?
- 25 A. Yes, sir.

- 1 Q. This is a female?
- 2 A. Yes, sir.
- 3 Q. Boxer?
- 4 A. Yes, sir.
- 5 Q. Obviously, this dog has been a cycle before cause it
- 6 has enlarged teeth?
- 7 A. Yeah.
- 8 Q. Probably been bred once before?
- 9 A. Yeah, not definitive, but may have.
- 10 Q. In fact, she was in heat at this time?
- 11 A. Yes, sir.
- 12 Q. When she was at your place?
- 13 A. Yes, sir.
- 14 Q. Brown in color?
- 15 A. Yes, sir.
- 16 Q. No identifying marks of anything unusual?
- 17 A. No, sir.
- 18 Q. Thirty-six pounds?
- 19 A. Yes, sir.
- 20 Q. Four c.c. for her? She only took 4 c.c.?
- 21 A. Correct.
- 22 Q. Now, was this dog -- again, this dog's head severed?
- 23 A. Yes, sir.
- 24 Q. Animal control picked up the body?
- 25 A. Yes, sir.

1 Q. Head went to Columbia?

2 A. Yes, sir.

3 Q. No dental impressions made of this dog?

4 A. No, sir.

5 Q. Nothing done with paw prints?

6 A. No, sir.

7 Q. No impressions made of the teeth? Let's go to Dog

8 Four, please. This again Bentley Collins indicates he the
9 owner, correct?

10 A. Yes.

11 Q. Here we have -- that was again by law enforcement.
12 This form is signed by the sheriff?

13 A. Yes, sir.

14 Q. This is a pit/boxer mix?

15 A. Yes.

16 Q. Sex is a female?

17 A. Yes, sir.

18 Q. Age, I don't - what do you have here?

19 A. Adult, question make. One year.

20 Q. Okay, so this dog is really kind of still a puppy?

21 A. Yes, sir.

22 Q. Relatively speaking?

23 A. Yes, sir.

24 Q. Right hood shows bite marks. Black white -- how
25 about read that? I can't read that.

1 A. "Right shoulder shows bite marks, black mass of
2 muscles and back toe is white."

3 Q. Okay, the cuts to the back, that's indicative of a
4 dog fight?

5 A. Hum?

6 Q. Is that the bite marks. Where are the bite marks?

7 A. Right shoulder.

8 Q. On the right shoulder?

9 A. Yes.

10 Q. Here. Where were -- how about point that out for me?

11 A. It would be on the other side.

12 Q. Okay, just assume, but about where?

13 A. Well, I mean the shoulder area. In this area here.

14 Q. Okay, this dog weighs 30 pounds?

15 A. Yes, sir.

16 Q. Brindle. That's that tiger stripe look?

17 A. Yes, sir.

18 Q. Now, this dog's tail wasn't docked?

19 A. No, sir.

20 Q. Ear's weren't trimmed?

21 A. No, sir.

22 Q. Do you dock tails and trim ears?

23 A. I prefer not to dock tails, no, sir. I mean I dock
24 tails but I don't trim ears.

25 Q. Most people who want the ears trimmed on a dog of

1 this type why you they want it done?

2 A. Well, I mean it depends on what kind of dog. I mean
3 if you call a pit bull they normally -- I've known you
4 trim them short. Boxers usually trim longer.

5 Q. Why is one trimmed shorter and one trimmed longer?

6 A. That described in the breed standard you know for
7 the -- each breed of dog will have a type of ear trim
8 that's customary for it.

9 Q. This dog wasn't trimmed at all?

10 A. No, sir.

11 Q. Is that unusual that some owners don't have their
12 tail docked and their ears trimmed?

13 A. No, sir.

14 Q. Let's go to Dog Number Five. Let match them up.
15 It's easier. Again real quick as to Dog Number Four, here
16 I forgot to ask you his head was severed or her head?

17 A. Yes, sir.

18 Q. Her head was severed. Any dental impressions made or
19 you were asked to make any?

20 A. No, sir.

21 Q. Draw blood?

22 A. I wasn't asked to but I did.

23 Q. Head went to Columbia?

24 A. Yes, sir.

25 Q. Body picked up by animal control?

1 A. Yes, sir.

2 Q. Why did you draw blood from these animals?

3 A. Just to cover myself as well as possible -- just
4 didn't know if they were going to do any sort of testing
5 or anything beyond that.

6 Q. You thought there might be D.N.A. testing?

7 A. At that time I don't know that they had it. They
8 have since some out with some tests as far as the accuracy
9 of the tests. I don't know.

10 Q. But you drew and you held blood until it went bad?

11 A. Yes, sir.

12 Q. Now, let's go to -- this is Dog Number Five. It's
13 again owner, Mr. Collins, according to this, but it's
14 signed by the sheriff?

15 A. Yes, sir.

16 Q. Weight of 36-pounds. What is "Vial 44?" Is that
17 just your control in the office?

18 A. Yes, sir.

19 Q. So that's the 44th bottle?

20 A. We have to keep records of it.

21 Q. Now, this is a pit/boxer mix according to you?

22 A. Yes, sir.

23 Q. This is about two years of age?

24 A. I think an approximate one year.

25 Q. Approximate one year. This is a female?

1 A. Yes, sir.

2 Q. And this next section here about markings. I can't
3 read your writing?

4 A. "Bite marks on both shoulders. White chest. White
5 feet."

6 Q. The markings are where?

7 A. Bite marks on both shoulders.

8 Q. How about -- I don't have the reverse side of it.
9 Show me you would have seen bite marks?

10 A. I've seen bite marks on the dogs right here, here,
11 here, actually, and some bite marks. As far as the
12 shoulder I don't know. I don't really see it.

13 Q. You and I have fallen into a lower voice into a
14 conversation. We need to speak up. This dog's head was
15 severed?

16 A. Yes, sir.

17 Q. Body taken to Columbia by animal control to wherever?

18 A. Yes, sir.

19 Q. Head taken to Columbia?

20 A. Yes, sir.

21 Q. You weren't asked to do any dental impressions?

22 A. No, sir.

23 Q. Paw prints?

24 A. No, sir.

25 Q. Now, these dogs weren't initially housed with you,

1 were they?

2 A. No, sir.

3 Q. In fact they were housed at the pound?

4 A. That's my understanding.

5 Q. Okay, you know why they -- I believe you testified
6 before they moved it to you because your place was more
7 secured?

8 A. Yes, sir.

9 Q. And did you understand that there was a sixth dog but
10 he escaped?

11 A. That was my understanding that there was a sixth dog
12 that was missing.

13 Q. Okay, now, you testified on the scale of one to five
14 that these dog were a two, but how many dogs do you treat
15 in Dillon County?

16 A. A large number.

17 Q. Give me an approximation? Is it 10 percent of your
18 practice, 50 percent, 40 percent?

19 A. I'm not sure. I don't understand the question.

20 Q. Well, in Dillon County how much of your practice is
21 treating canine animals?

22 A. Approximately 30 percent.

23 Q. Of those dogs are -- with regards to those dogs you
24 see and you know to be here in Dillon County where do they
25 fall? In the top or the bottom?

1 A. Well, I mean there is some ---

2 Q. Or in the middle?

3 A. Certainly was in the range of the Dillon County
4 average dogs.

5 Q. So I mean when you saw -- when these animals came to
6 you were you shocked?

7 A. No, sir.

8 Q. Okay, and do you know how long they had been at the
9 pound?

10 A. No, sir. Only by the reference to documents that
11 I've seen since I think they were there.

12 Q. Which documents have you seen since?

13 A. Some of the Court orders as far as the ones for
14 euthanasia and.

15 Q. That would have been Judge Lockemy's order?

16 A. I think so, the reference to it, but I really have no
17 direct knowledge of how long they were at the county
18 pound.

19 Q. Now, one we have here we have two males and three
20 females?

21 A. I believe that's correct, sir.

22 Q. Okay, let me ask you this. In your veterinary
23 practice you ever do autopsies on dogs?

24 A. Not usually. Usually if there is a need for an
25 autopsy I prefer to send it off to Clemson Diagnostics.

1 Q. Okay, but where is that?

2 A. In Columbia.

3 Q. Okay, so in other words is it your testimony that
4 these dogs could have been -- their bodies could have been
5 sent as close as Columbia for an autopsy?

6 A. To the pathology -- pathologist in Columbia, South
7 Carolina. Clemson Veterinary Diagnostics. It is the
8 State laboratory.

9 Q. You weren't asked to do that though, were you?

10 A. No, sir.

11 Q. And is it complicated to -- is it just as easy as
12 filling out a form?

13 A. You mean -- again, I don't understand. If the matter
14 of transferring the animal and with a post mortem autopsy,
15 Necropsy Request Form, and providing the animal to the
16 facility.

17 Q. So in other words, and I'm not trying to put words in
18 your mouth, all they had to do was fill out a form, take
19 the body of the dog and take it to Columbia, correct? And
20 I guess pay whatever it is the fee would have been to the
21 county?

22 A. Yes, sir.

23 Q. But there are times -- do you do some autopsies of
24 dogs when you like to see if the dog had parvo sometimes?
25 Just simple things? How organs are damaged?

1 A. I prefer to send those out to a trained pathologist.
2 I generally don't do post mortems certainly not in a
3 controversial case.

4 Q. I understand. But my question was do you ever do ---

5 A. Certainly have, yes, sir.

6 Q. Okay, let me ask you about fecal matter from the
7 dogs. Would it have been possible to examine the fecal
8 matter? Is it possible to collect fecal matter for
9 examination in the dogs?

10 A. You mean for -- to examine for parasites or what?

11 Q. Well, for parasites, for food ingestion, anything?

12 A. Well, for parasites it certainly -- there are fecal
13 flotations are routine. As far as examining the fecal
14 material to determine diet that would be certainly beyond
15 the scope of my ability and whether it's possible or not,
16 I don't know.

17 Q. Okay, can they do that at Clemson?

18 A. I do not know.

19 Q. Okay, again, Doctor, you can tell us how many days
20 the dogs were in the pound?

21 A. I have no direct knowledge of that.

22 Q. How many days at your place before you euthanised
23 them?

24 A. Approximately three or four days.

25 Q. Okay, thank you very much. I appreciate it.

1 to Assistant Solicitor Ship Daniel for the next witness.

2 THE COURT: Solicitor.

3 MR. DANIEL: State calls Jerry McAlpine.

4 THE COURT: If you will come around to the bench
5 where the Bible is.

6 JERRY MCALPINE, after being duly sworn,
7 testified as follows:

8 CLERK OF COURT: Be seated in the witness box. State
9 your full name for the Court spelling your last, please,
10 sir.

11 THE WITNESS: Jerry Kim McAlpine. M-C-A-L-P-I-N-E.

12 MR. DANIEL: May it please the Court.

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION

15 BY MR. DANIEL:

16 Q. Mr. McAlpine, good morning?

17 A. Morning.

18 Q. I'm going to ask you to speak loudly so everyone can
19 hear you. Where do you live, Mr. McAlpine?

20 A. 231 Emmanuelville Loop.

21 Q. How far is that from the defendant's home?

22 A. Roughly a quarter of a mile.

23 Q. Do you have any family that lives there with you?

24 A. Yes, I have my mother and my two daughters.

25 Q. Do you work?

1 A. Yes, I do.

2 Q. Where is that?

3 A. At the Welcome Center on 95.

4 Q. Did you know Matthew Davis?

5 A. Yes, I did.

6 Q. Do you know the Defendant, Mr. Collins?

7 A. Yes.

8 Q. Do you happen to know if the defendant has any dogs?

9 A. Yes, he does.

10 Q. Do you know how many?

11 A. I believe four right now.

12 Q. Mr. McAlpine, tell the jury about any encounters you
13 may have had with these dogs?

14 A. Well, they have a tendency to chasing people. They
15 chased me. They chased me several times.

16 Q. They chased you as you were walking?

17 A. No, I was riding a bicycle. That was the only
18 transportation I had was a bicycle at the time, so I rode
19 it back and forth to work. And they would take after me
20 on the bike.

21 Q. So you rode by Mr. Collins' home?

22 A. Yes, I did.

23 Q. Did these dogs ever chase you in such a way that you
24 were frightened?

25 A. Oh, yeah. They came right out in the road after me

1 one day.

2 Q. Tell us about that night?

3 A. Well, I went to ride my bike and they actually
4 stopped me. I couldn't even move. So I got off the bike
5 and got the bike between me and them and eased on up the
6 road because I knew they weren't going to pass the ditch
7 that's dividing the two properties: His and someone
8 else's. Once I got past it it was already, but they
9 scared the daylights out of me. I thought I was had.

10 Q. When did this happen?

11 A. About a week before they nailed him.

12 Q. Was Mr. Collins ever outside to see any of these
13 attacks?

14 A. Yeah, one day he was outside when I rode by, and the
15 dogs took after me. He actually called them back.

16 Q. He was aware that his dogs chased after people?

17 A. Yes, he was.

18 Q. Did you ever tell Caroline, Caroline Davis, about
19 this?

20 A. Yes, I did. I went to her and told her about the
21 dogs going after me after they went after her son because
22 I felt bad because I should have called the cops and
23 didn't call the cops and thought you know maybe if I had
24 of boy might have been all right.

25 Q. Okay, Mr. McAlpine?

1 MR. DANIEL: With the Court's permission I'd like to
2 show you the pictures of those dogs to see which one if
3 any you can identify. Would you please step down, Judge,
4 if that's all right.

5 (WHEREUPON, the witness steps down from the witness
6 stand.)

7 BY MR. DANIEL:

8 Q. First, I'm going to show you State's 37. Do you
9 recognize this dog?

10 A. Yeah.

11 Q. And you recognize this dog as?

12 A. Yeah, that's one of them.

13 Q. Okay, I'm going to show your State's 38. How about
14 this one?

15 A. I definitely remember that one because of the white.
16 The light chop up here.

17 Q. And State's 39?

18 A. Yeah, he had a kind of a funny snout.

19 Q. And State's 40?

20 A. That's one. I'm not too sure. I'm not going to say
21 it wasn't there. I'm not too sure of that one.

22 Q. Okay, and State's 41?

23 A. That one was there, yeah.

24 Q. Okay, thank you, Mr. McAlpine.

25

1 (WHEREUPON, the witness returns to the witness
2 stand.)

3 BY MR. DANIEL:

4 Q. After this attack what if anything did you do
5 differently?

6 A. I started not going by his house. I started going
7 the long way around.

8 MR. DANIEL: Okay, I have no further questions.
9 Thank you.

10 CROSS-EXAMINATION

11 BY MR. LEE:

12 Q. Mr. McAlpine, let me just ask a couple questions.
13 The dogs -- let me show you. I can do that better. How
14 about come on down here and let me talk to you for a
15 second.

16 (WHEREUPON, the witness steps down from the witness
17 stand.)

18 BY MR. LEE:

19 Q. All right. You stand on one side and I'll stand on
20 the other so the jury can see. Step back just a hair.
21 All right. You would come down this way. This is Mr.
22 Collins. I'm sorry. This is Mr. Collins' house. Do you
23 come straight by here?

24 A. Okay, I would come down -- normally, come right here
25 and down.

1 road or they hear you coming?

2 A. No, they came out when I got there.

3 Q. So, you see them and you stop?

4 A. Um hum.

5 Q. You get off the bike and you're walking that bike.

6 Is that what you're doing? All right. What was this dog
7 doing? I mean you're doing this, and you're looking at
8 them staring them down. Tell me what their doing?

9 A. What that one particular dog was doing?

10 Q. Yes, sir.

11 A. I wasn't looking at one particular dog. I was
12 looking at a pack of dogs with teeth bearing and gnarling.
13 And I wasn't thinking about what the dog was doing. I was
14 worried about what all of them were going to do.

15 Q. Tell me about this one. This one had teeth baring?

16 A. They all did.

17 Q. Had his hackles up?

18 A. They all did.

19 Q. Okay, how about this one?

20 A. They all did.

21 Q. I mean I want to make sure this one, too?

22 A. I can't point out individual dogs. I wasn't looking
23 at that individual dogs.

24 Q. This is what I want to know. They were in the road
25 when you got there or they were on the edge of the road?

1 A. No, they were in his yard.

2 Q. So as you approached you saw them coming after you?

3 A. Yeah.

4 Q. Okay, so they heard you and they were coming?

5 A. Um hum.

6 Q. And came out to the road, and they got -- did --

7 here's what I want to know. Did they lower their bodies?

8 A. They got down right nasty.

9 Q. I mean did they lower that bodies? Did they lower
10 themselves?

11 A. They didn't lower their bodies, but they came right
12 out there snarling and ready to jump.

13 Q. Okay, and you had -- what I want to know is did any
14 of them come around the front of you?

15 A. They tried to, but the fact that I was moving and the
16 fact that I kept nudging that bike was making them think
17 about it.

18 Q. I don't understand. You were nudging the bike, but
19 you were rolling it forward?

20 A. I was nudging it forward.

21 Q. You mean you were walking slow with the bike in tow?

22 A. Yes, sir, I was making sure to keep the bike a little
23 ahead of me you know like so part of it was sticking out
24 the front and part of it was sticking out the back.

25 Q. You mean sticking out the back of you? So you're

1 walking in the middle?

2 A. Yeah.

3 Q. Okay, and you're staring the dogs down?

4 A. Um hum.

5 Q. And you can't tell us which of these dogs -- how many
6 dogs were there?

7 A. It was a bunch of them. I can't tell you exactly how
8 many. I didn't count them. I wasn't thinking about
9 counting dogs either.

10 Q. Okay.

11 A. I was thinking about keeping out of -- getting out of
12 there with my arms and legs still on me.

13 Q. This was a horrific experience, wasn't it?

14 A. It scared the day lights out of me, yes, sir.

15 Q. And it scared you so much I mean -- and the first
16 time you told anybody about this was to whom?

17 A. I told people where I was staying at about it.

18 Q. Okay?

19 A. When I got home the very next day.

20 Q. Did you pick up the telephone and call the Sheriff's
21 Office?

22 A. No, I didn't because I didn't think that they would
23 do any good.

24 Q. Okay, I appreciate that. Thank you.

25 MR. DANIEL: Briefly, Your Honor.

1 Q. Can I ask you a question? When they would chase you
2 down the road did they know where that ditch was?

3 A. Yeah, that knew what point to stop at.

4 Q. So they would run out on the asphalt until they saw
5 the ditch and then they would stop?

6 A. I don't know if it was so much the ditch as it was
7 that they just knew what spot to stop running on.

8 Q. And after that you would go on, and then the next day
9 would be the same thing?

10 A. It would be the same thing.

11 Q. And the next day the same thing?

12 A. Um hum.

13 Q. Okay. I appreciate it.

14 MR. DANIEL: Nothing further.

15 THE COURT: You may step down.

16 MR. REDMOND: State would next call Craig Thompson.

17 CRAIG THOMPSON, after being duly sworn,
18 testified as follows:

19 CLERK OF COURT: Be seated. State your full name for
20 the Court spelling your last.

21 THE WITNESS: Craig Thompson. T-H-O-M-P-S-O-N.

22 DIRECT EXAMINATION

23 BY MR. REDMOND:

24 Q. And, Mr. Thompson, where do you reside?

25 A. Columbia, South Carolina.

1 Q. And let me ask you something. Were you retained by
2 the State to review evidence in this case?

3 A. Yes, sir.

4 Q. And did you review pictures and did you review
5 reports and other exhibits that were provided to you by my
6 office?

7 A. Yes, sir.

8 Q. Did you in fact review those?

9 A. Yes.

10 Q. And, again, you were retained by us to do that?

11 A. Yes, sir.

12 Q. Now, let me ask you about your educational
13 background. Would you give the Court and the jury your
14 educational background?

15 A. I went to Irmo High School and attended Citadel and
16 majored in psychology. I was there from '85 to '89.

17 Q. And did you get a degree from the Citadel?

18 A. Yes, I did.

19 Q. And what was your degree?

20 A. Psychology.

21 Q. And could you tell us what you did after you
22 graduated from the Citadel in 1989?

23 A. I did my senior thesis with the Charleston County
24 Sheriff's Department in 1999. I assisted in working in
25 the vice squad, narcotics squad, canine unit and traffic

1 division.

2 Q. And then subsequent to your employment with the
3 Charleston County Sheriff's Office could you tell us what
4 you did next?

5 A. Went to work for the Lexington County Sheriff's
6 Department in 1989. I worked in traffic division,
7 criminal division, canine unit, underwater dive recovery
8 team, advanced crime scene investigations. I was also on
9 the operations committee. I attended the schools of the
10 A.C.E. Team investigation, crime scene type and crime
11 scene detection.

12 I went to basic detective school, advanced crime
13 scene detection, latent print detection, advanced crime
14 scene photography. I was also on the swat team. I was a
15 sniper. I went to advanced sniper school, counter sniper
16 school and drug intervention sniper school.

17 Q. And, Craig, I'm going to do this because there is a
18 lot of ruffling with the change in weather there has been
19 some coughing. So I'm going to ask you to speak a little
20 louder so we can all hear you?

21 A. Okay.

22 Q. Now, how long did you stay the Sheriff's department
23 in Lexington County?

24 A. 1999 to 2001.

25 Q. And let me ask you this. Since 2001 what have you

1 been doing?

2 A. I've worked -- well, actually it backs up to 1989. I
3 worked two jobs. I had my own business with Thompson's
4 Canine Academy from 1989 to current and Lexington County
5 Sheriff's Department from 1989 to 2001.

6 Q. Okay, and so since 2001 you have been working with
7 the Academy?

8 A. Yes, sir.

9 Q. Exclusively with your Academy?

10 A. Yes, sir.

11 Q. Now, let's talk about that. Could you tell the jury,
12 first of all, what education, what training, what have you
13 done in the realm of dog behavior pursuant to your work at
14 the Academy?

15 A. I work with trainers, Owen Tober, Amsel Training
16 Kennels, which is in Buffalo, New York and Louis Marshall,
17 who trained with the Air Force in the 1960s to current.

18 Q. How many hours did you get in that training?

19 A. It's over a thousand hour.

20 Q. So you can continue.

21 A. I've gone to handler school, trainer school,
22 instructor school, decoy school, and behavior school.

23 Q. Have you ever had to testify as an expert in dog
24 behavior?

25 A. Yes, I have.

1 Q. And how many times have you done that?

2 A. Twice.

3 Q. And where was that?

4 A. That was in the State of New York.

5 Q. And was that after you were in South Carolina and
6 went back to New York as an expert?

7 A. Yes, sir.

8 Q. And have you in your -- let's talk about, before I
9 ask to have you qualified, what kind of dogs do you
10 actually work with?

11 A. I work with everything but the toy dogs.

12 Q. Have you worked with pit bulls?

13 A. Yes, sir.

14 Q. Have you worked with boxers?

15 A. Yes.

16 Q. Have you worked with German shepherds?

17 A. Yes, sir.

18 Q. Okay?

19 MR. REDMOND: Your Honor, at this point so I would
20 move to qualify Mr. Thompson as an expert specifically as
21 a dog behavior expert.

22 MR. LEE: I'd like to question.

23 THE COURT: Your witness.

24 BY MR. LEE:

25 Q. Mr. Thompson, with regards to the cases in New York

1 could you tell us what those were about?

2 A. They were dog bite cases.

3 Q. Civil or criminal.

4 A. Criminal.

5 Q. Okay, you testified on behalf of whom?

6 A. Once for the Defense and one for the prosecution.

7 Q. Okay, with regards to -- have you written any
8 articles? Published anything?

9 A. No, sir.

10 Q. Done any specific kinds of studies?

11 A. I've worked with Owen Tober in behavior studies.

12 Q. Owen Tober is who?

13 A. He's the owner of Amsel Training Kennels.

14 Q. Okay, and you did they behavior study as part of
15 what?

16 A. In aggression.

17 Q. Okay, but I mean were you publishing an article?
18 What were you doing?

19 A. Yeah, I was working with Owen. I was like just the
20 novice working him.

21 Q. Okay, have you done any work with let's say
22 University of Georgia? University of Auburn Veterinary
23 Schools?

24 A. No, I have not.

25 Q. Do any work for the federal government?

1 A. No.

2 Q. Any of your dogs that are trained to go Iraq where
3 the troops there?

4 A. Yes.

5 Q. Which of those dogs?

6 A. German shepherd.

7 Q. What do they perform there?

8 A. Actually, they're dual purpose dogs. They're for
9 protection. They're also trained in bombs, narcotics,
10 cadavers, structure rescue tracking and trailing.

11 MR. LEE: Your Honor, I have no objection to his
12 qualify.

13 THE COURT: All right. So qualified.

14 BY MR. REDMOND:

15 Q. Now, Craig, let's talk in general about what you do.
16 Do you train animals in aggression? In other words do you
17 as part of your training ---

18 A. I actually train not in aggression but in protection.

19 Q. And I'd ask you to clarify that for the jury as it
20 relates to protection?

21 A. That's the difference between an attack dog and
22 protection dog. An attack dog would attack, main, maul.
23 They're like guard dogs that have the decisions only made
24 by them. The dogs get to make the decision.

25 Protection dogs are dogs that are trained to bite but

1 on command from a human.

2 Q. Okay, and what kind of training services do you offer
3 in your work at the Academy?

4 A. I offer obedience, advance obedience, protection,
5 bombs, cadaver, search and rescue, track and trail, and
6 therapy dogs.

7 Q. Now, and I didn't ask you this, but have you trained
8 dogs for law enforcement agencies?

9 A. Yes, I have.

10 Q. And have you done that during the course of the time
11 the academy has been open?

12 A. Yes, I have.

13 Q. Let's get to this case in particular. Again, did you
14 review the documents that were provided to you? Documents
15 and notes and other exhibits regarding this particular
16 case?

17 A. Yes, I did.

18 Q. Did you have an opportunity to review the incident
19 reports from the particular case involving John Matthew
20 Davis?

21 A. Yes, sir.

22 Q. And pursuant to that, Craig, from what you reviewed
23 in those reports what can you tell this jury that is
24 significant about the dog's behavior?

25 A. It's highly unusual for dogs to actually attack and

1 consume a person. It is so unusual that I cannot find a
2 case in the last ten years where five or six dogs have
3 attacked a person and consumed the body.

4 Q. Let me ask you about the scene, and let's say that
5 there is testimony or let's say there is a situation where
6 officers approach a scene ---

7 MR. LEE: Your Honor, if he's going to pose a
8 hypothetical he needs to pose it the proper way.

9 MR. REDMOND: I can rephrase, but I am allowed to
10 quote hypothetical.

11 BY MR. REDMOND:

12 Q. If a dog -- if I'm standing here. Let's say I'm
13 standing here. Get to a scene. I see a body several feet
14 away. I'm approaching the body. If the dogs are a few
15 feet away from the body but near the body, and they
16 approach me how would you explain that type of behavior to
17 the jury?

18 A. The guards would actually -- the dogs -- that would
19 show that the dogs were actually guarding what they have
20 killed.

21 Q. Okay, now, if I were to say shine spotlight or throw
22 something at them. I'm about 5'10", 5'11", about 175 give
23 or take pounds. And let's say I'm coming at them with a
24 flashlight or yelling at them what not?

25 A. Are you by yourself?

1 Q. No. There were other people around me in doing that.
2 If the dogs were to retreat would you explain that
3 activity to the jury?

4 A. That, basically, that would be like an army or a
5 fight. If you have one person against one person then may
6 be you're not going to retreat. But if you have one
7 person against an army then you're going to look at it and
8 go, "Hey, I'm going to back up because I'm going to lose."

9 Plus, if somebody comes at you with a flashlight you
10 can't see me. I can see you well. So what are you going
11 to do? You're going to back up because you can't see me
12 and you've got multiple lights shining at you, yelling.
13 You're going to back up.

14 Q. Now, ask you this, if I came upon the scene and I
15 actually saw three dogs consuming the body and there were
16 other dogs that then turned and attacked me what would
17 that behavior tell you?

18 A. That their in such a mind set that their aggression
19 is highly unusual; that they are actually going after
20 somebody because they're just highly aggressive. I mean
21 it's just this is unusual that they would actually come
22 after you in that scenario.

23 Q. Now, did you have an opportunity to view the diagrams
24 and what not that were provided? Did you also have an
25 opportunity to review the autopsy reports?

1 A. Yes.

2 Q. Did you also have an opportunity to review
3 Dr. Hooker's reports on the weight and what not of the
4 dogs?

5 A. Yes.

6 Q. Let's talk about that first, Dr. Hooker's report that
7 you reviewed. What did you find significant in your
8 review of those particular documents concerning the
9 condition of the dogs?

10 A. Based on the ages of the dogs, the breed of the dogs
11 or the mix breed of the dogs it's -- the dogs are about 20
12 to 25 pounds underweight. I notice from the photographs
13 that you can see all the ribs all the dogs and notice that
14 they were underweight.

15 When you look at the weight of the dogs on the
16 reports they were anywhere from 30 to 43 pounds which is
17 highly unusual. So you've got dogs that are underweight,
18 showing ribs, under sized which means that you've got
19 negligent.

20 Q. Let's talk about the autopsy report that you had a
21 chance to review. Did you have a chance to review the
22 report and pictures?

23 A. Yes, I did.

24 Q. Not going to show you those pictures since you had
25 time to review beforehand. Could you tell the jury what

1 you found significant in reviewing those particular
2 photos? Let me ask this way as it relates to the level of
3 aggression with the dogs?

4 A. Based on -- in ten years going back on reports that
5 I've noted on dog bites and dog attacks and deaths caused
6 by dogs this is the worse case I've ever seen. I worked
7 for the Sheriff's Office for over a decade, and I have
8 never seen something to gruesome.

9 Q. Now, in the reports did you see the notes concerning
10 the lack of food that was found on the premises?

11 A. Yeah, I saw that in the reports.

12 Q. What significance is that to you in your analysis?

13 A. That nobody left food out so you've got -- it's
14 showing that the dogs were starving and looking for food.

15 Q. Craig, what conclusions have you reached -- well,
16 before I get into that. The fact that these dogs were not
17 restrained, in other words there was no -- there was
18 nothing indicating that these dogs were chained, pinned or
19 anything. How is that significant given the level of
20 aggression that you observed in reviewing the case?

21 A. Well, you've got a couple of things. You've got dogs
22 that have shown aggression or prior instances. The lack
23 of you know -- the fact the lack of concern that you know
24 that these dogs are aggressive. They're running loose
25 with -- I'm not sure if the defendant was home or not, but

1 whether or not he was or wasn't they were running around
2 loose, and they're going around after somebody with no
3 food for over four days then it's so bad that they take
4 somebody down and actually consume this body is just
5 unbelievable.

6 Q. And let's talk about the size of the person. And,
7 again, you've reviewed all these records. The fact that
8 this was a ten year old child about hundred pounds what
9 significance is that as it relates to, one, of the dogs
10 attacking a child like that. And, two, how is that
11 significant as it relates to the number of dogs that would
12 be involved in such an incident based on your review of
13 everything?

14 A. It shows that the dogs were working as a pack with a
15 leader, and that the dog began to take the boy down by the
16 legs. Taking him down, grabbing the boy, dragging him
17 from Point A to Point B, going towards the residence.
18 You've got pools of blood. There were ---

19 MR. LEE: Objection, if you would please, Your Honor.
20 Can I have a matter of law.

21 THE COURT: Ladies and gentlemen of the jury, step
22 back to your room, please.

23 (WHEREUPON, the jury was excused from the courtroom
24 at 11:19 a.m.)

25 THE COURT: All right.

1 MR. LEE: What good it will do, I move to strike the
2 last set of questions and stop this line of questioning.
3 He has him qualified in forensics as a forensics expert.
4 He's here as an expert in dog behavior. Now he's
5 testifying as to blood splatter, and he's testifying as to
6 those type things. Now, if he wants to qualify him as a
7 forensics expert he needs to do that. And he's getting
8 real close to accident reconstruction; that he's now
9 reconstructing the thing.

10 MR. REDMOND: I'll be more than happy to go through
11 that and qualify him if that's an issue. First of all,
12 since the pictures -- I'll be glad to show them. I've
13 been trying to avoid showing them, but I'll be glad to
14 show the pictures regarding the fact that there are pools
15 of blood that are in the -- that have been testified to
16 already in the record.

17 There is no question that there are pools of blood
18 out there, but again, if I need to further qualify based
19 on his law enforcement background I'll be more than happy
20 to do that.

21 THE COURT: Up to this point we're okay.

22 MR. REDMOND: Okay.

23 THE COURT: But if it starts getting into the
24 rearranging of the blood or whatever.

25 MR. REDMOND: Oh, no, we're not getting into that.

1 THE COURT: You may want to start different
2 qualification, but right now we're all right.

3 MR. REDMOND: Thank you, Judge. And that's really as
4 far as into that as we get.

5 (WHEREUPON, the jury panel enters the courtroom at
6 11:21 a.m.)

7 THE COURT: You may continue.

8 MR. REDMOND: Thank you, Your Honor.

9 BY MR. REDMOND:

10 Q. You may continue unless you need me to repeat.

11 A. If you would, please.

12 Q. I'll just ask you, Craig. What significance -- I ask
13 you the significance of the size of Matthew as it relates
14 to the attack and whether or not one dog would have been
15 able to do that or would it have been more than one dog?

16 A. It would have to be more than one dog because of the
17 consumption of the tissue from the body. A 30 pound dog
18 would not be able to consume that much tissue by itself,
19 and the fact that more than one dog was guarding the body
20 at a time would show that it would be significant that
21 multiple dogs had consumed parts of the body.

22 Also a hundred pounds is the weight of the body after
23 the fact at the autopsy not the weight of the body prior
24 to the attack.

25 Q. Let me ask you this. You had eluded to it earlier.

1 The picture, did you have a chance to review the autopsy
2 photos regarding the lower leg bites?

3 A. Yes, sir.

4 Q. I think you testified about dogs biting and taking
5 the child down?

6 A. Yes, sir.

7 Q. I want you to reiterate that since we had a break.
8 Could you reiterate the significance of the bite on the
9 lower part of the body and how that affected the attack?

10 A. I would show that the dogs had bitten the ten
11 year-old in the legs taking him down first. Because,
12 obviously, well, not obviously, but hypothetically they
13 would not be going up high. They would go for the legs
14 first and take him down which shows from the bites and the
15 tissue loss.

16 Q. Okay. Now, let me ask you to step down with the
17 Court's permission. I'm going to show you what's been
18 marked as I think State's 37, 38, 39, 40 and 41. And I'll
19 show them to you.

20 (WHEREUPON, the witness steps down from the witness
21 stand.)

22 BY MR. REDMOND:

23 Q. And we can reverse places, and for the benefit of the
24 court reporter I just ask you to continue to speak up so
25 that she can take down what you say. Now, when you look

1 at this dog is there anything significant about this
2 particular dog that stands out to you?

3 A. You notice in the pictures that you can see multiple
4 ribs. The shoulder blades back to the pelvis which would
5 show that the dog was mall nourished.

6 Q. Okay, I'm showing you now what's been mark as State's
7 38?

8 A. In this picture also you can see multiple ribs, one,
9 two, three, four, five, six, seven, eight ribs on the dog
10 on this particular dog, female. Which would also show
11 that the dog was malnourished.

12 Q. State's 39?

13 A. You can also see right in the center of this female
14 multiple ribs also which would show that the dog was also
15 malnourished.

16 Q. State's 40?

17 A. In this particular picture it's a little bit harder
18 to see, but if you look closely you can see ribs on this
19 dog also. And shows that he got malnourished also.

20 Q. And State's 41?

21 A. Forty-one is also difficult to see, but you can see
22 several ribs on this dog. It's not quite as bad, but the
23 angle of the photo with the flash makes it a little more
24 difficult to see. But you've got some malnourish here,
25 but not as bad.

1 Q. And did you ever a chance to review Dr. Hooker's
2 notes as well in preparation for today?

3 A. Yes, I did.

4 Q. And would you concur with him as it relates to the
5 breeds of the dogs?

6 A. Right. You've got mixed breed dogs in all of these.
7 I can't tell exactly. It look more like ---

8 Q. And I'll just go through each one demonstrate.
9 Starting with State's 37. Would you just go through?

10 A. This looks like a lab mix with something on 37. I
11 can't quite tell.

12 Q. Okay?

13 A. You've got looks like a boxer on 38. Female. I
14 can't quite -- like I said I'm not you know whatever he
15 said on that one would be right for 38.

16 Q. Okay, how about 39?

17 A. Thirty-nine is -- looks like a boxer mix with
18 something. The lower jaw is protruding, and also he's got
19 a cropped tail with lower stance. So you've got a mixed
20 breed also.

21 Q. How about 40?

22 A. Forty looks like a Brindle Boxer but the tail is
23 extended so I can't quite tell, but you've also got a
24 lower jaw protrusion on State's Exhibit 40, so it looks
25 like a male mix.

1 Q. Okay, and finally 41?

2 A. Forty-one, I can't quite tell. It looks like a
3 boxer, but it's Brindle, maybe German Shepherd or
4 something else.

5 Q. Okay, now, and let me just get you to have a seat. I
6 have a few more questions for you.

7 (WHEREUPON, the witness returns to the witness
8 stand.)

9 BY MR. REDMOND:

10 Q. Speaking about the breed of the dog that had been
11 mentioned earlier in the trial. Based on what you see and
12 your training and experience let's take a pit bull for
13 instance. Is a pit bull -- I bring a pit bull home. The
14 fact that I got that pit bull at home does that
15 automatically make that a dangerous animal?

16 A. No, it doesn't. Just because the pit bull, German
17 shepherd, boxer, Doberman pincher, just because it's that
18 breeds of dog does not make it mean.

19 Q. So as it relates to the level of aggression based
20 upon your review which is more important the breed of the
21 dog or the treatment and training of the dog?

22 A. Treatment and training.

23 Q. In other words if I'm the owner of a dog and I train
24 the dog to be aggressive. The fact that it's a pit bull,
25 lab, golden retriever is not as important as what I'm

1 training that dog to do?

2 A. Correct.

3 Q. If I'm abusive and not giving that dog food, if I'm
4 kicking the dog or abusing the dog or trying to get it to
5 learn to be aggressive ---

6 A. Or even having it on chains.

7 Q. If I'm doing those things would it -- would the breed
8 of the dog be more important than the way I treat the dog
9 as it relates to the level of aggression?

10 A. No, the treatment of the dog.

11 Q. Okay, now, what significance -- I want to ask you
12 some conclusions based on your analysis, and I'd ask you
13 this. Is it your opinion that multiple dogs were involved
14 in this attack?

15 A. Yes.

16 Q. Is it your opinion that these dogs -- let me just ask
17 you this. Was this situation, based on what you've seen,
18 would be provoked anger from the dogs or hunger?

19 A. Hunger.

20 Q. Okay, would you explain to the jury your basis for
21 these conclusions?

22 A. Dogs are not naturally aggressive. If you bring a
23 dog home, a lab, boxer, german shepherd, whatever it
24 maybe, 99.9 percent of the time that dog will die before
25 it attacks a human and eats it. It is not bred into the

1 dog.

2 You've got dogs that will attack humans that are
3 provoked or unprovoked just like you have some people in
4 society that do things wrong. You can't explain it, but
5 if your dog is home and you leave and it's left outside it
6 may search for food. It may scavage, but just because a
7 kid is walkings down the street that dog is not going to
8 run up and attack it, take it down and eat it.

9 Q. And along those lines in a situation how would you
10 explain the fact that number of dogs did what they did in
11 the photo that you saw. How do you explain that?

12 A. Meaning taking the child down?

13 Q. Taking the child down and the extent of the injuries
14 and the eating of the child.

15 A. The dogs worked together as a pack, and that the dogs
16 had the body in the yard and worked together to consume
17 the body.

18 Q. Now, let me ask you this. What conclusions would --
19 let me ask like this. Say I'm a german shepherd or let's
20 say I'm a boxer or a pit and I'm hungry would that alone
21 cause me to consume ---

22 A. I didn't hear.

23 Q. Okay, I'll ask it again. The fact that I'm whatever
24 kind of dog. Assuming I'm a dog which probably I
25 shouldn't be doing at this point, but let's assume using

1 me as an example. I'm hungry. Is just the fact that I'm
2 a hungry pit, german shepherd, boxer, whatever breed,
3 would that make me consume a child?

4 A. No.

5 Q. Okay, what else would have to come into place based
6 on your opinion? What else would have to come into place
7 for me to do what was done to this poor child?

8 A. Abuse and negligent to the extent that it would make
9 the dogs psychologically unstable.

10 MR. REDMOND: Your Honor, I have nothing further at
11 this time.

12 CROSS-EXAMINATION

13 BY MR. LEE:

14 Q. Mr. Thompson, what is your home company?

15 A. Excuse me.

16 Q. What is your home company?

17 A. Thompson's Canine Academy.

18 Q. Your home company is at the Citadel?

19 A. Lema.

20 Q. Let me ask you this. I want to go through the things
21 you've reviewed. You reviewed the incident report?

22 A. Yes, sir.

23 Q. Prior to your testimony today?

24 A. Yes.

25 Q. In reviewing that is there anything in there that

1 alters any opinion you have?

2 A. No, sir.

3 Q. Okay, were you provided with the affidavit from the
4 search warrant regarding the dog's behavior?

5 A. I haven't seen any search warrants.

6 Q. Okay, were you provided with the crime scene data
7 sheet and the notes from S.L.E.D.?

8 A. Yes, sir.

9 Q. Did you review these?

10 A. Yes.

11 Q. They were based of your opinion?

12 A. Only what ---

13 Q. With regard to the behavior of the animals?

14 A. That did not influence any opinions.

15 Q. Okay, but did it cause you to change anything?

16 A. No, sir.

17 Q. I believe you testified that you did see the autopsy,
18 correct?

19 A. The autopsy photos?

20 Q. The autopsy. Did you see the autopsy itself?

21 A. No, sir.

22 Q. Not physically go there. Did you see the report?

23 A. Yes.

24 Q. And you've seen the photographs?

25 A. Yes.

1 Q. After reviewing those at any point in time have your
2 opinion changed?

3 A. No, sir.

4 Q. Euthanasia forms, have you seen those?

5 A. I've saw the -- just the dogs and -- yes, sir, I saw
6 these.

7 Q. Okay, now you seen the photographs of each of the
8 animals?

9 A. Yes, sir.

10 Q. Okay, and is there anything in these that caused you
11 to reach any other opinion than the one you've given?

12 A. No, sir, they didn't influence my opinion.

13 Q. Do you've see the statement of Joey Pope?

14 A. Yes.

15 Q. And you've see the statement of Bobby Chavis?

16 A. Yes, sir.

17 Q. At any point in time did those change your opinion?

18 A. I noted that they had information that showed that
19 there had been a possible change.

20 Q. Okay, if your understanding is the three males, three
21 females -- what do you understand the sex of the dogs to
22 be?

23 A. I believe that's correct.

24 Q. Do you know their relative ages?

25 A. Relative, yes.

1 Q. Okay, the best you can give me the male dog's ages,
2 please, from oldest to youngest?

3 A. Can I look at the ---

4 Q. Sure. And I put them in order?

5 A. Okay, thank you.

6 Q. What are the relative sexes?

7 A. I can only -- I am not good at guessing just looking
8 at a dog and guessing an age.

9 Q. Based on what Dr. Hooker said, he saw ---

10 A. Right. Right. Right. He saw -- to him it looks
11 like -- it looks like two years old, I believe. Two
12 years -- I can't read what's below that, but two years old
13 on the first dog.

14 Q. Indeed that's a male.

15 A. I'm sorry.

16 Q. All right. Let's do it that way. Give me the age
17 and the sex?

18 A. Let's see. Sex -- animal's name, One. Sex, male.
19 Age, two.

20 Animal name, Two. Male. Two years old.

21 Animal name, Three. Age -- female. I mean age, two.
22 Sex, female.

23 Animal name, Four. Sex, female. One year old.

24 Animal name, Five. Sex, female. Four years old.

25 Q. Okay, and there are only five dogs there?

- 1 A. Correct.
- 2 Q. You understand that there was a sixth dog?
- 3 A. Correct.
- 4 Q. Okay, any idea where he went?
- 5 A. No, sir.
- 6 Q. Okay, contrary to what people say dogs don't think,
7 do they, in terms of having logic?
- 8 A. No.
- 9 Q. The old photograph of all the dogs sitting play cards
10 that's a myth?
- 11 A. They don't play cards.
- 12 Q. A lot of times in fact I know dog trainers, it's not
13 a problem with the dogs you have, but with the -- actually
14 the owner?
- 15 A. Correct.
- 16 Q. And it's the owner's behavior that have a lot of
17 problems?
- 18 A. Correct.
- 19 Q. Let me ask about a dog that kills chickens. Once a
20 dog kills chickens what happens to that dog?
- 21 A. It will kill more chickens.
- 22 Q. Why?
- 23 A. It's got blood.
- 24 Q. Okay, a dog don't lie, do they?
- 25 A. No.

1 Q. Meaning they are -- once a dog's a biter he's always
2 a biter?

3 A. You can -- actually that's not true. You can change
4 them so their not biters.

5 Q. Okay, let's say you put a biter on a chain what does
6 that do to them?

7 A. Make them more aggressive because they're chained up.

8 Q. This aggressiveness, what does that? What about that
9 dog does that?

10 A. It's the fact that the dog can't move around.
11 Usually people put them on logging chains which are
12 extremely heavy and the behavior of the dog is influenced
13 because it is stuck to that post, chain, tree, whatever it
14 may be, and it makes them more aggressive.

15 Q. Okay, that's typically -- chaining a dog is typically
16 something you see routinely in dog fights, correct?

17 A. Correct.

18 Q. And one of the issues here these dog weren't chained,
19 were they?

20 A. No, they weren't.

21 Q. Okay, you do bomb dogs, correct?

22 A. Correct.

23 Q. And a bomb dog is always a bomb dog, isn't he?

24 A. Correct.

25 Q. And he can't say, "Well, I want to be a bomb dog on

1 Monday. I'm take Tuesday off?"

2 A. Right.

3 Q. So if he comes in your house and if you've got a bomb
4 he's going to find it because that's what he does?

5 A. Right.

6 Q. He's not going to say, "I'm in your house. Oh, well,
7 what I smell can't really be gun powder?"

8 A. Right.

9 Q. You talk about the dogs and the legs. Okay, ever
10 seen a dog fight?

11 A. Personally?

12 Q. Yes, sir.

13 A. No, sir.

14 Q. I don't mean for sport. I mean two dogs going at it?

15 A. Yes, sir.

16 Q. Okay, and typically their not like horses. They
17 don't go like this, do they?

18 A. I've seen them every which way.

19 Q. Okay, any they are everywhere, right?

20 A. Right.

21 Q. What does -- what do they go for?

22 A. I've seen them go for legs. I've seen them go for
23 sides. I've seen them go for shoulders. I've seen for go
24 for necks. I've seen them go for mouths.

25 Q. Okay, and when they're fighting it is always on,

1 isn't it?

2 A. Right.

3 Q. And for instance, you as a dog trainer how -- have
4 you ever had a dog fight in your kennel?

5 A. Not in my kennel, no.

6 Q. Never had. Ever try to stop a dog fight?

7 A. Yes, sir.

8 Q. I mean and once they're really going at it?

9 A. Once they're really going at it?

10 Q. Have you ever done ---

11 A. Tried to break them up?

12 Q. Yeah.

13 A. Oh, yes, sir.

14 Q. Do you physically step in between them?

15 A. I don't get in their mouths.

16 Q. But what I'm asking you is that would put you in
17 their mouths, would it?

18 A. I have to physically be there.

19 Q. Okay, and -- but you don't step -- you don't -- it
20 isn't like stepping in between two people fighting and
21 trying to push them away?

22 A. No, that's not how you break up a dog fight.

23 Q. How do you break up a dog fight?

24 A. You grab the rear legs of one of the dogs.

25 Q. Why do you grab them by the rear legs?

1 A. Because it makes them enable to jump, and you can
2 actually physically pull them back.

3 Q. Okay, and it also keeps you away from what's on the
4 other end, doesn't it?

5 A. Yes, sir, but it's more of a -- like wrestling.

6 Q. And if you stretch them out like that it keeps them
7 from being able to whirl -- they lose their balance
8 because they can't whirl around and bite?

9 A. Correct.

10 Q. Tell me about canine -- canine teeth?

11 A. Canine teeth?

12 Q. Teeth. Teeth?

13 A. Teeth. Oh, canines, yeah.

14 Q. Those are the two large teeth here?

15 A. Yes.

16 Q. Generally, how long are they on a groen dog?

17 A. I've seen them from -- I mean we've got so many
18 different kinds of dogs. Anywhere from an inch to two and
19 a half inches.

20 Q. Well, let's take a shepherd. How long are they on a
21 shepherd?

22 A. Probably an inch and three quarters, 2-inches.

23 Q. How long would they be. You know, these dogs look
24 like boxer mix, pit mix?

25 A. Inch, inch and a half.

1 Q. Both sides on here on the front?

2 A. Correct.

3 Q. Okay. What age do dogs tend to loose their teeth?

4 They loose their teeth like us?

5 A. Right, at about four months, four and a half months.

6 Q. And full grown canine growth by what age?

7 A. By seven months.

8 Q. Okay, let me ask you. You talked about the food and
9 that kind of stuff. Is it fair to say nothing in, nothing
10 out?

11 A. Correct.

12 Q. In other words, there are not going to be excrement
13 of the dogs if he's not eating?

14 A. Correct.

15 Q. You testified earlier that these dogs had been
16 without food and water for four days. What's the basis of
17 your understanding of?

18 A. Information that I received from the reports.

19 Q. What information was that?

20 A. That no food and water was present, and that the
21 defendant was not home.

22 Q. Okay, but did you receive information as to when he
23 was last home?

24 A. Yeah, there is conflicting information of when he was
25 last home.

1 Q. Okay, so you -- did you give him the benefit of the
2 doubt or not?

3 A. No, I didn't.

4 Q. Let's talk about abuse and negligent. How do you
5 make a dog mean? How do if I -- I mean let's back up.
6 Let's say I buy a boxer, and I decide what I want to do
7 with that boxer is I want him to be mean. Tell me what it
8 is I have to do to get him that way?

9 A. You could deny food and water. You could physically
10 abuse the dog. Kicking, slapping, punching, yelling,
11 screaming, throwing objects at the dog. You could also
12 encourage him when he's around other dogs, and he will
13 growl and starting with the gruel and encouraging that
14 action.

15 And then if he's with another dog or another person
16 you know he barks and encouraging that. And bite,
17 encouraging that so that he becomes more aggressive and
18 aggressive.

19 Q. And in fact dog fighters they will put them on
20 treadmills, won't they?

21 A. I've never seen that.

22 Q. They will. You ever seen them shot with the
23 hormones?

24 A. No, I haven't.

25 Q. Once I get that dog -- I'll got that dog mean.

1 That's all I need to do?

2 A. Right.

3 Q. So I now own this animal?

4 A. Right.

5 Q. And it's kind of like a chainsaw, isn't it? I mean I
6 started this chainsaw. It's rattling. And he's kind of a
7 ticking time bomb, correct?

8 A. Correct.

9 Q. How is he going to pick who he bites? Who he
10 attacks?

11 A. He's not.

12 Q. He's not. And so would he go after a six year-old
13 child?

14 A. Yes.

15 Q. Would he go after a ten year old boy as we have here?

16 A. Yes.

17 Q. Would he go after a 13 year old?

18 A. Yes, sir.

19 Q. What age does he stop? What age does he say, 'that's
20 too big a human for me'?

21 A. There would be no determination.

22 Q. Cause just like you said, 'he can't think'?

23 A. Right.

24 Q. He is acting on instinct?

25 A. Right.

1 Q. One last thing make sure you do -- you were in law
2 enforcement ten years?

3 A. Yes, sir.

4 Q. And you, I believe your testimony was, that you've
5 done research and hadn't found anything else where humans
6 had been consumed by animals or pets?

7 A. Consumed to this degree, there has been some cases
8 where the consumption has been questionable, but I've
9 had -- there are cases where tissue has been ripped off,
10 nose missing, ears missing, stuff like that, but not
11 consumption to this degree.

12 Q. Okay, no arms?

13 A. I mean there have been pieces of arms missing, but
14 not eaten. I mean been ripped but not eaten.

15 Q. And in those cases what kinds of dogs are you dealing
16 with?

17 A. It's variations. We've had Rottweiler, pit bull,
18 german shepherd, boxers and chows and a couple other
19 breeds.

20 Q. How about this, just house dogs?

21 A. What's a house dog?

22 Q. I'm talking about the medium to small dogs. You know
23 the ones that yap. The ones you won't train?

24 A. Well, I mean it's hard to train the little toy dogs
25 because they -- I mean nobody really -- they want to carry

1 the little toy dogs around. They don't worry about them
2 having sit, lie down. The big dogs, you know you can't
3 carry a german shepherd in your arms real well. So you've
4 got -- need them to have to sit, lay down, and stuff like
5 that, but there have been attacks -- I mean there have
6 been bites from the toy dogs and the medium size dogs.

7 Q. But the first thing is reason you can't train them
8 because they're an unruly youngen. Everybody wants the
9 youngens to behave.

10 A. Well, I mean some of them are great and ruly and
11 wonderful dogs and they don't bite, and they will lay in
12 your lap and they're wonderful. But it's the fact that
13 people just want to carry them around in their arms. If
14 they bark a little bit they don't worry about it.

15 But they -- you don't because dogs aren't naturally
16 bred to be aggressive and mean. The little small dogs,
17 nobody worries about. Does that make sense?

18 Q. It does to me. Let me ask you this. Any cases where
19 those little small dogs all group up on somebody?

20 A. No, sir.

21 Q. Okay, small dogs and medium dogs. Medium being I
22 guess I would kind of -- let's say kind one of this and
23 lower. Now, I'm trying to -- your labs come in all sizes.

24 A. Okay.

25 Q. But let's say a small lab on down?

1 A. Right.

2 Q. Any groups of those dogs kind of cross breed ganging
3 up on somebody?

4 A. What's a group?

5 Q. Four or five?

6 A. No, sir.

7 Q. One last thing I want to make sure I understand is --
8 make sure I have this clear in my one mind. A biter is
9 always a biter?

10 A. No, sir.

11 Q. He can be fixed?

12 A. Yes.

13 Q. How do you fix a biter?

14 A. Desensitization.

15 Q. Okay, how do you desensitize?

16 A. You start basically you start slow and work your way
17 up meaning that if you had a dog that was aggressive
18 towards another dog you would first have them see another
19 dog at 50-yards, and if he behaved you would encourage
20 that. You would by praise and by treats.

21 And you would slowly move the other dog closer and
22 closer. As the dog got closer you would praise that dog,
23 and if he was aggressive you would correct him and move
24 the other dog back and just progressively do that over a
25 period of time.

1 Q. Okay, but for instance, a dog that kills chickens,
2 you can't fix that?

3 A. You can.

4 Q. You can do the same thing with the chickens and kind
5 of get them together?

6 A. Yep.

7 Q. Lie down with the lamb thing?

8 A. It's hard to keep a chicken still, but you can do it.

9 Q. Okay, the next question I have is this. If you
10 the -- but for instance, can you unprogram a dog, say it's
11 a bomb dog?

12 A. Yes, you can.

13 Q. How do you do that?

14 A. Don't bring him around bombs for a long time, and if
15 you notice that he is responding to particular odors you
16 would tell him not to sit down.

17 Q. Okay, yell at him? I mean correct him? Whatever it
18 is you've got to do?

19 A. Well, yeah, right, but I mean I wouldn't yell at him.
20 I would -- it's not good to go -- everybody can go
21 aggressive. I mean brutal is easy. You can always yell
22 at somebody. That's an easier step. Being kind is hard,
23 so you would want to be kind first because you can also go
24 brutal.

25 Q. Okay, so as long as that dog is continually exposed

1 to that same kind of stimulus he's like you said before.

2 Ones he's always on, he's always on?

3 A. Right. So long as I don't make any response to what
4 he's doing.

5 Q. Do you know what the average weight for a dog is in
6 Dillon County?

7 A. No, sir.

8 Q. And in your research you haven't found that out?

9 A. No.

10 Q. You know what the average weigh for a dog in the Pee
11 Dee region is?

12 A. That's a broad question. That I can't answer.

13 Q. Okay, but you haven't done any research to see what
14 the average weight of a dog in this area is?

15 A. Well, I mean you've got too many breeds of dog to
16 make a conclusion -- statement.

17 Q. Okay.

18 MR. LEE: Thank you very much, Mr. Thompson.

19 MR. REDMOND: One question on redirect. If it please
20 the Court.

21 REDIRECT EXAMINATION

22 BY MR. REDMOND:

23 Q. Would a dog pen or fence around a yard be better than
24 chaining the dog? You talked on cross examination about
25 chaining and aggressiveness, but would having a dog penned

1 or fenced around the yard, would that be better than
2 chaining the dog?

3 A. Definitely.

4 MR. REDMOND: Nothing further.

5 MR. LEE: Nothing, Your Honor. Thank you very much.

6 THE COURT: Thank you, sir. You may step down.

7 MR. REDMOND: Your Honor, if I can take a short
8 recess to confer with the attorneys, and not more than
9 five minutes?

10 THE COURT: The State asks for a break. Let's take
11 ten minutes.

12 (WHEREUPON, the jury panel was excused from the
13 courtroom at 11:56 a.m.)

14 (WHEREUPON, Court was in recess at 11:56 a.m. and
15 reconvened at 12:15 p.m.)

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1 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
2 identification only.)

3 COLLOQUY

4 MR. REDMOND: Just a housekeeping matter. State and
5 Defense have agreed, without objection -- it's going to be
6 marked as Defense Three since it's the exhibit that
7 Mr. Lee utilized, but the aerial map, we are going to go
8 ahead and have that put in evidence at this time. And the
9 State is going to rest. I'm prepared to rest in front of
10 the jury.

11 MR. LEE: And, Your Honor, we have no stipulation as
12 to this exhibit.

13 MR. REDMOND: And with that, the only other thing is
14 that there are motions that I do anticipate, and if we
15 could take those up after lunch. I have some research I'd
16 like to do during the course of lunch, and but other than
17 that the State is ready to proceed.

18 (WHEREUPON, Defendant's Exhibit No. 3 was admitted
19 into evidence.)

20 (WHEREUPON, the jury panel enters the courtroom at
21 12:19 p.m.)

22 THE COURT: All right, Solicitor.

23 MR. REDMOND: Your Honor, ladies and gentlemen, State
24 respectfully rests at this particular time.

25 THE COURT: All right. At this time if you don't

1 mind we will defer matters of law until three o'clock.

2 MR. LEE: Yes, sir.

3 THE COURT: Okay, ladies and gentlemen of the jury,
4 we've arranged lunch for you. I apologize. We're going
5 to have to take an extended lunch, but the reason we are
6 is because we are running ahead of time and we have to
7 rearrange some witnesses from out of town. So we need
8 just a little extra time at lunch. So we're going to go
9 ahead and go to lunch.

10 If any of you need to run home or whatever to do any
11 type of business after we finish with lunch there will be
12 a little time in between to come back to courthouse. But
13 I do need you back in the jury room at three o'clock,
14 okay. All right. Same arrangement as yesterday except we
15 will come back to the courthouse unless you prefer to
16 drive out there on your own and meet at the restaurant.

17 If you want to do that make sure you let Ms. Hyatt
18 know. Bottom line, lunch same as yesterday. We will be
19 needing you back in the jury room at three o'clock. Okay.

20 (WHEREUPON, the jury panel was excused from the
21 courtroom at 12:21 p.m.)

22 THE COURT: All right. We're in recess for lunch.

23 (WHEREUPON, Court is in recess at 12:22 p.m. and
24 reconvened at 2:54 p.m.)

25 MR. LEE: May it please the Court.

1 THE COURT: Yes, sir.

2 MR. LEE: At this point I'm going to have to make a
3 motion for directed verdict. First, Your Honor, as to the
4 charge, under 47-3-720, "No person having or harboring
5 having care and custody of a dangerous animal permit the
6 animal run unconfined on the premises requisite for that
7 charge being that the dog was in fact dangerous as defined
8 for 47-3-710.

9 It says, "Dangerous animal means the animal, canine
10 or feline species, which the owner knows or should know
11 has a propensity to attack or otherwise endanger the
12 safety of human beings."

13 Your Honor, we would contend that the State has
14 failed to meet its burden of proof to prove that these
15 animals had the tendency, disposition or propensity to
16 attack unprovoked. There is nothing in the record. I ask
17 you to direct a verdict on that issue.

18 THE COURT: Solicitor.

19 MR. LEE: Your Honor, I think clearly there is
20 evidence. It is a question for the jury at this time. We
21 do have testimony about the propensity to attack by two
22 witnesses, Mr. McAlpine and Mr. Chavis, specifically, who
23 clearly set forth that not only had the propensity, but
24 that the defendant was actually present on at least
25 occasions with both of them where the dogs attacked while

1 they were not even on the property.

2 So I think that element has been met, and a it
3 relates to the dogs being a dangerous animal I think that
4 based on the evidence that's in the record, again, that is
5 a jury question on whether or not these dogs would be
6 considered dangerous. We got, again, the testimony of the
7 witnesses and including an expert witness in that regard
8 as well.

9 So, respectfully, I would ask the Court to deny the
10 Defense's motion at this time. I think there is evidence
11 in the record clearly to support the State's contention of
12 the defendant's guilt.

13 THE COURT: All right. Well, the testimony of
14 Mr. Chavis doesn't assist the Court. That was after --
15 apparently after the fact of this tragic situation here,
16 but certainly with the evidence Mr. McAlpine brought forth
17 and taking all the other evidence in consideration I have
18 to deny that motion.

19 MR. LEE: Please note my exception for the record,
20 Your Honor.

21 THE COURT: So noted.

22 MR. LEE: Your Honor, second, we move for directed
23 verdict on the voluntary manslaughter. The State has not
24 established criminal negligence as defined by the statute
25 which is reckless disregard for the safety of others. I

1 don't think this rises to that level. I don't think there
2 has been a recklessness on the part of Mr. Collins, and
3 therefore, I request you direct a verdict on that
4 particular issue.

5 MR. LEE: Please the Court. First, I would site and
6 I have provided to the Court and Defense cases outside of
7 South Carolina, but yet within the southeast region.
8 These are convictions for dog attacks that resulted in
9 death and thus resulted in involuntary manslaughter
10 convictions which were upheld in each of those situations.

11 Further, in this situation we have a safety statute
12 that he's been charged on three counts. If the jury finds
13 that he violated those statutes we would argue that that
14 was willful behavior.

15 In addition, we've got the testimony that -- and just
16 to clarify, Your Honor, Mr. Chavis' testimony was as well
17 the attack occurred before that with these particular
18 dogs. Before the incident with Matthew Davis. So I just
19 want to make that clear for the record. So I think with
20 Mr. Chavis, Mr. McAlpine and all the testimony in its
21 entirety and the nature and the extent of the attack we
22 would submit that we do have persuasive authority within
23 our region within the southeast region which would allow
24 this case to go to the jury on the issue of involuntary
25 manslaughter.

1 Again, willful and reckless, I think that is a jury
2 question. I think there is evidence in the record to show
3 that the behavior of the defendant in not restraining
4 these animals, despite the fact that he knew that they did
5 have a propensity to attack, I think that would satisfy
6 the requirements under the willfulness and the criminal
7 negligence aspect of the voluntary manslaughter and
8 criminal negligences.

9 The fact that the jury does convict of these three
10 other charges, the dangerous animal charges, then that
11 would also directly satisfy the involuntary manslaughter
12 findings by the jury. So we would respectfully ask that
13 motion be denied at this time as well.

14 THE COURT: I'm going to have to deny that motion. I
15 apologize. I was mixing up the testimony of Pope and
16 Chavis. Sorry about that.

17 MR. LEE: If Your Honor would note my exception?

18 THE COURT: Okay.

19 MR. LEE: And, Your Honor, at this point would you
20 like to take up with the Defense going to testify?

21 THE COURT: I'll be glad to.

22 MR. LEE: Let's take that up on the record.

23 THE COURT: Mr. Collins, I need your undivided
24 attention. I need to discuss with you on the record
25 concerning your Fifth Amendment right to remain silent.

1 signature right here in front of me just to quote it to
2 you. That part of Fifth Amendment of the Constitution
3 reads in part, "No person shall be compelled in any
4 criminal case to be a witness against himself," and you
5 certainly have the right to go either way on it. Whatever
6 decision it is I just need to be satisfied that it's your
7 own personal decision. That you're freely and voluntarily
8 making that decision.

9 MR. COLLINS: Yes, sir, Your Honor.

10 THE COURT: All right. Any questions?

11 MR. COLLINS: No, sir.

12 THE COURT: Okay. All right.

13 MR. LEE: We're ready to proceed.

14 MR. REDMOND: State is ready, Your Honor.

15 (WHEREUPON, the jury panel enters the courtroom at
16 3:07 p.m.)

17 THE COURT: All jurors accounted for. Mr. Lee.

18 MR. LEE: Your Honor, please. We call Taylor
19 Collins.

20 TAYLOR COLLINS, after being duly sworn, testified as
21 follows:

22 CLERK OF COURT: Be seated in the witness box. State
23 your full name for the Court, okay.

24 DIRECT EXAMINATION

25 BY MR. LEE:

- 1 Q. I need you to scoot up. Get close now. I need you
2 to speak up. Tell us your full name.
- 3 A. Bentley Austin Tailor Hayes.
- 4 Q. You go by Taylor?
- 5 A. Yes.
- 6 Q. Taylor, that's Judge Burch.
- 7 A. I know.
- 8 Q. And that's the jury. You need to talk up so
9 everybody can hear you.
- 10 A. Okay.
- 11 Q. Can you do that?
- 12 A. Yeah.
- 13 Q. All right. Thank you. What grade are you in?
- 14 A. I'm in fifth grade.
- 15 Q. Okay, where you go to school at.
- 16 A. Gordon Elementary.
- 17 Q. What you want to do when you grow up?
- 18 A. Become a carpenter.
- 19 Q. Why do you want to do that?
- 20 A. I like working on things.
- 21 Q. That's your daddy?
- 22 A. Yes, sir.
- 23 Q. Love him?
- 24 A. Yes, sir.
- 25 Q. Even though you love him you're going to tell the

1 truth?

2 A. Yes, sir.

3 Q. You're going to tell Mr. Redmond the truth, too?

4 A. Yes, sir.

5 Q. That's all we want here. You understand that?

6 A. Um hum.

7 Q. You live with your daddy?

8 A. Yes, sir.

9 Q. All right. How about come down here a second.

10 (WHEREUPON, the witness steps down from the witness
11 stand.)

12 BY MR. LEE:

13 Q. Let's talk for a minute. Come stay on this side so
14 everybody can see. Now, this is a map of where you live?

15 A. Yes, sir.

16 Q. Okay, where is your house?

17 A. Right there.

18 Q. Step back some. This is your house?

19 A. Yes, sir.

20 Q. Okay, what road this is?

21 A. That's ---

22 Q. Where do you catch the bus?

23 A. I catch the bus right here.

24 THE COURT: Mr. Lee, the court reporter needs for
25 y'all to speak up.

1 MR. LEE: All right.

2 THE COURT: I think what may help is if you put your
3 back right here and pull that closer to Madam Court
4 Reporter.

5 MR. LEE: All right.

6 BY MR. LEE:

7 Q. Okay, tell me where you catch the bus?

8 A. I catch the bus right there.

9 Q. Okay, and what is this all in here?

10 A. That's the field between our house and the bus stop.

11 Q. Okay, let me show you something else. Tell everybody
12 what this is?

13 A. That's our front yard.

14 Q. Okay, what's this right here?

15 A. That's the road in front of our house.

16 Q. And what's this right here? Step back, please.

17 A. That's the gate part.

18 Q. Okay, and if you would start over here. Would you
19 tell everyone what that is?

20 A. That is the trailer right there, and then that's a
21 little bus. You've got the building. You've got the
22 house, hallway, church.

23 Q. Okay.

24 A. And cars.

25 Q. Okay, where exactly do y'all live?

1 A. I go to sleep over there.

2 Q. Okay, and so this is connected in the back?

3 A. Yes, sir.

4 Q. All right. Let me show you one more. Now, this
5 is -- and in between the two posts?

6 A. Okay.

7 Q. All right. Point everything out one more time?

8 A. That's the trailer. That's the bus. That's the
9 building. That's our house and the car in the front.

10 Q. Okay, if you would y'all owned some dogs, didn't you?

11 A. Yes, sir.

12 Q. Did everyone in the family have their dog?

13 A. Yes, sir.

14 Q. You had a dog you. You've got a brother, don't you?

15 A. Yes, sir.

16 Q. What's his name?

17 A. Mitchell.

18 Q. And how old is Mitchell?

19 A. Fifteen.

20 Q. Okay, y'all still get along sometimes?

21 A. Yes.

22 Q. Okay, but and so you sleep over here. Where does
23 Mitchell sleep?

24 A. He sleeps over here.

25 Q. Okay, so y'all had -- so you had a dog?

1 A. Yes, sir.

2 Q. Your dad had a dog?

3 A. Yes, sir.

4 Q. And so that's three. How many were there?

5 A. There were Two Toe, Two Finger, and Jake and Cody,
6 and the other one.

7 Q. Okay, so where would they stay?

8 A. They would stay in the yard.

9 Q. Okay, various places?

10 A. Yes, sir.

11 Q. Now, did y'all feed -- where was that food?

12 A. There was a food pan right there, and when we were
13 gone it was a feeder on the porch.

14 Q. Okay, how about water? What y'all do about water?

15 A. In the back back there there's a faucet and there is
16 a little bucket, and we would just leave it dripping.

17 Q. Okay, so that way they always had fresh water?

18 A. Yes, sir.

19 Q. How about go back. Well, stay right here. Now, who
20 is this?

21 A. That looks like -- I can't tell.

22 Q. You don't remember which dog that is?

23 A. That looks sort of like Three Fingers.

24 Q. Okay, why the name Three Fingers?

25 A. Cause it had -- I believe three right toes.

1 Q. Okay, how about this one. Do you remember whose dog
2 that was?

3 A. I believe that was Donna's.

4 Q. Who is Donna?

5 A. That's our babysitter.

6 Q. Talk up now. Who is this?

7 A. That is Cody.

8 Q. Okay, whose dog is Cody?

9 A. It was the whole family.

10 Q. Okay.

11 MR. REDMOND: Your Honor, if I could ask cause I
12 don't see the exhibit number, if we could refer to exhibit
13 numbers to make sure I'm accurate as to which dog he's
14 identifying as who.

15 THE COURT: Help him out there, Mr. Lee.

16 MR. LEE: Well, let me go -- then I'll have to mark
17 them. We never marked them. We've always done them by --
18 let's mark them then.

19 (WHEREUPON, Defendant's Exhibit Nos. 4, 5, 6, 7 AND 8
20 were marked for identification only.)

21 BY MR. LEE:

22 Q. Defendant's Number Four?

23 A. This is Three Fingers.

24 Q. Okay, that was Donna's dog?

25 A. Yes, sir.

- 1 Q. Donna, that was the babysitter?
- 2 A. Yes, sir.
- 3 Q. Okay, Number Five?
- 4 A. That's Sarge.
- 5 Q. Belongs to who?
- 6 A. Me.
- 7 Q. That's your dog?
- 8 A. Yes, sir.
- 9 Q. And Number Six?
- 10 A. That is Cody.
- 11 Q. Okay, Cody, who is?
- 12 A. Everybody's.
- 13 Q. Okay, Number Seven?
- 14 A. That was Two Toes.
- 15 Q. Okay, so Three Toes and Two Toes?
- 16 A. Yes, sir.
- 17 Q. Two Toes have two white toes?
- 18 A. Yes, sir.
- 19 Q. Who named him?
- 20 A. I did. He's my dog. That's the same dog.
- 21 Q. Okay, is that Two Toes, too?
- 22 A. Yes.
- 23 Q. How many dogs did y'all have?
- 24 A. Six.
- 25 Q. Okay, do you know how many took off from the house?

1 A. Well, they took -- all of them except Buddy, and I
2 believe two others.

3 Q. Okay, go back up and sit down.

4 (WHEREUPON, the witness returns to the witness
5 stand.)

6 BY MR. LEE:

7 Q. I'm going to ask you some more about the dogs. Let's
8 do this. Do you know Matthew Davis?

9 A. Yes, sir.

10 Q. How did you know him?

11 A. He was my friend.

12 Q. He was?

13 A. Yes, sir.

14 Q. Come to your house a lot?

15 A. Yes, sir.

16 Q. Y'all play together?

17 A. Yes, sir.

18 Q. What kind of thing would y'all do?

19 A. We jumped. We ran. The dogs chased us and played
20 with us, and that's about it.

21 Q. Did y'all get on the trampoline?

22 A. Yes, sir.

23 Q. Dogs get on the trampoline with you?

24 A. Yes, sir.

25 Q. What else happen?

- 1 A. We watched t.v.
- 2 Q. Okay, normal things?
- 3 A. Yes, sir.
- 4 Q. Y'all went to school together?
- 5 A. No, sir.
- 6 Q. He went to a different school?
- 7 A. Yes, sir.
- 8 Q. Okay, let me ask you this. Did your dad have to get
- 9 on you and Matthew about the dog sometimes?
- 10 A. Yeah, when we get on the ground and the dog would
- 11 come over in our face.
- 12 Q. Why would he tell you to get up off that ground, why?
- 13 A. Because he said he didn't want the dog that their
- 14 face.
- 15 Q. He tell you why he didn't want the dog doing that?
- 16 A. No reason.
- 17 Q. Huh?
- 18 A. We didn't know where they put their faces, in oil of
- 19 whatever.
- 20 Q. Okay, well, all of your dogs. Okay, have you ever
- 21 seen them out in the road in front of your house?
- 22 A. No, sir.
- 23 Q. Okay, why wouldn't they go in the road in front of
- 24 your house?
- 25 A. Cause we taught them not to.

1 Q. How did you teach them?

2 A. When they went towards the road we said, no, and they
3 would come back.

4 Q. Okay, you ever take them downtown here in Dillon?

5 A. Yes.

6 Q. How would you take them downtown in Dillon?

7 A. Have them on the back of our truck.

8 Q. You would?

9 A. Yes.

10 Q. And didn't have a problem with them jumping out of
11 the truck?

12 A. No, sir.

13 Q. Anybody ever complain about dogs being in the truck?

14 A. No, sir.

15 Q. Not that you know of?

16 A. Not that I know of.

17 Q. Did you ever see your dad correct the dogs?

18 A. Yes, sir.

19 Q. Tell the jury how he's get on the dogs?

20 A. Well, when they didn't do something or they didn't
21 listen to him he would take a switch and just switch them.

22 Q. Okay, you ever see him beat them?

23 A. Yes, sir.

24 Q. Beat them?

25 A. No, I thought you were talking about a switch.

- 1 Q. You ever see him hurt them?
- 2 A. No, sir, besides switch them.
- 3 Q. Ever see him tease them?
- 4 A. No.
- 5 Q. Tell the jury if you would, when he would come up in
- 6 the truck that I know that they see him, tell how the dogs
- 7 would act?
- 8 A. Well, when he come up in the truck they come over
- 9 like that and they just be all excited and cause they
- 10 wanted to play.
- 11 Q. Would you -- could away from him?
- 12 A. No, sir.
- 13 Q. What does could mean?
- 14 A. Run away.
- 15 Q. Hide or like that?
- 16 A. No, sir.
- 17 Q. Never did that?
- 18 A. No, sir, never.
- 19 Q. Any jumping on him?
- 20 A. Yes, sir.
- 21 Q. How about talk to them?
- 22 A. He talked to them, basically, like that's a good girl
- 23 or that's a good boy. Yes, that's --
- 24 Q. Did you pet them a lot?
- 25 A. Yes, sir.

- 1 Q. Did you play with them a lot?
- 2 A. Yes.
- 3 Q. How about feed them. Whose job was that?
- 4 A. That was everybody's.
- 5 Q. Everything that you had mentioned?
- 6 A. Me, Mitchell, dad and sometimes Donna?
- 7 Q. What did y'all feed them?
- 8 A. Dog feed.
- 9 Q. And what else?
- 10 A. Every now and then when we came back from the Waffle
- 11 House we'd bring back a doggy bag.
- 12 Q. You'd bring that back for them in a doggy bag?
- 13 A. Yes, sir.
- 14 Q. Have you ever seen any of your dogs snap at anybody?
- 15 A. No, sir.
- 16 Q. When you and Matthew were playing you said the dogs
- 17 chased you?
- 18 A. Yes, sir.
- 19 Q. What do you mean by 'chase you'?
- 20 A. When we would run they would run up right beside us
- 21 and stuff like that. We were racing.
- 22 Q. But they weren't chasing, like trying to get away
- 23 from them?
- 24 A. Yes, sir, they just run up like simple racing.
- 25 Q. Let me ask you this. Did you have a four wheeler?

1 A. No, sir, not at the time.

2 Q. Did you see a boy ride around your house on a four
3 wheeler?

4 A. Yes, sir.

5 Q. Would your dogs chase the boy on the four wheeler?

6 A. No, sir.

7 Q. Why wouldn't they do that?

8 A. I don't know. They just didn't. They didn't bark at
9 them going by. Basically, a car goes by. They didn't
10 bark at it.

11 Q. Did they chase cars?

12 A. No, sir.

13 Q. Okay, did you have other people -- children come play
14 at the house?

15 A. Yes, sir.

16 Q. Okay, like who?

17 A. I don't remember their names, but they -- one was
18 like eight -- around eight at the time, and that's all
19 the -- and another one was around 11 at the time sand he
20 was about at the same height.

21 Q. Okay, and would they play outside with y'all?

22 A. Yes, sir.

23 Q. And would the dogs be out there with you?

24 A. No, sir.

25 Q. And would these dogs try to growl at children?

1 A. No, sir.

2 Q. Have you ever seen your dogs chase children?

3 A. No, sir.

4 Q. Other than just play?

5 A. No, sir, I have not.

6 Q. Okay, just a moment, please. Tell me about Oscar.

7 A. Well, Oscar would bark at me and Mitchell, too, while
8 we were going out to the bus stop or just passing by.

9 Q. Okay, who does Oscar belong to do?

10 A. Joey Pope.

11 Q. What kind of dog is Oscar?

12 A. I believe he looks like a pit bull.

13 Q. Well, tell me where Oscar would be in relation to the
14 bus stop?

15 A. Right around where that house is in the yard.

16 Q. Okay, have you ever seen Oscar bite anybody?

17 A. Yes, sir.

18 Q. Tell us about that?

19 A. Well, me and Mitchell were at the bus stop, and we
20 were coming and we saw Taylor Chavis coming out to the bus
21 stop. And he and Oscar was in the bushes, and when she
22 passed he bolted out and got her on her ankle.

23 Q. She do anything to him?

24 A. No.

25 Q. Okay.

- 1 A. Besides getting him off.
- 2 Q. Now, is Oscar chained up now?
- 3 A. He was.
- 4 Q. What do you mean, 'was'?
- 5 A. He was chained up a little bit, but then he broke his
- 6 chain.
- 7 Q. Was he always chained up?
- 8 A. No, sir.
- 9 Q. Did he used to run the neighborhood?
- 10 A. Yes, sir.
- 11 Q. Okay, other than Oscar any other dogs run the
- 12 neighborhood?
- 13 A. Yes, sir.
- 14 Q. Let me ask you to the best of your memory. Now, you
- 15 and Matthew had played before. Y'all played football and
- 16 stuff you know, ball in the front yard?
- 17 A. Yes, we played ball.
- 18 Q. And the dogs would be out with you?
- 19 A. Yeah.
- 20 Q. Was he afraid of the dogs?
- 21 A. No, sir.
- 22 Q. Would he pet the dogs?
- 23 A. Yes, sir.
- 24 Q. They knew him?
- 25 A. Yes, sir.

1 Q. Would he love on the dogs?

2 A. Yes, sir.

3 Q. What do you mean by that?

4 A. Love them. He petted them and stuff, and say that
5 they're a good boy and good girl and good dog.

6 Q. Taylor, do me a favor and answer any questions Mr.
7 Redmond has.

8 CROSS-EXAMINATION

9 BY MR. REDMOND:

10 Q. Taylor, how you doing today?

11 A. Fine.

12 Q. My name is Kernard Redmond, and I'm going to be ask
13 you a few questions. Some of the things you have been
14 asked about, but then there are some questions you haven't
15 been asked about. But you talked about food on the porch
16 and you showed him on the picture?

17 A. Yes, sir.

18 Q. How often would y'all feed the dogs?

19 A. Every day.

20 Q. Every day. How many times a day?

21 A. Well, usually, we give them one big bowl of food.

22 Q. One big bowl for six dogs?

23 A. Yes, sir. We had separate bowls and every now and
24 then one bowl would get missing or whatever we just put a
25 big bowl out and fill it full of dog food.

1 Q. And you would do this in the morning I guess before
2 going to school? When would the dogs be fed?

3 A. Sometimes just to keep them happy or whatever we
4 would feed them in the morning and when we get back we
5 feed them when we got home.

6 Q. Just to keep them happy did I hear you say? Now, you
7 hadn't -- you weren't asked about -- you were asked about
8 Matthew was your friend and used to come over?

9 A. Yes, sir.

10 Q. Do you remember when Matthew died?

11 A. Yes, sir.

12 Q. Do you remember? Is that a yes, sir?

13 A. Yes, sir.

14 Q. Were you home the night Matthew died?

15 A. No, sir.

16 Q. Was your dad home?

17 A. No, sir.

18 Q. Where were you?

19 A. I was with my dad.

20 Q. Where were y'all?

21 A. We were out of town.

22 Q. Charleston?

23 A. I don't remember.

24 Q. How long had y'all been out of town?

25 A. I don't remember.

1 Q. Okay, was it more than a day?

2 A. No, sir.

3 Q. Okay?

4 A. I believe we left that morning and came back that
5 night.

6 Q. What time did y'all get back?

7 A. I don't remember.

8 Q. But y'all left to go to Charleston and came back from
9 Charleston the same night?

10 A. Yes, sir.

11 Q. So it wasn't -- but y'all got back before -- you were
12 at home the next morning, is that whether you're telling
13 me?

14 A. Yes, sir.

15 Q. Was it dark when y'all came back?

16 A. Yes, sir.

17 Q. Do you remember if it was before or after midnight?

18 A. It was before.

19 Q. Y'all came back before midnight?

20 A. Yes, sir, a little bit before.

21 Q. You came back home to your house?

22 A. Yes, sir.

23 Q. And you slept in your bed that night?

24 A. Yes, sir.

25 MR. REDMOND: Beg the Court's indulgence. That's all

1 I have, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. LEE:

4 Q. Taylor, let me ask you this. Mr. Redmond asked you
5 and you said you fed the dogs sometimes to keep them
6 happy. What do you mean by that?

7 A. Energetic and playful.

8 Q. You did mean that you had to keep them happy or they
9 would do something ugly to you?

10 A. No, I didn't mean that. Energetic and playful at
11 home.

12 Q. Tell the jury why you don't remember exactly what
13 town you went to? Tell them what you were doing.

14 A. My dad had just recently got me a Game Boy Advance.
15 At the time when we were going I was playing with it so I
16 didn't pay that much attention to my surroundings.

17 Q. That's all I have. Thank you.

18 MR. REDMOND: Nothing further.

19 THE COURT: Thank you, sir. You may step down.

20 MR. LEE: On come up here, please, sir.

21 ROBERT COLLINS, after being duly sworn,
22 testified as follows:

23 CLERK OF COURT: Have a seat there in the witness
24 box. State your full name for the Court, please sir.

25 THE WITNESS: Robert Mitchell Hayes Collins.

1 MR. REDMOND: I can't hear him, Your Honor.

2 CLERK OF COURT: You're going to have to speak up.

3 Pull your chair up a little bit.

4 THE WITNESS: Robert Mitchell Hayes Collins.

5 DIRECT EXAMINATION

6 BY MR. LEE:

7 Q. Mitchell, tell us your full name again?

8 A. Robert Mitchell Hayes Collins.

9 Q. You're going to have to speak up a lot louder than
10 that.

11 A. Robert Mitchell Hayes Collins.

12 Q. That's the best you can do?

13 A. Robert Mitchell Hayes Collins.

14 Q. Okay, Mitchell, whose jobs is it to feed the dogs?

15 A. Me and my brother.

16 Q. And how did y'all feed them?

17 A. Well, I fed them before I went to school.

18 Q. Okay, did you feed them every day before you went to
19 school?

20 A. Yeah.

21 Q. Tell the jury if you would what was the procedure?

22 A. I take my brother to the bus stop and I'd feed the
23 dogs.

24 Q. Okay, and the bus stop is around here?

25 A. Yeah, we go down Pocket Road, come over here to the

1 dirt road right here. Right there.

2 Q. Okay, you walked him over there?

3 A. Yeah.

4 Q. And you walked back ---

5 A. Yes, sir.

6 Q. --- to the house?

7 A. Yes, sir.

8 Q. Y'all went to two different schools?

9 A. Yes, sir.

10 Q. Okay, he was going to grammar school? You were in
11 middle school?

12 A. Yeah.

13 Q. You're in the ninth grade now, so you would have been
14 in the seventh grade when this happened?

15 A. Yes, sir.

16 Q. Okay, so you walked him to the bus stop, right?

17 A. Um hum.

18 Q. And you walked back to feed the dogs?

19 A. Yes, sir.

20 Q. All right. Tell the jury if you would on
21 November 3rd if you fed the dogs?

22 A. What?

23 Q. On November 3rd when this happened who fed the dogs?

24 A. I did.

25 Q. Okay, how do you know you fed the dogs?

1 A. Because when I leave -- when I walk out the house I
2 get the food and I give it to the dogs and I go to the bus
3 stop.

4 Q. Tell us how you would feed them? I mean was there a
5 big bowl, a small bowl?

6 A. We had a couple of bowls sitting out there and we put
7 the food in the bowls.

8 Q. Okay, and then you would set it on the porch?

9 A. Well, I just put the food in the bowl and put the
10 bowl -- and scoop the food out of them back and walk to
11 the bus stop and let them eat the food.

12 Q. Okay, how about when y'all went out of town? How did
13 y'all feed the dogs?

14 A. We put the food in the feeder.

15 Q. Is that -- tell us. You mean one of the metal pans?

16 A. It's plastic. You put the food in it. As it empties
17 out it pours down.

18 Q. Okay, so you would leave food there?

19 A. Yeah, had to ---

20 Q. I'm sorry. I didn't mean to cut you off.

21 A. They had the food in the feeder when we leave.

22 Q. Okay, well, on November the 3rd, this is a Friday,
23 did you and your daddy and Mitchell go out of town?

24 A. Yeah.

25 Q. Okay, you remember where you went?

1 A. It was like Charlotte.

2 Q. Charlotte of Charleston?

3 MR. REDMOND: Your Honor, leading.

4 THE COURT: Sustained.

5 BY MR. LEE:

6 Q. What town you go to?

7 A. I'm not sure what town it was.

8 Q. That's fine. Don't tell us something you don't know.

9 If you're not sure, not sure is a good answer. Did y'all
10 go in a pick up truck or a tractor trailer?

11 A. Tractor trailer.

12 Q. Because your daddy is a long distance truck driver,
13 isn't he?

14 A. What?

15 Q. Your daddy is a long distance truck driver, isn't he?

16 A. Yes, sir.

17 Q. Y'all drop a load there?

18 A. We were picking one up I think.

19 Q. So you went down empty?

20 A. Yes, sir.

21 Q. And picked up a load and came back?

22 A. Um hum.

23 Q. Okay, do you know -- you remember when you got back?

24 A. I don't remember when. I was playing my game. I was

25 ---

1 Q. But when y'all got back what did you find across the
2 driveway?

3 A. Yellow tape across the driveway.

4 Q. Okay, let me ask you this. Did you -- the dogs, how
5 many dogs did y'all have?

6 A. Six.

7 Q. Okay, and the dogs, everybody in the family had a
8 dog?

9 A. Yeah.

10 Q. And what was your dog's name?

11 A. Jake.

12 Q. And what was Taylor's dog's name?

13 A. Sarge.

14 Q. Okay, what was your daddy's dog?

15 A. He had a puppy named Buddy.

16 Q. And how many other dogs were there?

17 A. There was an older dog, Jake, Sarge.

18 Q. You need to talk up. You've got to talk way up.

19 Your mumbling to me. You've got to talk up.

20 A. Well, there was three older dogs and the rest was
21 puppies. So three puppies and three adult dogs.

22 Q. Okay, so one belonged to you?

23 A. Yes, sir.

24 Q. One to your daddy?

25 A. Yes, sir.

- 1 Q. One to Taylor; is that right?
- 2 A. Yes, sir.
- 3 Q. Okay, and who did the other dogs belong to?
- 4 A. Donna. The lady that stayed at the house.
- 5 Q. And the puppies, who do they belong to?
- 6 A. Well, one of them belongs to Donna and the other one
- 7 belongs to one of us. I'm not sure which one.
- 8 Q. Okay, let me ask you this. Did you know Matthew
- 9 Davis?
- 10 A. Yes, sir.
- 11 Q. Would he come to y'all's house?
- 12 A. Yes, sir.
- 13 Q. Tell the jury about that?
- 14 A. He'd come over and play and eat food sometimes.
- 15 Q. Okay, was he around the dogs?
- 16 A. Yeah, he's been around the dogs.
- 17 Q. Would the dogs play with y'all? Would you play with
- 18 him and your brother?
- 19 A. Yeah.
- 20 Q. So you first hand interacts with them?
- 21 A. Yes.
- 22 Q. Did y'all play on the trampoline?
- 23 A. Yes, sir.
- 24 Q. With the dogs?
- 25 A. Yes.

1 Q. How do you -- we're talking about these dogs?

2 A. Yes.

3 Q. I want you to look at these. This is State's --
4 Defendant's Four, Five, Six, Seven and Eight. See if you
5 recognize those.

6 A. Two Toes.

7 Q. Two Toes?

8 A. Three Fingers.

9 Q. Okay, Buddy? Speak up, now.

10 A. That's Buddy.

11 Q. This is Buddy.

12 A. Yeah.

13 Q. Who is this?

14 A. Sarge. That looks like Jake.

15 Q. Okay, so what -- which of these dogs would get on the
16 trampoline with y'all?

17 A. Sarge.

18 Q. And I mean he would let y'all jump up and down and
19 than do?

20 A. Yes, sir.

21 Q. He didn't get angry or irritated that y'all got him
22 on a trampoline?

23 A. No, sir. She would jump up there.

24 Q. She would jump up there on her own?

25 A. Yes, sir.

- 1 Q. To be with you?
- 2 A. Um hum.
- 3 Q. Tell me. Have you ever seen your dogs chasing people
- 4 in the road?
- 5 A. No, sir.
- 6 Q. Have you ever seen a man go by your house on a ten
- 7 speed bicycle with gray hair?
- 8 A. I've seen people go by on bikes. I'm not sure if it
- 9 was him.
- 10 Q. Okay, if somebody went by on a bicycle tell the jury
- 11 what they would do? What the dogs would do?
- 12 A. They would look, but they wouldn't go out to the road
- 13 further.
- 14 Q. Would they bark at them?
- 15 A. No.
- 16 Q. If somebody came in the yard would they bark?
- 17 A. If they came in the yard, yes, they would bark.
- 18 Q. Okay, did -- have you ever seen your dogs growl at
- 19 anybody?
- 20 A. If they weren't supposed to be there, yes, they would
- 21 growl.
- 22 Q. Okay, explain that.
- 23 A. I mean they look after the house. I mean if they
- 24 come they let them know their not supposed to be here or
- 25 something.

1 Q. Okay, would they growl at Matthew?

2 A. No, sir.

3 Q. Did Matthew play with the dogs, too?

4 A. Yes, sir.

5 Q. What kind of things did he do playing with the dogs
6 other than the trampoline?

7 A. Pet them and things like they. Run around the yard.

8 Q. So that all knew him?

9 A. Yes.

10 Q. Okay, how about people on the four wheeler? You ever
11 seen anybody on a four wheeler riding around the property?

12 A. Yeah, I've seen somebody riding around on a four
13 wheeler.

14 Q. Okay, the dogs chased people on four wheelers?

15 A. Not that I know of, no.

16 Q. You've never seen them do that?

17 A. No.

18 Q. Let me talk to you about this. How did you dad treat
19 the animals?

20 A. He treated them like somebody else. I mean he talked
21 to them kind, and if they were tearing up the trash he
22 would scold them but that's.

23 Q. When you say 'talk to them like somebody' what do you
24 mean?

25 A. I mean he talked to them like a little kid or

1 something.

2 Q. Did you ever see him beat the dogs?

3 A. No.

4 Q. I'm talking about -- you understand what I mine? I
5 don't mean switching them. I mean beating them.

6 A. No, sir.

7 Q. Ever put a chain on them?

8 A. What do you mean?

9 Q. A heavy chain or anything like that?

10 A. No, sir.

11 Q. Ever tease them?

12 A. No.

13 Q. Try to make them mean?

14 A. Uh uh.

15 Q. Your dad fight dogs?

16 A. No, sir.

17 Q. Would you know if he did?

18 A. Yes, sir.

19 Q. When he comes up in the yard or when he comes in the
20 yard when y'all have a dog tell the jury how the dogs
21 would react to him?

22 A. They go greet him and they wag their tails and see if
23 he had any treats for them.

24 Q. So did they cower away from him?

25 A. No.

1 Q. What do you understand cower to mean?

2 A. Run away.

3 Q. They didn't back away from him?

4 A. No.

5 Q. Did the kind of lower their head like they'd been
6 hit?

7 A. No, sir.

8 Q. Would the dogs jump on him?

9 A. They would jump up and be playful.

10 Q. And did y'all take the dogs downtown here?

11 A. We've taken the dogs to places, yes.

12 Q. What kind of places y'all take the dogs?

13 A. Friends houses, different family.

14 Q. And your family is from where?

15 A. We take them up to Kentucky.

16 Q. Okay, did you take them to the grocery store here in
17 Marion?

18 A. They been around in Marion, yes.

19 Q. Have a problem with them getting out of the truck?

20 A. No, sir.

21 Q. Ever had anybody that you remember complain about the
22 dogs growling at them or anything like that?

23 A. No, sir.

24 Q. Mitchell, do me a favor. How about answer any
25 questions that Mr. Redmond has for you.

1 MR. REDMOND: Thank you. Your Honor, please the
2 Court.

3 CROSS-EXAMINATION

4 BY MR. REDMOND:

5 Q. You got by Hayes or Collins, last name?

6 A. I go by Hayes.

7 Q. Hayes, okay. Just want to make sure. Let me ask you
8 just a few questions. You made a comment -- well, before
9 I get into that. Did you ever see your dad use a switch
10 on the dogs?

11 A. If they were tearing up the trash he would kind of
12 switch them a little bit, but not nothing violent.

13 Q. But, now, you made a comment that they would bark if
14 someone who wasn't supposed to be there. Would it be safe
15 to say that if somebody wasn't supposed to be there they
16 in essence sort or guarded the house?

17 A. They were supposed to.

18 Q. They were supposed to guard the house?

19 A. Well, I mean if somebody tried to come into the yard
20 not allowed or anything I mean, yeah.

21 Q. Okay, so in essence they would guard the house? That
22 was part of what they were supposed to do? Would that be
23 a fair comment?

24 A. Yes, sir.

25 Q. Okay, thank you. Now, you also made the comment in

1 reference to a question that you don't know of the dogs
2 chased anybody, but just from a common sense standpoint
3 isn't it true that you aren't there at the house all the
4 time, are you?

5 A. No. I go to school.

6 Q. You go to school, and I'm sure you do social
7 activities and what not? So you can't say what the dogs
8 do when you're not there, can you?

9 A. No, sir.

10 Q. You cannot testify to what they do or capable of when
11 you're not there, can you?

12 A. No, sir.

13 Q. Now, let's get to the day in question. On the 3rd of
14 November I think your testimony was about how you would
15 feed the dogs. And if I understand right you said there
16 were a couple of dog bowls, right?

17 A. Yes.

18 Q. And y'all had six dogs and you would put food in
19 those bowls?

20 A. Yes.

21 Q. Were y'all gone overnight on the night -- on the day
22 of November 3rd 2006 when you talked about going to
23 Charleston that day in the tractor trailer?

24 A. I believe so, yes.

25 Q. Y'all were gone all day?

1 A. Yes.

2 Q. Did y'all stay overnight?

3 A. It took us a while to get down there and a while to
4 get back. I don't recall too much.

5 Q. Do you recall staying in a hotel room or staying at
6 somebody's house or did y'all go and come back home?

7 A. We went to a truck stop, and I don't -- we didn't get
8 a hotel room. I remember going and coming back.

9 Q. Where were you when you found out that Matthew Davis
10 had been killed?

11 A. I was in the truck.

12 Q. You were in the truck?

13 A. No, I'm sorry. When I found out I was at the house.
14 We found the tape in the driveway and the paper on the
15 door?

16 Q. Was that at night or the next morning?

17 A. The next morning.

18 Q. It was the next morning. Y'all got home and found
19 the tape? Is that what you're testifying to right now?

20 A. Yes, sir.

21 Q. Now, since y'all were not gone long cause I think you
22 testified that when y'all were going -- you know when
23 y'all would go out of town you would use the feeder and
24 what not, but like on the day like the 3rd of November
25 since you weren't going to be gone a long time you would

1 have fed them like you normally do? Is that a fair
2 comment?

3 A. Yes, sir.

4 Q. With the bowls and what not, right.

5 A. Yes, sir.

6 MR. REDMOND: Nothing further at this time, Your
7 Honor. Oh, one more question. I'm sorry.

8 BY MR. REDMOND:

9 Q. That would have been in the morning, too, before you
10 left that you fed the dogs and the bowl.

11 A. Yes, sir.

12 MR. REDMOND: Nothing further.

13 MR. LEE: That's fine. Nothing else.

14 THE COURT: You may step down.

15 FREEMAN DENISH, after being duly sworn,
16 testified as follows:

17 CLERK OF COURT: Be seated and state your full name
18 for the Court, please, sir.

19 THE WITNESS: My name is Andrew Denish.

20 DIRECT EXAMINATION

21 BY MR. LEE:

22 Q. Mr. Denish, scoot forward.

23 A. What?

24 Q. I need you to scoot forward and talk in that mike.
25 Mr. Denish, where do you live?

- 1 A. I live in Lumberton, North Carolina.
- 2 Q. How do you know Mr. Collins?
- 3 A. I've known him for all of -- at least close to 10, 20
- 4 years.
- 5 Q. Okay, were you with him when he bought his bull dog?
- 6 A. Yes, I was.
- 7 Q. Okay, and have you -- is it fair to say that you've
- 8 seen them grow up?
- 9 A. I watched them grow up from pups.
- 10 Q. Okay, how about tell the jury how he treated those
- 11 dogs?
- 12 A. He treated those dogs good, and they just grew to be
- 13 playful dogs and would just come out and then greet you
- 14 and get out and I've never see any problems with them at
- 15 all.
- 16 Q. Okay, when you say 'they come out and greet you' tell
- 17 the jury what you mean?
- 18 A. Well, You pull in, get out the car or truck whatever
- 19 I was driving. They would come up to the vehicle and I'd
- 20 get out, and they'd just get up there and want to jump,
- 21 play and just like general dogs.
- 22 Q. When is the last time you actually were at
- 23 Mr. Collins' in relation to November the 3rd when all this
- 24 happened?
- 25 A. It -- I couldn't tell you the last time that I had

1 been down there, honestly, cause I never keep track of
2 time. But, honestly, I couldn't tell you exactly how long
3 it's been since been down there. Probably two, three
4 months. Something like that.

5 Q. Okay, so you believe you've been two or three months
6 before you've been down there?

7 A. Yes, sir.

8 Q. And the reason is you had health problems, didn't
9 you?

10 A. Yes. I had a heart problem. I had to go in the
11 hospital and stay a little while, and then I couldn't -- I
12 wasn't supposed to go anywhere or do anything.

13 Q. Okay, you said he would talk to the dogs. How would
14 he talk to them?

15 A. Just talk to them. Tell to behave and just like any
16 dog owner would, you know, just take care of them and
17 actually rub the dogs.

18 Q. Did he to your knowledge did he feed the dogs?

19 A. Yes, he did.

20 Q. How do you know he fed the dogs?

21 A. I've been with him when in the past when he bought
22 dog food. Ten, 15, 25 pound bags, whatever they were, and
23 brought them home and fed them.

24 Q. Okay, do you know how big the bags were?

25 A. Some were 2-foot high. Some were 3-foot high. Like

1 that. I couldn't tell you just what weight bags they
2 were.

3 Q. Okay, and have you ever seen -- gone to his house and
4 seen other dogs there?

5 A. I've seen other dogs at one time running across the
6 road, but as far as ---

7 Q. Let me ask you this. If this is Mr. Collins' house
8 ---

9 A. Yeah.

10 Q. --- and this is the open field ---

11 A. Yes.

12 Q. --- would you tell the jury where you've seen the
13 pack of dogs?

14 A. They would be over in here. I didn't see them that
15 many times. I have seen them.

16 Q. Okay, do you remember when you saw them?

17 A. I couldn't remember exactly when I've seen them
18 because being disabled I have lost all thought of time of,
19 you know, dates and everything.

20 Q. Have you ever seen Mr. Collins abuse these dogs?

21 A. No, never.

22 Q. Ever seen him strike them?

23 A. No.

24 Q. Have they -- have you ever had them growl at you?

25 A. No.

1 Q. Ever had a case where you thought, you know, I need
2 to back up and go cause the dogs are coming at me?

3 A. Not really, no.

4 Q. Not really or no?

5 A. No, I have not had them do that.

6 Q. Okay, are these animals which you were afraid? Were
7 you afraid of them?

8 A. No. No. No, way.

9 Q. Okay, answer any questions Mr. Redmond has.

10 CROSS-EXAMINATION

11 BY MR. REDMOND:

12 Q. You said you live in Lumberton?

13 A. Yes, sir.

14 Q. So, you didn't live in that neighborhood that Bentley
15 Collins lived in?

16 A. No, sir.

17 Q. And you can't testify as to what went on when you
18 weren't around, can you?

19 A. Not honestly.

20 Q. Exactly, not honestly. You can't testify about what
21 went on when you weren't around, can you?

22 A. No, I can't testify to that.

23 Q. Exactly, and, now, you talked about a big bag of dog
24 food. I think you said that you would see him feed them I
25 guess -- you didn't know how big the bag was?

1 A. I never looked at the poundage on the bag.

2 Q. But was it a big bag where you had to carry it with
3 both hands?

4 A. One would have to put over your shoulder sometimes.
5 Sometimes smaller ones when he was low at home.

6 Q. Okay, and would he feed them the whole bag at one
7 time or how would he?

8 A. He would put down a great big dish of it and let them
9 eat until they were done. If they wanted more they give
10 them more.

11 Q. Because there were six dogs?

12 A. How many?

13 Q. There were six, at least six. There were a lot of
14 dogs.

15 A. There were a lot of dogs. I couldn't tell you
16 exactly how many there was all the time.

17 Q. And since you were with them when he bought them I
18 guess common sense tells you that for six dogs you're
19 going to need a lot of food to feed six dogs? Isn't that
20 why you have so big bags, right?

21 A. He always got big bags of food.

22 Q. Okay.

23 MR. REDMOND: I have nothing further at this time,
24 Your Honor.

25 MR. LEE: Thank you, Mr. Denish.

1 BONNIE HAWKINS, after being duly sworn,
2 testified as follows:

3 CLERK OF COURT: Be seated in the witness box and
4 state your full name for the Court, please.

5 THE WITNESS: My name is Bunny Jean Hawkins.

6 DIRECT EXAMINATION

7 BY MR. LEE:

8 Q. You go by Bunny?

9 A. Yes, sir.

10 Q. May I call you Bunny?

11 A. Yes, sir.

12 Q. Let me ask you this, Bunny, where do you live now?

13 A. I live any Alabama.

14 Q. And you're here today under subpoena?

15 A. Yes.

16 Q. That was served by us?

17 A. Yes.

18 Q. And since you've been here have you spoke or talked
19 with Mr. Collins about this case?

20 A. No.

21 Q. Other than talk to me have you talked to anybody?

22 A. No.

23 Q. Are you being paid anything to be here?

24 A. No.

25 Q. Okay, let me start by asking you this. There was

1 this time when you lived out on Mr. Collins' place?

2 A. Yes, sir.

3 Q. You call him Bentley, don't you?

4 A. Yes, sir.

5 Q. Okay, so you lived at Bentley's place?

6 A. Yes.

7 Q. Would you show the jury -- let me -- exactly where
8 you lived?

9 A. I lived in the trailer over here.

10 Q. How did you come to live in that trailer?

11 A. I lived there on two different occasions. I lived
12 there in 2002. I came here from Alabama and he give me a
13 place to stay until I got on my feet. And then the second
14 time I lived there was in 2006. I lost my job and I
15 didn't have any income, and he offered me a place to stay
16 once again, and that's why I was there.

17 Q. Okay, and in exchange for staying there what kind of
18 things would you do around the place?

19 A. Make sure the three boys, his sons, got to school
20 over to the bus stop or if they miss the bus I would take
21 them to school. And if they needed to go somewhere or
22 needed to be picked up from school I'd pick them up.

23 And there was a lady that watched them and so
24 sometimes if he needed to go somewhere or they needed
25 stuff from the store and he was not there, and that's what

1 I did. I'd take them to the store.

2 Q. You buy -- ever have to buy dog food for them?

3 A. Yes, one time they had to go on a trip. He asked me
4 would I pick up some dog food and I didn't have any money
5 with me. But I got some money from our pastor and went to
6 the store and bought a big, tall bag of dog food. Like a
7 50-pound bag.

8 Q. You say one time. Was it just before all this
9 happened?

10 A. Yes, sir.

11 Q. Okay, how many days before it happened?

12 A. Probably a week. Five days to a week?

13 Q. So, five days to a week you bought a 50 pound bag of
14 food?

15 A. Yes, sir.

16 Q. Okay, where was the food kept?

17 A. One time I know that it was inside to house in a big
18 plastic container, and sometimes it was outside beside the
19 automatic feeder, there was a big drum that had a top and
20 something laying on it outside. And the food was out
21 there sometimes. And if it was raining the food was in
22 the house.

23 Q. When would you load the automatic feeder?

24 A. I didn't load it myself. The boys, that was one of
25 their chores to feed the dogs, so I would call over there

1 and ask them every day, "Did you feed the dogs. Did you
2 feed the dogs," and they would put the food in there. And
3 then I would go over there sometimes just to see if they
4 did what they were supposed to do.

5 I would take my foot and kick the door on the
6 automatic feeder and see if the food fell down.

7 Q. Now, do you remember November the 3rd when all this
8 happened?

9 A. Yes, sir.

10 Q. Do you remember that day?

11 A. I remember that day.

12 Q. How about tell the jury, beginning to end, what your
13 day was?

14 A. On that Friday, November the 3rd?

15 Q. Yes, ma'am.

16 A. That morning I got up and it was a school day for the
17 children. So I had planned a trip to Alabama. So that
18 morning I got up. I think the bus run like 6:30,
19 something like that. And I went over to Mr. Collins'
20 house, Bentley's house, and got the boys and my
21 granddaughter that lived with me and took them down to the
22 bus stop.

23 And I told them that I wasn't going to be there that
24 afternoon because I was going to Alabama, and so I left
25 immediately after the bus and I went -- I left going to

1 Alabama. I made a trip to Alabama, and a lady from my
2 church had instructions to pick up my granddaughter at
3 Mr. Collins' house that afternoon when she got off work
4 and take her to my daughter's house.

5 Q. And when did you -- did your granddaughter get picked
6 up ---

7 MR. REDMOND: Your Honor, I'd object to it unless
8 there is some foundation that isn't hearsay.

9 MR. LEE: She either knows or doesn't know.

10 BY MR. LEE:

11 Q. Well, let me ask you this. Did you talk to Mr.
12 Collins that afternoon?

13 A. Yes, sir.

14 Q. What did he tell you?

15 A. About -- a little before five o'clock he called me
16 and he said, "I have to go. I have to leave and nobody's
17 here to pick up your granddaughter." He said, "Did you
18 make arrangements?" I said, "Yes, I did." He said,
19 "Well, what's going on cause I have to go."

20 Q. Did he tell you where he had to go?

21 A. He had a load to pick up. I don't remember exactly
22 where but he had a load to pick up.

23 Q. What does he do for a living?

24 A. He was a truck driver at the time.

25 Q. Okay. Now, we talked about -- let me back up. We

1 talked about the dogs got their food. Where did they get
2 their water?

3 A. It was a bowl or a pan in the back of the house that
4 sit up under a faucet, an outside faucet, and it
5 continually dripped. And so it dripped down in that bowl
6 or pan or whatever. It was that bucket thing. And so it
7 stayed full of water so I didn't have to worry about that
8 cause it always dripped.

9 Q. Okay, so they had fresh water?

10 A. Yes, sir.

11 Q. Let me ask you this. Besides the dog food that they
12 would get over here and the water that they get from
13 behind the house did they get fed table scraps?

14 A. Yes, sir. It was -- must be me and my granddaughter
15 lived in the trailer I cooked cause I'm used to cooking
16 for more than two people, and I always had left overs.
17 We're not much on eating leftovers. Well, beside the bus
18 right there between my trailer and Mr. Collins' house.

19 Q. How about show this jury were you're talking about?

20 A. Right out in here besides this bus. It was like a
21 dirt spot, and we would take the scraps bask there and
22 dump them out.

23 Q. And they were for the dogs?

24 A. The dog, the chickens, the cats and whatever else ate
25 out there.

1 Q. Okay, so there were chickens that came up in the
2 yard?

3 A. Yes, sir.

4 Q. These dogs ever kill a chicken?

5 A. I never saw them kill one.

6 Q. Ever got any complaints?

7 A. No, sir.

8 Q. Who do the chickens belong to?

9 A. I'm not sure. I think they came from the house in
10 the back or the side or something. I'm not sure where
11 they came from.

12 Q. How about cats?

13 A. I had a cat when I moved out there.

14 Q. Did it bother your cat or any of them bother your
15 cat?

16 A. Not that I know of.

17 Q. Now, let's back up and talk about this. When you
18 moved out there you moved with your granddaughter?

19 A. Yes, sir.

20 Q. How old is your granddaughter when y'all moved out
21 there?

22 A. She was six.

23 Q. She was six years old?

24 A. Yes, sir.

25 Q. And y'all lived in the trailer?

1 A. Yes, sir.

2 Q. Now, did you have some concern moving out there about
3 the dogs?

4 A. Sort of because I'm not a dog lover. I don't
5 particularly care for dogs, and my granddaughter being
6 little there were several dogs. I, of course, I had my
7 concerns but I had been out there before on occasion when
8 he had left and I fed the dogs for him another time. So
9 we had been around the dogs briefly and they had never you
10 know showed any problems towards her or anything.

11 But when we moved out there I would watch her when
12 she would go out and everything. She didn't like dogs
13 that much either, but she would go out and play with his
14 boys and whoever else was outside. And so I watch them
15 you know. She would sometimes holler at them and scold
16 them.

17 I always told her to talk to them like they were
18 somebody. They did what you tell them so what's they I
19 told her. Talk to them like go on and leave you alone.
20 That's what I did.

21 Q. Did you allow her to be out in the yard when the dogs
22 were out and you weren't outside?

23 A. Yes, sir, there was a window that was by my kitchen
24 sink.

25 Q. Would that be it right there?

1 A. It's in the front, so when I was washing dishes they
2 would be outside playing, and I could see them. There was
3 a big area right there in the front with the dirt, and
4 they would -- had to be right there throwing football, a
5 big empty space where they could throw footballs and run
6 and whatever kids are doing. I can see them out the
7 window. I kind of kept an eye on them that way.

8 Q. Would the children who play out there include your
9 granddaughter?

10 A. Yes, sir.

11 Q. Where would the dogs be?

12 A. Just around. Sometimes laying over towards the edge
13 of the yard and sometimes up more close to the house with
14 wherever there was a shade or under the bushes or some
15 vehicles. They were just always around.

16 Q. Did Mr. Collins own property behind this house?

17 A. A little space back there.

18 Q. Did they go back there, too?

19 A. Yes, sir.

20 Q. Did you have any concern about your granddaughter
21 being around these dogs?

22 A. No, sir.

23 Q. Did she play on the trampoline?

24 A. Yes, sir. She loved the trampoline. They stayed out
25 there a lot. Sometime I couldn't see the trampoline from

1 where I was. I could hear them getting loud sometimes and
2 with her being the only girl she was real small. The boys
3 kind of played rough, so I would go around to make sure
4 they were okay on occasion.

5 Q. You ever see the dogs up on the trampoline?

6 A. There was one of the smaller dogs they would put up
7 on the trampoline sometimes.

8 Q. Did you see those dogs chained?

9 A. No, sir.

10 Q. Did you have see Mr. Collins do anything to aggravate
11 them?

12 A. No.

13 Q. Tease them?

14 A. No, sir.

15 Q. Would you have been in a position from your kitchen
16 window to see him with the dogs when he didn't know you
17 were looking?

18 A. If he was in that area you couldn't see me in the
19 window.

20 Q. But could you get a chance to watch him with the
21 dogs?

22 A. When they would go out to the mailbox there was a
23 building that had tools or something on this side and he
24 was out there.

25 Q. You mean there building?

1. A. No, sir. It was another one over here in this area
2 here.

3 Q. Okay, so you could watch him?

4 A. Yes, sir.

5 Q. When you were watching him he didn't know you were
6 watching? Did you ever see him strike the dogs?

7 A. He scolded them.

8 Q. What do you mean by scolded?

9 A. Tell them get on, get gone, you know. Sometimes if
10 he would go somewhere and come back then the dogs would
11 come up to him and they wanted to be petted, and he would
12 pet them for a while and talk to them. And then when he
13 was through petting them and they wanted to continue to be
14 petted and jump on him and stuff and he would walk away to
15 do something he would say, "Go on now. That's enough,"
16 and they would go on. They minded him real good.

17 Q. Did he carry the dogs around town?

18 A. Yes, sir. I've seen him a good bit out with the
19 dogs -- with a couple of the dogs on the back of the
20 truck.

21 Q. Did he ever loose any dogs?

22 A. He told me about an accident in Florence when he was
23 going to work on a property that he had the mother dog and
24 I guess it may have been the dad, I don't know. But they
25 was on the back of the truck and one fell off, and he had

1 to go back and get it. And so from then on he didn't have
2 any trouble loosing them on the back of the truck any
3 more.

4 Q. Did any of the dogs ever live in the house?

5 A. When the dogs -- one that went to the vet when she
6 was pregnant, she stayed in the house, and when the
7 puppies were born they were in there.

8 Q. That look like her?

9 A. Yes, sir.

10 Q. She had -- Two Foot right there?

11 A. Yes, sir.

12 Q. To your knowledge did he ever take the dogs with him
13 out of town?

14 A. He took them to Kentucky.

15 Q. He's not originally from South Carolina, is he?

16 A. No.

17 Q. So he took the dogs with him on trips?

18 A. Yes, sir. Go and visit his mom.

19 Q. I'm sorry?

20 A. When he would go and visit his mom.

21 Q. Okay, how about when you were there? Did -- how
22 about four wheelers, did you see people?

23 A. I never saw one.

24 Q. Okay, did you ever see the dogs leave the yard and go
25 in the road?

1 A. I seen them go to the edge of the road, but not go
2 into the road or down the road.

3 Q. Now, when you say they went into the edge of the road
4 what do you mean?

5 A. That they usually would come -- there is an area
6 right here and sometimes they may come all the way out
7 here but mostly they'd stop right here. If somebody went
8 by or if somebody was out there and they would run and
9 bark.

10 Q. When you say 'run out here', now, how far you said
11 they ran out?

12 A. Do -- they were still inside the yard, but almost to
13 those post that were there.

14 Q. From your kitchen window have you ever seen a man go
15 by on a ten speed bicycle?

16 A. I saw a man on a bicycle.

17 Q. Could you have seen the dogs chase him?

18 A. They went out towards the road because they barked if
19 somebody came by or something. I never saw him chase
20 somebody.

21 Q. But you were where you could have seen if it happened
22 where were you?

23 A. Yes, sir.

24 Q. Let me ask you about this right here. Now, that
25 light pole right here ---

1 A. Yes, sir.

2 Q. --- was that light pole there in November, 2006?

3 A. Yes, sir.

4 Q. And was it working okay then?

5 A. Uh huh.

6 Q. You remember it working?

7 A. I remember it was working prior to that, and I'm
8 assuming then or prior to that because several times I
9 would send my granddaughter over there to borrow some milk
10 or something. And she's not going out if it's dark. So
11 the light was on and I would stand on the porch and wait
12 there, over there until she came back.

13 Q. Did you have to get phone service in your trailer?

14 A. Yes, sir, I did.

15 Q. How about tell the jury about that?

16 A. I had my phone transferred from where I lived
17 previous, and when they came out to put my phone in there
18 was no line. So the phone company had to run a line from
19 out here by those pillars to those poles up into my
20 trailer. And children was outside that day. They had
21 just come in from school, and I was kind of watching to
22 see what they were doing, the phone people were doing.

23 And they had took a roll of wire out to the road, and
24 when I looked out the window one of the men was standing
25 about middle ways from the road to my trailer in this area

1 here, back in here. And he was just standing there and
2 the dogs with their teeth sticking up stand in front of
3 him, and he was standing still and I thought, oh, no.
4 What's going on. And I went out and when I went out he
5 said, "Does she bite?" And I said I never seen her bite
6 anybody, and I said ---

7 MR. REDMOND: Your Honor, I would object to hearsay.
8 Anything anybody else said. Anything she said is fine.

9 THE WITNESS: Okay, I told him that I never saw her
10 bite anybody, and so I went out to make her go away. He
11 said, well.

12 BY MR. LEE:

13 Q. No.

14 A. Well, I went to make her go away, and before I got
15 there he just walked away, and I made her go on over there
16 while they were working.

17 Q. Did she growl at him?

18 A. No, sir.

19 Q. Did she bark at him?

20 A. She was just standing there.

21 Q. She was just standing there?

22 A. Yes, sir.

23 Q. So she never -- to your knowledge she's never been in
24 here before?

25 A. Not to my knowledge.

1 Q. You remember about when you had your phone put in?

2 A. I moved there around the last part of August and my
3 phone was transferred a few days afterwards.

4 Q. Matthew Davis, who died in this case, did you know
5 Matthew?

6 A. I saw him on occasion.

7 Q. Did you know who he was by name?

8 A. Yes, sir

9 Q. How did you know him by name?

10 A. The boys. I asked Taylor and Mitchell, who was the
11 little boys out there, and they told me the little boy up
12 the street, his name was Matthew.

13 Q. What things did you observe Matthew doing there?

14 A. Out there throwing the football and running, playing
15 with Taylor, mostly, and my granddaughter.

16 Q. So your granddaughter would play with the three of
17 them?

18 A. Yes, sir.

19 Q. And Mitchell really didn't play cause he was kind of
20 older?

21 A. He was out there sometimes.

22 Q. So then you have him. So everybody was out there?

23 A. Yes, sir.

24 Q. Okay, would the dogs be there?

25 A. Sometimes and they were laying around when it was hot

1 during the summer. They would be in the shaded area, but
2 they were out there. The puppies especially.

3 Q. They were -- I mean they were jump on the kids and
4 growl at the kids? Anything like that?

5 A. They would just play with them. Sometimes they would
6 chase the ball. You know they would jump up on them
7 sometimes.

8 Q. You say, 'jump up on them'. What do you mean?

9 A. When they would catch the ball or something the dogs
10 would try to get the ball and they would jump up on them
11 and kind of playing with them.

12 Q. You remember when you learned that Matthew died?

13 A. Yes, sir.

14 Q. Okay, tell the jury about that?

15 A. I was in Alabama, and I had been to the prison to
16 visit a friend. When I came out from the visit that
17 afternoon, it was on a Saturday, I had a message, several
18 messages, on my phone from Bentley's residence and cell
19 phone.

20 MR. REDMOND: Your Honor, I just want to make sure
21 that she's going to be testifying about something the
22 defendant said. Not somebody else.

23 BY MR. LEE:

24 Q. As a result of the messages on your phone ---

25 A. Said it had been an accident on the property ---

1 Q. --- what did you learn?

2 A. That there had been an accident on the property and
3 for me to call.

4 Q. When you called did you talk to Mr. Collins?

5 A. I talked with Donna.

6 Q. And as a result of that did you learn that Matthew
7 died?

8 A. Yes, sir.

9 Q. Now, tell the jury if you would, finally, what was
10 your biggest complaint about living out there with Bentley
11 Collins?

12 A. Poop. Dog poop.

13 Q. Okay, where was the dog poop?

14 A. Everywhere. Like I said I'm not a dog lover, and one
15 of the reasons is I don't like dogs poop. I hate to step
16 in it. And I like to be outside, and I felt like I
17 couldn't go outside because I didn't like stepping in dog
18 poop.

19 And I felt like the dogs -- I told Bentley that the
20 dogs must have known that I didn't like them. Seems like
21 they pooped in front of my house and I couldn't get in my
22 car without stepping in dog poop. Maybe -- now one night
23 I found some shoes where I threw the grandbaby's shoes
24 out. She stepped in poop all the time, all the time. I
25 don't like dog poop so I threw the shoes out in the yard.

1 Q. Hold on just one second. Answer any questions Mr.
2 Redmond has.

3 CROSS-EXAMINATION

4 BY MR. REDMOND:

5 Q. Ms. Hawkins, based on your testimony you were not
6 there that night, the 3rd of November, 2006 when this
7 incident occurred, were you?

8 A. No, sir.

9 Q. And in fact you indicated that you left earlier that
10 same day?

11 A. Yes, sir.

12 Q. Right after -- that morning after you dropped the
13 kids at the bus stop?

14 A. Yes, sir.

15 Q. So the kids went to school?

16 A. Yes, sir.

17 Q. So the kids were at school. If I remember your
18 testimony correctly he called you sometime before five
19 o'clock that afternoon and could not pick up you
20 granddaughter?

21 A. No, he told me that my granddaughter had not been
22 picked up.

23 Q. Okay, had not been picked up, but this occurred ---

24 A. From his house.

25 Q. This occurred just before five o'clock?

1 A. Yes, sir.

2 Q. So his -- so your granddaughter was still at the
3 house at five o'clock that afternoon?

4 A. She left. When he called it was a little before
5 5:00, and then I went to -- I tried to call immediately
6 the lady that was to pick her up.

7 Q. All right.

8 A. And he called me back before you could reach here and
9 said, "Never mind. She's here."

10 Q. But this all took place shortly before 5:00?

11 A. Yes, sir.

12 Q. So based on that Bentley Collins was -- your daughter
13 was at Bentley Collins' residence before five o'clock on
14 that day, the 3rd of November, right?

15 A. Yes, sir.

16 Q. Okay?

17 MR. REDMOND: Beg the Court's indulgence.

18 BY MR. REDMOND:

19 Q. Bottom line, again, is that you were only there from
20 August until when?

21 A. I moved from there when I took up residence in
22 Alabama. It was February the 28th that I moved.

23 Q. You were there only a few months?

24 A. Yes, sir.

25 Q. But like you had testified earlier Bentley had done a

1 lot for you. He was nice enough to allow you a place to
2 stay. You came all the way up from Alabama. He helped
3 you out, basically, right?

4 A. Yes, sir.

5 MR. REDMOND: I have nothing further at this time,
6 Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. LEE:

9 Q. Bunny, as a result of anything that Bentley Collins
10 has done for you has that influenced what you had to tell
11 this jury?

12 A. No, sir.

13 Q. You just told them what you know?

14 A. All I know.

15 Q. Thank you.

16 JANICE GIBBS, after being duly sworn, testified
17 as follows:

18 CLERK OF COURT: Have a seat in the witness box, and
19 state your full name for the Court.

20 THE WITNESS: Janice Virginia Gibbs.

21 DIRECT EXAMINATION

22 BY MR. LEE:

23 Q. Ms. Gibbs?

24 A. Yes, sir.

25 Q. If you would where do you live?

- 1 A. I live in Madison area.
- 2 Q. Okay, what do you do there?
- 3 A. I'm a teacher for the public schools of Robinson
- 4 County. I work in Fairmont.
- 5 Q. Okay, we subpoenaed you to be here today?
- 6 A. Yes, sir.
- 7 Q. How do you know Mr. Collins?
- 8 A. He's a personal friend. We have an on and off
- 9 relationship going.
- 10 Q. Do y'all date from time to time?
- 11 A. From time to time, yes.
- 12 Q. Is any of your testimony here today you're going to
- 13 give are you going to change your testimony because you
- 14 date him from time to time?
- 15 A. No.
- 16 Q. You're going to tell us the truth?
- 17 A. Yes, sir.
- 18 Q. The whole truth?
- 19 A. Yes, sir.
- 20 Q. All right. That's all we need to know. Let's me ask
- 21 you this. You got a daughter?
- 22 A. I've got a daughter, yes.
- 23 Q. Her name is Ellen Kate?
- 24 A. Yes, sir.
- 25 Q. How old is Ellen Kate?

1 A. She's ten.

2 Q. Okay, at the time this was going on in November, 2006
3 she would have been how old?

4 A. In 2006 she would have been seven or eight.

5 Q. Okay, so eight years old?

6 A. Yes, sir.

7 Q. She's a midyear baby?

8 A. She was born in October. I'm just nervous.

9 Q. Okay, that's fine. Just take a minute. Would you
10 bring Ellen Kate down from Maxton with you to Bentley's?

11 A. Oh, yes. Yes, sir.

12 Q. Okay, is it fair to say she kind of grew up around
13 dogs?

14 A. Yes, sir.

15 Q. And how many dogs did he have when she was around?

16 A. All of them that he had you know.

17 Q. Do you remember how many he had?

18 A. About five or six.

19 Q. Okay, are you a dog person?

20 A. Yeah.

21 Q. Do you own a dog?

22 A. I do.

23 Q. What kind of dog do you own?

24 A. Well, I own a couple.

25 Q. Okay, what kind of dogs are they?

1 A. I have a little Welsh Yorkie and I have had some
2 other dogs, but they died off.

3 Q. What do you have right now?

4 A. I have -- well, I have one of pups from Mr. Collins'
5 dog.

6 Q. Okay?

7 A. And she has some puppies.

8 Q. Okay, this Mr. Collins' house?

9 A. Okay.

10 Q. Would your daughter play out in the front yard?

11 A. Yes, sir.

12 Q. With whom would she play?

13 A. She played with his children.

14 Q. Do you know if she played with other children in the
15 neighborhood?

16 A. There have been other children there, and she played
17 with them, yes, sir.

18 Q. Were the dogs always around then?

19 A. Yes.

20 Q. As her mother do you concern about her being around
21 the dogs?

22 A. No, sir.

23 Q. Why weren't you concerned?

24 A. They never gave me reason. The dogs never gave me
25 any reason to be concerned about them. I was around them.

1 She was around them. They never behaved in any way that
2 caused me concern.

3 Q. Okay, was she ever unsupervised around the dogs?

4 A. Yes, sir. I left her there on occasion. I left her
5 there with that family, and you know I was not worried
6 about her.

7 Q. Do you know whether Bentley Collins fed his dogs?

8 A. Yes, sir. He fed those dogs, yes.

9 Q. How do you know he fed them?

10 A. Well, I know that he -- that he bought food very
11 regularly for them. And on occasion I would pick up the
12 food for the dogs. When I would go buy dog food for my
13 dogs it was you know, pick me up some, because where I
14 bought dog food it was less expense than where he
15 purchased it.

16 Q. Do you remember how big the bags were or anything
17 like that?

18 A. It was around a 50-pound bag.

19 Q. Do you remember -- can you give me dates? Times?
20 Places?

21 A. I was -- at that time I purchased food from Midway
22 Grocery between Rowland and Maxton. About 3-miles from
23 where I live.

24 Q. You remember what you paid for it?

25 A. Around \$15 or \$16.

1 Q. Okay, and you'd bring dog food down to Mr. Collins?

2 A. Yes, sir.

3 Q. Okay, you remember when the last time you did that
4 for him?

5 A. I don't remember. A day?

6 Q. Yes, ma'am.

7 A. I don't remember a date.

8 Q. Okay.

9 A. But I did that often. Several times.

10 Q. Before November the 3rd when was the last time you
11 and your daughter come down?

12 A. There again I don't remember about dates, but we were
13 frequent visitors at their home.

14 Q. We're talking about six months? A month? A week?

15 A. A couple of weeks, perhaps.

16 Q. Okay, did you daughter play on the trampoline with
17 the other children?

18 A. Yes, sir.

19 Q. And did you see them play?

20 A. Yes, sir.

21 Q. And did they have any of the dogs on the trampoline?

22 A. No. I don't know for sure if they had the dogs on
23 the trampoline. The dogs were there and around -- you
24 know always there.

25 Q. When you were there did you see the dogs come out in

1 the road?

2 A. No.

3 Q. You weren't there all the time?

4 A. No, I wasn't there all the time. No, sir.

5 Q. But the times you were?

6 A. Right, no, sir.

7 Q. Did you see them chase cars?

8 A. No, sir.

9 Q. Or chase along the property line?

10 A. No, sir, I never saw them do that.

11 Q. Okay, to your memory you -- you ever have them growl
12 at your daughter?

13 A. No.

14 Q. She ever come to you out of fear for the dogs?

15 A. No, sir.

16 Q. Ever been to a restaurant with Mr. Bentley?

17 A. Yes, sir, on occasion.

18 Q. What would he bring home from the restaurant?

19 A. He would grab up everybody's scraps cause he had to
20 take them to Sarge and Corporal.

21 Q. Go ahead.

22 A. He would bring them the steaks or whatever we were
23 eating. He would bring all the scraps for them.

24 Q. Okay, did you have a chance to watch him treat his
25 dogs?

1 A. Yes.

2 Q. Did you ever see him when he didn't know you were
3 watching?

4 A. Yes, sir.

5 Q. Okay, tell the jury how he treated those dogs?

6 A. Oh, he treated those dogs like they were his babies.
7 He would call them -- well, he didn't have to call them.
8 When he come they would just come running up to him, jump
9 up and kiss him in the face and stuff. And he would pet
10 them and talk to them and you know refer to himself as
11 their daddy. And he loved them to death.

12 Q. Is it fair to say that he treated them like his own
13 children?

14 A. Oh, yes.

15 Q. And did you ever see anybody come up when they were
16 able to come out and growl at them?

17 A. I've never seen those dogs growl at anyone. I'd
18 never leave my child if I was afraid of the dogs.

19 Q. But, you aren't there all the time?

20 A. No, I wasn't there all the time.

21 Q. And what did your daughter do when she heard the dogs
22 had to be put down?

23 A. She was very upset. She was very upset. She cried.
24 She cried. She still does occasionally cry about the
25 dogs.

1 Q. Will you answer any question Mr. Redmond has.

2 CROSS-EXAMINATION

3 BY MR. REDMOND:

4 Q. What does your daughter have to do with what happened
5 on November 3rd? Does that have anything to do with
6 anything, the fact that your daughter was upset about the
7 dogs? Even though that's a sad occurrence, but isn't that
8 irrelevant to what happened on November the 3rd ---

9 MR. LEE: Objection, calls for a legal question.
10 It's a matter for the Court, not the witness.

11 MR. REDMOND: Actually, it was raised by you as it
12 relates to that, and I'll be glad to rephrase it.

13 MR. LEE: Your Honor, I ask for a ruling from the
14 bench.

15 THE COURT: All right. Rephrase the question. It
16 was never answered.

17 MR. REDMOND: I'll be glad to.

18 BY MR. REDMOND:

19 Q. Were you there on the 3rd of November, 2006?

20 A. No, sir.

21 Q. Was your daughter there on the 3rd of November 2006?

22 A. No, sir.

23 Q. So you can't say what occurred or what those dogs did
24 or didn't do on the 3rd of November 2006, can you?

25 A. No, sir, I didn't say what they did.

1 Q. Exactly, cause you can't. You can't say because you
2 weren't there, right.

3 A. I was not there, no.

4 Q. In fact you can't say -- now, you can talk about what
5 you observed when you were there, but you can't talk about
6 what or how the dogs treated people when you weren't
7 around there, can you cause you weren't there? You don't
8 know how the dog treated anybody if you weren't there, can
9 you?

10 A. No.

11 Q. You can only talk what you saw, right? You did not
12 live there, did you?

13 A. No, sir, I did not live there.

14 Q. Matter of fact you didn't live in South Carolina?
15 You lived in North Carolina? You did not live in that
16 neighborhood, did you?

17 A. No, sir, I did not.

18 Q. Okay, so as it relates to what took place around the
19 neighborhood you couldn't even testify to that either,
20 could you?

21 A. No, sir.

22 Q. Okay..

23 MR. REDMOND: So with that, Your Honor, beg the
24 Court's indulgence. Your Honor, may we approach.

25

1 Richard McDonald.

2 RICHARD MCDONALD, after being duly sworn,
3 testified as follows:

4 CLERK OF COURT: Be seated in the witness box and
5 state your full name for the Court, spelling your last for
6 us, please, sir.

7 THE WITNESS: Richard E. McDonald.

8 DIRECT EXAMINATION

9 BY MR. LEE:

10 Q. Richard, if you would give the -- tell the jury where
11 you're from?

12 A. I'm from Hartsville.

13 Q. Okay, you live there with your wife?

14 A. I do.

15 Q. You have children?

16 A. Two.

17 Q. And grandchildren?

18 A. Four.

19 Q. Okay, if you would how about tell the jury your
20 educational background?

21 A. I have high school degree, two years of college.

22 Q. Okay, where are you currently employed?

23 A. I'm currently employed in Smithfield, Virginia or
24 Carrolston, Virginia with AK9I which is a company,
25 privately owned company, that trains bomb dogs for the

1 Marines.

2 Q. Okay, in addition to bomb dogs what other kinds of
3 dogs have you trained there?

4 A. We train Malawis, Belgium Shepherds, German Shepherds
5 for patrol work and guard dogs.

6 Q. Okay, you involved in the training of both animals?

7 A. Primarily with the roadside bomb dogs. I do train --
8 am involved to some degree with the bite dogs, I call
9 them.

10 Q. Have you been involved at Auburn University
11 Veterinary School?

12 A. For the past six years I have developing the roadside
13 bomb dog for the Marines and doing some other work with
14 them, but primarily with the roadside bomb dog.

15 Q. I how explain to the jury when you mean by roadside
16 bomb dogs.

17 A. The dogs are trained to find the IEDs that are buried
18 beside the road in Iraq, and Afghanistan. And these dogs
19 once trained deploy with Marines to those two places to
20 find the bombs for the Marines to proceed down any road.

21 Q. What is the national success or failure rate of those
22 dogs in Iraq? What's kind of average?

23 A. Normally, in the military dogs the failure rate is
24 roughly 20 percent.

25 Q. And what is your company's failure rate?

1 A. Less than three percent.

2 Q. Okay, what title do you hold with that company?

3 A. I am the head trainer for the IED dogs.

4 Q. Prior to going to work for the company what did you
5 do?

6 A. I trained retrievers for hunting and competition and
7 also obedience trains all breeds of dogs. I've been doing
8 that for 25 years.

9 Q. Okay, currently who's running that part of your
10 business?

11 A. My wife and we also breed dogs in that business.

12 Q. And does she whelp puppy?

13 A. Yes, she does.

14 Q. Tell the jury what whelping puppies means?

15 A. It means giving birth to puppies. Having litters of
16 puppies, and she does assist the dogs in giving the
17 births.

18 Q. Y'all have a website, don't you?

19 A. I do.

20 Q. Your website indicates you do training and?

21 A. And boarding and puppy stud service.

22 Q. That stud service, what do you mean?

23 A. I'll have a male dog available to breed females.

24 Q. Okay, before you got in the training full time did
25 you train with anybody in particular? For instance, did

1 you apprentice under another professional?

2 A. A lot of training with Bruce Jackson over in Camden,
3 South Carolina. Probably for three to four years.

4 Q. How many dogs would you say in the past 25 years that
5 you've interacted with?

6 A. Thousands. I mean normally my kennel -- I have -- I
7 had 30 runs in my kennel that normally stayed full. Dogs
8 stay anywhere from two months to several years depending
9 on what people want done with them. The obedience dogs
10 normally around six weeks, two months.

11 The competition dogs, for years. You know in and out
12 I'm sure several thousand dogs went through my place over
13 that period of time.

14 Q. Have they all been one breed or several breeds?

15 A. No, the competition dogs, all retrievers. Obedience,
16 all breeds of dogs. So of the medium and large size. I
17 don't take small dogs for training.

18 Q. That's small dogs? What do you mean?

19 A. Terrier, small dogs are -- lap dogs I call them.

20 Q. Is it that they can't take the pressure?

21 A. No, I just don't want them around the larger dogs
22 because they could get hurt.

23 Q. Okay, how many personal dogs do you have in the
24 house?

25 A. Too many. Let's see four, five, six.

1 Q. That would be what breed?

2 A. Five retrievers and a one little mixed breed hound.

3 I say little. Probably 40 pounds.

4 Q. How many dogs do y'all board or have y'all boarded in
5 the past 25 years?

6 A. Well, Kathy, my wife had a boarding kennel with 40
7 runs, and she stayed full most weekends. And a good many
8 during the week. So hundred at least. Probably more than
9 that.

10 Q. And the time ---

11 A. All bleeds.

12 Q. Okay.

13 MR. LEE: Your Honor, at this point we would tender
14 Mr. McDonald as an expert in canine behavior.

15 MR. REDMOND: No objection, Your Honor.

16 THE COURT: So qualified.

17 BY MR. LEE:

18 Q. Richard, again let's get this out the way. Are you
19 being paid anything to be here today?

20 A. No, sir.

21 Q. How about tell the jury how you know me.

22 A. I have known Robert probably for the last ten to 12
23 year. I train dogs for him and through that relationship
24 with him we have become friends, but so -- training dogs
25 for you.

1 Q. Okay, does that in any way influence what you're
2 going to tell the jury?

3 A. No, sir.

4 Q. Okay, let me ask you next. When an owner buys a dog
5 how important is it that they understand the breed their
6 getting?

7 A. It's a primary importance. That should be the number
8 one factor for buying any breed of dog. What are you
9 looking for in a dog. What are you expecting out of that
10 dog. Know what to expect out of him.

11 Q. And that falls to genetics?

12 A. Genetics. That's all it is. That's you know dogs
13 are what they are. I tell people all the time they can't
14 change what they are.

15 Q. Okay, explain to the jury, for instance, why it is we
16 pick certain lines?

17 A. Say in the Labrador line if you want working dogs you
18 want dogs with a lot of retrieve drive, high energy and by
19 looking at pedigree and knowing those pedigrees you know
20 what to expect out of the individual dogs from certain
21 breeding and because they're going to mimic the parents.
22 I mean that's what you strive for in a breeding program is
23 to reproduce the positive qualities you want in those
24 dogs.

25 Q. But tell the jury what happens for instance if a

1 family acquires a Border Collie?

2 A. Okay, so you've got children. You buy a Border
3 Collie for a pet. That's a high energy dog. It was bred
4 to herd heard animals. If that dog's energy is not
5 channeled in the right direction then the dog in the
6 family setting will start wanting to herd the children in
7 the family.

8 Kids don't want to go where the dogs what them to go
9 they will start nipping them. So here you take the dog
10 that you want for a pet that really doesn't make a good
11 pet around children for that simple reason.

12 Q. How about tell the jury what happens if lets say a
13 family of four, mother, father, two children, take a
14 Chesapeake in?

15 A. Okay, Chesapeake as a breed was developed to retrieve
16 and protect the master's belongings. No matter who came
17 up he was going to protect his master's belongings. A
18 Chesapeake gets attach to one person and one person only
19 even in the family setting.

20 So he's going to adopt one person in that family and
21 that's his person. And he will protect the person from
22 people in that family. So they get -- and they are
23 aggressive towards people. Buying a Chesapeake you have
24 got to be aware of that.

25 Q. What happens if the Chesapeake adopts one of the

1 children?

2 A. Well, then he's not going to let the parents
3 discipline the children. He's going to protect that
4 child.

5 Q. How about in retrievers. Let's -- retrievers, let's
6 use an example? Lady Margaret Quarantine, tell the jury
7 who she is.

8 A. It's a dog that you owned that was real successful in
9 competition, but she was real stand offish. Robert's wife
10 or me were the only two that would put her hands on the
11 dog, really. And when we bred her same thing was in her
12 puppies, and then we kept -- I kept one puppy out of her,
13 bred her and the grand -- the second generation from that
14 the same thing exists. So from -- so you can, like I say,
15 you look at breed and you know what to expect.

16 I know if I breed that line that I'm going to get
17 dogs with a lot of talent, but they're going to be real
18 stand offish. It's not going to take to people. Not
19 aggressive towards people because as a lab, labs aren't
20 than way. But they just don't want people to get close to
21 them. That's not what you look for in a labs. You want
22 something that's real friendly and for the purpose of
23 being a good pet.

24 Q. Okay, explain to the jury what breed law enforcement
25 use or pick? Military police would use?

1 A. The shepherd lines because they tend to be biters.
2 That's what they do. They want to bite, and given the
3 choice you know it takes very little conditioning to get
4 those dogs to bite.

5 Q. Okay, how about tell the jury about the dogs you have
6 up in Virginia now. You have some that are biters?

7 A. We do. We have ten or 12 dogs on the premises that
8 were bred to be protection dogs, slash patrol dogs.

9 Q. How about the Malawi that you have? I mispronounced
10 that.

11 A. We just like one little female named Kelly that
12 weighs probably 50, 55 pounds. I could bring her in here
13 and get her to bite anybody in this room and probably if
14 the situation was -- right circumstances. And because
15 she's -- that's bred in them it talks like I say very
16 little conditioning to get them to do that.

17 Now, she's a trained dog, and I can tell her to watch
18 you, and she will set there and watch you and that's fine.
19 If you move she's going to bite you. And you know that's
20 all she's good for is that type of thing. And if
21 something were to happen that we couldn't work her no more
22 then she would never make anybody a good pet because you
23 can't deprogram those dogs.

24 Q. How do you know you can't deprogram a dog?

25 A. Well, I know. Like in doing the research like the

1 dogs, patrol dogs they had in Vietnam military, when we
2 pulled out of Vietnam all of those dogs were euthanized.
3 They never came back to this country because there was
4 nothing you can do with them you can't adopt them out
5 because there is always the potential for them biting
6 people because that's what they're trained to do.

7 Q. The dogs y'all have in Virginia, the biting kind, not
8 the labs, but the biters, you ever interact with the
9 handlers?

10 A. Well, the handle -- the people who handle or train
11 those dogs or those handlers and in talking with them they
12 will tell you -- to the person they have all been bitten
13 by their dogs. And they will tell you they have never
14 known anybody that can train those dogs and handle them
15 that didn't get bit by the dogs they were working with.

16 Q. Okay, Richard, in preparing for your testimony today,
17 I just want to cover with you what you've seen here.
18 You've seen photographs of the dogs?

19 A. I have.

20 Q. Have you seen the euthanasia consent forms?

21 A. I have.

22 Q. Have you seen the statements of Bobby Chavis and Joey
23 Pope?

24 A. I have.

25 Q. How about aerial photographs of Mr. Collins' home?

1 A. I have.

2 Q. And one photograph of the dogs in a group?

3 A. I have.

4 Q. Have you also seen pictures of what happened to this
5 boy?

6 A. Yes, sir.

7 Q. Okay, now, if you would is it your opinion, were
8 these vicious dogs?

9 A. No, sir.

10 Q. Okay, if I tell you, as someone who knows dogs, all
11 of these dogs ate out of a common bowl. What does that
12 tell you?

13 A. Tells you they were not aggressive towards other
14 animals.

15 Q. Why?

16 A. Because if, typically, dogs eating together will
17 fight over the food. I would say more times than not.

18 Q. Okay, is -- I mean for instance your kennel do you
19 ever feeds together?

20 A. Not ever. Every dog is fed separately and totally
21 enclosed where they can't interfere with another dog
22 eating.

23 Q. How about at the house? Does Kathy feed the dogs?

24 A. My dogs raised in the house -- live in the house
25 together are fed separately.

1 Q. Okay, let me ask you this. If I told you that right
2 here there is a spot where scraps are thrown and chickens,
3 cats and dogs all eat. What does that tell you about
4 these dogs?

5 A. Well, it tells you they're not aggressive towards
6 other animals. I mean if you've got cats and chickens
7 around, if they was aggressive they would -- those other
8 animals got around them they would fight those animals to
9 keep them from getting to the food. That's what dogs
10 typically do if they are aggressive towards other animals.

11 Q. Tell me about play drive of the dogs?

12 A. Play drive the instinct to chase whatever runs from
13 them.

14 Q. Okay, so for instance what would the play drive do if
15 those dogs were not being fed?

16 A. Well, they would attack. I mean like the chickens or
17 the cats around, and if they those dogs were hungry
18 they're going to find something to eat and their going to
19 get if they can. And chasing the chicken would do it. So
20 it's a natural instinct.

21 Q. Okay. Did you understand in this case there were
22 three males?

23 A. Correct.

24 Q. Three female?

25 A. Correct.

1 Q. And the males were all intact?

2 A. Yes.

3 Q. Tell the jury what intact means?

4 A. Means they have not been neutered, breedable.

5 Q. Let me first show you the five euthanasia slips that
6 are blown up. Let's talk about the weight of those
7 animals. Before I do that, Richard, where did you grow
8 up?

9 A. In Marlboro County.

10 Q. Okay, so if you would let's look at the weights of
11 these dogs and talk about them.

12 A. Okay.

13 Q. The next what I'd like you to look at is the
14 photographs of these dogs? Okay, this is euthanasia for
15 Dog One on the right. Dog Two is on the left. This
16 animal weighs 47-pounds. If you would is this dog
17 emaciated?

18 A. By no means. You can barely see an outline of the
19 ribs. The hipbones aren't pronounced. I mean this dog to
20 me is where he should be for his weight.

21 Q. Tell me what the problem is if dogs carry too much
22 weight?

23 A. Well a lot of things can -- you know it's unhealthy.
24 But active dogs normally aren't going to be that way.
25 Dogs is pinned up, you over feeding them could be, but

1 dogs that run loose -- you know dogs better than people
2 they normally can stay in better shape.

3 Q. And you understand those dogs did run loose?

4 A. Yes.

5 Q. Let me show you this is Dog Number Two. Weighs
6 44-pounds. Tell me about the weight of this dog. Does it
7 cause you concern?

8 A. Probably a little less. That dog is leggier than the
9 first dog. It's going to make you know weight to me would
10 be fine. The hipbones aren't pronounced. The ribs aren't
11 protruding would be fine, and in that breed of dog that's
12 the look you get in the bulldog line. They're always
13 going to look like that as far as ---

14 Q. How about these ribs right here?

15 A. Well, in my dogs, the working dogs the ideal
16 condition for them is where you can see the outline of the
17 ribs. You don't want them protruding, sticking out like.

18 Q. And where does a bulldog carry his weight? Where
19 does this line carry his weight?

20 A. In his chest and up front is where his weight is
21 going to be.

22 Q. Is it fair to say it's kind of inverted?

23 A. Right. And you've got to remember, too, that these
24 dogs do have a slick coat. They don't have hair covering
25 up these areas, so you notice things about a slick coated

1 dog that you don't notice in a long haired dog.

2 Q. Long haired dogs are what?

3 A. Shepherd, shepherd line, Collie. That sort of dog.

4 Q. This is Dog Number Three over here. Thirty-six
5 pounds. This is female?

6 A. Again, same thing. The hipbones aren't protruding.
7 The ribs look fine to me. You can tell these dogs have
8 some boxer in them which typically -- I means that's the
9 perfect look for the boxer. I mean that's the way they
10 look. Healthy dogs, and I've done a hundred -- I've
11 trained a hundred boxers and all of them have that same
12 look. And I know they were healthy.

13 Q. Let me look at this. On this photograph, this
14 outline here, is that muscular or skeletal?

15 A. I think it's more muscular. I don't see the skeletal
16 there. I mean the hipbones aren't protruding through the
17 skin. You just don't see it pronounced back there. Good
18 chest up here. That dog is not underweight as far as I'm
19 concerned.

20 If you look back right behind its ribs you would like
21 to see those you know actually sunk in a little bit, and
22 that's not the case on that last dog.

23 Q. So is this dog a little bit heavy?

24 A. A little bit heavy, yes.

25 Q. This is Dog Number Four?

1 A. Okay, now this dog probably could carry a little bit
2 more weight. In looking at the dogs I'm guessing this is
3 one of the younger dogs which normally dogs don't put on
4 weight and bulk up until they get mature.

5 Q. Tell the jury what age this dog is.

6 A. Age, one year. So approximately one year old. So
7 he's not at mature dog. You don't expect him to look like
8 a mature dog. I mean he's still growing. He's leggy, but
9 you see that in young dogs.

10 Q. Let me show you along his spine. Look close to the
11 ribs and hips?

12 A. Okay, like I say that one is I think maybe a little
13 underweight, but if he's being fed with the adult dogs
14 he's going to get probably what's left. So he's not
15 probably getting enough as the same amount of food the
16 adult dogs, but he's not unhealthy.

17 Q. Okay, this is Dog Five?

18 A. Okay, then again I think that's the one -- that's one
19 of the younger dogs, and he's just like the other dogs.
20 Probably he can be carrying a little more weigh, but
21 unhealthy, no. Looks like he's got a good sheen to his
22 coat, and all I mean is he's getting the vitamins and all
23 he needs to be getting.

24 He's got a glossy coat. So you know I would say
25 that's a healthy dog. If he came into my kennel I'd

1 probably up his food a little bit, but I wouldn't be
2 concerned about it.

3 Q. Richard, let me show you a photograph if I could.
4 How about explain to the jury the significance can of this
5 photograph to you?

6 A. Okay, so someone had to take this picture. So those
7 dogs if they were aggressive, vicious dogs they wouldn't
8 be huddled up like these dogs are. They would be out with
9 the person taking the picture trying to do what vicious
10 dogs do, bite somebody.

11 I mean vicious dogs don't cowl or group up back in a
12 place like that. They won't do that.

13 Q. By way of example if I'm with a dog that y'all
14 trained to bite and I'm in the pin which way are they
15 going to go?

16 A. They're going to come to you. You don't have to come
17 to them. They go to you. They're not going to retreat.

18 Q. Okay, and the that -- I mean dogs that are vicious
19 dogs?

20 A. Vicious dog doesn't know fear.

21 Q. Okay, let me ask you this. Do dogs lie?

22 A. No, they are what they are and going to be what they
23 are.

24 Q. Okay, they can't escape that?

25 A. No, they act out of instinct. What they have been

1 conditioned to do.

2 Q. Okay, Richard, let me ask you this. The kennel you
3 have, the old one, not the new house, I'm going to try to
4 draw it. Is that 15 on each row?

5 A. Fifteen on the one to the left and 20 on the ---

6 Q. Fifteen and 20.

7 A. Fifteen on one and 20 on the other. It's a total of
8 35 runs.

9 Q. Let me ask you this. In the owner -- you train
10 owners?

11 A. I do.

12 Q. And the owners bring their children?

13 A. Yes.

14 Q. Do you allow children in here?

15 A. No, sir.

16 Q. And these are retrievers?

17 A. Yes, sir.

18 Q. All of them well socialized?

19 A. All of them.

20 Q. Well cared for?

21 A. Well cared for.

22 Q. Why wouldn't you allow the children in here?

23 A. Well, when you've got children around they're
24 easily -- if you've got dogs out there they're easily
25 knocked down. Kid -- child gets to crying and all -- the

1 prey drive takes over, and these dogs could attack that
2 child.

3 Q. Okay, let's say within these confines there is a dog
4 fight. How about tell the jury what happens in a dog
5 fight. What do dogs do?

6 A. When two dogs get in a fight and other dogs are out
7 around it whichever dog goes down on the ground the rest
8 of the dogs out pack up on that dog without exception.

9 Q. Okay?

10 A. In other words, they're dogs and they're pack
11 animals. Meaning they run in a pack and when -- once what
12 I would call prey, but whatever dog goes down the rest of
13 them just like I say pack up on it and attack the one dog.

14 Q. With when they're in that pack what rules do they
15 have?

16 A. None. It's just the alpha male, you have the
17 survival of strongest when they get that mentality.

18 Q. And would they go to the legs of the claimant?

19 A. Whatever moves. I mean if you go in and try to break
20 up a dog fight, you reach your hand in there around the
21 head you're probably going to get bitten because that's
22 what the they're doing is fighting. And whatever they see
23 move they're going to go for it.

24 Q. And they literally fight to the death?

25 A. Well, not those breeds. Not the labs, but some of

1 the dogs will.

2 Q. Okay.

3 A. And a dog could get in that situation where a dog
4 could get maimed or killed by the sheer number of dogs
5 just -- I mean dogs are involved.

6 Q. Okay, how about what -- you talked about the alpha
7 male.. What would the alpha male do?

8 A. Well, he's going to be in charge, and he's going to
9 keep the other dogs submissive to him.

10 Q. And in a fight what's he's going for?

11 A. He's going for whatever he can get, probably. You
12 know, the throat, whatever.

13 Q. Okay, let's take a child this size. Okay, where is
14 the -- let's step out at little bit so everybody can see.
15 Where is the dog fight going to occur on him physically?

16 A. It's going to be down about his knee, probably, if
17 he's down in there with it or if the dog is rearing up say
18 waist down.

19 Q. Are they going to respect him if they know him? Are
20 they going to respect him?

21 A. No, once they get to fighting, no. I'd say no
22 especially if there are several dogs involved. No. I
23 mean they're not paying any attention to him. They're
24 fighting and if he was to get involved in it and step in
25 there and try to break it up or something kid easily his

1 see could get knocked down because they would just bowl
2 him over. And once he goes down he's fair game.

3 Q. Do me a favor. Come down and show the jury what
4 would have happened if he went down?

5 (WHEREUPON, the witness steps down from the witness
6 stand.)

7 A. Okay, if you -- if he goes -- if he gets knocked
8 down, a kid this age, is probably going to start crying
9 and hollering and trying to fight the dogs off. And
10 whatever is moving the dogs, that's what they're going to
11 grab. So once he's knocked down and tries to get up or
12 whatever the dogs are going to pack up on him.

13 Q. Okay, did they go for his arms?

14 A. Whatever is moving. Probably his arms are moving
15 more and that's the first thing they're going to grab.

16 Q. What about his neck?

17 A. If he's moving around, yeah. But they're going in
18 and biting, you know just what's moving. I don't think
19 you can say I think they're not thinking of going for the
20 throat. Whatever is moving they're going in for.

21 (WHEREUPON, the witness returns to the witness
22 stand.)

23 Q. Richard, I want you to assume I give you some facts
24 and take them into consideration in your next opinion.

25 Let's say we have a dog named Oscar. What we know about

1 Oscar at this point ---

2 MR. REDMOND: Your Honor, I actually going to pose
3 the same objection he posed on me. There is an actual
4 procedure. He needs to do a hypothetical if that's what
5 he's going to do. I don't have any objection to the line
6 of the question. It's the form of the question.

7 MR. LEE: I think I can get in the underlying facts
8 and then give him a hypothetical.

9 THE COURT: All right. Go ahead.

10 BY MR. LEE:

11 Q. We have Oscar. In 2006 Oscar is two years old. He
12 is a male. He is intact. We know he's a biter. We know
13 he is not confined or chained. Now, we also believe he is
14 a neighbor's house. If you would can you tell the jury
15 what neighbor's house he was at?

16 A. He was where the female in heat was.

17 Q. And where would that be?

18 A. Would be at the Collins' place.

19 Q. Okay, how about if you would circle on this what
20 leads you to that opinion?

21 A. (Witness writes on board).

22 Q. This is Mr. Collins' yard. If in estimation how many
23 other Oscars were in that yard?

24 A. Well, I would say in the immediate vicinity any male
25 dog that was running loose was probably over there. Would

1 be -- that's just, again, go back to instinct. The female
2 is in season. That's where the male dogs are going to be.

3 Q. Okay, how strong if -- you breed dogs, don't you?

4 A. I do.

5 Q. You breed Labradors?

6 A. Labradors Retrievers, yes, sir?

7 Q. How strong is the breeding instinct in labs?

8 A. Probably as strong as any other breed, I mean.

9 Q. I mean is it any less strong than any dog?

10 A. No.

11 Q. Is it something he can fight?

12 A. No, it's an instinct. It's a natural thing.

13 Q. How about in fact if he is not intact?

14 A. Well, if he's been neutered he's still going to go
15 where the female is in heat. I mean they still -- those
16 dogs will still try to breed, but they just can't.

17 Q. Okay, but tell me what happens when one male dog
18 comes up and wants to breed a dog you've got another male?

19 A. You're going to have a dog fight.

20 Q. Okay, is that going to happen pretty much every time?

21 A. It's going to happen ever time.

22 Q. How far would the male travel to breed?

23 A. I mean I've known miles. I mean but they get -- I've
24 known people -- I've know cases where people -- where male
25 dogs can be ten miles from home, but I know the females

1 running loose they can travel with them but they still
2 within a neighborhood if there is a female in heat in the
3 neighborhood the male dogs are going there.

4 Q. Would it be fair to say -- this is an aerial view.
5 Mr. Collins lives here. Would it be fair to say that any
6 male dog in that area?

7 A. I would think so.

8 Q. So long as he's unconfined?

9 A. That is correct.

10 Q. And by confined we mean isn't chained?

11 A. Getting places where he can't get away from because
12 he's going to try.

13 Q. But if he can get there he's going to be there?

14 A. He's going to be there.

15 Q. Okay, and again when two males get together and a
16 female dog is in heat what's going to happen?

17 A. The alpha male is going to be in control and fight.

18 Q. And again when they fight are they respecters of
19 persons?

20 A. I'm sorry.

21 Q. Do they respect people?

22 A. Well, I mean their not concerned with people.

23 They're fighting, and if a person reaches in there and
24 gets close then they're probably going to get bitten if
25 they get close enough to the fighting dogs.

1 Q. If they fight how do they move?

2 A. Well, they're just all over. I mean they just --
3 they're going to be moving. Whichever one pushes the
4 other one around. They going at each other, but
5 unconcerned with what's around them.

6 Q. Okay, let's say for instance there is a dog fight
7 here. You're there and I'm here. Is it possible they're
8 going to move towards you?

9 A. No, not intentionally, but it's a possibility that
10 they just -- they're going to be moving.

11 Q. Okay, is it possible they're going to move towards
12 me?

13 A. There is always that possibility.

14 Q. Okay, you believe it -- is this your opinion that
15 there was a dog fight there that night?

16 A. My opinion, if there were male dogs running loose,
17 yes.

18 Q. Have you reviewed statements of Joey Pope and Bobby
19 Chavis?

20 A. I have.

21 Q. How about if you take a minute to read them again and
22 based on those would you tell the jury what happened in
23 your opinion. What I would like for you to do is look at
24 them in conjunction with each other?

25 MR. REDMOND: Your Honor, and based on what he's

1 asking and maybe it's not clear to me, but he's asking him
2 I think something that goes towards recreating a crime
3 scene. And he's been qualified as an expert in that
4 regard. And I guess either he needs to rephrase the
5 question or lay some more foundation. But he's being
6 asked to in essence -- I would say because the elements in
7 those statements regarding the crime scene and what
8 happened, unless he's going to deal with specific issues
9 within those statements I'd have to object, Your Honor.

10 MR. LEE: If Your Honor please, he's already
11 testified to dog fights occurring. I've asked him how the
12 dog fights occurred, based on these statements and what
13 these boys who testified as to those statement said. From
14 that he can rely on to make his opinion as to how the
15 fight occurred. That's what I'm asking him. I apologize
16 for not being clear..

17 THE COURT: Still object?

18 MR. REDMOND: Just as it relates to the dog fight.
19 If it gets anywhere else I'll have to uphold my objection.

20 THE COURT: Go ahead.

21 BY MR. LEE:

22 Q. You still need these.

23 A. I just feel like that the dog, Oscar, wasn't at home
24 we have to assume that he was with the female in season,
25 in heat.

1 Q. Okay?

2 A. And.

3 Q. Go ahead. I'm sorry.

4 A. And they went to get their dog and the dogs were
5 fighting. You're going to go over there and try to break
6 them up to get your dog. How else you going to get him.

7 Q. I'm sorry?

8 A. And you already know you've got -- Oscar is an
9 aggressive dog. We don't know that these are. I haven't
10 read anywhere where these dogs have bitten anyone. And
11 looking at the pictures I'd say they weren't vicious dogs.
12 And we know from reading what the boys say that Oscar has
13 tried to bite people.

14 So there is a good possibility that someone got
15 bitten when they tried to break up the fight.

16 Q. How about the if you would comment on Joey Pope's --
17 he says, "Dogs bit me on the back of my leg." Explain
18 that, please?

19 A. You know it seems strange to me that he got bit at --
20 you know the size of these dogs, that dog would really
21 have to jump up to bite him in the neck unless he was
22 bending over doing something. And if he didn't -- you
23 know dogs fighting, if he got bitten I would think he
24 would probably need stitches.

25 Q. Okay, and the statement here about -- and tell me how

1 the fight happened where Bobby Chavis says he grabbed him
2 and pulled him out?

3 A. Well, what if he grabbed and pulled him out.

4 Well ---

5 MR. REDMOND: Well, Your Honor, now that we've gotten
6 into the first bit of that which actually is helpful for
7 me, but now I think we're getting into a little more
8 outside the dog activity. He's asking him about pulling
9 Bobby Chavis out, but again, unless he lay some kind of
10 foundation about the behavior of the dogs being relevant
11 to that.

12 THE COURT: I'm going to give him some leeway.

13 MR. LEE:

14 Q. Go ahead.

15 A. Well, you know I would say if he 's pulling him out
16 from fighting dogs you know he's in there trying to break
17 this dog up and probably there was probably three kids
18 there and the little one got knocked down. And the two
19 big boys ran and left him there. From what you know --
20 that's what I concluded from reading everybody's
21 statement.

22 Q. And all this would have been -- all this would have
23 happened over a dog in heat?

24 A. Oh, yes, or cause that's what cause dogs to fight was
25 Oscar going over there. There was a dog in heat.

1 Q. Let's talk about the dog fights for a minute. You've
2 seen the photographs. We're not going to look at those,
3 but are those photographs to you, I mean is that what --
4 can a dog inflict those kinds of wounds.

5 A. Oh, yes.

6 Q. A dog fight would that inflict those kinds of wounds?

7 A. Well, they could, yes. A kid that size he could get
8 really mauled real quick.

9 Q. Okay, and I mean when they did when this fight
10 occurred there would be no consideration for him?

11 A. No.

12 Q. And it would just ---

13 A. I mean you've got -- they're animals and they're
14 in -- the strongest instinct that they probably have is
15 the breeding instinct. Once they got to fighting I mean
16 that's what they do. I mean that's the reason you don't
17 get in the middle of dogs when they're fighting. I mean
18 if I get I -- if I got dogs fighting I know better than to
19 stick my hand up and try to grab them around the -- grab a
20 collar or anything.

21 I would grab them by the hind legs and pull them out
22 and sling them away from the fight. That's how you break
23 dogs up. If you keep them off of your because if you grab
24 them they're going to bite you.

25 Q. This isn't based on your experience with dogs?

1 A. Based from experience. That's based ---

2 Q. My next question is based on experience. As a father
3 would a ten year old understand that?

4 A. No.

5 MR. REDMOND: Your Honor, I would object to that ---

6 THE WITNESS: A lot of adult dogs ---

7 MR. REDMOND: --- speculation. He asked him about a
8 ten year old, and I'm assuming that he's talking about
9 Matthew. That calls for speculation, Your Honor.

10 MR. LEE: I'll back up.

11 BY MR. LEE:

12 Q. You have a son, Chris? You have a son, Chris?

13 A. Yes.

14 Q. How old is Chris now?

15 A. He's 35.

16 Q. Chris lived with you when he was ten, didn't he?

17 A. Right.

18 Q. And would Chris have appreciated this?

19 MR. REDMOND: Your Honor, again, even those that's
20 his child that's still referencing somebody else.

21 MR. LEE: Okay.

22 THE COURT: Totally different. Possible background
23 now. I can't allow that.

24 BY MR. LEE:

25 Q. Finally, again Richard, couple of last things. Dogs

1 are always dogs, right?

2 A. Right, they are what they are.

3 Q. And a vicious dog is always vicious?

4 A. Correct.

5 Q. Does he have the ability to flip it on and off?

6 A. No.

7 Q. So let's say for instance the officers come to the
8 home and the dogs came out to the body of this child.
9 Would they have ever retreated?

10 A. No, dogs -- vicious dogs don't retreat.

11 Q. So it's your testimony they would have stood there?

12 A. Yes. Would have been aggressive towards anyone that
13 came up there to where they were.

14 Q. What if I told you these dogs that are huddled here
15 that and the -- now, which the body is right here; that
16 they were retreating under that porch based on people
17 shining flashlights, shining their headlights and, who,
18 who, who, making noise at them that they retreated?

19 A. I'd say no because that was things they had been
20 accustomed to. You know light, artificial light was
21 something they'd probably seen it every night of their
22 life.

23 Q. Okay, what would it take if these dogs were vicious
24 what would it have taken to get them back here?

25 A. I don't see -- I just don't see them going back in

1 there that they're vicious. They're going back there
2 because they're scared and that's their place of safety
3 right there. That's probably where they sleep and where
4 they retreated to. That's -- that was safety for them.
5 Now, you know in that situation if someone went up there
6 and put their hands in those dogs probably would have
7 bitten them because they were scared.

8 But I'll put it if they were vicious dogs, no,
9 they're not going to retreat. Vicious dogs are aggressive
10 and that means they're going to come -- they're going to
11 come get you. That's what they do.

12 Q. Well, let's say this. Again, there were three males,
13 three females. You've seen the photograph. Could three
14 males do what happened to Matthew?

15 A. Yes.

16 Q. How many dogs would do that? What are the fewest
17 number?

18 A. One. I mean one could do it given enough time, but
19 we know there is more than one dog and probably once the
20 kid went down it was a pack.

21 Q. Okay, and would that -- you said the pack. Now, if
22 the pack were here how many dogs were in the pack?

23 A. I would say we know there were six plus any male dogs
24 in the neighborhood that was running free.

25 Q. So any male dogs would come up trying to breed with

1 the female in heat?

2 A. Become part of that pack.

3 Q. And they would have joined in, too?

4 A. Yes.

5 Q. Okay, and I mean what would have got them there would
6 have been the dog in heat?

7 A. In heat.

8 Q. Now, let me give you another scenario that I want you
9 to find out. There is a road that runs here. And let's
10 say that someone rides by on a bicycle. If these are
11 vicious dogs and they come out after him what's going to
12 happen?

13 A. They're going to go get him.

14 Q. And when you say, 'get him' what are they going to
15 do?

16 A. They're going to go out in the highway where the
17 person is.

18 Q. Okay?

19 A. Unless they've been well trained by someone that
20 knows a lot about training those type dogs.

21 Q. Okay, and if the person puts the bicycle in between
22 them will that stop the dogs?

23 A. A pack of dogs, no.

24 Q. And why? What does the pack do?

25 A. They're going to surrounds they're prey and get him.

1 Q. Okay, and I mean they -- if that's what they intend
2 to do they would bring him down?

3 A. Yes.

4 Q. Okay, and they could ---

5 A. If they're vicious dogs.

6 Q. Okay, but if they're vicious dogs that's something
7 they cannot be turned off?

8 A. No, they're not going to turn it off. That's what
9 they are.

10 Q. Well, let me ask you this. This female in heat here
11 is this an instinct they can turn off?

12 A. No.

13 Q. And does this instinct take all control?

14 A. 100 percent.

15 Q. Tell me for a minute if you would about the gestation
16 cycle?

17 A. Well, now, you mean the heat cycle?

18 Q. The heat cycle?

19 A. Well, male dogs start paying attention to the female
20 several days, maybe up to a week before they actually
21 start in heat. And then they're going to stay there.
22 Rule of thumb is seven. Seven coming in, seven in and
23 seven going out.

24 But it's probably closer. Right around a month when
25 the male dogs start paying attention to the female until

1 they stop.

2 Q. Is it possible for a female to go into season and the
3 owner not know?

4 A. Yes.

5 Q. I mean is it most people think when a female dog
6 comes in season she can be bred immediately?

7 A. No.

8 Q. How does that process work?

9 A. Well, normally, in my opinion the 12th day in season
10 is the ideal time. Some females breed a little earlier
11 than that, but with my experience with not helping the
12 male breed then the 12th day is the magic day.

13 Q. But does the dog have any sense of time?

14 A. No.

15 Q. Does the dog have any way of logically counting the
16 days?

17 A. No, just you know, experienced breeder will know when
18 the dog is ready to breed. I guess by smell, but the
19 time, no, not time.

20 Q. How about a two year old male? Is he going ---

21 A. Well, then the youngest that dog is he's going to as
22 soon as that dog gets to giving off the odor of being in
23 heat he's going to be there.

24 Q. Okay, how about answer any questions Mr. Redmond has.

25 MR. REDMOND: Thank you, Your Honor. May it please

1 the Court.

2 CROSS-EXAMINATION

3 BY MR. REDMOND:

4 Q. Mr. McDonald, your testimony supposes that this dog
5 in heat, because Mr. Lee didn't ask you about this
6 neighborhood. Isn't it possible that there are several
7 other female dogs within that whole area that also maybe
8 in heat?

9 A. Well, I'm sure that would be a possibility.

10 Q. And isn't that possible then that every male dog in
11 that area isn't necessarily converging on this one dog?
12 In other words, we don't know, do we? We don't know that.
13 You cannot definitively say that this was the only female
14 dog in heat at that time?

15 A. But we can say she was in heat.

16 Q. She was in heat. That's fine. But you can't say ---

17 A. But we know she was the closest female in heat to the
18 dog across the road -- across the field.

19 Q. But aren't dogs territorial, sir?

20 A. To a certain degree, yes.

21 Q. I mean they're going -- in other words if you've got
22 a male dog, and you've testified to the fact that you've
23 got three -- there were other male dogs right there on the
24 property?

25 A. Right.

1 Q. So they're just going to let Oscar, since Oscar seems
2 to be the dog of the moment, they're just going to let
3 Oscar walk on their property ---

4 A. That's what causes dog fights.

5 Q. --- and ---

6 MR. LEE: If Your Honor, please, I don't mind Mr.
7 Redmond crossing him. He can badger him all he wants to,
8 but let him finish his question.

9 MR. REDMOND: And I don't have any problem with that.

10 BY MR. REDMOND:

11 Q. Did you need the finish your answer to that?

12 A. Well, you were asking the questions. If you want me
13 to.

14 Q. Well, how about this. Oscar. We've only talked
15 about one dog, right, Oscar? One dog, right?

16 A. No, From ---

17 Q. Well, I mean you were asked specifically about this
18 dog, Oscar.

19 A. I was also asked if -- would any other dog, male dog,
20 in that neighborhood where would they be.

21 Q. They would be with the female dog in heat?

22 A. That's exactly right.

23 Q. But we don't know if that was the only female dog in
24 heat?

25 A. We know that there was one in heat in the Collin's

1 yard.

2 Q. Please, sir. Answer my question.

3 A. I did.

4 Q. We don't know if that's the only female dog in heat
5 in that neighborhood. It's a simple question.

6 A. Only thing I know for sure it was one in the Collins'
7 yard in heat.

8 Q. In other words, I'm not getting an answer to my
9 question. I'll move on. Now, you talked about the fact,
10 too, that the pack mentality. In other words and let's
11 make sure I got this right. You testified on direct that
12 the fact that they knew anybody -- I think you
13 demonstrated that the defendant's son. The fact that they
14 knew that person wouldn't have mattered when they got into
15 their prey mode.

16 You talked about going for the legs and he
17 demonstrated that you would have bite marks on the legs,
18 arms and neck. Isn't that's what you testified to?

19 A. I testified that once those dogs got to fighting and
20 a small person got in close and got knocked down then,
21 yes, the dogs -- those wounds could have been inflicted.

22 Q. Did you see the autopsy photos, sir?

23 A. Yes, sir, I did.

24 Q. Wouldn't that be pretty much the range of damage that
25 you see on those autopsy photos?

1 A. Most of it was upper part above the waist.

2 Q. But there were bite marks on the legs?

3 A. But nothing close to what was up here.

4 Q. Actually. This is where the consumption took place,
5 right?

6 A. Yes.

7 Q. That would be fair to say; that was assumption that
8 took place up -- further up. And I think you referred to
9 it as being in prey mode. That's your term not mine.
10 Prey mode?

11 A. No, I didn't see that there. No, that's not what I
12 said.

13 Q. Okay, tell me what you said?

14 A. I said when the kid got knocked down he was part of
15 the dog fight then. That's -- that was -- the dogs don't
16 tell the difference. They don't discriminate between a
17 person, and the dog once that -- once they get involved in
18 a fight.

19 Q. And you said also that dogs tend to fight over food.
20 In other words if there was food in, you've got six dogs,
21 they're going to fight over the food?

22 A. No, I didn't say they were going to fight for food.
23 I said there was a good opportunity for it to happen.

24 Q. In other words it is very possible that that could
25 happen?

1 A. It's possible, yes, sir.

2 Q. And, now, you made the comment about these not being
3 vicious dogs, and what is a vicious dog in your opinion?
4 How would you define a vicious dog?

5 A. A vicious dog is a dog that's going to bite people or
6 any other animal that gets around them. They're going to
7 be aggressive with them. In other words they're going to
8 attack.

9 Q. And you're saying, and I think you were shown that
10 picture, that if, let's say a ten year old is going to be
11 a lot smaller than say me, an over 30 year-old?

12 A. I would say so.

13 Q. Now, that being the case if you've got say several
14 law enforcement officers, some whom we've seen testify are
15 pretty big, you're saying that the dogs are not going to
16 have any -- if they're truly vicious dogs, they're not
17 going to stop? They're going to keep going regardless?

18 A. Have no fear.

19 Q. No fear at all?

20 A. No, sir.

21 Q. Whatsoever? Under no circumstances?

22 A. No, sir.

23 Q. That's what you're telling me right now?

24 A. That's been my experience.

25 Q. All right. Now, wouldn't it also be fair to say,

1 too, that the dogs are going to protect their prey. I
2 mean if they have brought down something and they have
3 consumed it aren't dogs territorial? Aren't they going to
4 protect their prey?

5 A. Not necessarily.

6 Q. So they will kill something and not protect it. If
7 they wouldn't protect their prey why fight over it?

8 A. They're not fighting over it. Who said they were
9 fighting over it?

10 Q. No, you said they could fight over it?

11 A. Over what?

12 Q. Over prey. In other words ---

13 A. No. No. No. No. I did not say that. I never said
14 that.

15 MR. LEE: If Your Honor, please, if they would just
16 if one would allow the other to finish.

17 THE WITNESS: I've never said they fight over prey.
18 That fight over food.

19 BY MR. REDMOND:

20 Q. Prey. What's the difference?

21 A. Prey not necessarily mean food. I mean retrieves
22 retrieve and bring it back to the owners. Hounds chase,
23 and when you kill it they -- if the hunter kills the game
24 they quit chasing it at that time.

25 Q. Well, I appreciate you making me rethink my

1 definition of prey that I've had all my life.

2 MR. LEE: Your Honor, please.

3 MR. REDMOND: I will ---

4 MR. LEE: There is civility and this is crossing the
5 line.

6 MR. REDMOND: I'll move on, Your Honor.

7 THE COURT: All right.

8 BY MR. REDMOND:

9 Q. You also talk about the dog bites needing stitches.
10 Now, you've trained dogs for many, many year as you've
11 testified to.

12 A. Yes, sir.

13 Q. And Mr. Lee asked you about you know, well, if the
14 dog bites you you're going to need stitches. So every
15 time -- I'm assuming you've been bitten before in the
16 course of your training?

17 A. I have.

18 Q. And every time you got bitten you went to the
19 hospital and got stitches?

20 A. I don't -- typically, I don't train vicious dogs. I
21 don't do that. That's not what I do, but I know people --
22 I know the trainers that train "vicious" dogs. Yeah, when
23 they get bit they're going to get stitches.

24 Q. So you don't train vicious dogs. Is that what you
25 just said?

1 A. I don't train -- Typically is what I said.

2 Q. Typically you don't train vicious dogs, but we spent
3 time talking about what is and what is not vicious?

4 A. Correct.

5 MR. REDMOND: I have nothing further for this
6 witness, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. LEE:

9 Q. Richard, let me ask you this. With regards to
10 training, training vicious dogs. You define vicious dog
11 as what?

12 A. Ones that are aggressive towards people or other
13 animals without being teased or pushed into it.

14 Q. And so, basically, you don't train those kinds of
15 dogs?

16 A. No.

17 Q. But you do train dogs ---

18 A. That bite.

19 Q. --- that bite?

20 A. Yes, sir.

21 Q. Okay, and the big deal was made that there might be
22 other females in the area. How many females do we know
23 was in the area?

24 A. One.

25 Q. And ---

1 A. That was in heat.

2 Q. And in fact this is a -- let me do one better than
3 that. Let's look at State's Exhibit Number Eight. Is
4 that an accurate copy of this or is this an accurate copy
5 of that?

6 A. Yes, sir.

7 Q. And that's the State's Exhibit?

8 A. Correct.

9 Q. Dog Number Five is a female. Is she in heat?

10 A. No.

11 Q. Dog Number One, he's a male. So we know he's not in
12 heat?

13 A. No.

14 Q. Dog Number Two, he's another male?

15 A. So.

16 Q. Dog Number Four, she's female?

17 A. Female. Not in heat.

18 Q. Okay, so only dog is in heat is Dog Number Three?

19 A. That we know of, yes.

20 Q. And, granted, dogs are coming from miles to breed a
21 dog?

22 A. Correct.

23 Q. And is there any limit to -- what's the limit on the
24 number of dogs that will come find a female?

25 A. I guess the -- what the limit is if they know there

1 is a female in season there is a number of dogs that know
2 there is a female in season.

3 Q. How strong is the dog's sense of smell with regards
4 to that?

5 A. Phenomenal. I mean it's a hundred -- Hundreds of
6 times better than humans.

7 Q. Okay, and so if there are other females there in the
8 area in heat they would be drawing males, too? The males
9 would be drawn to this yard?

10 A. Yeah, but -- so -- but if there are other females in
11 heat I wonder why the males in this yard didn't go to
12 the -- you know leave.

13 Q. Now, if ---

14 A. If she -you know unless they all came in at the same
15 time.

16 Q. Well, let me ask you this. Let's go back to that
17 alpha male thing. Okay, this is a male. This is a male.
18 Unfortunately, the other male is gone, but let's assume
19 for a second that neither of the dogs is the alpha male,
20 okay. Where would they go if there are other dogs in the
21 neighborhood in heat?

22 A. They would probably be driven off and go to easier
23 places -- better place. If they were not the alpha males
24 here I would say that they would go somewhere else if they
25 thought they could smell a female in heat.

1 Q. Okay, because what is an alpha male do?

2 A. He's in charge and he's going to fight those dogs
3 off.

4 Q. Now ---

5 A. But you know what strikes me as odd. You've got a
6 female in heat. You've got dogs people say are vicious,
7 but these young male dogs aren't cut up from being
8 attacked over a female in heat.

9 Q. What interests you about that?

10 A. Well, you would -- I mean if the dogs, the way they
11 fight over females in heat, I would think they would be,
12 the dogs, would be all cut up, the younger males, from
13 trying to get around the female cause they're going to try
14 to.

15 Q. Okay, now, you talked to Mr. Redmond. He made a
16 thing about prey. How about explain to the jury what you
17 mean by prey?

18 A. Prey is something that the dog wants to chase. Not
19 necessarily kill but just prey drive. I didn't say kill.
20 Prey. I said prey drive and that means to chase after
21 something. Like you throw a tennis ball or whatever for a
22 retriever, their prey drive gets them to chase after it.

23 Q. And let's talk about retrievers and retrievers are
24 bred to do what?

25 A. To retrieve.

1 Q. What are they bred to retrieve?

2 A. Game. Ducks, doves, whatever the -- you shoot you
3 know within reason for its size. Probably they would
4 retrieve a rabbit, a squirrel, whatever they can pick up.

5 Q. Okay, we talked about hounds. What are they bred to
6 retrieve?

7 A. They chase.

8 Q. They chase. And what happens when they catch their
9 prey?

10 A. Well, typically, the hunter shoots it and then they
11 leave it alone and go chase something else.

12 Q. Okay, just because, you know, prey does not equate to
13 food?

14 A. No.

15 Q. When we were talking about the dog being fed out of
16 the same dog pan, how is that different from this
17 situation as far as dogs being aggressive and not being
18 aggressive?

19 A. Say again. I didn't understand.

20 Q. Mr. Redmond asked you about the dogs all being fed
21 out the same dog pan. And the fact that you testified
22 that that is an indication that they weren't vicious?

23 A. Right again. You feed them out of the two dishes,
24 you feed six dogs out of the two or three dishes and you
25 got young males that are not cut up or scarred up they're

1 eating with the older dogs. So back at the kennel where I
2 work if I took the ten shepherd type dogs out and put
3 three dishes of food out there wouldn't be any eating
4 going on. They would be fighting until wouldn't be but
5 three left to eat or one.

6 Q. Let me ask you this. Does that mean that the dogs
7 are starved because they're fighting over the food pan?

8 A. No, it's instinct. It's the pack mentality, the
9 strong and weak first.

10 Q. Okay, let's go back and we can talk about -- we were
11 talking about the dog fight. If Matthew getting knocked
12 down. Okay, once he's on the ground who is the weakest
13 person? Who's the weakest animal there?

14 A. Matthew. And the rest of the dogs are going to pack
15 up on him. And it's not a -- at that point he becomes the
16 weak animal in the pack and then they try to destroy it.

17 Q. So, literally, he joined the pack?

18 A. Um hum. As far as the dogs are concerned. He's in
19 the pack once he puts his hand or got involved in that.
20 He was part of the pack.

21 Q. And he could have become unintentionally involved,
22 couldn't he?

23 A. Correct. I'm sure. Yeah.

24 Q. And these other dogs who would be coming up, the dog
25 in heat, they would be in the pack?

1 A. Correct.

2 Q. He would have always been the weakest animal?

3 A. Correct.

4 Q. Answer any questions Mr. Redmond has.

5 RECROSS-EXAMINATION

6 BY MR. REDMOND:

7 Q. From what you've been told Oscar is a lab, right?

8 A. No -- well ---

9 Q. Oscar is not a lab?

10 A. Well, from the testimony yesterday that I looked over
11 it was said that he was part pit.

12 Q. Oscar. From the testimony you looked over
13 yesterday -- were you here yesterday?

14 A. No.

15 Q. The Defense, I guess it provided you information on
16 the testimony, right?

17 A. Yeah.

18 Q. Yeah, they did.

19 MR. REDMOND: That's all I have.

20 FURTHER REDIRECT EXAMINATION

21 BY MR. LEE:

22 Q. Richard, I in fact informed you that Taylor said like
23 pit bull?

24 A. Yes, somebody told me that. I'm not going to say. I
25 don't know who, but it's safe to assume that cause a dog

1 is black he's not a lab.

2 Q. Let me ask you about that real quick.

3 MR. REDMOND: Your Honor, is this -- and I'm just
4 citing the rules. On recross I just got into one issue.
5 And my understanding is that redirect or recross issues
6 are based on issues that were brought up on recross. So I
7 don't know if you're getting back into something that's
8 already been ---

9 MR. LEE: No. No. No. I -- he wants to know on
10 recross about was the lab or ---

11 BY MR. LEE:

12 Q. I'm just dealing with was it a lab or a boxer. A lab
13 or a pit. In the end would it matter if the black dog ---

14 A. No, it wouldn't matter. He's a large black dog and
15 he's a part of it. You know he's a male dog. Dogs in
16 heat. He's over there. If there's a dog fight he's
17 involved in it. If Matthew get knocked down he's a part
18 of it.

19 Q. Okay, thank you.

20 MR. LEE: That's all I have.

21 MR. REDMOND: Nothing further, Your Honor.

22 THE COURT: You may step down. We're going to take a
23 brief recess. The jury step back to the jury room.

24 (WHEREUPON, the jury was excused from the courtroom
25 at 11:59 a.m.)

1 Two?

2 MR. LEE: One more and then we have to make a
3 definitive decision with Mr. Collins, and again, I will
4 make that on the record if Your Honor, please.

5 THE COURT: Let's go with in the morning cause we
6 could get in a situation where we would be up here way
7 into the evening.

8 MR. REDMOND: That's fine, Judge. I have no
9 objection to that.

10 THE COURT: All right. We'll break until 1:30.

11 (WHEREUPON, Court was in recess at 12:11 p.m. and
12 reconvened at 1:40 p.m.)

13 THE COURT: Ready for the jury?

14 MR. LEE: Yes, sir.

15 MR. REDMOND: State is ready.

16 (WHEREUPON, the jury panel enters the courtroom at
17 1:40 p.m.)

18 THE COURT: All right.

19 MR. LEE: Your Honor, at this time we call Eldridge
20 Cropper.

21 ELBRIDGE CROPPER, after being duly sworn,
22 testified as follows:

23 CLERK OF COURT: Be seated and state your full name
24 for the Court, sir, spelling your last.

25 THE WITNESS: I'm sorry, ma'am. I have a little

1 trouble hearing. Could you say that again?

2 CLERK OF COURT: Will you repeat your full name,
3 please, sir.

4 THE WITNESS: Yes, my full name is Elbridge,
5 E-L-B-R-I-D-G-E. W. Cropper, C-R-O-P-P-E-R.

6 DIRECT EXAMINATION

7 BY MR. LEE:

8 Q. Newt, you go -- how about tell the jury what you go
9 by. What name you go by?

10 A. I go by the name Newt.

11 Q. Okay?

12 A. I don't need to explain that, do I?

13 Q. No, sir. Newt, if you would how about tell the jury
14 where you're from?

15 A. I'm from Ocean City, Maryland and I was born on and
16 raised in Ocean City, and right now I residing in
17 Hartsville, South Carolina. I'm here January through
18 April of each year.

19 Q. Okay, Newt, let me ask you this. How involved in the
20 breeding of dogs are you?

21 A. I spent 40 of my 70 years involved with dogs. Mainly
22 breeding dogs. Helping other people and assisting in
23 breeding dogs. And so during -- probably bred a thousand
24 or more different dogs in my life.

25 Q. Okay, how many stud dogs have you owned?

1 A. I've personally owned probably 15. Around 15 I'd
2 say. Somewhere between 12 and 15 of my own personal stud
3 dogs.

4 Q. Okay, specifically what breed of dog do you own?

5 A. Mostly all Labradors. I have bred other dogs. Not
6 man that weren't labs, but 99.9 percent of the time they
7 are Labradors. Either yellow, brown or black.

8 Q. Have you been responsible for the development of a
9 line of dogs within the breed of Labrador?

10 A. Yes, when I first got into the game the yellow string
11 of Labradors were kind of frowned upon. A little bit like
12 a Republican sometimes, and they would not -- were not
13 accepted as a first top line of dogs.

14 They weren't readily asked to be used as stud dogs,
15 but through the training I was very fortunate. I had a
16 lot of help, and I trained yellow labs that two of them
17 where in the bird dog thing today and they had bred
18 probably 500 times or more.

19 Q. Is it 500 a piece or 500 together?

20 A. I would say, Houston, the older of the two, probably
21 around \$300 to \$500. The yellow one about \$200 to \$300.

22 Q. If you don't mind to give the jury perspective what
23 is a stud fee run for a Labrador of your caliber?

24 A. The stud fee today of a caliber dog would be -- it
25 depends somewhat on the bitch, but actually most of them

1 are anywhere between \$2,000 and \$5,000 stud fee. That
2 doesn't cover expenses for travel or veterinary bills and
3 preparation from medical records for the dogs is bled.

4 Q. Newt, you used the term 'bitch'. Would you please
5 explain ---

6 A. Oh?

7 Q. --- to the jury what that is and what -- if you're
8 going to use it can you explain why?

9 A. I'm sorry and I apologize. When I use the word
10 'bitch' that is the proper name for is a female dog. I'm
11 sorry. I don't mean to be disrespectful, but correctly
12 that is the name. And after using it for 40 something
13 years I just call a female dog what the proper name is
14 which is bitch.

15 Q. Okay, let's talk about Houston. That would be FCASC
16 Kennelwoods M.D. Houston, correct?

17 A. That is correct.

18 Q. And Houston is in the Hall of Fame?

19 A. Yes, sir.

20 Q. And in the Labrador world, how about other than -- we
21 have the Houston line of dogs, correct?

22 A. That is correct.

23 Q. And we would find most yellow labs of any standing
24 Houston bred into them?

25 A. There are very few that somewhere in their background

1 their pedigreed. Houston would not be there.

2 Q. How about -- what is it? Tell me Cropper's full
3 name?

4 A. M -- Cropper's full name is Cropper.

5 Q. MD.

6 A. MD. MD Houston and Cotton Picking Cropper. That's
7 father and son. I get them confused sometimes. That's MD
8 Houston and a lot of people think MD is something medical,
9 but it wasn't. It was dog I bought from the lady there
10 and her name was MD. And so that's how I got that.

11 And Cropper, I got -- Cropper came from South
12 Carolina, and he was named Cotton Picking Cropper and he
13 became one of the stop yellow stud dogs in the country for
14 several years.

15 Q. If in fact with Cropper you end up winning the
16 national name in the field trials?

17 A. I did win national with Cropper. And can I explain
18 to them what the nationals is ---

19 Q. Yes.

20 A. --- cause it doesn't sound like much win you say win
21 a national, but actually, there is like 22 -- \$20,000 a
22 year competing and the field trial grams. Out of those
23 22,000 you have probably 90 to 120 that will qualify for a
24 national. So that gives you a pretty good idea of what
25 the odds are of our getting qualified.

1 Fortunately, I've had a dog qualified or as high as
2 three dogs qualify. I guess 30 of the last 40 years, and
3 I won the national with Cotton Picking Cropper.

4 Q. And you're not a professional, are you? A
5 professional dog trainer?

6 A. No, I'm not a professional and the difference between
7 a professional and non-professional in the dog training
8 game is this. If you own a dog you bring it to me. I
9 train it for you. You pay me. Then I become a
10 professional.

11 If you come to me with your dog and want me to help
12 you with your dog because I'm training my own dogs every
13 day with the intentions of competing throughout the United
14 States. Therefore, a lot of people who know of my success
15 with the dogs will come or call and travel as high as a
16 1,000 miles to bring their dog for two or three week for
17 me to help them, so therefore, I will not charge them.
18 I'm not qualified -- not qualified. Or I'm not listed as
19 a professional. I'm an amateur.

20 Q. Okay, let's go ahead and get this out of the way.
21 How do you and I know each other?

22 A. Robert Lee and I have been friends I guess for 30
23 years or so, and actually, he was lucky enough to own one
24 of my better dogs. I should have kept it.

25 Q. In fact I beat you in amateur here, didn't I?

1 A. See, I wasn't going to bring that up.

2 Q. Let me ask you this, Newt. Let's talk strictly
3 breeding. How many dogs have you bred?

4 A. How many dogs have I bred?

5 Q. Yes.

6 A. I don't know exactly, but I feel quite confident that
7 I've bred over a thousand because at one time we would
8 have as high as five bitches on the premises at a time to
9 be bred to those two dogs. And so there was two or three
10 breedings going on a day during those years.

11 Q. And you kind of eluded to it before. Are there
12 instances where people ship dogs in to you to be bred?

13 A. Yes, there have been situations where Joe and Ann had
14 a male dog that they wanted bred, and they took it to
15 someone else to get it bred. And they just weren't
16 getting the job done so to speak. And you've got a very
17 limited amount of time. And in that timeframe if you
18 didn't get that breeding at the correct -- even if you get
19 the breeding if you don't get it at the correct time they
20 don't seed.

21 And, of course, if the don't seed they don't have
22 puppies. So I have had people through the years -- I've
23 had people come from Ocean City or Vermont or wherever all
24 the way up here in Hartsville to bring a dog for the
25 purpose of getting it bred even though the male and the

1 female weren't my dogs. They weren't mine at all. It
2 was a case that they needed assistance to getting the dogs
3 together and getting them bred.

4 Q. Are you consulted by professionals about dog breeding
5 and how to get dog bred?

6 A. Yes, I have been consulted many times by the
7 professionals.

8 Q. How many amateurs consulted you?

9 A. I don't know. Well, I don't know how many amateurs
10 there are on the east coast but there are not many that at
11 one time or another in the 30 or 40 years that haven't
12 consulted or talked to me about breeding a dog or having a
13 dog bred.

14 Q. Do you read extensively about dog breeding and
15 genetics, those kinds of things?

16 A. I read some, yes. I've read a lot through the years.

17 Q. Specifically, going to other things. In dealing with
18 stud dogs are you -- how many stud dogs have you dealt
19 with that are around the females in heat?

20 A. How many dogs have I dealt with that are around dogs
21 that are in heat? It depends on what time of the year
22 that dog may be, but practically all of them at one time
23 or another if I've had that dog six or seven or eight or
24 ten years at one time or another that male dog has been
25 around a bitch in heat.

1 Q. And are you familiar of the way a male dog conducts
2 himself around a female in heat?

3 A. Yes, I am.

4 Q. Okay?

5 MR. LEE: Your Honor, at this time I would tender Mr.
6 Cropper as an expert in animal and canine behavior
7 specifically with regard to breeding when that dog is
8 bred.

9 THE COURT: Just that limit?

10 MR. LEE: Just that limit.

11 THE COURT: Solicitor?

12 MR. REDMOND: I have a couple of questions, Your
13 Honor.

14 THE COURT: All right.

15 BY MR. REDMOND:

16 Q. And you said that I've got written down here that
17 this is all related to Labradors; that you've done all of
18 your studying with Labradors as far as breeding?

19 A. I think I said all except for a couple of exceptions,
20 yes.

21 Q. Okay, but other than that?

22 A. Yes, that's correct.

23 MR. REDMOND: As long as it's restricted to
24 Labradors.

25 THE COURT: So qualified. Go ahead.

1 BY MR. LEE:

2 Q. Newt, if I can in preparing for your testimony today
3 you looked at the euthanasia reports?

4 A. Yes.

5 Q. You've seen photographs of the dogs?

6 A. Yes.

7 Q. Okay, you've seen a photograph of Mr. Collins' home?

8 A. Yes.

9 Q. Okay?

10 A. Yes.

11 Q. Let me show you what's been marked or is in evidence
12 as State's Exhibit Number Eight?

13 MR. REDMOND: Your Honor, based on what he's just put
14 up on there I would need more of a foundation. We may
15 need to take up an issue as it relates to his ability to
16 testify because I don't see a Labrador right there that
17 he's about to testify to.

18 THE COURT: All right. Let's try.

19 BY MR. LEE:

20 Q. Let me ask you a question.

21 MR. LEE: I'll clear it up, Your Honor.

22 BY MR. LEE:

23 Q. How anatomically different is let's say this dog from
24 a Labrador?

25 A. None.

1 Q. They got four legs?

2 A. Expect Labradors mostly have a full tail.

3 Q. Okay, but I mean as far as how they're bred?

4 A. By their size, frame, a confirmation. Basically the
5 same as a Labrador.

6 Q. Okay, for instance just because this is not a
7 Labrador Retrieve would it be bred any different?

8 A. No.

9 Q. I mean the whole conception process would take care
10 of itself?

11 A. Absolutely.

12 Q. All right. Okay.

13 MR. REDMOND: Right now I'm just going to see where
14 he goes. I don't know that I'm satisfied, but I just
15 going to, maybe out of an abundance of caution I may need
16 to do a proffer with this. I've got some concerns as it
17 relates to what he testified to mostly with Labradors and
18 we're getting into other types of dogs.

19 MR. LEE: I think ---

20 THE COURT: Let me pose a question. As far as
21 breeding purposes of any breed of dog are they all
22 generally the same or are some distinct differences that
23 may come to play in a situation where you have a bull dog
24 or a boxer compared to a Labrador? I think that's going
25 to probably be the crucial issue that y'all are after.

1 THE WITNESS: Your Honor, the characteristics of
2 breeding to the best of my knowledge is the same with all
3 dogs. I know of no difference between greyhound, German
4 shepherd when it comes to how the bitch comes into heat,
5 what her ovulation is, and how and when she should be bred
6 and the behavior of her and the male during this timeframe
7 whether it be Labrador or German shepherd or whatever.

8 THE COURT: All right. With that said do you want to
9 proffer? Further proffer?

10 MR. REDMOND: I do.

11 THE COURT: Ladies and gentlemen of the jury, if
12 y'all would step out just for a minute or two, please.

13 (WHEREUPON, the jury was excused from the courtroom
14 at 1:52 p.m.)

15 MR. LEE: How ---

16 THE COURT: Go ahead wherever you need to with it,
17 and the Solicitor can come back.

18 PROFFER EXAMINATION

19 BY MR. LEE:

20 Q. Newt, let me ask you this, and what we're doing is
21 you give your opinion to the Court and they decide whether
22 or not you can give it. So you understand what we're
23 doing?

24 A. You're going to have to speak up, Robert Lee.

25 Q. I'm going to ask your opinions about what you're

1 going to testify to and we'll go through it now and we may
2 go through it again?

3 A. Okay.

4 Q. Within dogs, all dogs, is there -- that are grouped
5 together is there an alpha dog?

6 A. 99 percent of the time there is. If there is a bitch
7 in heat and there is another group of dogs with that bitch
8 in heat 99 percent of the time there is an alpha dog. We
9 call them dominant dogs.

10 Q. Okay, so there is a dominant dog?

11 A. Yes, sir.

12 Q. In this case, based on what is in evidence, the
13 State's Exhibit Number Eight ---

14 A. Yes.

15 Q. --- does it indicate that they had -- you have a
16 female dog in heat?

17 A. It does.

18 Q. Okay, now, when you have a group of dogs together and
19 one female is in heat tell me what happens within the
20 pecking order?

21 A. If you have a group of male dogs and you have a
22 female in heat and they are -- she's in the stage of where
23 she's getting close to ovulation those dogs will pack with
24 her. They will protect her, and they will have what you
25 might call a placing order. The best example I can give

1 you is if you've ridden down the street or highway or road
2 whatever and you see a pack of dogs with a bitch in heat
3 you will usually see four or five male dogs with her.

4 Amongst those four or five male dogs, you stop your
5 truck or your car to go get that female there is going to
6 be one dominant male in that group. And if he comes after
7 you most of the time the rest of them will, too.

8 Q. Okay, for purposes of your testimony here this is a
9 picture of Mr. Collins' home?

10 A. Yes, sir.

11 Q. As part of your testimony you've seen the photographs
12 of what these dogs did or what the dogs did?

13 A. Yes, I have.

14 Q. Okay, and you've read the statements of the Chavis
15 boy and the Pope boy?

16 A. I did read those, yes.

17 Q. Okay, now, for purposes of your opinion let's say if
18 a child is coming down this road and enters this yard with
19 this pack of dogs protecting their bitch in heat how about
20 explain what will happen?

21 A. If there is a pack of dogs that bitch has been with
22 and lived with and is in heat and especially if they have
23 already started to breed her as they will. And they will
24 stand and watch the other dog breed. If it's their dog,
25 their bitch, their domicile, then if somebody regardless

1 of who invade that territory which unless they be highly,
2 highly recognized by them they would protect and come out
3 and they would go after whoever or whatever was coming in
4 to invade their domicile.

5 Q. Is it -- what do they consider her to be? The bitch
6 in heat? What do the other males consider her to be?

7 A. Actually, a bitch if in heat, rule of thumb is seven
8 days coming in, seven days in, seven going out. The male
9 dogs on a scale of one to a hundred the first two or three
10 days will probably be in the category of a three to 15 to
11 20.

12 And as she progresses until she starts to ovulate
13 they will become more demanding, but she will not breed
14 until, even though they're all there, they're all wanting
15 to breed her, She will probably won't breed until --
16 unless she's forced to until she's within we'll say the
17 sixth day. Probably be the fifth or sixth day around the
18 earliest.

19 And then she will breed on through. If she's not
20 more than seven, eight years old she will breed on through
21 until probably 14th, 15th day, and then she will go out of
22 her ovulation and start out of her heat cycle.

23 Q. Okay, the males who have claimed her as their
24 property, correct?

25 A. Say that again.

1 Q. They will have claimed her as their property?

2 A. Absolutely.

3 Q. If another dog enters they will attack, correct?

4 A. Correct.

5 Q. Does it have to be a dog?

6 A. Of course not.

7 Q. Okay, explain that if you would?

8 A. Once they have established their domicile which is in
9 this case in my opinion this yard, this house, this area,
10 is their domicile. That bitch in heat is part of their
11 private property and pack.

12 And so therefore anything that comes into that yard
13 will probably be challenged. And at that point it's up to
14 what it is or who it is as to what the final results could
15 be.

16 Q. Okay, what if me had a child that entered the yard?
17 What if the child -- you have the child that enters the
18 yard?

19 A. Uh hum.

20 Q. What will the pack do?

21 A. If the child enters the yard the pack would, wherever
22 they may have -- may be on that property at that time will
23 come out. And in all probability if the child doesn't
24 know any better he would be surprised and would be
25 attacked and once he is attacked, if he's attack viciously

1 enough that the time, if he's attacked the other dogs are
2 going to follow and they're going attack at the same time.

3 Q. Okay, let's talk about the male dog behavior when a
4 bitch comes into season?

5 A. Correct.

6 Q. Okay, tell me what it does to their appetite?

7 A. A male dog, which I have two right now, a lot of
8 times will actually lose their appetite because they're
9 more concerned about the breeding than they are anything
10 else. In normal -- I mean in a normal they still eat. It
11 will still eat, but assuming that a dog is eating 16
12 ounces or 12 ounces a day and if he's got a bitch in heat
13 or going to be breeding he will fall off his appetite some
14 during that cycle.

15 Q. How about working dogs in terms of what do they do as
16 far as their ability to perform?

17 A. They don't perform nearly as well. The fact is they,
18 in the American Kennel Club, there is a definite rule
19 throughout the United States that you are not even allowed
20 to have a bitch in heat on the grounds because it disturbs
21 the dogs and a lot of different aspects: Behavior,
22 eating, viciousness, the whole thing.

23 Q. But, well, two males competing for the same female,
24 will they fight?

25 A. Oh, absolutely.

1 Q. Have you experienced this yourself?

2 A. Yes. Yes, sir.

3 Q. Let me show you some photographs if I can. For the
4 purpose of this I'll show them to you and you can explain
5 to His Honor what they are.

6 A. Can I stand up?

7 Q. Sure. First tell us where these were taken?

8 A. These pictures, I'll assume they're the ones, all
9 these pictures were taken at my kennels in Hartsville,
10 South Carolina.

11 Q. Okay, let me let Kernard. Going through these how
12 about explain to His Honor what he's seeing and kind of
13 hold it up.

14 A. Well, what we're looking at in this particular
15 picture -- let me go through these pictures do I can do
16 them in a sequence. May I, please?

17 Q. Sure.

18 A. In this picture here it -- if you look you'll see
19 this is 4-inch length gate wire. So strong that you
20 couldn't take a pair of vice grips and bend it unless you
21 reached out like six inches to bend it.

22 These little corners here, the little diamonds are I
23 think like an inch and a half or 2 inches. This is a
24 picture of a male dog going through with his teeth cutting
25 this wire, going through this kennel to get to the male in

1 the next kennel because the bitch was in the next kennel.
2 That's how strong they are and that's how strong they can
3 become over a bitch in heat.

4 And so what you're looking at there is the actual
5 picture of where the dog had destroyed the top of that.
6 Now, this is another closer view here in you want to get a
7 good view of it.

8 MR. REDMOND: I've seen it, Judge. I've seen it,
9 thank you.

10 THE WITNESS: Oh, okay. And this is what they can do
11 to the bottom of a gate under the same circumstances.
12 This is how hard a 50-pound bitch or a 35-pound bitch can
13 put her weight or his weight against a 2-inch tubular pipe
14 that's at the bottom to bend that pipe like you're looking
15 at it there.

16 And, of course, this is just another picture of the
17 same door that is open from a different angle.

18 BY MR. LEE:

19 Q. There is an incident where you had a male not trying
20 to get to a female, but the male was trying to get to a
21 male?

22 A. That is correct.

23 Q. Explain to the Judge why one male would go after
24 another male?

25 A. The one male will go after the other male because

1 that one male is the one that actually has been bred to
2 that bitch. And the reason he's not beside her because of
3 this particular problem. We try to keep them separated
4 even though the picture -- one picture does show it where
5 we actually have to put some of the bitches in the kennel
6 with a top on top of them.

7 And so this bitch, actually having been bred to her
8 at one time or that particular cycle, the other males have
9 not been. He actually went through there to get to the
10 other male because the male next to here was sniffing her
11 and what have you. And this male went through and we had
12 one hellacious dog fight on our hands.

13 Q. How did you -- let me ask. How did you break that
14 fight up?

15 A. Being in the business when I built the property which
16 I think it was about 14 years ago, we had -- the County
17 puts in the 3-quarter inch line. Our house and our
18 kennels sits back up the road probably 250-yards. And we
19 want a lot of pressure. We want enough pressure that we
20 can actually knock a dog pretty much off his feet if we
21 have to.

22 So at that property, 1849 Spring Valley Road, if you
23 check out right out this minute, you will find 3-quarter
24 inch coupling. We had PCV pliable pipe brought up from
25 Virginia to hook into the coupling and run that 1200 and

1 so feet up to the kennels, and of course, unfortunately,
2 to the house, too.

3 The pressure so great that went we first turned it on
4 it blew all the fixtures. Our water fixtures and shower
5 nozzles right inside the house. But at the same time when
6 you squeeze it a dog from here to Robert Lee can't stand
7 it. He's going to go down or out. So if you get into a
8 serious dog fight I can break it up with that. And that's
9 the reason we did that.

10 Q. Newt, let me ask you this. Going back over this. We
11 had a female in season here in this situation?

12 A. Yes.

13 Q. Okay, any -- I mean you have any reasonable doubt she
14 was in season?

15 A. Say that again.

16 Q. You have any reason to doubt she was in season?

17 A. No, I have no doubt.

18 Q. Okay, with regards to those dogs would it be fair to
19 say the rules had changed once she comes into season?

20 A. When you say rules changed I assume you're talking
21 about that pack of dogs that was living at that residence?

22 Q. Yes, sir.

23 A. When she comes into heat and she's been living there
24 with them she was part of their domain. And, yes, when a
25 bitch comes into heat that male dog's characteristics

1 change completely.

2 Q. Would that be true in this case? There are three
3 males. Would that be true for all three males?

4 A. Of course, yes. And go ahead.

5 Q. Go ahead. I'm sorry.

6 A. And so -- during -- even if there is another female
7 there and she's part of that pack sometimes she would join
8 in the fight also. That's the example I was giving about
9 going down the road with a pack of dogs, find a female in
10 heat that even though one of them may be a female and the
11 other three are males or one male and one female or one
12 female in heat you'd better watch out. The female might
13 nail you also cause they all belong to the pack.

14 Q. Okay, and let's say someone entering here. What
15 would they have to do to cause the dominant male to be
16 threatened?

17 A. The presence of something or somebody that they
18 consider an invasion of that territory is all is necessary
19 for them to threaten or attack or both.

20 Q. Let me ask you very simply. Are dogs creatures of
21 instinct?

22 A. Creatures of habit.

23 Q. And at there points where their instinct have kicked
24 in?

25 A. Absolutely, yes.

1 Q. Okay, so they're instinct would be to protect their
2 property?

3 A. Protect their property; that is correct.

4 Q. And their property would be?

5 A. Their property and if there is a bitch in heat and
6 her also to make sure nobody got to her.

7 Q. Okay?

8 MR. LEE: Your Honor, that's all what we're offering.

9 MR. REDMOND: Beg the Court's indulgence. I may not
10 have any questions. Judge, I may not have any objection.

11 PROFFER EXAMINATION

12 BY MR. REDMOND:

13 Q. Let me just ask you briefly. Mr. Cropper, do you
14 train show dogs or working dogs or Labradors, show
15 Labradors or work Labradors?

16 A. Sir?

17 Q. Do you train ---

18 A. Can I interrupt you just a second?

19 Q. Absolutely.

20 A. Could you -- I have a very difficult time hearing.
21 I'm sorry. It comes from training dogs.

22 Q. My dad does, too.

23 A. I can hear you much better there. If you could do
24 that for me, please.

25 Q. No problem. I'd be more than happy to. No problem

1 at all. Do you train show dogs or working dogs?

2 A. I train working dogs.

3 Q. Okay, what is a working dog?

4 A. There are several different types of working dogs.

5 Mainly, the working dogs that I train are dogs that
6 retrieve downed game and birds.

7 Q. Okay, do you train dogs that are watching property
8 or guarding property?

9 A. I do not train guard dogs, per se.

10 Q. Okay, and have you ever trained boxers? Pit mixes?
11 Boxer shepherd mixes? Boxers or pits in that regard
12 either as -- for show dogs? Have you ever trained them in
13 that regard?

14 A. No, sir.

15 Q. Have you ever trained them in regards to trying to, I
16 guess, protect property or guard dogs as you say? Have
17 you ever trained them in that capacity?

18 A. I have assisted the Ocean City Police Department in
19 training their canine dogs.

20 Q. Now, are those canine dogs for what purposes?

21 A. Attack.

22 Q. For attack dogs? And ---

23 A. Well, attack -- to sniff, to follow scent and if
24 necessary attack.

25 Q. Okay, and what kind of breed was that?

1 A. German shepherd.

2 Q. German shepherd, okay.

3 A. Not necessarily. German shepherd, couple of
4 Dobermans, couple of Doberman, German shepherds and the
5 other one didn't make it. So that's it. German shepherd
6 and Doberman. Mostly German shepherd.

7 Q. And when was that? About how long ago was that?

8 A. I'd have to guess this. I don't know exactly. I'd
9 say about ten years ago.

10 Q. Okay, and as say relates to guess when I say guarding
11 property and specifically talking about guarding property,
12 have you trained any dogs for the purpose of guarding
13 property outside of what you just testified to?

14 A. No, sir.

15 MR. REDMOND: I think that's all I have at this time.
16 Based on what he's testified to, Judge, and quite frankly
17 I don't know that I'm all that opposed to it, but just
18 strictly speaking I don't know if enough foundation has
19 been a laid as it relates to the actions of those pit
20 boxer mixes and what not. So that he would be qualified
21 as an expert in how they would react under the
22 circumstances. That would be the basis of my objecting at
23 this point to that evidence getting in.

24 MR. LEE: I think in part what he's saying it goes to
25 weight more than admissibility, but I do think I've laid

1 the foundation with him. I'll be glad to go back and have
2 him tie the dogs to the dogs to the dogs?

3 THE COURT: I don't think that's necessary. I think
4 he responded to my question and cleared that up. Did he
5 not?

6 MR. LEE: Yes, sir, he did.

7 THE COURT: Based on what you developed there on the
8 proffer I don't have any problem with it. I'm going to
9 allow you to do it.

10 MR. REDMOND: And I won't have any -- I'll accept
11 that ruling, Your Honor, as long as he doesn't stray
12 outside of what was in the proffer.

13 (WHEREUPON, the jury panel enters the courtroom at
14 2:17 p.m.)

15 THE COURT: All right.

16 MR. LEE: Please the Court.

17 CONTINUED DIRECT EXAMINATION

18 BY MR. LEE:

19 Q. Newt, let's pick up kind of where we left off. There
20 is -- you've been provided with State's Number Eight.
21 Does that indicate that this female dog was in heat?

22 A. Yes, it does.

23 Q. Okay, if you would tell the jury what the affect of a
24 female dog being with this group of dogs, what effect it
25 had on the group?

1 A. When a female dog, a bitch, is in heat she goes
2 through a proffer, 21 day period. And when she first
3 starts going into her heat cycle, on a scale like one to a
4 hundred, that first two or three days that scale may get
5 up to a 15. Second three or four day or whatever it will
6 gradually increase up to her ovulation period which is
7 usually four to six days of the 21.

8 Once she's near that ovulation period the male dogs
9 will actually go bananas and try to and want to breed her.
10 And there once a bitch, there is usually a dominant one if
11 there is more than one male, but when she's in heat you
12 got chaos with them wanting to bleed that dog.

13 Q. Would it be fair to say she becomes the property of
14 that group?

15 A. She would definitely becomes the domicile or
16 together, and she -- they think and she does too a lot of
17 times, that she is part of that group. And I as use the
18 expression before when you see a group of dogs on a road,
19 you're riding along a bicycle down the road and see a pack
20 of dogs and you've got 99 percent of the time you've got a
21 bitch in heat there and four or five male dogs following
22 her.

23 You stop your car or truck and try to get out and get
24 a hold of that female you're going to get hurt. Sometimes
25 they fight amongst the whole pack. And because they are

1 creatures of habit sometimes when that fight starts they
2 will all jump in there together. And so you have to be
3 very, very careful when you have a female in heat and you
4 have male dogs around.

5 Q. Can you tell the jury what a -- the presence of this
6 female -- well, first of all, you understand we have three
7 males in this group?

8 A. Yes.

9 Q. And three females?

10 A. Yes.

11 Q. Can you tell us what the effect of this female dog
12 being in heat would do to those male's appetites?

13 A. It -- what will happen -- I've had several male dogs
14 that were just for the purpose of bleeding, and usually
15 when you bring them in or they know that you have a female
16 there for preparations of getting started to start her 21
17 day period or whatever they're appetite will drop off.

18 They will not eat their food as well. Will still eat
19 some. Will eat enough to keep themselves nourished, but
20 normally if you give them a full five cup plate that may
21 only eat three cups. Once she goes out heat and they quit
22 breeding, whatever, appetite will usually go back to
23 normal:

24 But, yes, it does deter most male dogs. It will
25 deter their appetite when they are expecting to be bred.

1 Q. What effect will it have on their ability to work, a
2 working dog, to work and perform?

3 A. What effect would it have on their ability to work?

4 Q. A working dog, what effect?

5 A. Oh, a working dog or speaking like a field trial dog
6 is something that is working an event out in the field
7 retrieving birds, ducks, whatever they retrieve or hunt.
8 They are, they being the males, are so disturbed by the
9 presence of the female and the scent the female is putting
10 off that in the American Kennel Club today you are
11 prohibited from any event that you go to in the United
12 States, the American Kennel Club prohibits you from even
13 having a female in heat on the grounds, period. Not even
14 allowed on the grounds. So that's how devastated their
15 mindset can be to the possible and probability of getting
16 bred or being bred.

17 Q. Is it possible -- is it an overstatement to say that
18 a presence of a female dog in heat will kind of blow their
19 minds?

20 A. That's exactly -- I guess that's a layman's way to
21 put it. It blows more than their mind, but, yes.

22 Q. Let me show you. This is Mr. Collins' home.

23 A. That's the picture I've seen.

24 Q. If you would tell the jury where this group of dogs
25 domain was?

1 A. According to what I have read their domain -- I'm
2 looking for the truck. Their domain was this truck, bus
3 or whatever that is. And somewhere in here is a porch.
4 This picture is very dark, but there is a porch and so
5 their domain is a porch, the bus and the area of which
6 they reside upon.

7 Q. Okay, would the female dog in heat be part of their
8 domain?

9 A. Absolutely.

10 Q. Is it an overstatement to say that the presence of
11 this female dog would disrupt kind of the order within
12 that group?

13 A. Absolutely.

14 Q. Okay, explain to the jury about would there be a
15 dominant dog?

16 A. There usually is a dominant dog, yes. Going back --
17 go ahead.

18 Q. Go ahead?

19 A. Going back to the pack theory. If there is a pack on
20 the road and there is a bitch in heat that they're all
21 with the one dog usually, that will be the first one to
22 come after you, he usually is the dominant dog. Doesn't
23 mean he's the only one.

24 In most cases there is a dominant dog and that's why
25 they stay with her and they will take turns breeding her

1 without fighting amongst themselves, but the dominant dog
2 will control the situation. If they breed her they
3 wouldn't be staying with her. They're following her
4 during the term of her ovulation, of her heat cycle.

5 Q. Does it in any way surprise you there are three male
6 dogs here?

7 A. Does did surprise me?

8 Q. There are three male dogs with this female?

9 A. I know from the report that's what it says there was.

10 Q. And within those three dogs would have been an order?
11 There would have been a dominant dog?

12 A. Yeah, there would have been a dominant dog of a six
13 dogs. Yes.

14 Q. Okay, and the female would have been their property?

15 A. Absolutely. They would feel as she was. They would
16 accept that she belongs to them.

17 Q. What would they perceive as a threat to their
18 property?

19 A. They would perceive the threat anything or anybody
20 that they -- that entered their domicile and would a
21 threat to their pack. Anywhere you would go or anyone
22 would go into that area would say perceive up here and the
23 female being theirs they think that belongs to them.

24 Q. Okay, what would they do to protect their property?

25 A. They would do whatever it took necessary to rid the

- 1 threat that they had in their mind.
- 2 Q. Okay, again let me ask you this. Dogs are not
- 3 capable of conscious thought, are they?
- 4 A. They're not able to what?
- 5 Q. Don't have conscious thought?
- 6 A. No. No.
- 7 Q. Okay, are the creatures -- is it fair to say that
- 8 they are creatures of habit?
- 9 A. Yes, creatures of habit.
- 10 Q. Are there times when their instinct overtakes the
- 11 habit?
- 12 A. Absolutely. Yes.
- 13 Q. And is this one of those instances where instinct
- 14 overtakes everything?
- 15 A. That's the way it presents itself.
- 16 Q. Okay, so anything they perceived as a threat they
- 17 would attack?
- 18 A. They would attack anything that they see as a threat
- 19 to whatever they perceive to belong to them and their
- 20 domicile.
- 21 Q. Okay, another dog?
- 22 A. Another dog, absolutely.
- 23 Q. A person?
- 24 A. Absolutely.
- 25 Q. If you would let's come down. I want to show you

1 some photographs and let you explain to the jury what they
2 are.

3 (WHEREUPON, the witness steps down from the witness
4 stand.)

5 BY MR. LEE:

6 Q. First, how about tell the jury where these
7 photographs were taken?

8 A. In Hartsville, South Carolina. That's where I'm
9 residing now. That's where these kennels are. There are
10 12 of them. And we have dogs shipped in to be bred and
11 whatever. And so we have about as elaborate set of
12 kennels as you can possibly have.

13 What you're looking at her is a view taken of a
14 little further back, but if you look real close you will
15 see this wire is torn completely out of here and
16 completely out of here by a male dog who is trying to get
17 to the next male dog which the bitch is on the other side
18 of that with a lid on top of her kennel.

19 There is -- I can't exaggerated enough what some male
20 dogs will do and extent they will go to to try and to
21 either protect or get to a bitch in heat especially if
22 they already bred her one time which in this case -- when
23 we get to the next picture I'll show you.

24 You can see on this picture taken especially to get
25 through there this wire is 4-inch. I don't know how many

1 gauge, but it's 4-inch. And they did this or this dog did
2 this with just his teeth. And this is not the first dog
3 I've seen do this. I've seen this happen several times.
4 I've seen the bitch also do the same thing, but 99 percent
5 of the time that's not the case. It's usually the male
6 dog trying to get to the female.

7 But in this case the dog wasn't after the bitch. He
8 was after the dog next to him because the dog next to him
9 was next to the bitch.

10 This is a picture taken here of to show you how
11 strong, how forceful. You can see where this was clamped
12 that this male dog actually put his shoulders and his head
13 and his weight and his strength behind that until he broke
14 the bracket and pushed the gate out from the space in the
15 kennel.

16 This picture here is running along the bottom. So
17 I'm going the turn it up like this just to show you the
18 pressure of that dog -- that the dog put against that
19 kennel to try to get out. Now, this is strictly body
20 pressure. How he bent that 2-inch pipe. You've got to
21 remember he's not got his shoulder up against the pipe
22 itself. He's got it up against the wire enough to push
23 the wire to bend the pipe.

24 And this is the same picture we showed you a while
25 ago from the bottom, but they're just from the other end

1 to show how far it protrudes out to allow a dog to escape.

2 Q. You want to return to the stand, please.

3 (WHEREUPON, the witness returns to the witness
4 stand.)

5 BY MR. LEE:

6 Q. Newt, did, in this instance, did these two males get
7 together?

8 A. Yes, they did get together.

9 Q. How about tell the jury about that?

10 A. Well, I have to go back a bit in history when --
11 knowing what we're going to be doing cause we did this for
12 years before we came to Hartsville. And it's interesting
13 why we came to Hartsville. Because it's so cold up North
14 you can't train the dogs. Too darn cold so we brought
15 property in Hartsville.

16 And knowing that we were going to be breeding dogs we
17 built the kennels and built the angles so all the urine
18 and all the feces and everything else won't even stay
19 there unless it become a freeze or something like that.

20 But even so, we hooked up a water system that our
21 property our kennels, those kennels you just looked at,
22 sit back about 250, 300-yard. And at the road is a
23 3-quarter inch water outlet that the County feeds to your
24 property. And knowing that we have problems every now and
25 then with a male dog or a fight the easiest way to break

1 them up and get control fast before they really kill each
2 other or hurt each other to the point where they have to
3 be put down we ran from that quarter inch line, we ran to
4 a two and a half -- I believe two or two and a half inch
5 PVC line.

6 Hooked it into that at the 3-quarter inch coupling
7 and ran it the full 250-yards or whatever to the kennels.
8 Volume creates pressure. Having been in the fire
9 department for over 20 years I know how it works, and so
10 we did it that way. And probably just over did it a
11 little because I had so much pressure when we turned it on
12 that we blew the nozzles off of the shower fixtures in the
13 house.

14 But at the same time I can take the hose and from
15 here to that stand I can pretty much knock a dog off of
16 his feet. So if I do have the a two dogs interplay with
17 that water pressure I can break them up. And that's a lot
18 better than trying to wade in there with them. Normally,
19 we separate them and get a lead on one and get it out of
20 the situation.

21 Q. Newt, do you have ever -- when males are fighting
22 like that do you ever reach in with your hands?

23 A. Not in the last 35 years because if you do that's a
24 good way of losing your hand.

25 Q. We're talking about labs here?

1 A. Yes.

2 Q. And let me ask you this. When labs fight are they
3 slashers? How do they bite?

4 A. A lab will -- there's been several cases where labs
5 have killed each other. And there is -- they're not a
6 vicious dog by nature, but dogs in general aren't vicious
7 by nature. It's occasionally where some become very
8 vicious, but labs have destroyed other labs from being
9 able to compete simply because of stupid dog fight of a
10 bitch being in heat and somebody not keeping control of
11 the bitch in heat.

12 So the male dog -- I mean I've seen two year old dogs
13 that are paid as high as \$10,000 for is started field dogs
14 that lost part of a leg or had to have a leg amputated
15 because of a dog fight and they're down for the rest of
16 their life.

17 Q. That was all because of a bitch in heat?

18 A. Yes. I'm not saying a dog can't fight because of
19 something other than that, but what I'm saying is that
20 99 percent of the time if you really want to create a
21 situation like this you put a dog in heat involved in it.

22 Q. Okay, if you want to -- well, let me go on to
23 something else. You're live in Ocean City, correct?

24 A. Yes.

25 Q. Live in a neighborhood?

1 A. Yes.

2 Q. Keep your dogs kenneled?

3 A. Yes.

4 Q. Okay, you have children that come to your kennel?

5 A. Oh, I do. I have a neighborhood of mothers and
6 daughter and little boys that love to come down to
7 Mr. Coppers to see the dogs.

8 Q. Okay, and you allow them the feed the dogs?

9 A. I have a special box which they all know where it is,
10 and the first thing they do is 'Mr. Cropper, can we feed
11 the dogs'.

12 Q. Is there a time when you refused to let them feed the
13 dogs?

14 A. Yes, whenever we have a bitch in season or a bitch in
15 heat the kids aren't even allowed to come into the
16 driveway. Even though she is secluded in her own area.
17 Behavior problems of the males change enough that we can't
18 take the chance on giving a little five year old girl a
19 bone to put through the fence to the dogs.

20 Q. Newt, thank you. Answer any questions Mr. Redmond
21 has.

22 MR. REDMOND: May it please the Court.

23 CROSS-EXAMINATION

24 BY MR. REDMOND:

25 Q. What makes a dog vicious? You made a comment late in

1 Mr. Lee's questioning about a dog can become vicious.

2 What can make a dog vicious?

3 A. Other than being in heat?

4 Q. Exactly, other than being in heat. What can make a
5 dog become vicious?

6 A. Somebody that abuses the dog and in training they're
7 trained the dog but their unfair to the dog and its train
8 cycles. And now and then in our business we will have a
9 dog that I mean not being vicious at all just being one
10 which when you walk or try to lead, try to make it sit and
11 stay, basic obedience, that it won't accept.

12 So, therefore, we don't keep them. They make great
13 house dogs and all, but they don't adhere to obedience
14 training.

15 Q. And so would I be correct or would it be a fair
16 statement for me to say that the treatment of the animal
17 can contribute to the level of viciousness that the animal
18 may exhibit?

19 A. That is so possible.

20 Q. Okay, now, how old is a dog -- is a female dog when
21 it first goes into heat? The first time a female goes in
22 heat about how old is that dog?

23 A. Depends on the dog, and the average I would say is
24 about 14 months old. Sometimes they go at nine.

25 Q. At nine months old?

1 A. But the average I'd say is about a year to 14 months
2 old. You said the first time?

3 Q. The first time. So if I had a two year old dog, a
4 dog that was about two years old, chances are that was not
5 the first time that dog went in heat? May be the second
6 time at least that it went in heat? Would that be a fair
7 statement?

8 A. Possibly. Possibly.

9 Q. So if you have worked with dogs. When one of your
10 pups becomes -- grows up to the point that she goes in
11 heat for the first time are you aware that she is in heat
12 that first time based on the actions of the other dogs?

13 A. Can I cut that question in half.

14 Q. Yeah, sure. Go right ahead.

15 A. Am I aware?

16 Q. Yes.

17 A. Yes, because of the spotting.

18 Q. Okay, and ---

19 A. Not because necessarily of the other dogs, but of the
20 spotting.

21 Q. Okay.

22 A. Do you understand what I mean? Now, if the jury
23 doesn't I'll explain.

24 Q. No, I think we can ---

25 MR. LEE: I think, Your Honor, he asked him.

1 MR. REDMOND: No, if he wants to explain it that's
2 fine. I'm just trying to spare what I think might be some
3 gory details.

4 THE WITNESS: When you say spotting you stop and
5 think about it. If you're not in the business like I am
6 you say, "what the devil is he talking about." Actually,
7 what happens is the dog, the bitch, goes into heat. Her
8 secretion will start as blood. Little tiny drips of
9 pinkish type blood and you will see that.

10 If she's on a cement counter you will see it. If
11 she's on dirt a lot of times you won't see it because the
12 dirt absorbs it. And as she goes from the first day up
13 until about that eighth day or when she starts ovulating
14 that bleeding stops and the secretion becomes clear that's
15 when the Dear Lord is say, "Okay, now she will conceive."

16 If you breed her during those days and the dog is
17 healthy and she's healthy and everything goes right she
18 will become pregnant. Then the last seven days, sometime
19 even after breeding she will spot just a little bit. But
20 that's from the breeding itself and then the last 7 days
21 she goes out.

22 Q. Okay, now, based on what you told us about the
23 activities of the dogs and the fact that how these dogs
24 react to protect and guard that female dog in heat would
25 you be able to tell on the actions of the other dogs,

1 based on what you told us earlier, wouldn't at least be
2 obviously that these dogs are a lot more I guess animated
3 towards this female or protective of this female as you
4 testified to earlier?

5 A. Only if their domain was being invaded.

6 Q. Okay, let's talk about ---

7 A. If they live with her everyday and sleep with her
8 every night so to speak, no. Now, if she was a stranger
9 down the block that would be a different part of the
10 domain.

11 Q. Let's get into that because you were saying that the
12 dogs are protective. There were three male dogs in this
13 particular pack that we testified -- that you testified
14 to. And those dogs and I recall you saying would attack,
15 is the term I remember being used, would attack anything
16 or anyone that they felt was invading their domain; is
17 that correct?

18 A. Yes.

19 Q. So if another pack of dogs were to try to enter the
20 property that would be a heck of a fight while she's in
21 heat?

22 A. If another pack of dogs tried to invade their
23 property, yes. I believe there would be a fight.

24 Q. And if a child entered into that property there would
25 be a tragedy possibly; is that correct?

1 A. Very possibility if they felt as though that child
2 was invading their territory that they would consider that
3 child a threat to their territory and the bitch in heat.

4 Q. Okay, we talked about viciousness and you had -- it
5 actually came up on direct examination when you were
6 talking to Robert, have you had a chance to review the
7 autopsy photos in this case?

8 A. Autopsy photos? I don't remember. I don't know. I
9 just don't know. I read -- I looked at everything, but I
10 really don't know if I've seen the photos.

11 Q. And ---

12 A. I don't remember. I just don't.

13 Q. And what I'm getting at is you had testified that
14 getting the child I guess getting a child or getting
15 whoever down that they would get them down until they felt
16 they were rid of the threat? I think that's what you
17 testified to earlier; is that correct? In other words the
18 pack would attack until that felt that the threat was
19 over?

20 A. Normally, one dog or two -- normally, there is a
21 dominant one that will start the attack and the rest of
22 them will just pile in.

23 Q. So based on that when the rest of them pile in at
24 there point would you or have you in your experience seen
25 anything that would have amounted to the consumption of a

1 child in such a situation?

2 A. I've seen -- no, I haven't seen.

3 Q. Have you experienced anything ---

4 A. I've not seen what you're eluding to, and that -- no,
5 I have not seen that. I have seen limbs eaten. I have
6 seen legs broken. I have seen people scarred for life.
7 But to answer your question a hundred percent, have I seen
8 anything exactly like that, but in my cases most time it
9 might be one dog or two dogs. Now I have seen -- you
10 asked about a human?

11 Q. Yes.

12 A. I have seen carcasses of animals that we've seen deer
13 chased down a dog, and they looked exactly like that body
14 did, unfortunate, of that ten year old.

15 Q. And that's -- and thank you. That's what I want to
16 get into. Because of the nature of that attack, and we
17 talked about viciousness, that would be an example of a
18 vicious dog or vicious dogs, wouldn't it?

19 A. Not if there were -- no.

20 Q. Okay, in other words ---

21 A. Not -- it would only be that way if there was a bitch
22 in heat.

23 Q. Okay, there was a female dog in heat in this case?

24 A. In that case, yes, sir.

25 Q. And from what we just described in the autopsy that

1 would be something that would be described as being
2 vicious? Those animals were acting viciously? Would that
3 be a fair statement?

4 A. They were acting as they would in a pack if they were
5 out on a hunt and they ran down an rabbit, a squirrel, a
6 deer or whatever. That would be their -- that would be --
7 and with the bitch there in heat that bitch would be
8 enough to carry them over from a normal reaction to what
9 you see that poor ten year old.

10 Q. Okay, let's say that we had a group of Pomeranians
11 and there was a female -- let's say we had a group of
12 Pomeranians. There was a female Pomeranian in heat, and
13 are you saying that they could be just as vicious as what
14 you described or what we described regard the ten year old
15 child as it relates to what happened?

16 A. I can't answer that because Pomeranians I'm not
17 familiar with. A lot of other animals I am, but a
18 Pomeranian I'm not. So I can't answer that.

19 Q. But pit bulls, would they be capable of such carnage?

20 A. History of eludes to -- I don't know this myself, so
21 I don't know that, but I know the history of what some
22 people say about a pit bull, but I've never seen it.

23 Q. Is that a yes, no or I don't know?

24 A. I guess you'd have to say I don't know.

25 Q. And that's fair enough. But regardless of that based

1 on what you have testified to earlier today those packs of
2 dogs are going to protect that female dog in heat be it a
3 child, be it another dog, they are going to protect their
4 domain; is that correct?

5 A. They're going to make sure nobody takes it away from
6 them.

7 Q. Nobody or no other pack of dogs take it away from
8 them without a hell of a fight. Is that a fair statement?

9 A. Yes.

10 MR. REDMOND: Nothing further, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. LEE:

13 Q. One thing very quickly. With regards to the bitch
14 coming in heat, to Dog Number Three, with regards to her
15 coming into season again tell the jury, to a dog owner who
16 not necessarily -- who is not into breeding ---

17 A. Say that again.

18 Q. With regards to this, Dog Number Three?

19 A. Okay, I'm familiar with that.

20 Q. Okay, coming into season. Tell me -- tell the jury
21 again about her cycle about coming in and when you notice
22 and when you don't notice. I mean as an owner, as a human
23 notices?

24 A. I'm not sure I understand the question so.

25 Q. Okay?

1 A. I know how to explain about the cycle, but I don't
2 understand what your question is. Can you ask it again
3 there?

4 Q. Okay, you heard the expression seven days in?

5 A. Seven days in and seven going out, okay.

6 Q. Okay, how fast can a dog come in season?

7 A. Oh, oh, a dog, a bitch, especially the first time and
8 some bitches all their lives you can go out on,
9 hypothetically, Friday evening. You feed them, give them
10 all their food and everything is fine. Go out on
11 Saturday, Sunday, Monday, Tuesday, and Wednesday morning
12 you've got chaos in the kennel because she is right next
13 to ovulation.

14 There are times -- I'd say probably, maybe 30 percent
15 of the time that the young dog will not spot prior to her
16 heat cycle, and that's when you don't know if the dog is
17 in heat. You have no way of knowing until you actually
18 see the aggression by the male dog.

19 Q. Newt, thank you.

20 MR. LEE: That's all I've got.

21 MR. REDMOND: Briefly.

22 RECROSS-EXAMINATION

23 BY MR. REDMOND:

24 Q. Just to clarify. So basically what you just said I
25 think this might answer an earlier question that I had.

1 The level of aggression -- if you see the level of
2 aggression in the dog -- let me step closer to you. I'm
3 sorry, Mr. Cropper.

4 A. That's all right.

5 Q. Once you see the level of aggression in the dogs
6 that -- observing that tells you that the female is in
7 heat? She's ovulating?

8 A. That would be the first thing you better look for.

9 Q. Nothing further. Thank you.

10 FURTHER REDIRECT EXAMINATION

11 BY MR. LEE:

12 Q. Newt, is that the first sign that you're going to see
13 that she's in season?

14 A. Is it going to be?

15 Q. Is that going to be the first sign of the male,
16 aggression?

17 A. It can be. It doesn't necessarily mean it has to be.

18 Q. What other types of behavior do you see in males that
19 would lead you to understand that?

20 A. In most cases the male will start following of the
21 female that -- got three females, whatever. He'll be
22 following that female a little closer sometimes or
23 sometimes he may just turn around and growl at another
24 male.

25 And you say, 'what's he growling about', and all of a

1 sudden you say, 'whoop, we've got a bitch here getting
2 ready to come in heat'. Did that answer your question?

3 Q. It does. So there were other behaviors that manifest
4 themselves other than the protective nature?

5 A. Yes.

6 Q. Thank you.

7 THE COURT: Thank you, sir. You may step down.

8 MR. LEE: If Your Honor, please, we need to cover one
9 more thing on the record outside the present of the jury.

10 THE COURT: Ladies and gentlemen of the jury, if you
11 would step back to your jury room.

12 (WHEREUPON, the jury was excused from the courtroom
13 at 2:35 p.m.)

14 COLLOQUY

15 MR. LEE: Your Honor, that's the Defendant's case. I
16 did want you to make one final inquiry of Mr. Collins
17 whether he plans to testify for purposes of the record.

18 Q. All right, Mr. Collins. I went over with you
19 yesterday. You told -- informed me that counsel had
20 talked with you about your Fifth Amendment rights. Your
21 election to testify or election not to testify.

22 MR. COLLINS: Yes, sir.

23 THE COURT: You have any questions at this time
24 concerning what we went over?

25 MR. COLLINS: No, sir.

1 (WHEREUPON, the jury was excused from the courtroom
2 at 11:18 a.m.)

3 (WHEREUPON, Court was in recess at 11:18 a.m. and
4 reconvened at 11:34 a.m.)

5 (WHEREUPON, the jury panel enters the courtroom at
6 11:34 a.m.)

7 THE COURT: Solicitor.

8 CLOSING STATEMENT BY MR. REDMOND

9 MR. REDMOND: May it please the Court, Mr. Lee.
10 Ladies and gentlemen, before I begin let me first take
11 this opportunity to thank you for your service and
12 attention in this case especially under the circumstances
13 in this and with some of the exhibits that you've had to
14 see. I know it's been hard. Let me also apologize in the
15 sense that I wish that I did not have to show you those
16 pictures, but it was necessary and I'll explain why.

17 But you are the last bastion of justice. You need to
18 see exactly what we have so you can make your decision
19 beyond a reasonable doubt.

20 Now, let's talk about beyond a reasonable doubt.
21 Beyond a reasonable doubt as His Honor will instruct you
22 is not beyond all doubt. Beyond any reasonable doubt. In
23 other words if you were firmly convinced of the
24 defendant's guilt you should render a verdict of guilty.
25 Let me remind you of something else, ladies and gentlemen.

1 In listening to Mr. Lee's closing there are some gaping
2 holes that I am definitely going to address.

3 Less me just say this. You don't leave your common
4 sense behind. One of the things and one of the reasons
5 you were chosen was for that very reason, because of your
6 common sense. We have been asked by the Defense to go
7 down various paths that lead to nowhere, but that's what
8 he's supposed to do. I mean he's not going to stand
9 before you and say, "Yes, my client is guilty." We don't
10 expect that.

11 At the same time you, ladies and gentlemen, are smart
12 enough to know when you're being hood winked or
13 bamboozled. And I would submit to you guard against it.
14 I have to upmost faith that you will.

15 Another thing I found interesting before I get into
16 my presentation, I want to address a few things Mr. Lee
17 mentioned and didn't mention to you. One of the things he
18 didn't mention to you was Mitchell. He never mentioned
19 Mitchell, the older son through his closing. And I
20 understand why. Because, of course, Mitchell was the
21 one -- one of the Defense witnesses that said the dog
22 would what? That they were guard dogs. They would bark
23 at anybody that wasn't supposed to be there.

24 And I asked him on cross-examination where they guard
25 dogs? Yes, so they were there to guard the property, but

1 he didn't want to go into that with you because that puts
2 a whole new wrinkle on things; that weakens his argument.
3 So he's not going to want to get into that with you.
4 That's a glaring oversight, and again I understand why.

5 Another thing I want to address is that he mentioned
6 that we were searching for a theory. Let's talk about
7 searching because he tells you four of things could have
8 happened. There is one stated right and this is kill for
9 prey. Then he talks about the fact that -- and I think he
10 said that Oscar did it. Let's talk about Oscar.

11 Joey's dog, Oscar, supposedly, according to Mr. Lee,
12 one of the things for you to consider that Oscar can go
13 into this yard, 87 feet into this yard, the Defendant's
14 yard, and commit this heinous act against Matthew and
15 that's it. That's his second theory.

16 But here is the problem I have with that. Our
17 expert, Craig, obviously, his testimony disputes that
18 based on the nature and territorial nature of dogs, but
19 his own expert, the one expert that is would actually say
20 somewhat understood what was going on, cause, let's face
21 it, Mr. McDonald didn't even deal with vicious dogs. I
22 don't even take in account his testimony.

23 But een Mr. Cropper says that these dogs are
24 territorial, and they are going to guard especially if you
25 take the Defense theory concerning dogs being in heat.

1 That actually supports the State's contention because that
2 means that those dogs were not let -- one dog, but let
3 alone another pack of dogs come in the yard. Especially
4 that far in the yard. Remember Doctor -- and I asked him
5 that would be a heck of a fight.. I didn't say it exactly
6 like that, but it would be a heck of a fight if it did
7 happen.

8 Well, it didn't happen, ladies and gentlemen. That's
9 why I say be careful. Do not let your common sense stay
10 behind when you go and deliberate.

11 Third theory was that, well, the dogs became -- that
12 this dog in heat, the female dog, that, okay, she's in
13 heat so she becomes the property of the pack. And,
14 therefore, yeah, the pack would be more aggressive and
15 could do that. But that the owner may not know about it.

16 Well, here is the problem I have with that. He
17 didn't mention to you or talk about the fact that Robert
18 Collins, the defendant's own brother, what was one of the
19 first things he told you when he testified? The defendant
20 owned dog all his life. All of his life. He would know
21 an aggressive animal if he had one. He would know if his
22 dog was capable of biting anybody. And I'll explain the
23 importance of that, the fact that his dog is capable of
24 inflicting harm on another person. That's all we have to
25 prove to convict him of the three unrestrained animal

1 charges.

2 And the fourth theory; that Oscar was there. He
3 became a part of the pact. Matthew got drawn into. Well,
4 again, back to Craig and Dr. Cropper. That's a
5 nonsensical argument because of the fact that, if what
6 he's saying is true about the level of the aggression in
7 the dog with the dog being in heat, the female dog being
8 in heat, Oscar wouldn't have been able to get that far in
9 the yard without the dogs tearing him apart.

10 But I can tell you who did get that far in the yard.
11 Matthew, that's why he isn't here today. Now, I've heard
12 Mr. Lee mention the fact that Taylor was Matthew's best
13 friend. Nobody else testified to that. Ladies and
14 gentlemen, Matthew can't testify to that, but if that was
15 his best friend he didn't seem terribly upset about what
16 happened to his best friend. I'm not saying they weren't
17 friend. I'm sure they were, but Taylor's main consider in
18 Court was his father.

19 And you can understand that. Look at the Defense
20 witnesses as they testified. They were either friends or
21 family of the defendant. So what's mean? What couldn't
22 they tell you? Well, none of them could tell you what the
23 dogs were capable of when they weren't around. What did
24 they tell? Well, yeah, the dogs were supposedly just
25 happy and fancy free and what not, but again, these were

1 all friends or the son's testifying this. That's
2 something that you can consider as it relates to the
3 weight that you give a particular witness's testimony.

4 But again, and another thing. The ones other than
5 Bunny that didn't leave there from out of state, don't
6 live in the neighborhood, can't tell you how those dogs
7 react to people in the neighborhood. But we did have
8 people from the neighborhood who came to testify to you
9 about those dogs.

10 Do not disregard that testimony, ladies and gentlemen
11 because it is important. And again, I'll get to these
12 things shortly. Before Mr. Lee said that the only person
13 that testified about any chasing or any biting or that
14 there was no testimony about the dogs biting, excuse me.
15 Well, Joey told you that night that the dogs attacked him.
16 The officers told you that night that they had to keep
17 flashing the lights and making gestures to get the dogs
18 away. Do those sound like friendly dogs or dogs that are
19 guarding their property? Again, rage. It's common sense.
20 Common sense.

21 Robert made the comment about having to live with
22 this since the case started. So have I. Caroline has
23 lived with it since that night. Since November the 3rd
24 2006. Since she ran to her son's body and had to be
25 pulled away because the dogs came at her. Caroline is

1 going to continue to live with it for the rest of her
2 life. It's a tragic circumstance. I don't have any
3 children, but I've got niece. I've got Godchildren, but
4 just as a human being I cannot imagine or care to put
5 myself in her position.

6 And during the time I've known her, during the course
7 of this case the fact that she's able to sit here and
8 listen to this, the bravery, the courage, the dignity.
9 The dignity that she had exhibited makes me hope and pray
10 that I do my job to help bring her justice, and more
11 importantly, bring her son justice.

12 What did we hear about, ladies and gentlemen? He
13 addressed the law first. I waived first argument so the
14 Defense could go first. I'm going to briefly talk to
15 about the law in this particular case. What is he charged
16 with? He is charged with having a dangerous animal. He
17 is the owner that knows or should know that that animal
18 has the propensity or disposition to attack unprovoked,
19 cause injury or otherwise endanger the safety of human
20 beings which those animals make an unprovoked attack
21 that caused bodily injury.

22 Let me stop there. Causes bodily injury. If Matthew
23 had been attacked and had survived the defendant would be
24 no less guilty under this statute. This statute does not
25 require it. It just indicates as long as there is injury.

1 And, again, common sense, ladies and gentlemen, based on
2 everything that you've heard, and I'm just going to be
3 quite frank with you I cannot imagine that you would tell
4 me and tell Caroline that those dogs were not capable of
5 injuring a human being. The evidence is there.

6 Obviously, they were and they did. That attack
7 occurs in a place other than where the animal is confined.
8 Well, There is no question that the dogs were not
9 confined. That's not even an issue .S. The Defense even
10 indicates. That is not an issue. The dogs were not
11 confined, and as His Honor will instruct you that includes
12 your own premises.

13 If I'm at my house if I've got dangerous dogs that
14 are not restrained, either by chain or fence or dog pen,
15 whatever, and they cause injury to somebody coming into my
16 yard, mail carrier, imagine a girl scout selling cookies
17 coming on the property, imagine a student or a church
18 worker, anybody that comes on to the property if they're
19 injured, if they're attacked they're guilty under this
20 statute.

21 So we know that this happened. Now we get to
22 involuntary manslaughter, and involuntary manslaughter,
23 ladies and gentlemen, is the unlawful killing of another
24 without malice. In other words we're not saying, oh,
25 Bentley Collins intended to do this. We don't have to

1 prove intent here. Let me repeat that. We don't have to
2 prove intent to convict him of involuntary manslaughter.
3 But criminal negligence, under the statute if you've got
4 dangerous animals unconfined on his property that's
5 criminal negligence because it is a crime, and he has been
6 negligent in showing a willful disregard to the safety of
7 others.

8 And that's what it take to prove involuntary
9 manslaughter, and if fact there's no question that Matthew
10 died as a result of this attack. Then, ladies and
11 gentlemen, let me just break these elements down just a
12 bit for you.

13 First, as I relates to dangerous animals, why do we
14 know those dogs were dangerous. Why the defendant should
15 have known the dogs were dangerous. Let me back up for a
16 second. I don't have to prove he actually knew. I just
17 have to prove that he should have known that under the
18 circumstances him owning those dogs, the defendant should
19 have known that these dogs were dangerous.

20 I will submit to you I don't think that takes a huge
21 leap of faith on your part to make that particular
22 finding. What did the evidence bear out. The dogs chased
23 Bobby, and Bobby said even his mother -- remember he even
24 testified to the fact that his mother -- he and his mother
25 would walking and try to lose weigh, but the dogs would

1 get after them so they quit walking because of those dogs.

2 And remember they lived in the neighborhood. The
3 dogs attacked and chased Joey that night as he walked into
4 the yard because they were protecting their property. But
5 here is the thing I really want you to keep in mind as
6 well. Law enforcement and Caroline were also threatened
7 with attack by these dogs. When Caroline first got there
8 and went towards her dead son those dogs started to charge
9 because they were protecting their prey.

10 And you had testimony from Caroline. You had
11 testimony from Douglas Pernell, and you had testimony from
12 Vickie Hallman at S.L.E.D. So if these dogs were so sweet
13 and so serene as the Defense would have you believe why
14 did law enforcement have to in essence flash lights,
15 threaten them with the flashlights, make all kinds of
16 gestures to kind of shoe them away if they were so serene.

17 They weren't so serene, and in fact officers
18 testified to you that animal control had to be called out.
19 And if these dogs were so nice and so serene why would
20 they have to catch them with a pole and a rope if they
21 were so nice as the Defense would you believe.

22 Jerry testified to you that he was threatened with
23 attack by the dogs. And after that attack, and I think
24 Mr. Lee made an elusion to this, but Jerry changed his
25 route. Remember he testified that he started going down

1 Pocket Road after that last attack the week beforehand.
2 And as you recall from the map Pocket Road is actually
3 before you get to the defendant's house. But here's the
4 thing that the Defense missed in his closing. Both Jerry
5 and Bobby where chased by the dogs and both of them were
6 chased with the defendant watching.

7 So the defendant knew that they had a propensity
8 because they were chased with the defendant watching.
9 We've got two witnesses who testified to you that the
10 defendant actually saw them being chased out in the road.
11 They weren't even on his property, and the dogs chased him
12 and his wouldn't do anything. They would stop at the
13 certain point but they would chase him. So these dogs,
14 again, were not as serene as everybody is trying to make
15 you feel on the Defense side.

16 Let's go a little further with the dangerous animal
17 aspect. Craig Thompson, who by the way is the only
18 witness, the only witness who actually trains these breeds
19 of dog. Remember Mr. McDonald doesn't even train vicious
20 animals or dangerous animals. And Mr. Cropper deals
21 mainly with labs, but he says that the nature of the
22 attack indicates that these dogs were either trained to be
23 aggressive or abused.

24 Ms. Cropper told you the same thing, that the nature
25 of the attack would tell you that these dogs were abused

1 or they were trained to be that aggressive. And then you
2 factor in the dog being in heat. That actually elevates
3 the nature of this attack. Craig also indicates that the
4 dogs were guarding their prey. Well, ladies and
5 gentlemen, you've watch the Animal Planet. If you've
6 watched anything, Discovery, National Geographic, is it
7 hard to believe that animals will protect their prey and
8 protect their kill.

9 It does not take a huge leap of faith to believe that
10 that's what these dogs were doing, but I want to be really
11 highlight this. Dr. Proctor -- excuse me. Mr. Cropper
12 said the dogs will protect their domain and even attack a
13 person as a pack. They would protect their domain. He
14 talked about where their domain was.

15 Matter of fact I think Mr. Lee used the picture to
16 talk about their domain. Look at where the body was find,
17 ladies and gentlemen. Where Matthew was found and eaten.
18 Could we all agree that that was within those dog's
19 domain. Can we agree to that. Common sense, ladies and
20 gentlemen. Common sense.

21 And even further and I had to mention this earlier,
22 but can't highlight this enough; that Mitchell, on cross,
23 said these dogs were guarding the property. I mean, what,
24 you're going to have a guard dog that is not going to
25 bite. Doesn't have the propensity to bite. If you think

1 about it most dogs have the propensity to bite if you
2 think about it, but if you look at the breed of those
3 dogs, you look at how they were abused, how they were
4 trained, and the fact as Mitchell said these dogs were
5 supposed to guard the property.

6 They were supposed to keep people out who were not
7 supposed to be there. His words not mine. That tells you
8 that, again, the defendant knew that these dogs had the
9 propensity, had the ability, had the means to attack a
10 human being.

11 Dr. Proctor -- Dr. Proctor tells you the extent and
12 the nature of these injuries, and that's the point, of
13 course, that I showed you the autopsy photos because you
14 needed to see the extent of these injuries. There are
15 certain things, ladies and gentlemen, that you are allowed
16 to infer using your common sense. You look at these
17 pictures and I will challenge anyone on the face of the
18 earth, anyone on the planet, to tell me that those
19 pictures are not indicative of a dangerous animal.

20 That's one of those things that is what it is. Just
21 by its very existence. The fact that you saw what
22 happened to Matthew, that tells you something dangerous
23 got a hold of him. That tells you right there. And,
24 again, I can't express to you how sorry I am to have had
25 to show you those pictures. But because of nature of this

1 case, because of what is at stake, it is absolutely
2 necessary that you be able to see that so you can make a
3 decision using your common sense.

4 Now, this last one is the heart wrenching part.
5 These dog ate Matthew alive, and this isn't me. This is
6 Dr. Proctor telling you. This -- they started on him,
7 they started eating him while he was alive. Poor child
8 suffered through that horrendous attack. So you mean to
9 tell me that even though the child is alive these dogs are
10 still eating him.

11 Again, there is no way that you can determine that
12 these dogs were not dangerous. I just don't see any way.
13 Briefly talk about whether or not the defendant knew or
14 should have known. Again that's one of the elements that
15 I have to prove under this dangerous animal statute.

16 Well, we've got Bobby as I told you. The Defendant's
17 son add he was being chased on several occasions but
18 didn't do or say anything. Jerry told you that, yes, the
19 defendant had seen him chased -- being chased by these
20 dogs. Craig tells you that based on the nature of these
21 animals that he would have had to have a role in them
22 becoming that vicious.

23 And let me stop right there for a minute. Can any of
24 us imagine an attack that vicious by dogs. I dare say,
25 no. And as Craig told you, as Mr. Cropper told you the

1 owner of the dog has a hand in how vicious they become. I
2 absolutely believe that. Yes, there are certain things
3 that are instinctive, but also we all have pet. We have
4 all had pet, and there are also certain things you can
5 control and minimize. But the fact that these dogs acted
6 in such a horrendous way would show that they were
7 actually trained to be aggressive.

8 Why does that make sense? Because they were guard
9 dogs. They were supposed to guard the property. Again,
10 these things go to common sense. Mr. Collins, and I told
11 you earlier, testified that his brother had dogs all of
12 his life. So you mean to tell me that Bentley Collins had
13 dogs all my life and he would not know these dogs are
14 capable of inflicting injury.

15 Again, ladies and gentlemen, I would submit to you
16 that that's a very easy answer. Of course he knew those
17 dogs could inflict injury. Of course he did. And then,
18 finally, Mitchell, the fact that, again, the dogs were
19 guard dogs. That's what they were. They guarded the
20 property:

21 Provocation. Why do you know this was an unprovoked
22 attack. Again, Bobby and Joey and Jerry testified that
23 they'd been attacked unprovoked by the dogs. Bobby and
24 Jerry before this incident. Joey after this incident.
25 Vicky Hallman, Douglas and Caroline, they came out to the

1 scene. All Caroline did was try to get to her child. The
2 dogs wouldn't let her. The dogs going to run her off.
3 Dogs going to get to her. Was not provoked. Did she
4 provoke them trying to get to her child? No. That goes
5 into that consideration, ladies and gentlemen.

6 Craig and Mr. Cropper and -- well, Craig and Mr.
7 Cropper testified that again if there's a certain
8 condition existing, either protecting the domain or as
9 Mr. Cropper said dog being in heat, anything that steps
10 into their domain is free game. Is fair game for those
11 dogs. That's not just my expert saying that. That's Mr.
12 Cropper saying that as well, their expert.

13 Again, as it relates to the lack of confinement.
14 Simply put that's not even an issue. We know the dogs
15 were not confined. The Defense is not contesting that
16 issue. But why do we know that this attack was committed
17 by Bentley Collins' dogs? Again, bobby, joey -- excuse
18 me. Bobby and Jerry, Jerry again talked about the dog's
19 behavior, but Bobby was there. Bobby and Joey.

20 And let me just explain this. The Defense talked
21 about the fact that there were three dogs, only three
22 dogs, that were being charged. Tell me tell you something
23 about this case. I represent the State along with
24 Mr. Hayes and Mr. Daniel. And we knew that the boy's only
25 could say they saw three of the dogs eating the body. If

1 we were trying to manufacture a case, of course, we know
2 there were six dogs out there.

3 We're not trying to convict the defendant of anything
4 he did not do. We are only trying to convict him of what
5 we know we proved and the three dogs. That's why there
6 are three. Both of them saw three dogs eating at that
7 time. We know that they had a pack mentality. We know
8 that -- we are certainly convince that that is at least
9 the case.

10 That at least three of the dogs were involved in that
11 attack, and that's why we've only got three counts.
12 Again, my job isn't to try to pile on. I'm only trying to
13 convict the defendant of what he is actually guilty of.
14 That's called fairness. That's called justice. That's
15 what I do. That's what we do.

16 Vickie and Douglas, because of the way, again, the
17 dogs were acting, they were guarding their domain, this
18 child lay in their domain. No other dogs were mention,
19 and let me talk about this. Let me just digress a few
20 minutes. No other packs of dog. Nobody else testified
21 that there were other packs of dogs that would come and,
22 these dogs would get into dog fights with these packs of
23 dog.

24 But now all of a sudden we're supposed to believe,
25 oh, another pack of dogs comes in. Oh, Oscar comes in.

1 He's the one that did it. Common sense, ladies and
2 gentlemen. Common sense. If I say it once I'll say it a
3 thousand times cause it doesn't change. But here is the
4 key thing. The attack was 87 feet inside the yard. We
5 aren't talking right near the road. He had gone into the
6 yard 87 feet right near where they feed heading towards
7 that porch where they congregate.

8 That's why he was attacked, and that's what the
9 evidence shows because that's actually what happened. And
10 again this is within their domain. Do not, do not
11 underestimate that, ladies and gentlemen.

12 Now, the Defense also spent some time talking about
13 the lack of D.N.A, a lack of this, lack of that, and I
14 asked Mr. Don Girndt, who I've known for years, haven't
15 you gotten conviction in cases where you didn't have
16 D.N.A? Haven't you gotten convictions where you look back
17 and say, 'well, I could have done this, that and the other
18 thing'.

19 Let me tell you something. This was not the normal
20 crime scene. Mr. Lee spent a lot of time bashing law
21 enforcement. The A Squad and the B Squad and this, that
22 and the other thing. This is not, and Craig even
23 testified to, this isn't the type of thing you see every
24 day. This is not the type of thing you gear yourself to
25 have to deal with every day. Could there have been things

1 done different, yes.

2 But does that change the fact that the defendant's
3 dogs were the dogs that killed this child? Absolutely
4 not. Absolutely not. But, ladies and gentlemen, let me
5 just say this. Matthew cannot be here next to his mother
6 like you've seen the defendant's children. She can't have
7 him sitting next to her. She will never have him sitting
8 next to her again. He is here in spirit in all of our
9 thoughts and prayers, but he's here. He's here in this
10 courtroom.

11 And he's got a story to tell, and why do I say that.
12 Because of these that I've shown you already. In these
13 photographs Matthew is telling you, is showing you what
14 happened. Matthew is showing you that these dogs are
15 dangerous through his autopsy photos and the pictures at
16 the scene. Matthew is also telling you that these dogs --
17 that these dogs committed an unprovoked attack upon him.

18 Matthew is telling you, through the fact that he does
19 not have a jugular vein anymore because it was eaten away.
20 Matthew is telling you because his face, his eyes, his
21 ears, his lips were eaten away. Matthew is showing you --
22 Matthew is showing you that in fact these dogs didn't kill
23 because they were provoked. These dogs killed two reasons
24 I would submit.

25 They killed because he had come onto their territory

1 and they killed because they were hungry. They killed for
2 prey. That would go toward abuse because this ain't
3 something that happens normally. This ain't something
4 that you see. So again you get to your common sense.
5 Matthew's story is a sad one, and I'll tell you what
6 Matthew did and this is the thing that make the most
7 sense. This is the story I'm firmly convinced of.

8 Matthew went to see his friend. When Bentley left
9 and went he got back and who was home we don't know.
10 There was contradicted testimony as to when and where they
11 went and who went where, but that -- I'm not dealing with
12 that right now. He went to see his friend. Before he
13 could even get to the door these dogs had attacked him and
14 ate him.

15 Joey and Bobby come onto the scene, but as they are
16 eating Matthew is fighting for his life, but he's got six
17 dog. We can only prove three, but it just stands to
18 reason that it's a fair inference that you can say six.
19 But imagine -- and when you get back in the jury room when
20 Mr. Lee asked you about theory, just close you eyes for a
21 little while, and just imagine based on what you've seen
22 and based on what you heard what happened to that child.

23 And that, ladies and gentlemen, I believe will leave
24 you firmly convinced that the defendant's dogs were the
25 dogs that, one, committed this terrible act, and that,

1 two, he is the owner is responsible for why and how they
2 became to that degree of viciousness to kill Matthew.

3 I've never seen a case like this in almost 16 years. I
4 hope to God that I never see another one.

5 And that's where you come in, ladies and gentlemen,
6 because through your verdict you can send a message that
7 Mr. Collins and those who might think like him have a
8 responsibility to the rest of the citizens of this county
9 and of the State. And have a responsibility to our
10 children. He knew that Matthew came over to that house.
11 Everybody said Matthew came over there, yet those dogs
12 were still allowed to be to the point of viciousness that
13 caused them to do what they did to him.

14 Mr. Lee quoted the Bible. I'm not going to quote you
15 a Bible verse, but I think we can all agree that the Bible
16 stands for, among a whole bunch of wonderful things, the
17 Bible stands for justice. Stands for justice, and as we
18 sit here and talk about the defendant being entitled to a
19 fair trial Caroline sits here without her child.

20 Caroline sits here with Matthew gone. She will never
21 see Matthew again, ladies and gentlemen. Like I said
22 Matthew is here. Matthew is here. He might not be here
23 in body. He might not be here in flesh. Matthew is here
24 and he is every bit as deserving of justice as the
25 defendant is. And, yes, the defendant is deserving of

1 justice. Not because we have to get somebody because what
2 he did was wrong. What he did was against the law and
3 what he did resulted in the life of Caroline's son.
4 That's why he's guilty.

5 That's why I ask you, through your verdict of guilty,
6 ladies and gentlemen, to send that message. You are a
7 last bastion of justice. You are the last bastion of
8 justice, and I'm asking you to send that justice on behalf
9 of Caroline and on behalf of Matthew. We're not here to
10 demonize those dogs.

11 MR. LEE: Your Honor, please would you please direct
12 the Solicitor to stay on his side of the room.

13 MR. REDMOND: It's okay, Your Honor. Thank you.

14 MR. LEE: Well, Your Honor, I put on the record that
15 this defendant hasn't taken the stand. The Solicitor is
16 not entitled to bait him into a reaction.

17 MR. REDMOND: Nor would I try to, but I appreciate
18 the fact that he thinks that I might. Like I said I'm not
19 here to demonize those dogs. But we know that through
20 what we've seen in Court the defendant has in fact
21 committed the crime of unrestrained -- having
22 unrestrained, dangerous animals and thus guilty of
23 involuntary manslaughter for the death of John Matthew
24 Davis. That's the message you send. That's the person
25 you send it to. I thank you. Caroline thanks you, and

1 most importantly I wish you God speed in your
2 deliberations. Matthew, Matthew thanks you. Thank you
3 very much.

4 CHARGE OF THE COURT

5 THE COURT: Ladies and gentlemen of the jury, does
6 anybody need a brief recess? Everybody okay? Ladies and
7 gentlemen of the jury, it now becomes my duty to charge
8 you the applicable law of the case, and I want to thank
9 both counsel for the State and Defense for their able
10 presentations and their close arguments.

11 The part of your oath that requires you as your duty
12 to accept and apply the law as the Court now states it to
13 you. As jurors it's your exclusive duty to decide all
14 issues of fact in this case and for that purpose to
15 determine the effect, the value, the weight and the truth
16 of the evidence. Both the State and the defendant have a
17 right to expect that you will you consciously consider and
18 evaluate the evidence and apply law of the case thereto.

19 To the end that both the State of South Carolina and
20 the defendant will receive and obtain a fair and impartial
21 trial in this case. As you've already heard the charges
22 concerned in these indictments were three indictments for
23 47-3-0760 for the dangerous animal statute. And also, and
24 I'll give you a full charge of that statute so that you
25 have a clear understanding. And also one indictment for

1 the involuntary manslaughter.

2 Now, to all of these charges the defendant has
3 entered a plea of not guilty. The plea of not guilty by a
4 defendant places the burden of proof on the State to prove
5 by evidence the guilt of the defendant beyond a reasonable
6 doubt before you the jury could find the defendant guilty.
7 The defendant is presumed in law innocent of the charges
8 contained in an indictment.

9 It is a cardinal and fundamental rule of the law of
10 evidence that every defendant, irrespective of the charges
11 against him will always be presumed innocent of the crime
12 which he is indicted unless and until the guilt of the
13 defendant has been proved by evidence that satisfies you
14 the jury of his guilt beyond a reasonable doubt.

15 The presumption of innocence is not a mere legal
16 theory. It is not just is a legal phrase. The
17 presumption of innocence is a substantial right which
18 every accused is entitled. Our Supreme Court has declared
19 that the presumption of innocence is like a robe of
20 righteousness placed about the shoulders of a defendant
21 and remains with him and assigns him to that class, the
22 innocent, until that presumptive robe of righteousness has
23 been stripped from his person by evidence satisfying you
24 the jury of the guilt of the defendant beyond a reasonable
25 doubt.

1 The presumption of innocence accompanies the
2 defendant from the time of his arraignment and appearance
3 in the Court and continues with the defendant throughout
4 every stage of the trial and continues with the defendant
5 after you retire to the jury room to deliberate your
6 verdict. The presumption of innocence continues in its
7 existence to the benefit of the defendant until you the
8 jury reach a conclusion that the State has proved the
9 guilt of the defendant beyond a reasonable doubt.

10 The State is not required to prove the guilt of a
11 defendant beyond all doubt or beyond every doubt, but
12 beyond a reasonable doubt. Some of you may have served as
13 jurors in civil cases where you were told it is only
14 necessary to prove that a fact is more likely true than
15 not true. In criminal case the government's proof must be
16 more powerful than that. It must be beyond a reasonable
17 doubt.

18 Proof beyond a reasonable doubt is proof that leaves
19 you firmly convinced of the defendant's guilt. There are
20 very few things in this world that we know with absolute
21 certainly, and in criminal cases the law does not require
22 proof that overcomes every possible doubt. If based on
23 your consideration of the evidence you are firmly
24 convinced that the defendant the guilty of crime charged
25 you must find him guilty.

1 If on the other hand you think that there is a real
2 possibility that he is not guilty you must give him the
3 benefit of the doubt and find him not guilty. A defendant
4 is entitled to every reasonable doubt arising in the whole
5 case. If upon issue or any issue of fact essential to
6 conviction and a verdict of guilty you have a reasonable
7 doubt as to how that issue should be resolved it would be
8 your duty to resolve that reasonable doubt in favor of the
9 defendant.

10 A defendant is not required to prove his innocence,
11 but the State is required in law to prove every essential
12 element of the offense charged against the defendant by
13 evidence which satisfies you the jury of the guilt of the
14 defendant beyond a reasonable doubt before you could
15 convict the defendant and find him guilty.

16 These documents that I have up here are the
17 indictments. You will have them later on when you begin
18 your deliberations. I instruct you that an indictment is
19 not evidence and cannot be considered by the jury as
20 evidence in the case. The indictment is simply the formal
21 written instrument which contains the charges against the
22 defendant and it serves as the formal written document by
23 which this case is processed into the Court.

24 During this trial all of us, you and I, have certain
25 duties to perform. As the trial judge it is my

1 responsibility to preside over the trial of the case, and
2 I also have the duty to rule upon or pass upon the
3 admissibility of the evidence offered during the course of
4 this trial. You are to consider only the competent
5 evidence before you, and you are to disregard and disabuse
6 from your mind any testimony ordered stricken from the
7 record of this case during the progress of the trial if
8 there be any.

9 And you are to consider only the testimony which has
10 been presented from the witness stand together with any
11 exhibits admitted into the record of this case and any
12 stipulations of counsel made into the record if there be
13 any. I have the additional duty to charge you the
14 applicable law of the case. As the presiding judge I am
15 the sole judge of the law of the case, and it is your duty
16 to accept and apply the law as I give it to you.

17 If you have a preconceived idea as to what the law is
18 or what the law ought to be in this case and it should not
19 agree with what I tell you the law is you are obligated
20 under your oath to abandon this preconception on your part
21 because you are sworn to accept the law precisely as I state
22 it to you.

23 In every case tried in this Court before a jury the
24 jury becomes the sole and exclusive judge of the facts of
25 the case. You the jury are the judge of the facts of the

1 case. The Judge is the law of the case.

2 The constitution of our State has declared that a
3 trial judge shall not intimate, state, comment upon or,
4 make any statement to a trial jury about the facts in a
5 case. Since you are the sole judge of the facts you are
6 not to in from anything I said during the progress of this
7 trial in ruling upon the admissibility of evidence or
8 otherwise or anything that I might say during the course
9 of this charge to you that I have an opinion about the
10 facts in this case.

11 The law does not permit me to have an opinion about
12 the facts. This is a matter solely for you, the jury, to
13 determine. As jurors then it is your duty to determine as
14 I have stated to you the effect, the value, and the weight
15 and the truth of the evidence presented during the course
16 of this trial.

17 Necessarily then you must assess the credibility of
18 the witnesses who have testified in this case.
19 Credibility is simply a legalistic term which means
20 believability. It becomes your duty then to analyze and
21 evaluate the evidence and determine that evidence which
22 convinces you of it's truth. I charge you that in
23 determining the question of the credibility or
24 believability of the witnesses you may believe one witness
25 against several witnesses or several witnesses against one

1 witness. You may believe a part of the testimony of a
2 witness and reject the remaining part of the testimony of
3 that same witness.

4 You may believe the testimony of a witness in its
5 entirety or reject the testimony of a witness in its
6 entirety. You may consider whether any witness has
7 exhibited any interest, any bias, or any prejudice in this
8 case. You may consider the demeanor of a witness and the
9 appearance of a witness upon the witness stand.

10 You may consider the opportunity for knowledge
11 concerning those things about which a witness testified.
12 And in doing so in exercising your mental processes in
13 determining what you consider to be true the law simply
14 requires that you exercise your good judgment, your common
15 sense, your sense of logic and reason, and your
16 experiences in life. And then you apply these attributes
17 to the evidence and determine what you consider to be the
18 truthful evidence and to these true state of facts as
19 determined by you the jury you take and apply the law as I
20 state it to you and thus arrive at a true verdict in the
21 case.

22 Now, speaking of evidence, I want to give you a
23 charge on direct and circumstantial evidence. There are
24 two types of evidence which are generally presented during
25 a trial, direct evidence and circumstantial evidence. I'm

1 not telling you what is present in this trial. You the
2 jury have to decide what you consider to be present. The
3 trial may have circumstantial evidence or it may be direct
4 evidence or a combination of the both. Direct evidence is
5 the testimony of a person who claims to have actual
6 knowledge of a fact such as an eyewitness.

7 It is evidence that immediately establishes the main
8 fact to be proved. Circumstantial evidence is proof of a
9 chain of facts and circumstances indicating the existence
10 of a fact. It is evidence which immediately establishes
11 collateral facts from which the main fact maybe inferred.
12 Circumstantial personal knowledge or observation evidence
13 is based on inference and not on anything else at times.

14 The law makes absolutely no distinction between the
15 weight or value to be given either direct or substantial
16 evidence, nor is a greater degree of certainty required of
17 circumstantial evidence than of direct evidence. You
18 should weigh all the evidence in the case. After weighing
19 all the evidence if you are not convinced of the guilt of
20 the defendant beyond a reasonable doubt your must find the
21 defendant not guilty.

22 I instruct you, now emphasize to you, that the
23 election of the defendant in the trial of the criminal
24 case not to testify on his own behalf is not a factor to
25 be considered by you in any way in your deliberations and

1 in your consideration on the question of the guilt or
2 innocent of the accused.

3 It must not be considered by you in any manner
4 against the defendant or mitigate against him in any
5 respect whatsoever. A defendant has the constitutional
6 right to remain silent and the assertion of such
7 constitutional right cannot and must not be considered by
8 you in your deliberations. Under you oath then you are to
9 reach no inference and draw no conclusion whatsoever from
10 the fact that the defendant did not himself testify. The
11 election of a defendant not to testify should not even be
12 discussed in the jury room.

13 Concerning the indictment about dangerous animals. I
14 now charge you from Section 47-3-720, "No person owning or
15 harboring or having the care or the custody of a dangerous
16 animal may permit the animal to go unconfined on his
17 premises. A dangerous animal is confined as used in this
18 section if the animal is not confined securely indoors or
19 confined in a securely enclosed fence or securely enclosed
20 and locked pen or run area upon the person's premises.

21 The pen or run area must be clearly marked as
22 containing a dangerous animal and must be designed to
23 prevent the entry of the general public including children
24 and to prevent the escape or release of the animal.

25 However, the Section does not apply to an animal owned by

1 a licensed security company and on patrol in a confined
2 area."

3 Now, I charge you 47-3-710, which is the definitions
4 statute. As use in this article, "Dangerous animal means
5 an animal of the canine or feline family. One, which the
6 owner knows or reasonably should know has a propensity,
7 tendency or disposition to attack unprovoked, cause injury
8 or otherwise endanger the safety of human beings or
9 domestic animals.

10 Two, which makes an unprovoked attack that causes
11 bodily injury to a human being, and the attack occurred in
12 a place other than the place where the animal is confined
13 as required by Section 47-3-720.

14 Or commits an unprovoked attack -- excuse me.
15 Correct that. Commits unprovoked acts in a place other
16 than the place where the animal is confined as required by
17 section 47-3-720, and those acts cause a person to
18 reasonably believe that the animal will attack and cause
19 bodily injury to a human being.

20 Three, which is owned or harbored primarily or in the
21 part for the purpose of fighting which is trained for
22 fighting.

23 Now, B, dangerous animal does not include, One, an
24 animal used exclusively for agricultural purposes or.

25 Two, an animal which attacks a person who is

1 trespassing or who appears to be trespassing.. A
2 trespasser is a person who is not lawfully upon the
3 premises of owner," and as you will remember at the
4 beginning of this trial I charged you in this case that
5 the decedent in this matter would not be considered a
6 trespasser. That is a matter of law which I instruct you
7 on.

8 "C, an animal is not a dangerous animal solely by
9 virtue of its breed or species.

10 D, as used in this article owner means a person who
11 owns or has custody or control of the animal.

12 And, E, as used in the article injury or bodily
13 injury means broken bones, lacerations, punctures of the
14 skin or any physical injury resulting in death."

15 That fourth indictment, involuntary manslaughter.

16 Involuntary manslaughter is the unlawful killing of
17 another without malice, either expressed or implied, by
18 some act or omission constituting criminal negligence.

19 Criminal negligence is the reckless disregard of the
20 safety of others. Thus, mere negligence will not suffice
21 to support a conviction of involuntary manslaughter. The
22 burden is upon the State to prove heedlessness and
23 willfulness.

24 Recklessness implies the doing of a negligent act
25 knowingly. What a man in fact acts negligently, and he

1 realizes that he is acting negligently the law says that
2 he is reckless, heedlessness or willful and wanton. Thus
3 involuntary manslaughter involves an unintentional killing
4 that is accomplished by means of some intentional act.
5 This criminal negligence must be the cause of death.
6 Furthermore, what constitutes criminal negligence depends
7 on the facts and circumstances of each case:

8 Finally, the violation of a statute if it is the
9 proximate result or contributing cause of an injury
10 constitutes negligence per se. That is negligence in
11 itself and is evidence of recklessness.

12 Speak to you about the elements of this offense of
13 involuntary manslaughter. In order to make out the
14 offense of involuntary manslaughter the State must prove
15 the following element beyond a reasonable doubt:

16 One, that the victim died in Dillon County on the day
17 alleged in this indictment.

18 Two, that the defendant did unlawfully and
19 unintentionally kill the victim.

20 And, Three, that the defendant's conduct was
21 criminally negligent which is defined by Section 16-360 as
22 the reckless disregard of the safety the others.

23 And, Four, that the alleged criminal negligence of
24 the defendant was the proximate cause of the death of the
25 victim.

1 The first element of the crime of involuntary
2 manslaughter is that the victim must have died at the time
3 and in the place alleged in the bill of indictment.

4 The second element of the crime of involuntary
5 manslaughter requires that there be an unlawful killing of
6 another unintentionally by the defendant without malice.

7 Involuntarily is defined as the unintentional killing
8 of another without malice and doing some unlawful act not
9 amounting to a felony and not likely or naturally tending
10 to endanger life or in doing a lawful act in an unlawful
11 manner.

12 Involuntary manslaughter is an unintentional killing
13 without malice. Malice in the law of homicide denotes
14 wickedness and excludes just cause or excuse. Malice is
15 something that springs from depravity from a heart devoid
16 of social duty and fatally bent on mischief. However, as
17 noted involuntary manslaughter is an unintentional killing
18 without malice; that is a homicide was not intended and it
19 was done without malice. Therefore, if the defendant had
20 an intention to kill then the offense is not involuntary
21 manslaughter.

22 The third element of involuntary manslaughter is that
23 the defendant's conduct be criminal by negligent. The law
24 defines involuntary manslaughter as the unlawful killing
25 of another without malice, expressed or implied, by some

1 act or omission constituting criminal negligence.
2 Criminal negligence is defined by the same law as the
3 reckless disregard of the safety of others. Thus, mere
4 negligence will not suffice to support a conviction of
5 involuntary manslaughter. The burden is upon the State to
6 prove heedlessness or willfulness.

7 Recklessness implies the doing of a negligent act
8 knowingly. When a man actually acts negligently and he
9 realizes that's he's acting negligently the law says that
10 he is reckless, heedless or willful and wanton. Thus,
11 involuntary manslaughter involves an unintentional killing
12 that is accomplished by means of some intentional act.

13 The last element is that the criminal negligence must
14 be the proximate cause of the death. Furthermore, what
15 constitutes criminal negligence depends on the facts and
16 circumstances of each case.

17 Finally, the violation of a statute, if it is the
18 approximate or contributing cause of an injury,
19 constitutes negligence per se; that is negligent in
20 itself, and is evidence of recklessness.

21 Willfulness is the intentional doing or omitting to
22 do something in disregard of the rights of others after
23 notice of those rights.

24 Wantonness or wanton negligence is reckless
25 indifference to the consequences of an act or omission.

1 Willful is further defined to mean intending to
2 result which actually comes to pass, not accidental or
3 involuntary. The words 'willful' and 'willfully' imply
4 such elements as design, intent and purpose, deliberation,
5 determination and premeditation. They are commonly
6 employed to denote an act that is wrong or prohibited by
7 law and to also indicate the intention or deliberate doing
8 of a wrongful act, the doing of a forbidden act purposely
9 in violation of the law.

10 Speak with you about criminal negligence. Section
11 16-360 of the Code of Laws of South Carolina defines
12 criminal negligent as with regard to the crime involuntary
13 manslaughter. Criminal negligence is defined, "As the
14 reckless disregard of the safety of other. Any person
15 charged with the crime of involuntary manslaughter hall be
16 convicted only upon a showing of criminal negligence as
17 defined in this section.

18 Criminal negligence is defined as conduct evidencing
19 a reckless disregard for the safety of others.
20 Recklessness implies doing of negligent act knowingly.
21 When a man acts or actually acts negligently and he
22 realizes that's he is acting negligently the law says that
23 he is reckless or willful and wanton.

24 A reckless disregard of the safety of others
25 signifies an indifference to the consequences of one's

1 acts. It mean something more than mere negligence or
2 carelessness which indicates inadvertence; that is the
3 failure to exercise due care, sometimes called ordinary
4 care. Meaning such care as a person of ordinary reason
5 and prudence would have exercised in the same
6 circumstances.

7 Recklessness, willfulness and wantonness, which
8 convey the same general idea, means a conscious failure to
9 exercise due care or ordinary care. Recklessness exists
10 when one who's aware that ordinary care or prudence
11 requires him to use certain precautions for the safety the
12 others with unconcern or indifference fails to use them or
13 who, aware that a coarse of conduct or act is negligence,
14 with unconcern or indifference follow such course or does
15 such act.

16 This signifies an indifference to the consequences of
17 one's act. Negligence is the failure to use that care
18 that a person of ordinary reason and prudence would use
19 under the same or similar circumstances. One can be
20 negligent in either one of two ways:

21 It may be negligent because me does something that a
22 person or ordinary prudence would not do under the same or
23 similar circumstances. Negligence may arise as a matter
24 of omission because of one's failure to do something that
25 a person of ordinary reason and prudence would do under

1 the same or similar circumstances.

2 It is a relative term. In determining whether one is
3 negligent or not one would have to take into consideration
4 all of the surrounding circumstances."

5 Speak to you about accidental killing distinguished
6 from involuntary manslaughter. Where death results from
7 the act of a person with no intent on the part of such
8 person to do bodily harm or injury to another and without
9 negligence in the doing of the act the death is the result
10 of an accidental killing if such person could not be
11 convicted of involuntary manslaughter or any other
12 criminal offense.

13 In a case such as this the burden is upon the State
14 to establish beyond a reasonable doubt that the death
15 involved was not the result of an accidental killing. One
16 cannot be convicted of reckless homicide if the evidence
17 shows that the death was due to an accident or in this
18 case involuntary manslaughter.

19 A killing done through an accident presupposes that
20 the accident was brought about through no fault of the
21 person charged with the killing. The killing of a human
22 being by misadventure that the accident killing of another
23 when the slayer is doing a lawful act unaccompanied by any
24 criminal or reckless conduct.

25 An accidental killing is a killing that occurs after

1 the exercise of care required by law to prevent its
2 occurrence. Homicide by misadventure or accident is
3 distinguished from reckless homicide or involuntary
4 manslaughter in that it happened in consequence of a
5 lawful act. Not done with reckless disregard for the
6 safety of others. Reckless homicide or involuntary
7 manslaughter happens in consequence of an unlawful act
8 done with disregard for the safety of others constitute a
9 misadventure or accidental killing in a homicide three
10 requisites exist:

11 First, there must have been no intention to do harm.

12 Second, proper precaution must be taken to avoid
13 mischief.

14 Third, the act from which death resulted must have
15 been lawful.

16 If one imposes the defense of homicide by
17 misadventure or accident such a defense would not be an
18 affirmative defense and the burden is not on the defendant
19 to prove a thing. On the other hand the State is required
20 to prove beyond a reasonable doubt that the killing of a
21 human being was not caused by misadventure or accident.

22 If the death of the deceased happened in such a
23 manner that it was not the proximate and direct result and
24 consequence of the defendant's conduct in a willful,
25 wanton and reckless disregard in the safety of others then

1 the defendant would be entitled to an acquittal or a
2 verdict of not guilty.

3 An accident is an occurrence that happens
4 unexpectedly from the unnatural operations of nature alone
5 or results undesignedly or unexpectedly from the main
6 agency alone or from the joint operation or both. If the
7 death of the deceased was the result of a pure accident
8 within the meaning of that definition, of course, this
9 defendant would not be guilty of any offense.

10 However, the law does not allow one to excuse himself
11 by the defense of accident if he himself was guilty of
12 recklessness and such recklessness was the cause of the
13 deceased's. A homicide is justifiable when it is
14 committed in the exercise of a legal right or in carrying
15 out a legal duty.

16 At homicide is excusable when it is committed either
17 by accident or self-defense. There is no practical
18 difference between justifiable homicide and excusable
19 homicide. The terms are used synonymously in the case and
20 each constitute a complete defense. Hence, each is
21 treated as a defense therein.

22 There may be a good defense to a homicide committed
23 in the following cases: Execution in pursuance of a Court
24 order as punishment for capital offenses carried out by
25 the proper officer to prevent the commission of a felony

1 such as murder, rape, sodomy, robbery, arson or burglary
2 to effect the arrest of a felon, to prevent the escape of
3 a felon, to suppress a riot, self-defense, defense of
4 another, if that other has the right of self-defense and
5 defense of habitation and if the homicide is purely
6 accidental.

7 A homicide by accident, misadventure or misfortune is
8 excusable where it is accidentally committed while doing a
9 lawful act in a careful and lawful manner without an
10 unlawful intent. Homicide by misadventure is the
11 accidental killing of another where the slayer is doing a
12 lawful act accompanied by any criminal carelessness or
13 reckless conduct.

14 A homicide committed by accident is excusable. For
15 example a homicide is excusable if death unfortunately
16 ensued where a parent was correcting his child and the
17 bounds of moderation were not exceeded in the manner. The
18 instrument or the qualify or quantity of punishment where
19 a person was at work with a hatchet and the head flew off
20 and killed a bystander.

21 In order that a homicide by misadventure may be
22 excusable. The act resulting in death must have been a
23 lawful one. It must have been done with reasonable care
24 and due regard for the life and person of others. And the
25 killing must have been accidental and without lawful

1 intent or evil design.

2 All three elements must occur or concur. In the
3 absence of any one of them will involve guilt. It is not
4 excusable where it was the result of an lawful act. An
5 act such as unlawfully striking another with intent to
6 hurt although not with the intent to kill is not
7 excusable. Likewise, the homicide is not excusable if it
8 was the result of an act done with such recklessness as to
9 amount to criminal negligence.

10 If the testimony shows that a defendant voluntarily
11 and knowingly intending to hurt the person of another
12 struck him the dangerous blow which was likely to result
13 in serious harm and death resulting it is not an
14 accidental killing. Where the death of a human being is
15 the result of accident or any misadventure in the true
16 meaning of the term no criminal responsibility attaches to
17 the act of the slayer if it be shown that the killing was
18 unintentional; that it was done while the perpetrator was
19 engaged in a lawful enterprise the homicide will be
20 excused on the score of accident.

21 An accident is an occurrence that happens
22 unexpectedly from the unnatural operation of nature alone
23 or result undesignedly and unexpectedly from the main
24 agency alone or from the joint operation or both of both.
25 If the death of a deceased was the result of a pure

1 accident within the meaning of that definition, of course,
2 the defendant could not be guilty of any offense.

3 However, the law does not allow one to excuse himself
4 by the defense of accident if he himself was guilty of
5 negligence and such negligence was the proximate cause of
6 the death of the deceased.

7 Now, there is a lot of general law in that. It may
8 not apply to this case, but I need to give you an idea of
9 the law that I needed to charge to you I gave you the full
10 summation there. So you the jury will need to use your
11 common sense in your deliberations to apply any of the law
12 that I've given to you during the course of this charge.

13 Once again, reiterate to you I do not have an opinion
14 in this case. Finders of the fact, solely up to you the
15 jury. I am only the judge of the law.

16 All right, ladies and gentlemen. You're not
17 partisans or advocates for the State or for the Defendant.
18 You do not serve as jurors to reward friends or punish
19 enemies. Obviously such a perverted system of justice
20 would be intolerable in our society. You have been
21 selected by both the State and the Defendant to be fair
22 and impartial jurors.

23 It is your duty then by your joint deliberations to
24 determine the truth in this case giving to the defendant
25 the benefit of every reasonable doubt on each and every

1 issue. Then to those facts which you determine to be true
2 and then take and apply the law which has been given to
3 you by the Court and thus arrive at a verdict which does
4 speak the truth of the case. For the word, 'verdict'
5 which is a Latin derivative word means a true saying.
6 When you have accomplished these responsibilities you will
7 have satisfied your oath as jurors and you will discharge
8 your duty to the Court.

9 Now, you've got to take up each indictment
10 separately. So this charge applies as far as the possible
11 verdicts you're going to have to apply to each indictment.
12 As you take up each indictment if the State has failed to
13 prove the guilt of the defendant beyond a reasonable doubt
14 your verdict would be two words, 'not guilty'. If the
15 State had proved the guilt of the defendant your verdict
16 would be one word, 'guilty.'.

17 The verdict that you render in this case on each
18 indictment must be the verdict of each and every juror.
19 In other words it's got to be your unanimous verdict. All
20 12 deliberating jurors must agree on the verdict which you
21 authority Madam Forelady to write for the jury.

22 Madam Forelady, on the back of each indictment that
23 you will have there is a section at the very bottom
24 entitled, 'verdict'. It will be your duty to write the
25 appropriate verdict in on each indictment and sign your

1 name and I notice there is a date that was inadvertently
2 written in there. Just strike that and put today's date
3 or whatever the verdict is reached will be the date.
4 Madam Forelady, it will be your duty as I said to write in
5 the appropriate verdict. Should you begin your
6 deliberations a little later on and someone were to refuse
7 to abide by their oath and do their duty, such as should
8 someone refuse to take part in the deliberations, please
9 notify the Court of that. That's why we have an alternate
10 available.

11 It will be your duty to make sure that if anybody
12 takes a restroom break or a smoke break or steps out of
13 the room for any valid reason make sure deliberations stop
14 until you have all 12 back together. If you need anything
15 the bailiffs will be stationed close by. All you need to
16 do is knock on the door and let them know.

17 We will try to accommodate any needs you have. Also
18 by your duty, once the jury has reach a verdict on each
19 and every indictment, to knock on the door and let us know
20 and we will receive the jury for the purpose of publishing
21 the verdicts.

22 Madam Clerk has arranged for lunch for you. We will
23 assemble the cars out in the regular place that we've been
24 meeting. You will go to lunch. Do not deliberate this
25 case until you return to the jury room and all 12 regular.

1 jurors are in place. Once again do not let anybody say
2 anything to you. Do not discuss this case amongst
3 yourselves. Do not let anybody approach you concerning
4 this case. Okay. Anybody got any questions about the
5 procedure? All right. If you will report to the jury
6 room. Just relax there a few minutes. Do not deliberate.
7 I'm going to allow Madam Alternate to stay with you. Once
8 you're instructed to deliberate I'm going to ask her to go
9 with the bailiff to a separate room.

10 Give us a minute. I've got to check in with the
11 attorneys one last time to make sure I've covered
12 everything I was supposed to cover with you. Also that
13 will give us occasion to get the vehicles ready. So if
14 y'all will just step back a minute or two and relax.

15 (WHEREUPON, the jury was excused from the courtroom
16 at 12:58 p.m.)

17 COLLOQUY

18 THE COURT: Anything for the record, gentlemen?

19 MR. REDMOND: None from the State.

20 MR. LEE: No exception to the charge, your Honor.

21 THE COURT: Gentlemen, I want to thank you for your
22 professional manner and the way all of you that this case
23 was prepared and presented. I cannot sit up here and say
24 it was a pleasure for me to try a case because of the
25 nature of this case, but you sure make my job a lot easier

1 when you show your expertise and your professionalism in
2 presenting the case. And I want to personally thank you.

3 MR. REDMOND: Thank you, Your Honor. I

4 MR. LEE: Appreciate that. Thank you.

5 THE COURT: All right. If you will leave your cell
6 phone numbers available in case something goes the wrong
7 way or whatever during this so we can get ahold of you
8 cause I know you probably want to get some lunch. One
9 other thing.

10 MR. LEE: Yes, sir.

11 THE COURT: I'm going to have bailiff staff and some
12 deputies go with them to take them to lunch. Do you still
13 waive oaths?

14 MR. LEE: Yeah, that's fine.

15 THE COURT: Thank you.

16 THE COURT: Just as a rule of thumb. I guess I would
17 say that it would take about an hour. Close to an hour
18 for them to complete the meal and come back. If y'all
19 would please check off the exhibits before we deliberate.

20 MR. LEE: We're going to check them off now so they
21 will be sealed -- so that they will be ready. So they
22 will just pick them up and carry them in.

23 (WHEREUPON, the jury panel was excused from the
24 courtroom to begin deliberations at 2:43 p.m.)

25

1 (WHEREUPON, other Court-related business was
2 conducted on the record but not related to the trial
3 of this case and not included in this transcript of
4 record.)

5 QUESTION FROM THE JURY

6 THE COURT: We have a question from the jury.
7 Counsel, you're going to have to help me with this one.
8 We would like to view the D.V.D. provided to them.

9 CLERK OF COURT: Your Honor, I'm giving them the
10 remote and the thing. I don't know about the picture of
11 the dogs under the porch. That was not marked. It was --
12 it can't go back. That wasn't in evidence. That was
13 just --

14 MR. REDMOND: That's all of it that they want; that
15 picture.

16 MR. LEE: Question is we never introduced it.

17 MR. REDMOND: We showed it to repeated witnesses.

18 THE COURT: Let's simplify that. Bring Madam
19 Forelady. Y'all stay right there. Under the porch?

20 MR. LEE: Right there at the porch when the light
21 shown? I think I showed it to them during cross.

22 THE COURT: Madam Forelady.

23 MADAM FORELADY: Yes, sir.

24 THE COURT: I understand there is inquiry about a
25 photograph of that dog under the porch?

1 MADAM FORELADY: Yes, sir.

2 THE COURT: That photograph in not in evidence so I
3 can't send it back to you.

4 MADAM FORELADY: Okay, thank you.

5 THE COURT: Y'all agree to put it in evidence.

6 MR. REDMOND: Robert?

7 THE COURT: That's the way it is now unless y'all
8 agree that it comes in now.

9 MR. LEE: Rather since it's not in let's not.

10 THE COURT: Both have to be in agreement.

11 MR. LEE: I just don't know.

12 MR. REDMOND: Exactly. I don't know either. I'd
13 rather just not.

14 THE COURT: I'm going to cut the alternate loose.
15 Express my appreciation.

16 (WHEREUPON, Court is in recess at 3:28 p.m.)

17 (WHEREUPON, Court's Exhibit No. 2 AND 7 were marked
18 for identification and received into evidence.)

19 (WHEREUPON, other Court-related business was
20 conducted on the record but not related to the trial
21 of this case and not included in this transcript of
22 record.)
23 record.)

24 (WHEREUPON, Court is in session at 4:28 p.m.)

25 QUESTION FROM THE JURY

1 THE COURT: The jury wants to hear some testimony
2 back. Bring them in.

3 (WHEREUPON, the jury panel enters the courtroom at
4 4:29 p.m.)

5 THE COURT: Madam Forelady.

6 MADAM FORELADY: Yes, sir.

7 THE COURT: We have located the testimony, the
8 beginning of the testimony, hopefully, that you requested.
9 We will begin with that. If you will signal to me
10 whenever you have reached a point that you want us to
11 stop. Then we will stop. Okay?

12 MADAM FORELADY: Okay.

13 (WHEREUPON, the testimony of Douglas Pernell was
14 played for the jury in open Court.)

15 THE COURT: Okay, you may return.

16 (WHEREUPON, the jury was excused from the courtroom
17 at 4:32 p.m.)

18 THE COURT: Anything for the record?

19 MR. REDMOND: Nothing from the State, Your Honor.

20 MR. LEE: Nothing from the Defense, Your Honor.

21 THE COURT: We're back at ease.

22 (WHEREUPON, Court is in recess at 4:32 p.m. and
23 reconvened at 4:46 p.m.)

24 VERDICT OF THE JURY

25 THE COURT: The jury has knocked at the door and

1 informed the bailiff that they have reached a verdict.
2 Before I bring them in to receive the verdict, once again,
3 I beg of you if you feel like you cannot emotionally
4 handle whatever to jury's verdict maybe please step
5 outside at this time. All right.

6 (WHEREUPON, the jury panel enters the courtroom at
7 4:46 p.m.)

8 THE COURT: All juror very reported. Madam Clerk.

9 CLERK OF COURT: Madam Forelady, have you reached a
10 verdict?

11 JURY FOREPERSON: Yes, ma'am.

12 CLERK OF COURT: Would you pass it to the bailiff,
13 please.

14 THE COURT: Madam Clerk, you may publish the verdict.

15 CLERK OF COURT: On Your Honor's Docket is 07-GS-17
16 Number 0009, the State of South Carolina v. Bentley
17 Collins, indictment for animals penalty for owner of
18 dangerous animal attacks. We the jury find guilty.
19 Signed by Sherry Page, Foreperson, 1/30/09.

20 On Your Honor's Docket is 07-GS-17 Number 0008, the
21 State of South Carolina v. Bentley Collins. Involuntary
22 manslaughter. We the jury find guilty. Signed by
23 Foreperson, Sherry Page, 1/30/09.

24 On Your Honor's Docket is 07-GS-17 Number 916. The
25 State of South Carolina v. Bentley Collins. Animals

1 penalty for owner of dangerous animal attacks. We the
2 jury find guilty. Signed by Foreperson Sherry Page,
3 1/30/09.

4 On Your Honor's Docket is 07-GS-17197. The State of
5 South Carolina v. Bentley Collins. Animals penalty for
6 owner of dangerous animal attacks. We the jury find
7 guilty. Signed by Sherry Page, 1/30/09.

8 THE CLERK: The jury has been polled, Your Honor.

9 POLLING OF THE JURY

10 THE COURT: Ladies and gentlemen of the jury, is this
11 your verdict, still your verdict, so say you all by
12 raising your right hand. Thank you. Mr. Lee.

13 MR. LEE: Your Honor, please, I move to poll the
14 jury.

15 THE COURT: Madam Clerk, proceed to poll the jury.

16 CLERK OF COURT: On each indictment, Your Honor?

17 THE COURT: You want each indictment or just an
18 individual poll?

19 MR. LEE: Individual poll, Your Honor.

20 CLERK OF COURT: Individual poll. Thank you, sir.

21 When I call you name I need for you to stand, okay.

22 Sherry Page, was this your verdict.

23 JUROR: Yes, ma'am.

24 JURY PANEL: Is this still your verdict?

25 JUROR: Yes, ma'am.

1 CLERK OF COURT: Marvin Moody, is this your verdict?
2 JUROR: Yes, ma'am.
3 CLERK OF COURT: Is this still your verdict?
4 JUROR: Yes, ma'am.
5 CLERK OF COURT: Dameka McCants, was this your
6 verdict?
7 JUROR: Yes, ma'am.
8 CLERK OF COURT: Is this still your verdict?
9 JUROR: Yes, ma'am.
10 CLERK OF COURT: Joseph Myers, was this your verdict?
11 JUROR: Yes, ma'am.
12 CLERK OF COURT: Is this still your verdict?
13 JUROR: Yes, ma'am.
14 CLERK OF COURT: Timothy Wilson, was this your
15 verdict?
16 JUROR: Yes, ma'am.
17 MR. REDMOND: Is this still your verdict?
18 JUROR: Yes, ma'am.
19 MR. REDMOND: Robert Gaddy, Jr, was this your
20 verdict?
21 JUROR: Yes, ma'am.
22 CLERK OF COURT: Is this still your verdict?
23 JUROR: Yes, ma'am.
24 CLERK OF COURT: Gerald Berry, Jr, was this your
25 verdict?

1 JUROR: Yes, ma'am.

2 CLERK OF COURT: Is this still your verdict?

3 JUROR: Yes, ma'am.

4 CLERK OF COURT: Johnny Wheeler, was this your
5 verdict?

6 JUROR: Yes, ma'am.

7 CLERK OF COURT: Is this still your verdict?

8 JUROR: Yes, ma'am.

9 CLERK OF COURT: Melissa Alford, was this your
10 verdict?

11 JUROR: Yes, ma'am.

12 CLERK OF COURT: Is this still your verdict?

13 JUROR: Yes, ma'am.

14 CLERK OF COURT: Lottie McCollum, was this your
15 verdict?

16 JUROR: Yes, ma'am.

17 CLERK OF COURT: Is this still your verdict?

18 JUROR: Yes, ma'am.

19 CLERK OF COURT: Shameka Evans, was this your
20 verdict?

21 JUROR: Yes, ma'am.

22 CLERK OF COURT: Is this still your verdict?

23 JUROR: Yes, ma'am.

24 CLERK OF COURT: Roland Wiggins, was this your
25 verdict?

1 JUROR: Yes, ma'am.

2 CLERK OF COURT: Is this still your verdict?

3 JUROR: Yes, ma'am.

4 CLERK OF COURT: Thank you. That's your jury, Your
5 Honor.

6 THE COURT: Anything further from the jury?

7 MR. LEE: Nothing further from the jury, Your Honor.

8 MR. REDMOND: Nothing further, Your Honor.

9 (WHEREUPON, Court's Exhibit No. 8 was marked for
10 identification and received into evidence.)

11 COLLOQUY

12 THE COURT: Madam Forelady, ladies and gentlemen of
13 the jury, I want to take this time to thank you so much
14 for your service on this jury. I know it's a difficult
15 decision any time you're asked to sit on a jury no matter
16 what the trial maybe about. I want to thank you all for
17 your patience with the Court.

18 I know we've had some delays and some time carry
19 overs, and the reason for that was that division I
20 mentioned to you that you all are the judge of the facts
21 and I'm the judge of the law and sometimes I have to hear
22 matters to determine legal issues outside of your
23 presence.

24 If you are selected to serve on a jury in the future
25 I hope you will be willing to do so. You would not have

1 there serve on a jury, as far as the Circuit Court, during
2 the calendar year 2009. If you would like to stay and
3 watch the conclusion of the case which would include
4 mitigation and possible sentencing you may do so. If you
5 would like to leave at this time Madam Clerk will forward
6 a check for your expenses to you. If you do not
7 receive -- in fact she will meet you as you leave here and
8 take care of them. Thank you, Madam Clerk.

9 CLERK OF COURT: Thank you, Judge.

10 THE COURT: Bottom line, if y'all -- if those of you
11 that would like to stay, you may stay. Those of you that
12 would like to leave follow Mr. Bailiff out. Sheriff, I
13 need a contingent to escort the jurors to their respective
14 vehicles. Thank you very much.

15 (WHEREUPON, the jury was excused from the courtroom
16 at 4:54 p.m.)

17 SENTENCE OF THE COURT

18 THE COURT: All right.

19 MR. LEE: Your Honor, please, for purposes of the
20 record at this point Defense would move for judgment not
21 withstanding the verdict or in the alternative a new trial
22 in that the State didn't provide enough evidence to meet
23 the legal requirements of the statutes charged and further
24 against the weight of the evidence.

25 THE COURT: Any response from the State?

1 MR. REDMOND: Obviously, I think that the jury had
2 some sufficient facts as they have deliberated. I think
3 the Court will note that they even came back, heard some
4 more testimony, had several questions which would be, of
5 course, part of the Court's record which would show that
6 they did give due deliberation to the evidence. It was
7 not an easy decision for them. Obviously, it took them,
8 by my count, more than two hours to reach a verdict. So I
9 think with that, and obviously the law as it stands, we
10 feel that it was obviously plenty of evidence to support
11 this verdict and ask that the motion be denied.

12 THE COURT: Based on what's before me I'll have to
13 deny that motion.

14 MR. LEE: Note my exception for the record, Your
15 Honor.

16 MR. REDMOND: Your Honor, if the Court would indulge
17 us. I have a habit of not doing the sentencing sheets.
18 It's a superstition of mine. We are in the process of
19 doing that. I apologize to the Court, but I didn't
20 remember which indictment numbers were on there. We can
21 still proceed while we're finishing these up if I can get
22 Mr. Hayes -- if I can get Ms. Davis to step up to the
23 podium and we can just finish completing these sheets.

24 THE COURT: While the Solicitor finishes up the
25 paperwork I can tell her a few things. What we will do we

1 will hear from the State, and I will hear from the
2 Defense. And I need to make sure I'm clear with
3 Mr. Collins that he understands his appellate rights.
4 Mr. Collins, you certainly have a right to appeal this
5 matter. The important thing that you need to keep in mind
6 that any notice of appeal has to be filed within ten days
7 of sentencing. If you do not get that notice of appeal
8 filed within that time limit you probably be barred from
9 appealing. So please note that timeframe.

10 MR. LEE: If Your Honor please, what I will do it is
11 my intention to get with him this weekend and then I'll
12 have him either sign he wants or doesn't file. Make sure
13 we have for purpose of the record. If he elects not to
14 appeal that that's clearly effective in writing. If he
15 elects to I'll see it's taken care of.

16 THE COURT: Okay.

17 MR. REDMOND: And I'll pass these, as I finish them,
18 to the defendant for signature. Your Honor, if it please
19 the Court, as it relates to the issue of sentences at the
20 appropriate time Ms. Caroline Davis would like to address
21 the Court. But I want the Court to take into
22 consideration something that I obviously could not get
23 into during the trial.

24 In August of 2008 on two separate occasions two
25 separate complaints came through, and again, could not get

1 into this since it was after this event so it would not
2 have been admissible at trial. But the defendant still
3 has pit bulls running around unrestrained on his property.

4 I'd like to pass up these pictures and I'll show them
5 to the Defense. These are the pictures that are Deputy
6 Ken Rogers took in August and provided them to me again
7 showing the fact that there are still dogs even after this
8 incident, even after the death of Matthew. And there had
9 been a couple of complaints file. Fortunately, these
10 ladies were not hurt. But upon those complaints Deputy
11 Ken Rogers did go out and take those pictures and
12 contacted my regarding that.

13 And the reason I say that is because even after the
14 death of Matthew on the property it's almost an act of
15 defiance by the defendant, disregard, whatever you want to
16 call it. And I hope that the Court gives him a maximum
17 sentence in this case because you know whenever something
18 traumatic and dramatic such as this occurs one would think
19 that you would govern your behavior differently.

20 But that didn't happen in this occasion, and like I
21 said in an act of defiance he decided to have more dogs,
22 which is fine. But there is still to restraints, still no
23 pens, still nothing on this property that would protect
24 any child that would walk on that property.

25 Don't know what the situation is with those dogs, but

1 I do know that I've got two complaints that we followed up
2 on and were able to get that information that I provided
3 to the Court. So I would ask that the Court take that
4 into consideration at sentencing with the sentence of the
5 defendant.

6 MR. LEE: If Your Honor please, if I can address the
7 specific issue. I would represent as an officer of the
8 Court that I have been to that residence. I have be
9 around these dogs as late at two days ago, and I will
10 represent to the Court that those animals are puppies,
11 probably under the age of one. I know dogs well enough
12 because I've been around them that I mean while you --
13 Mr. Redmond may want to characterize as defiant.

14 I don't know the other animals. I do know these.
15 And so I would ask for purposes of these, given this
16 severity of the sentence you already can impose, that you
17 set that aside.

18 With regards to the dog's being confined or not
19 confined with regard to this sentence -- this sentence
20 having been passed or this verdict having been entered I
21 think that Mr. Collins and his family will probably deal
22 with those dogs. And they will be dealt with, but I can
23 represent as an officer of the Court that I have been
24 around those dogs at least two days ago.

25 And I haven't had that problem, and I think that now

1 is piling it on, but that's up to Your Honor in your
2 discretion.

3 THE COURT: Mr. Collins, anything you like to say?

4 MR. LEE: If I can further -- I didn't realize, Your
5 Honor, is Mr. Collins is 57 years old. He's been employed
6 as a truck driver. He's got two small sons. You know
7 this is a tragedy, Your Honor. You heard all the
8 evidence. You have heard all the testimony. There is --
9 we would just ask you to do what's just, fair and
10 reasonable, and I don't know what else to say at this
11 point.

12 MR. COLLINS: Your Honor, I stand before you just
13 totally lost for words. I mean I could never in my
14 wildest dreams phantom the ruling going to way that it
15 did. I have never in all my life -- anybody that knows me
16 or had any dealings with me would tell you that I'd go out
17 of my way to try to help anybody. Anybody that I feel is
18 in need. I do anything I can.

19 I've got two boys. I've got a ten year old and a 15
20 year old now that I've been trying to raise since the
21 little one was in diapers. I've tried my best to be
22 responsible and also teach them and bring them up and in
23 such a way that they would be proud to tell somebody I was
24 their father. I stand before your today and this matter.

25 I -- my attorney I feel he's done a good job in

1 presenting the evidence and so on. And I thank God for my
2 family that was here, but I stand here. I beg mercy from
3 the Court. I never did anything but try to be a friend to
4 this child. How this happened I cannot -- I haven't been
5 able the possibly wrap my mind about that cause many times
6 the child would show up to play with my boys and I always
7 thought it was strange, but it was always around supper
8 time that he would come to play.

9 When he knocked on that door, and can Taylor come out
10 and play, sometimes I would say yes and sometimes I would
11 say, "he's got homework to do, son." And he's come on in
12 and sit down and we'd eat supper and mess. They would go
13 out on the trampoline and so on.

14 I could have just been like some and not allowed
15 anybody in my yard, but I welcomed and tried my best to
16 treat everybody that come to my door the very best I knew
17 how. And that's what I did with that little boy was try
18 my best to show him love and let him know we was his
19 friend.

20 And it was a hard thing for my son when this
21 happened. It hurt him, and for days -- you know they
22 tried to understand, and I tried my best to explain it in
23 a way that they could as best as I could. There's been
24 remarks about the fact that I didn't try to show remorse
25 or this, that, or the other. But as you know the Court

1 ordered me to have no contact.

2 I would have loved to have been there. I would have
3 loved to carry flowers to the funeral. I would have loved
4 to have been able to do that, but I couldn't. Otherwise,
5 I would have. But I was so ordered and I followed the
6 order of the Court, and I -- as he said, as my attorney
7 said, I will be 57 my birthday. I am going on 57. I
8 remember a time in my life I thought 30 something was old.
9 But you know you get 45, 50 you realize it wasn't old at
10 all. I'm sorry, tragically sorry, for Miss Caroline
11 Davis' loss. Words can't explain that. There is no
12 sentence that can be given that could ever make up for the
13 pain that all of us has felt. All of us.

14 And I stand before you humbled today. I just say
15 God's will be done. That would be about it. I don't know
16 what else to say, Judge.

17 THE COURT: Okay, I certainly understand about the
18 order you were under. Ms. Davis like to say anything?

19 MR. REDMOND: Yes, sir. Ms. Davis would like to
20 speak.

21 MS. DAVIS: I would like to know through the whole
22 time he never once come to me and apologized. Even before
23 he went to jail and it was Court ordered. He never once
24 apologized to me or my family about Matthew. And they're
25 saying that he went up there and played with the dogs or

1 whatever. That's not saying just because you play with a
2 dog that a dog can't do what a dog is going to do.

3 As his lawyer said a while ago he's got dogs right
4 now, and he's went in the yard -- that's not to say if he
5 didn't restrain these dogs what can happen to somebody
6 else if they're not taken care of the right way. And
7 that's -- I just want to know why he never apologized or
8 showed any remorse before he went to jail or before it was
9 Court ordered.

10 THE COURT: If he would like to respond to that I'll
11 be more than glad to let him do it. In most cases it's
12 where legal advice was given to do so.

13 MR. COLLINS: When this incident happened, in the
14 very beginning, even the morning we got back there, I, you
15 now, it was like I was -- my mind. I was numb. I
16 couldn't imagine what happened. Even when I called and
17 they said this did happen I couldn't imagine that this
18 happening. I couldn't fathom that. When naturally I'm
19 interceding with the law enforcement, and I was told by
20 them, "You can't contact them."

21 And then when I came before the Judge immediately
22 when -- after I got out on bond I was told point blank,
23 "You cannot call. You cannot go there. You cannot send
24 no flowers. If you're in the grocery store, I was told,
25 if you're in the grocery store buying your groceries and

1 Miss Davis or any family comes in you leave that store and
2 go until they get their stuff. You can't stay in the
3 store."

4 And you know I'm sorry to say this but I didn't know
5 you. Hun, if I had met you on the street I wouldn't have
6 recognized you. Now that's the fact of it. I would not
7 have recognized you. I saw you more this week than I saw
8 you in my whole life. But I would not -- if you would
9 have walked into Food Lion -- and in fact I was in
10 Wal-Mart on time. And there was some folks in there,
11 perhaps family of yours. And I heard one of them say,
12 "That's the fellow where Little Matt died." So I realized
13 it was family, and I went ahead and left because I don't
14 know -- you know I didn't know until I heard them say
15 that. And I realized that it must have been some of his
16 family.

17 And so you know like I said I didn't even know you,
18 and you know -- I mean I never -- I don't go down that
19 part of the area there that much unless somebody down
20 there comes to me that's got a need. Like one of the
21 witnesses even came to my house -- sent somebody to my
22 house said they had a need. I went down there, but I
23 wouldn't have knowed you if I had met you you know.

24 And then after this and all the authorities, people
25 in law and the Judge, told me you cannot and so I couldn't

1 say anything. It hurt. It hurt. I mean, hey, if you'd
2 been an enemy that would have been one thing or somebody
3 that you know that we despised. If -- there is no such --
4 but had you have been that would have been, but, hey, a
5 friend and I can't even talk to them.

6 The boy was a friend. He was a friend of my family.
7 And one of the last things he said sitting at my table, he
8 told the lady that cooked for us that he sure loved her
9 biscuits. I'm sorry that we never had. Had we been
10 having church service during the time that all this stuff
11 happened maybe you would have been coming up there to
12 church and I would have got to know you then, but we
13 hadn't had church there for a long time.

14 I went through -- about 11 years ago I went through a
15 divorce. Me and my wife separated and so on, and I've
16 been raising these children, but honest, if I had of
17 knowed you. And could have, had not been forbidden, but
18 see, I was on bond and told if I had any dealing with you
19 I would go back to that hole over there. That's why I
20 couldn't.

21 But I'm sorry. God knows I'm sorry. Not for what
22 happened here, but for your lost, I've got my little son,
23 and no matter where I'm at he can see me every so often.
24 I understand. Your son can't come visit you, but I can
25 tell you this. You can go visit him. You can see him one

1 day, but he can't come back and see you, and my son can.

2 And I thank God for that, and I'm sorry for your
3 loss, and I'll be praying for you and your family.

4 THE COURT: Mr. Redmond.

5 MR. REDMOND: Have nothing further at this time.
6 Caroline, did you want to say anything else.

7 MS. DAVIS: No, sir.

8 MR. REDMOND: That would be all we have at this time,
9 Your Honor. Only thing I would add is that, and I think I
10 can appreciate and i think Caroline, we can appreciate
11 that this is a different kind of case if I can just for a
12 moment. As I said in closing argument this is not the
13 type of case you see everyday. And I know the Court has a
14 difficult decision right now.

15 I would ask that the Court keep in mind what
16 transpired during the trial and the fact that hopefully
17 there will be a message sent in some way that people will
18 be more careful in situations like this when they have
19 animals on their property because these are tragedies that
20 could be avoided. And there is no sense that Caroline
21 doesn't have her son who would be 12 I believe now.
22 Thirteen. I'm sorry, 13. He would be 13 right now.

23 And there should punishment. I hope there is
24 punishment, and hopefully, Mr. Collins means what he says.
25 Hopefully there can be some healing past this point. The

1 State sincerely hopes so. At this point the State does
2 hope that there will be punishment that will, one, serve
3 as a deterrent to the defendant, and hopefully as to
4 others that are out there with similar situations as the
5 defendant as it relates to having dogs around running
6 loose. That would be all I have to say.

7 THE COURT: I don't think anybody in the courtroom
8 thinks Mr. Collins intentionally caused any of this
9 tragedy, it's not a case of intention. It's a case of bad
10 judgment. The law says criminal negligence.

11 Mr. Cropper made a point in his testimony that during
12 the field trials of dogs that no female dog in heat is
13 allowed on the premises. That's the thing that sticks in
14 my mind. That was some bad judgment on your part. This
15 was not the first time that that particular female had
16 been in heat.

17 This day and time you do not let a dog in heat run at
18 large. If you are a responsible dog owner and citizen you
19 confine them during that period. Take care of them. That
20 was horrible judgment on your part when you had that many
21 other dogs around. I don't think anybody in here,
22 including Miss Davis, wants to see me throw a maximum
23 sentence at you.

24 Now, counsel, y'all correct me if I'm wrong. I'm
25 going to review it. The dangerous dog statute is a

1 maximum three years?

2 MR. REDMOND: That is correct, Your Honor.

3 MR. LEE: That is correct.

4 THE COURT: Involuntary manslaughter has a maximum of
5 five years.

6 MR. REDMOND: That's correct, Your Honor.

7 MR. LEE: That is correct.

8 THE COURT: So there is a total possible exposure
9 which is a little unusual of 14 years, but as I said I
10 don't think anybody in this courtroom thinks that that
11 would be the justifiable thing to do as far as dispensing
12 justice. I'm going to mix up this a little bit and I've
13 got some concerns and various areas as far as the future.

14 On the involuntary manslaughter I'm sentencing you to
15 five years. That was 07-0008.

16 On 07-0009, the first one I come to for the dangerous
17 dogs statute, I'm going to sentence you to three years,
18 concurrent.

19 On the second dangerous animals or dogs; that
20 particular one is 2000-197, the sentence is going to be
21 three years, concurrent.

22 On the 2007-196, the last dangerous animal
23 indictment, I'm going to sentence you to a consecutive
24 term of three years suspended on five year probation.

25 Provision of probation will be you will come out when

1 you are paroled or released, which I hope everything goes
2 well for you, and you're going to pay restitution to this
3 family for funeral expenses in the amount of \$8,000 to be
4 scheduled by Probation and Parole.

5 During probation you will not own, possess or have on
6 your premises, your residence premises any animals of
7 canine species. To encourage you to get out and get to
8 work and pay these damages of restitution off I will allow
9 it to be P.T.U.P.ed after three years if everything goes
10 well, and I've already advised you about you're appeal
11 rights. I think that covers each and every one of the
12 indictments.

13 I hope everybody can go on with their lives and make
14 something of it. What has happened has happened. Life is
15 too short for any further injury to come out of this. So
16 everybody behave like they're supposed to. Mr. Lee.

17 MR. LEE: Your Honor, I apologize for interrupting.
18 I'm informed by Mr. Collins, he's on federal disability
19 which affects his ability for employment. When will that
20 be taken into consideration with scheduling or payments?

21 THE COURT: Yes.

22 MR. LEE: Your Honor, I also ask for credit for time
23 served.

24 THE COURT: That comes automatically. I'll check
25 that. All right. Now, for security purposes I'm going to

1 ask that the Sheriff's Department will assist the victim's
2 family out the rear entrance. We'll make an exception.
3 We'll allow the victim's family to go out this way at this
4 time. Everybody else just stay here and remain quiet.

5 END OF TRANSCRIPT OF RECORD
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WITNESSES

James Campbell

Dcso

ARREST WARRANT #:

K129350

Arrested on November 10, 2006

ACTION OF GRAND JURY

TRUE BILL

Foreman:

Grand Jury

VERDICT

*Guilty*FILED
GWEN T. HYATT
2009 JAN 30 AM 8:38
CLERK OF COURT
DILLON COUNTY

Foreman:

Petit Jury

Date:

1-30-09

DOCKET #: 07GS17-0008

THE STATE OF SOUTH CAROLINA
County of Dillon

COURT OF GENERAL SESSIONS

Term: January, 2007

THE STATE

vs.

Bentley Collins

INDICTMENT FOR

0218

INVOLUNTARY MANSLAUGHTER

16-3-60

A CERTIFIED
TRUE COPYCLERK OF COURT
DILLON COUNTY

WITNESSES

James Campbell

Dcso

ARREST WARRANT #:

K129351

Arrested on November 10, 2006

ACTION OF GRAND JURY

TRUE BILL

Foreman:

Grand Jury

VERDICT

*Guilty*FILED
GWEN L. HYATT
2009 JAN 30 AM 5:38
CLERK OF COURT
DILLON COUNTY

Foreman:

Petit Jury

Date:

1-16-09 1-30-09

DOCKET #: 07GS17-0009

THE STATE OF SOUTH CAROLINA

County of Dillon

COURT OF GENERAL SESSIONS

Term: January, 2007

THE STATE

vs.

Bentley Collins

INDICTMENT FOR

0912

ANIMALS/PENALTY FOR OWNER OF DANGEROUS

ANIMAL ATTACKS 47-03-0760

A CERTIFIED
TRUE COPYCLERK OF COURT
DILLON COUNTY

STATE OF SOUTH CAROLINA)
County of Dillon)

INDICTMENT #07GS17-0009

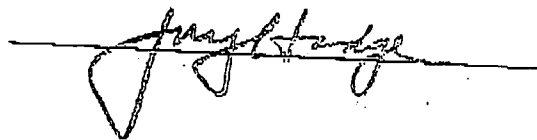
At a Court of General Sessions, convened on January 15, 2007
the Grand Jurors of Dillon County present upon their oath:

COUNT: ANIMALS/PENALTY FOR OWNER OF DANGEROUS
ANIMAL ATTACKS 47-03-0760

That Bentley Collins in the County of Dillon on or about November 03,
2006, did own, harbor, and/or have care and custody over a dangerous animal (dog)
and did allow said dangerous animal to go unconfined on the premises. Said
dangerous animal did attack and maul John Matthew Davis, resulting in his
death.

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

SOLICITOR:



428

WITNESSES

James Campbell

Dcso

ARREST WARRANT #:

DIL0555

Arrested on

ACTION OF GRAND JURY

TRUE BILL

Foreman:

Ashley Hill
Grand Jury

VERDICT

*Guilt*CLERK OF COURT
DILLON COUNTY

2009 JAN 30 AM 5:38

FILED
GWEN T. HYATT

Foreman:

Sherris Pope
Petit Jury

Date:

~~1-16-07~~ 1-30-09

DOCKET #: 07GS17-0196

THE STATE OF SOUTH CAROLINA

County of Dillon

COURT OF GENERAL SESSIONS

Term: January, 2007

THE STATE

VS.

Bentley Collins

INDICTMENT FOR

0912

ANIMALS/PENALTY FOR OWNER OF DANGEROUS

ANIMAL ATTACKS 47-03-0760

ALBANY COUNTY
SHERIFF'S OFFICECHIEF OF POLICE
DILLON COUNTY

STATE OF SOUTH CAROLINA)
County of Dillon)

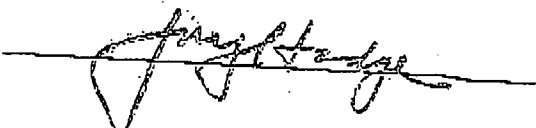
INDICTMENT #07GS17-C196

At a Court of General Sessions, convened on January 15, 2007
the Grand Jurors of Dillon County present upon their oath:

COUNT: ANIMALS/PENALTY FOR OWNER OF DANGEROUS
ANIMAL ATTACKS 47-03-0760

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and did allow said dangerous animal to go unconfined on the premises. Said
dangerous animal did attack and maul John Matthew Davis, resulting in his
death.

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

SOLICITOR: 

WITNESSES

James Campbell

Dcso

ARREST WARRANT #:

DIL0556

Arrested on

ACTION OF GRAND JURY

TRUE BILL

Foreman:

Ashley Hill
Grand Jury

VERDICT

*Guilty*CLERK OF COURT
DILLON COUNTY

2009 JAN 30 AM 5:38

FILED
GWENTH HAYT

Foreman:

Sherris Page
Petit Jury

Date:

~~1-16-07~~ 1-30-09

DOCKET #: 07GS17-0197

THE STATE OF SOUTH CAROLINA

County of Dillon

COURT OF GENERAL SESSIONS

Term: January, 2007

THE STATE

vs.

Bentley Collins

INDICTMENT FOR

0912

ANIMALS/PENALTY FOR OWNER OF DANGEROUS

ANIMAL ATTACKS 47-02-0760

A CERTIFIED
TRUE COPY*Brian T. Hight*
CLERK OF COURT
DILLON COUNTY

STATE OF SOUTH CAROLINA)

County of Dillon)

INDICTMENT #07GS17-0197

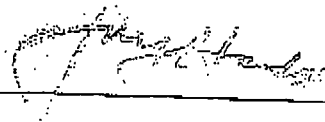
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Against the peace and dignity of the State, and contrary to the statute
in such cases made and provided.

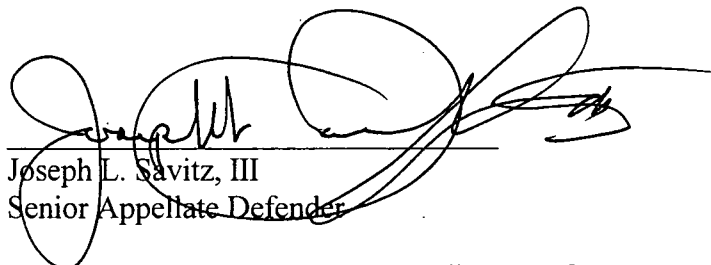
SOLICITOR: _____



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 23rd, 2010



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dillon County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BENTLEY COLLINS,

APPELLANT

AMENDED
FINAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
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STATEMENT OF ISSUES ON APPEAL

1.

The trial judge committed reversible error by allowing the State to introduce into evidence a series of autopsy photographs graphically depicting the young victim's partially-devoured corpse, as this evidence was emotionally inflammatory and unfairly prejudicial under evidence Rule 403, SCRE.

2.

The trial judge committed reversible error by failing to direct a verdict acquitting appellant of all charges, since the evidence established that the victims death was an unfortunate and tragic accident, but was not caused either by appellant's negligence (Section 47-3-710) or by his recklessness (involuntary manslaughter).

STATEMENT OF THE CASE

On January 26 through 30, 2009, Bentley Collins stood trial in Dillon County, before Judge Paul M. Burch and a jury, on indictments charging him with involuntary manslaughter and three counts of permitting a dangerous animal to go unconfined on his premises, a violation of SC Code Section 47-3-720. Whether accident or crime, this is a terrible case.

At least three of Collins' free-roaming dogs killed and partially devoured John Matthew Davis, aged 10. The State alleged that the animals had attacked Davis because they were malnourished. More likely (as the trial judge found), they were more aggressive than usual because a female of the pack was then in heat. R. p. 281 lines 22-25; R. p. 346 line 23- p. 347 line 24.

The jury found Collins guilty as charged and the judge observed:

I don't think anybody in the court room thinks Mr. Collins intentionally caused any of this tragedy. It's not a case of intention. It's a case of bad judgment. ... This was not the first time that that particular female had been in heat. This day in time, you do not let a dog in heat run at large. If you are a responsible dog owner and citizen, you confine them during that period.

R. p. 421 lines 7-22. He sentenced Collins to five years for voluntary manslaughter, two concurrent three-year sentences and one consecutive three-year sentence (suspended on probation) for the "dangerous animal" violations.

ARGUMENT

1.

The trial judge committed reversible error by allowing the State to introduce into evidence a series of autopsy photographs graphically depicting the young victims partially-devoured corpse, as this evidence was emotionally inflammatory and unfairly prejudicial under evidence Rule 403, SCRE.

Over defense counsel's objection under Rule 403, the State introduced a series of photographs (State's Exhibits 27, 30, 32, 33, 34 and 35) taken during the victim's autopsy, depicting his mangled and partially-devoured upper torso, particularly his arms, head and face. R. p. 43 line 10- R. p. 60 line 22. It published them to the jury during the testimony of a pathologist. R. p. 88 line 22- R. p. 99 line 22.

Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or unnecessary to substantiate material facts or conditions. *State v. Brazell*, 325 S.C. 65, 480 S.E.2d 64 (1997). Rule 403, SCRE, provides that even relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." "To constitute unfair prejudice, the photographs must create a 'tendency to suggest a decision on an improper basis, commonly, although not necessarily, and emotional one'." *State v. Kelley*, 319 S.C. 173, 460 S.E.2d 368, 370-71 (1995), quoting *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146, 149 (1991).

In *State v. Martucci*, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008), a prosecution for homicide by child abuse, the defendant claimed that the victim had been injured accidentally in an all-terrain vehicle accident. The Court of Appeals held that autopsy photographs of the child's internal organs and other injuries were admissible to prove the

elements of homicide by child abuse and that “[f]urthermore, the photographs were necessary to depict the severity of the bruises and the resulting trauma, which was inconsistent with [the defense of] accidental injury or play.” 669 S.E.2d at 608.

In Collins’ case, by contrast, the grisly autopsy photographs of the young victim were not necessary to prove any element of the offenses charged nor did they negate Collins’ defense. Their only conceivable purpose in this trial was to inflame the emotions of the jury and unfairly prejudice them against Collins in violation of Rule 403.

For this reason, the Court should reverse Collins’ convictions and remand for a new trial.

2.

The trial judge committed reversible error by failing to direct a verdict acquitting appellant of all charges, since the evidence established that the victims death was an unfortunate and tragic accident, but was not caused either by appellant’s negligence (Section 47-3-710) or by his recklessness (involuntary manslaughter).

Although the Assistant Solicitor argued that Collins’ dogs had attacked the victim “out of hunger ... for prey” (R. p. 4 lines 18-24), the State’s evidence did not support that assertion. A veterinarian testified that the dogs were “underweight but not emaciated.” R. p. 111 lines 8-15. An expert in dog behavior testified that the dogs would not have attacked out of hunger unless they had also suffered “[a]buse and neglect to the extent that it would make the dogs psychologically unstable.” R. p. 159 line 23- R. p. 160 line 9. However, the record contains no evidence that these animals were abused or neglected.

Although there was some evidence the dogs had harassed passersby occasionally in the past (R. p. 16 line 19- R. p. 17 line 23; R. p. 132 line 12- R. p. 133 line 17), there was no

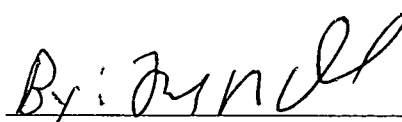
evidence Collins knew or reasonably should have known that his dogs had “a propensity, tendency, or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or domestic animals” as required by Section 47-3-710 (A)(1).

Involuntary manslaughter is defined as (1) the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. *State v. Wharton*, 381 S.C. 209, 672 S.E.2d 786 (2009). “To constitute involuntary manslaughter, there must be a finding of criminal negligence, statutorily defined as a reckless disregard for the safety of others.” *State v. Crosby*, 355 S.C. 47, 584 S.E.2d 110, 112 (2003), citing SC Code Section 16-3-60. Again, there is no evidence Collins acted or failed to act in reckless disregard of the safety of others. As the judge himself observed prior to sentencing Collins, the unfortunate victim was most likely attacked and killed because he ventured too close to a female of the pack who happened to be in estrus.

The judge denied defense counsel’s motion for directed verdicts on all charges. R. p. 180, line 2- R. p. 183, line 18. A trial judge must direct a verdict of acquittal when the State fails to produce any evidence of the offense charged. *State v. McCoombs*, 368 S.C. 489, 629 S.E.2d 361(2006). When considering a directed verdict motion, the judge considers the existence of evidence, not its weight. *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). The judge should grant a directed verdict when the evidence only raises a suspicion the accused is guilty. *State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000).

Since there is no evidence Collins was guilty of anything other than (as the judge put it) "some bad judgment," the Court of Appeals should reverse his convictions and direct verdicts of acquittal.

Respectfully submitted,

By: 

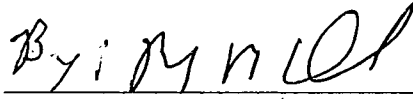
Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of April, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Amended Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

A handwritten signature in dark ink, appearing to read "By: J. L. Savitz, III", written over a horizontal line.

JOSEPH L. SAVITZ, III
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dillon County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BENTLEY COLLINS,

APPELLANT

CERTIFICATE OF SERVICE

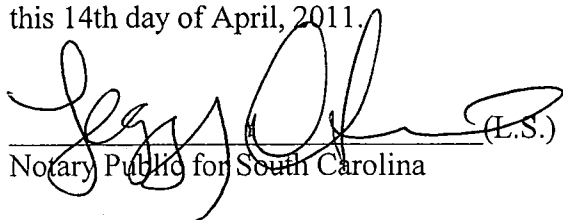
The undersigned attorney hereby certifies that a true copy of the Amended Final Brief of Appellant in the above referenced case has been served upon William Blitch, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 14th day of April, 2011.



Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of April, 2011.



(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Dillon County
Hon. Paul M. Burch, Circuit Court Judge

The State,

Respondent,

v.

Bentley Collins,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not err in admitting the autopsy photographs because they were relevant and necessary for the forensic pathologist's testimony, corroborated the testimony of the State's expert on dog training, and were not unduly prejudicial.
- II. The trial court did not err in denying Appellant's motion for a directed verdict.

STATEMENT OF THE CASE

Appellant was indicted on charges of involuntary manslaughter and three counts under section 47-3-760(B)(1) of the South Carolina Code for owning a dangerous animal that attacks and injures a human in violation of Section 47-3-710(A)(2)(a) of the South Carolina Code. Appellant proceeded to trial from January 26 through January 30, 2009, in front of the Honorable Paul M. Burch and a jury. The jury found him guilty as charged and Judge Burch sentenced him to five years for involuntary manslaughter; two concurrent terms of three years for two dangerous animal counts; and three years consecutive, suspended on five years probation, for the final dangerous animal conviction. This appeal followed.

STATEMENT OF FACTS

Appellant, living in Dillon County, allowed his dogs to roam unconfined—no fence, no pen, and no tether. The child victim was only 10 years old at the time he was eaten alive by Appellant's dogs.

On several occasions neighbors were chased and harassed by the dogs. A boy from the area and friends rode their four-wheelers down the road in front of Appellant's house. The dogs came into the road to "try to attack the four wheelers and all." (T.108; R.16). The boy and his mom walked in the area for exercise, but they had to stop walking around Appellant's house because his dogs "would come out in the road and try to bite our legs and stuff." (T.109; R.17).

Appellant's dogs also chased Jerry McAlpine, who lives near Appellant. The dogs would come into the road and chase him while he was on a bicycle. (T.282; R.132). On one occasion, the dogs forced McAlpine off his bike. He positioned the bike between himself and the dogs to keep them from attacking. According to McAlpine, Appellant was aware the dogs chased people and were aggressive to people on the road. During one of the times the dogs chased McAlpine down the road, Appellant was outside and called the dogs back onto Appellant's property. (T.283; R.133).

On November, 3, 2006, the child victim was staying with his Great Aunt and Uncle. His mother returned home on November 3, but the child victim did not return home for supper. (T.100-101; R.8-9). She began looking for the child victim and called law enforcement. (T.101-102; R.9-10).

Another child from the area heard barking and thought maybe his dog had gotten out. He went to Appellant's property and saw three dogs eating what he thought was raw meat. (T.132-133; R.24-25). He indicated he was attacked by another dog and he and his friend ran from Appellant's property and returned home. (T.134-135; R.26-27).

The child victim's mother was riding around the area with law enforcement. They pulled up to Appellant's yard and she immediately saw the child victim lying in the yard. She attempted to get to him, but had to be pulled back by law enforcement because of the dogs. (T.102-104; R.10-12). When she arrived, her son was "tore to pieces." (T.104; R.12).

Chief Deputy Pernell of the Dillon County Sheriff's Office arrived with the child victim's mother. When they arrived and she attempted to go to the child's body, he had to drive back the dogs by swinging his flashlight and yelling at them. (T.207; R.79). Any time someone went near the body, the dogs would come at them and had to be driven away by making noise and shining the flashlights. (T.208; R.80).

Agent Hallman of SLED arrived at the scene to find Dillon County deputies had covered the body with a sheet. She called in animal control to take possession of the dogs, who were acting aggressive. (T.163-164; R.35-36). Agent Hallman indicated she searched the premises and was unable to locate any food left for the dogs. (T.164-165; R.36-37). Agent Hallman took pictures of the scene which indicated the child victim had been killed in one location and dragged around the yard by the dogs. (T.168-170; R.40-42).

Forensic Pathologist Dr. Edward Proctor performed the autopsy of the child victim. He found there "were extensive traumatic injuries consisting of loss of skin and soft tissue in a tearing fashion about the face, the ears, the eyes, the neck, the chest." (T.237; R. 91).

He further found loss of skin and tissue in the shoulders and upper arms, as well as extensive bite marks on the back of the neck, the upper torso, and lower legs. (T.237-238; R.91-92). He indicated significant portions of the child had been “eaten away.” (T.239-240; State’s Exhibit 10; R.93-94;). He opined the child victim died “as a result of [extensive] traumatic injury secondary to being severely mauled by dogs.” (T.238; R.92).

ARGUMENT

- I. **The trial court did not err in admitting the autopsy photographs because they were relevant and necessary for the forensic pathologist's testimony, corroborated the testimony of the State's expert on dog training, and were not unduly prejudicial.**

Appellant contends the trial court erred in admitting the autopsy photographs of the child victim's body because the photographs were unduly prejudicial and served to emotionally inflame the jury. The photographs were necessary for a full explanation of the child victim's injuries by the forensic pathologist. Further, the State's dog training expert testified to the nature of the attacks and the photographic evidence corroborated his testimony. Finally, the photographs, while graphic, were not unduly prejudicial and were not admitted solely to inflame the sympathy, prejudice, or emotion of the jurors.

"The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." State v. Holder, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009) (quoting State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996)); see also, State v. Kelley, 319 S.C. 173, 177, 460 S.E.2d 368, 370 (1995) (stating that trial judge has considerable latitude in ruling on admissibility of evidence and his rulings will not be disturbed absent showing of probable prejudice). Admitting photographs which serve to corroborate testimony is not an abuse of discretion. State v. Martucci, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct. App. 2008).

Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions. State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997). "To constitute unfair prejudice,

the photographs must create ‘an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.’” State v. Jackson, 364 S.C. 329, 334, 613 S.E.2d 374, 376 (2005) (quoting State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991)).

The photographs in this case were admitted to assist the forensic pathologist, Dr. Proctor, in his testimony and explanation of how the child victim died. The trial court, *in camera*, specifically questioned Dr. Proctor regarding the various photographs and his reason for needing the photographs during his testimony. (T.176-179; R.48-51). Dr. Proctor testified: “Your Honor, these would certainly enable me to describe the degree of injury and show the extent of it. . . . But these I think would be very beneficial to explain exactly what happened to this young man.” (T.178; R.50). The parties then questioned the doctor in regards to the photographs and their use in his testimony. (T.179-182; R.51-54). The trial court excluded some photographs because Dr. Proctor admitted they were not necessary for his testimony. However, those photographs Dr. Proctor sought to use to explain his findings were properly included and admitted into evidence. (T.182-188; R.54-60).

During Dr. Proctor’s testimony, he indicated significant amounts of the child victim’s soft tissue were removed or “eaten away” by the dogs. (T.239-240; R.93-94). The forensic pathologist then detailed the significance of the autopsy photographs. (T.242-245; State’s Exhibits 27, 30, 32, 33, 34, 35; R. 96-97).¹ The photographs also corroborated Dr. Proctor’s findings as detailed in his autopsy report. (T.238; State’s Exhibit 10; R.92; Supp ROA. 1-7).

¹These State’s Exhibits have been transported to the Court of Appeals and are filed as an Exhibit separate from the Record on Appeal.

Defense counsel further explored the injuries to the child victim, and Dr. Proctor again referenced the pictures showing the bite marks on the legs and the damage to the neck and shoulders. (T.249-250; State's Exhibits 27, 33, 35; R.103-104).

In addition, the extent of the injuries served to demonstrate the nature of the attack by the dogs and corroborated the State's expert witness' testimony that the dogs attacked out of hunger. The pictures corroborated the State's expert witness who testified these dogs were aggressive and not merely protective. (T.302-303; 314-315; R.146-147; 158-159). The State maintained the dogs were not attacking solely because they were protecting a female dog in heat, but attacked because they were malnourished and had been mistreated. The extent of the attack was demonstrated in the amount of devastation done to the body of the child victim, and the fact the dogs attacked out of hunger was further exemplified by the areas of the body the dogs consumed. (T.306-307; 309; 328; R.150-151; 153; 172).

While the pictures in this case are admittedly graphic, as the South Carolina Supreme Court ultimately concluded in *Holder*, "the facts in this case were graphic, and there is no suggestion that [the photographs'] admission had an undue tendency to suggest a decision on an improper basis." *Holder*, 382 S.C. at 291, 676 S.E.2d at 697. The trial court properly admitted the pictures to corroborate and assist the testimony of the State's witnesses and to provide the jury with evidence required to prove each of the elements of the State's case against Appellant.

II. The trial court did not err in denying Appellant's motion for a directed verdict.

Appellant contends the trial court erred in failing to grant his motion for a directed verdict on all charges because there was no evidence 1) Appellant knew or should have known his animals were dangerous; or 2) he acted in with reckless disregard for the safety of others or criminal negligence. The State, however, provided ample evidence Appellant knew or should have known his dogs were dangerous and allowing them to roam unconfined was acting with reckless disregard for the safety of others.

“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. Id. When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Cherry, 361 S.C. 588, 593-593, 606 S.E.2d 475, 477-478 (2004). “If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” Id.

The State charged Appellant with three counts of owning a dangerous animal that attacks and injures a human. Section 47-3-710 states in pertinent part:

(A) As used in this article “dangerous animal” means an animal of the canine or feline family:

(1) which the owner knows or reasonably should know has a propensity, tendency, or disposition to attack unprovoked,

cause injury, or otherwise endanger the safety of human beings or domestic animals;

(2) which:

(a) makes an unprovoked attack that causes bodily injury to a human being and the attack occurs in a place other than the place where the animal is confined as required by Section 47-3-720; or

(b) commits unprovoked acts in a place other than the place where the animal is confined as required by Section 47-3-720 and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to a human being.

S.C. Code Ann. § 47-3-710(A) (Supp. 2008). Section 47-3-720 of the South Carolina Code (Supp. 2008) requires the dangerous animal to be properly confined:

No person owning or harboring or having the care or the custody of a dangerous animal may permit the animal to go unconfined on his premises. A dangerous animal is “unconfined” as used in this section if the animal is not confined securely indoors or confined in a securely enclosed fence or securely enclosed and locked pen or run area upon the person’s premises.

Section 47-3-760 provides for the penalty for violating the previous statutes:

B) A person who is the owner of a dangerous animal which attacks and injures a human being in violation of Section 47-3-710(A)(2)(a) or a person who violates Section 47-3-740:

(1) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years;

S.C. Code Ann. 47-3-760(B)(1) (Supp. 2008).

Further, the State charged Appellant with involuntary manslaughter. Involuntary manslaughter is (1) the unintentional killing of another without malice, but while engaged

in an unlawful activity not naturally tending to cause death or great bodily harm or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. State v. Wharton, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009). “To constitute involuntary manslaughter, there must be a finding of criminal negligence, statutorily defined as a reckless disregard of the safety of others.” State v. Crosby, 355 S.C. 47, 52, 584 S.E.2d 110, 112 (2003); see S.C. Code Ann. § 16-3-60 (Supp. 2008).

The Supreme Court has explained:

Recklessness is a state of mind in which the actor is aware of his or her conduct, yet consciously disregards a risk which his or her conduct is creating. Recklessness has also been defined as “something more than mere negligence or carelessness . . . a conscious failure to exercise due care or ordinary care or a conscious indifference to the rights and safety of others or a reckless disregard thereof.”

State v. Pittman, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007) (quoting State v. Tucker, 273 S.C. 736, 739, 259 S.E.2d 414, 415 (1979)) (internal citations omitted).

Dangerous Animal Charges

In the instant case, the State’s evidence demonstrated Appellant knew or should have known his dogs were aggressive and dangerous animals. The testimony of several witnesses demonstrated Appellant’s dogs qualified as dangerous animals under section 47-3-710(A)(2)(b), because Appellant witnessed unprovoked acts of aggressiveness by his dogs which clearly put the witnesses in fear.

A friend of the child victim testified he and friends would ride their four-wheelers down the road in front of Appellant’s house and the dogs would come into the road to “try

to attack the four wheelers and all.” (T.108; R.16). He also testified he and his mom used to walk for exercise, but they had to stop walking around Appellant’s house because his dogs “would come out in the road and try to bite our legs and stuff.” (T.109; R.17). The child victim’s friend testified the dogs were not kept in a fence or otherwise contained, but instead allowed to roam freely and unconfined. (T.109-110; R.17-18).

Further, Jerry McAlpine, who lives near Appellant, testified Appellant’s dogs have “a tendency to chasing people. They chased me. They chased me several times.” He indicated the dogs would come into the road and chase him while he was on a bicycle. (T.282; R.132). McAlpine testified about another incident in which the dogs forced him off his bike. He positioned the bike between himself and the dogs to keep them at bay. He stated, “[T]hey scared the daylights out of me. I thought I was had.” (T.283; R.133). Most importantly, McAlpine testified Appellant was aware the dogs chased people and were aggressive to people on the road. He indicated during one of the times he was chased by the dogs, Appellant called them back onto Appellant’s property. (T.283; R.133).

The testimony of these two witnesses provides ample evidence from which it can be concluded the Appellant harbored dangerous animals that were left unconfined. The testimony demonstrates Appellant as the owner knew or reasonably should have known his dogs had “a propensity, tendency, or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings.” S.C. Code Ann. § 47-3-710(A)(1) (Supp. 2008).

Further, the testimony indicated Appellant’s dangerous animals attacked and killed the child victim in this case in violation of section 47-3-760(B). The child victim’s mother

testified dogs surrounded the child-victim's body when he was discovered. (T.103; R.11). Another of the local children testified he heard dogs barking in Appellant's yard and saw three dogs eating something. (T.133-134; R. 25-26). Appellant identified the dogs taken from the scene as the dogs belonging to him. (T.213; 214; R.85; 86). As a result, there is evidence in the Record indicating Appellant violated sections 47-3-710(A)(2)(a) and 47-3-760(B).

Involuntary Manslaughter Charges

The State presented evidence from which the jury could find Appellant guilty of involuntary manslaughter. As discussed above, the State demonstrated Appellant knew or should have known his dogs were dangerous and needed to be confined. The State presented evidence the dogs were not confined by any means, but instead Appellant allowed them to roam freely. Further, the State demonstrated Appellant neglected the dogs by failing to provide food and water and the dogs attacked the child victim as a result of their hunger and aggressiveness.

SLED Agent Vickie Hallman testified she searched the premises where the body and dogs were found and could not locate any food or sign of food left for the dogs. (T.164-165; R. 36-37). In addition, Chief Deputy Pernell testified no one was home at Appellant's residence, and the officers did not locate any food or water left for the dogs. (T.209-210; R.81-82). Both also indicated the dogs were not confined on the premises.

Robert Hooker, a veterinarian, testified he was asked to keep the dogs before they were euthanized. He testified the dogs were all underweight. Using a scale of 1 to 5, with one being emaciated and five being obese, he testified Appellant's dogs were on the low end

of 2. (T.256-257; R.110-111). Dr. Hooker testified he took pictures of the dogs for documentation. (T.259; R.113).

Craig Thompson, an expert in dog behavior, testified there is a significant difference between protective animals and aggressive animals. (T.301-302; R.145-146). He also testified “[i]t’s highly unusual for dogs to actually attack and consume a person. It is so unusual that I cannot find a case in the last ten years where five [or] six dogs have attacked a person and consumed the body.” (T.302-303; R.146-147). Thompson testified the dogs behavior was “highly aggressive” and “unusual.” (T.304; R.148).

Thompson examined the pictures taken by Dr. Hooker and estimated the dogs to be about 20-25 pounds underweight each. He stated: “I notice from the photographs that you can see all the ribs [of] all the dogs and notice that they were underweight.” (T.305; 311-313; R.149;155-157). Significantly, Thompson testified:

You’ve got dogs that have shown aggression or prior instances. The lack of you know -- the fact the lack of concern that you know that these dogs are aggressive. They’re running loose with -- I’m not sure if the defendant was home or not, but whether or not he was or wasn't they were running around loose, and they're going around after somebody with no food for over four days then it’s so bad that they take somebody down and actually consume this body is just unbelievable.

(T.306-307; R.150-151). Thompson reiterated his belief the attack was unprovoked, but instead the dogs were unusually aggressive and attacked out of hunger in order to consume the body. (T.314-315; R.158-159).

Taking the facts in the light most favorable to the State, Appellant clearly acted in reckless disregard for the safety of others by allowing aggressive, dangerous animals to roam

freely. Appellant knew or should have known his dogs were dangerous animals as discussed above. He failed to provide proper food and water and essentially starved the animals. The evidence indicates the animals attacked and consumed the child victim as a result of Appellant's malnourishment of the animals as well as Appellant's allowing them to roam unconfined. Accordingly, the trial court did not err in denying Appellant's motion for a directed verdict on all of the charges.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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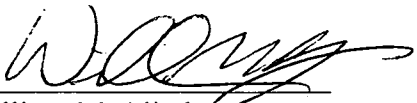
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ATTORNEYS FOR RESPONDENT

December 17, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Dillon County
Hon. Paul M. Burch, Circuit Court Judge

The State,

Respondent,

v.

Bentley Collins,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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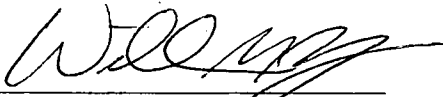
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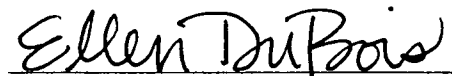
Appellant.

PROOF OF SERVICE

I, ELLEN DuBOIS, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 17th day of December, 2010.



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