

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Florence County  
Ralph King Anderson, Jr., Special Circuit Court Judge

---

Opinion No. 2011-UP-562 (S.C. Ct. App. filed 12/13/2011)  
08-GS-21-1877.

---

THE STATE,

RESPONDENT,

V.

TARUS TREMAINE HENRY, SR.,

PETITIONER

---

APPENDIX

---

LANELLE CANTEY DURANT  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

Attorney for Petitioner

ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

DAVID SPENCER  
Assistant Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211  
(803) 734-3727

EDGAR L. CLEMENTS, III  
Solicitor, Twelfth Judicial Circuit  
MSC-Q, Room 1101  
180 N. Irby Street  
Florence, SC 29501-3431  
(843) 665-3091

Attorneys for Respondent

## INDEX

|                                                         |     |
|---------------------------------------------------------|-----|
| INDEX.....                                              | i • |
| OPINION (NO. 2011-UP-562, FILED DECEMBER 13, 2011)..... | 1   |
| PETITION FOR REHEARING.....                             | 3   |
| RETURN TO PETITION FOR REHEARING.....                   | 14  |
| ORDER DENYING PETITION FOR REHEARING .....              | 20  |

1

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The State,

Respondent,

v.

Tarus Tremaine Henry, Sr., Appellant.

Appeal From Florence County  
Ralph King Anderson, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-562  
Heard November 3, 2011 – Filed December 13, 2011

**AFFIRMED**

Appellate Defender LaNelle Cantey Durant, of  
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy  
Attorney General John W. McIntosh, Assistant  
Deputy Attorney General Salley W. Elliott, and  
Assistant Attorney General David Spencer; all of  
Columbia, and E.L. Clements, III, of Florence, for  
Respondent.

**PER CURIAM:** This appeal arises out of Appellant Tarus Tremaine Henry, Sr.'s convictions for assault and battery with intent to kill, second degree arson, and two counts of unlawful conduct towards a child. On appeal, Henry claims the trial court erred in: (1) admitting into evidence his statement to police and (2) refusing to charge the jury on the lesser-included offenses of assault and battery of a high and aggravated nature and attempt to burn. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: Berghuis v. Thompkins, 130 S.Ct. 2250, 2263 (2010) (finding no evidence defendant's confession was coerced where there was no claim that police threatened him, injured him, or that defendant was in any way fearful, during a three-hour interrogation); State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) ("The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving of a confession.") (citing Dickerson v. U.S., 530 U.S. 428, 434 (2000)); State v. Gibson, 390 S.C. 347, 356, 701 S.E.2d 766, 770 (Ct. App. 2010) (finding it appropriate to decline to charge a lesser-included offense where "it very clearly appears that *no evidence whatsoever* exists tending to reduce the crime"); State v. Lindsey, 394 S.C. 354, 714 S.E.2d 554, 558 (Ct. App. 2011) (noting an argument is deemed abandoned on appeal when it is conclusory and made without supporting authority).

**AFFIRMED.**

**HUFF, PIEPER, and LOCKEMY, JJ., concur.**



THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

COPY

THE STATE,

RESPONDENT,

V.

TARUS TREMAINE HENRY, SR.,

APPELLANT

Appeal from Florence County  
Ralph King Anderson, Jr., Special Circuit Court Judge

Opinion No. 2011-UP-562

PETITION FOR REHEARING

RECEIVED

DEC 22 2011

SC Court of Appeals

The Court of Appeals affirmed the above named appellant's conviction and sentence on December 13, 2011. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, appellant submits the following:

Henry argued two issues on appeal where he believed the trial court erred: (1) in admitting the statement of appellant to the sheriff's investigators when the statement was not voluntary due to Henry's state of mind, and the coercion of the investigators when they told him they could help him out because the judge took their word very seriously; (2) and in refusing to charge the jury on the lesser included charges of assault and battery of a high and aggravated nature and attempt to burn when there was evidence that the victim attacked appellant first.

RECEIVED

DEC 22 2011

SC OFFICE OF  
APPELLATE DEFENSE

The Court of Appeals affirmed the trial court on both issues. On Issue One, the court held that there was no evidence that Henry's statement was coerced where there was no evidence that the police threatened him. On Issue Two, the Court held that there was clearly no evidence tending to reduce the crime.

It is respectfully submitted that the Court of Appeals misapprehended the issues.

**ISSUE ONE:** Tarus Henry told the court that he and Carol Parker had known each other about three years and had been married about one year. They had an infant daughter, and Tarus had a five year old son who lived with them. R. 417, ll. 7 – 25; R. 418, ll. 1 – 12. Tarus had been diagnosed in the past with psychosis and schizophrenia for which he had taken medications. He was currently on the medication, Seroquel, for bipolar disorder. R. 419, ll. 1 – 25; R. 420, ll. 1.

Tarus testified that after he was arrested for this incident and sent to the detention center, he was judicially admitted to Columbia Care Center on November 25 2008 where he remained until February 9, 2009. He was placed on the medication Seroquel in November 2008 and received treatment while he was hospitalized as well as an evaluation. R. 420, ll. 1 – 25.

The incident for which he was arrested occurred on June 23, 2008. Tarus and Carol were having trouble paying the rent and had been to talk to the magistrate to make an arrangement to pay it. They were having disagreements about money and about Carol's mother keeping their daughter. R. 424, ll. 24 – 25; R. 425, ll. 1 – 25; R. 426, ll. 1 – 24.; R. 427, ll. 1 – 25; R. 428, ll. 1 – 25.

When they returned home to their apartment, Carol began having a tantrum and yelling and crying. R. 428, ll. 23 – 25; R. 429, ll. 1 – 25; R. 430, ll. 1 – 15. He left the bedroom to make a bottle for the baby when he was attacked by Carol with a machete. When he reached for the machete, he was cut on his hands and the fight escalated. He received sutures for two of the multiple cuts. R. 430, ll. 15 – 25; R. 431, ll. 1 – 25; R. 432, ll. 1 – 25; R. 433, ll. 1 – 25; R. 434, ll. 1 – 22.

Carol continued to come after him with the machete as she said to him that she had had enough and there was nothing to talk about. R. 433, ll. 23 – 25. He then had a black out and did not remember anything that happened or what he did with the machete until he heard his son calling him by saying daddy. He then realized he was holding the machete which had blood on it. He saw Carol lying on the floor, and he panicked because he was “trying to come to terms with what had just happened.” He then started helping Carol, and finally got her and the children in the car. R. 435, ll. 1 – 25.; R. 436, ll. 1 – 25; R. 437, ll. 1 – 25; R. 438, ll. 1 – 25; R. 439, ll. 1 – 25; R. 440, ll. 1 – 10.

Gary Pace testified that he was employed with the Windy Hill Fire Department, and that he responded to a fire call on June 23, 2008 to the apartment of Tarus Henry. His job was to oversee the fire operations. The firemen arrived on the scene at 11:52 and had the fire under control at 12:07. R. 54, ll. 1 – 25; R. 55, ll. 1 – 25.

Steve McCormack testified that he was employed as a fireman with the Windy Hill Fire Department. He also responded to the fire call at Tarus’s apartment. He said the fire started in the bedroom. R. 61, ll. 1 – 25; R. 66, ll. 1 – 25; R. 67, ll. 1 – 20.

Tarus did not remember if he went back into the apartment but he did see smoke from the apartment. However, he did not know anything about the fire, although he said he did tell the detectives falsely during interrogation that he set the fire because he felt under “extreme pressure” from two of the three detectives - Detectives Bert Turner and Calvin Timmons. R. 440, ll. 8 – 25; R. 441, ll. 1 – 11.

Tarus took Carol to McLeod Hospital, and he then went to his mother in Bishopville for her to take care of the children. His brother told him the nearest hospital was in Kershaw County so and his mother and children went to Kershaw County hospital for him to receive treatment for his

injuries. He had already made up his mind to turn himself in to law enforcement, although he did not tell the medical staff the truth at first because he feared they would not treat him. R. 442, ll. 1 – 25; R. 443, ll. 1 – 25; R. 444, ll. 1 – 25; R. 445, ll. 1 – 25; R. 446, ll. 1 – 25; R. 447, ll. 1 – 25.

Law enforcement came and arrested him at the hospital, but he was taken to the local police station where Investigator Timmons picked him up and took him to Florence. R. 449, ll. 1 – 25.

Amy Corbett testified that she was the nurse who treated Tarus at Kershaw Hospital on June 23, 2008. Her testimony was that Henry had his mother and two small children with him. He had wounds on the palms of both hands with about five lacerations. He required sutures on two of the cuts. She contacted law enforcement. R. 98, ll. 1 – 21; R. 99, ll. 22 – 25; R. 100, ll. 1 – 25; R. 101, ll. 1 – 25; R. 102, ll. 1 – 25; R. 103, ll. 1 – 13.

Carol Parker's testimony was that she was taking her baby to her mother's and she wanted to look for a job. They did argue because Tarus did not want the baby leaving. R. 359, ll. 1 – 25; R. 360, ll. 1 – 25; R. 361, ll. 1 – 25; R. 363, ll. 1 – 25; R. 366, ll. 1 – 25. Her story was that she told him she needed to go and he attacked her with the machete. R. 369, ll. 1 – 25; R. 370, ll. 1 – 25.

Carol told him just before he hit her that something was obviously wrong with him because of the way he was acting. R. 369, ll. 6 – 14. She testified on cross examination that she had never seen him look that way before as he looked at her in a strange way. R. 386, ll. 5 – 18. .

Dr. Mark Reynolds, the emergency room physician who treated Carol Parker, testified that she had twenty-eight wounds which were life-threatening. He said she was close to death when she was admitted. R. 337, ll. 10 – 25; R. 343, ll. 22 – 25; R. 344, ll. 1 – 25; R. 345, ll. 1 – 25; R. 346, ll. 1 – 25; R. 347, ll. 1 – 2. He did say that she may have some permanent damage but that she would recover ninety-five percent of her original capacity. R. 356, ll. 1 – 14.

Dr. Richard Frierson, a forensic psychiatrist, testified for the defense that he completed two court ordered mental evaluations on Tarus Henry: one to determine his competency to stand trial and the second was to determine his level of criminal responsibility at the time of the alleged offense. R. 389, ll. 4 – 25; R. 391, ll. 1 – 25; R. 392, ll. 1 – 9. Dr. Frierson reported that Tarus was competent to stand trial and that he knew right from wrong. However, he did some impairment in his capacity to conform his behavior but it was not substantial. R. 392, ll. 10 – 25; R. 393, ll. 1 – 3.

Dr. Frierson's testimony was that Tarus previously had part of his brain removed which was part of his right non-dominant hemisphere. This was due to the fact that as a child he suffered irretractable seizures which meant the seizures did not respond to medication. The seizures were so severe that he was a candidate for the removal of part of his brain. One side effect of the removal of part of his brain was the inability to recognize fear in other people. Dr. Frierson's opinion was that seeing fear in other people when in an altercation might serve as a "stopping mechanism" to help the person control his behavior. R. 389, ll. 1 – 25; R. 391, ll. 1 – 25; R. 392, ll. 1 – 25; R. 393, ll. 1 – 25; R. 394, ll. 1 – 25; R. 395, ll. 1 – 25; R. 396, ll. 1 – 8.

Dr. Frierson testified that Tarus had other mental illnesses which included depression where he had attempted suicide; was hospitalized for hallucinations related to schizophrenia; and now met the criteria for bipolar disorder. He had been hospitalized at Bryan Psychiatric Hospital twice and at Duke University where he had the neurosurgery; he also attended Tricounty Mental Health Center. R. 393, ll. 4 – 17; R. 396, ll. 9 – 25; R. 397, ll. 1 – 25; R. 398, ll. 1 – 25. He said that people with these mental illnesses frequently stopped their medications but that the person will likely have future episodes. R. 398, ll. 6 – 25; R. 399, 1 – 25. Frequently people who commit a violent act that was something they would not typically do, then their mind may block it out as a defense mechanism. R. 401, ll. 1 – 24.

A Jackson v. Denno,<sup>1</sup> hearing was held pretrial as Tarus gave a statement to law enforcement following his arrest. The solicitor explained that one of the three investigators who were present during the statement was in Afghanistan: Investigator Calvin Timmons. The other two investigators were Officer Kathleen Street and Officer Bert Turner. The judge proceeded with the hearing. R. 4, ll. 9 – 25; R. 5, ll. 1 – 25.

Officer Street testified that Tarus signed the waiver of rights form and she had copies of the statement he gave.<sup>2</sup> R. 6, ll. 18 – 25; R. 7, ll. 1 – 25. According to her testimony, Tarus's statement was not recorded on video but was recorded with audio only. R. 11, ll. 1 – 8; R. 12, ll. 17 – 25. She admitted that Tarus told them that he had had surgery on his brain a few years earlier for a seizure disorder. However, they continued to take his statement. R. 9, ll. 1 – 11. Officer Calvin Timmons was the one who went to Kershaw and transported Tarus to Florence. Officer Street did not know what was said in the car. R. 13, ll. 1 – 25; 14, ll. 1 – 9. She admitted on cross examination that sometimes informal interrogation occurred before the recording, but she did not know if Officer Timmons did this. R. 20, ll. 1 – 25; R. 21, ll. 1 – 3.

On cross examination, defense counsel referred to the transcribed statement which Officer Street had in front of her. R. 22, ll. 1 – 15. Officer Street stated that Officer Timmons, Officer Turner and she were all present during the entire statement. R. 22, ll. 1 – 4. Counsel referred to page six of the statement where Officer Turner asked Tarus if he were prescribed any medication, and Tarus said not that he knew of. Then further on the page, Tarus said he was on Zyprexa for schizophrenia and psychosis, but it had been discontinued. Officer Street confirmed that was in the statement. R. 23, ll. 1 – 25; R. 24, ll. 1 – 25.

---

<sup>1</sup> Jackson v. Denno, 378 U.S. 368 (1964).

<sup>2</sup> The written statement was not admitted into evidence, but a CD of the audio recorded statement was admitted into evidence as State's Exhibit 74.

Counsel said that on page ten, Tarus told them he was still bleeding, but Officer Street admitted they did not talk with anyone at Kershaw Hospital to inquire what medications he may be taking or the extent of his injuries. R. 25, ll. 1 – 21.

Counsel then referred Officer Street to page twelve where Officer Timmons said to Tarus: “And don’t just like I told you, Tarus, in the car, man, don’t spoon feed us any information.” R. 25, ll. 22 – 25; R. 26, ll. 1 – 7. Then counsel referred to page thirty-seven of the statement where Officer Timmons said to Tarus:

We can help you out, man. I mean, the judge takes our word very serious.

R. 27, ll. 16 – 25; R. 28, ll. 1 – 4.

Officer Street said:

That’s what’s transcribed here.

R. 28, ll. 4 – 5.

During the trial, defense counsel referred Officer Bert Turner to page 40 of the transcribed statement where he and Officer Timmons asked Tarus about his state of mind. Officer Timmons said to Tarus:

Tarus, you need some help, man, too, okay. I mean, I mean, I’m not a psychiatrist or a doctor or anything, you know, but I, I from just sitting across the table, I can see you need some help, okay.

R. 292, ll. 1 – 25; R. 293, ll. 1 – 10.

Officer Turner replied that he was there when that was said. R. 293, ll. 10 – 11.

Officer Turner also admitted that Tarus told them he had tried to cut his wrists in the past. Officer Turner admitted that these things could be symptoms of mental illness. He denied they put any pressure on Tarus. R. 294, ll. 1 – 25; R. 295, ll. 1 – 14.

Defense counsel argued at the end of the pretrial hearing that the statement was not voluntarily given and should be suppressed as the officers had information that Tarus had been on medication for psychosis or schizophrenia. He told the officers he was diabetic and no food or water was offered to him. Part of the tape had been erased by the transcriptionist, Donna McDaniel, and therefore was incomplete. She argued that considering the totality of the circumstances, the statement was not voluntary. R. 35, ll. 1 – 25; R. 36, ll. 1 – 25; R. 37, ll. 1 – 21; R. 40, ll. 8 – 13.

The judge denied counsel's motion and ruled that the statement was voluntary. It was admitted. R. 37, ll. 22 – 25; R. 38, ll. 1 – 25; R. 39, ll. 1 – 25; R. 40, ll. 1 – 25.

In Bram v. United States, 168 U.S. 532 (1897), the Court held that a confession "obtained by any direct or implied promises, however slight," was not voluntary. Although the Supreme Court later wrote in Arizona v. Fulminante, 499 U.S. 279 (1991), that Bram did not set the standard for determining the voluntariness of a confession, the Court wrote that the promise had to be considered in light of the totality of the circumstances. The Court held that the confession of a prison inmate to his cell mate, who was an undercover FBI agent, was not voluntary but coerced. Id.

In Ex parte Matthews, 601 So.2d 52 (Ala. 1992), the court held that the confession was coerced where police told the defendant it would make a big difference with prosecutors and judge whether defendant cooperated or not. The Court in Womack v. State, 205 So.2d 579 (Ala. 1967), held that it was coercive to tell the defendant it would "go lighter on him" if he confessed.

A statement induced by a promise of leniency is involuntary only if so connected with the inducement as to be a consequence of the promise. State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2008). The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the given statement. Id.



Tarus's statement was not voluntarily made. His will was easily overborne as he was upset about what happened as indicated by his blackout, and the fact that he took his wife to the hospital after it happened. He told the officers of his history of mental problems and the fact that he was not on medication. This should have been a red flag to the officers. Also, the fact that he told them he had brain surgery should have caused concern for the officers and the trial judge.

The Court of Appeals misapprehended the issue. The fact that the expert, Dr. Frierson, testified that Henry had part of his brain removed, and that there was some impairment was significant evidence. The fact that the officers told Henry that they had influence with the judge, along with Henry's impairment was in itself coercion.

**ISSUE TWO:** Defense counsel requested the judge to charge the jury on the lesser included charge of assault and battery of a high and aggravated nature (ABHAN) for the ABWIK, and the lesser included crime of intent to burn for the arson second. Counsel argued there was evidence of ABHAN, and that the black out described by Tarus would negate any intent to kill, and indicated a loss of control. R. 470, ll. 1 – 23.

The judge refused, and counsel asked the court to please note her objection. R. 470, ll. 24 - 25; R. 471, ll. 1 – 7.

The trial court is required to charge a jury on a lesser-included offense if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed. Suber v. State, 371 S.C. 554, 640 S.E.2d 884 ( 2007); citing State v. Gourdine, 322 S.C. 396, 398, 472 S.E.2d 241, 242 (1996).

There was evidence of ABHAN as Tarus testified that Carol attacked him first with the machete in which case he would only have been trying to stop an action. Malice would not be an issue. The nurse who treated Tarus confirmed the wounds he suffered on the palms of both hands

would reasonably be consistent with his grabbing a machete. The DNA expert testified that there was blood from both Tarus and Carol on the machete. R. 230, ll. 4 – 12.

In State v. Tyler, 348 S.C. 526, 560 S.E.2d 888 (2002); citing State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000), the Supreme Court wrote that a defendant may be convicted of ABHAN regardless of whether malice was present.

In State v. Pilgrim, 326 S.C. 24, 482 S.E.2d 562 (1997), the Supreme Court reversed a conviction of ABWIK because the jury may have thought there had to be a finding of heat of passion in order to convict of ABHAN where the trial judge compared ABHAN with voluntary manslaughter.

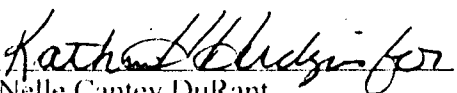
The judge should have charged the jury on the lesser included offense of intent to burn as there was evidence presented of the lesser. Tarus testified that he did not know anything about the fire. He also testified that he blacked out and did not remember hitting Carol or any thing else until his son called to him.

The trial judge should have given the lesser included charges of ABHAN and intent to burn.

The Court of Appeals misapprehended the issue. Henry had bloody wounds on the palms of his hands consistent with grabbing the machete. DNA confirmed that some of the blood on the machete was Henry's. The case law held that malice was not required for ABHAN as held in State v. Tyler, 348 S.C. 526, 560 S.E.2d 888 (2002).

THEREFORE, we respectfully ask the Court of Appeals to reconsider its rulings.

Respectfully submitted,

  
LaNelle Cantey DuRant  
Appellate Defender

This 22nd day of December, 2011.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Florence County  
Ralph King Anderson, Jr., Special Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

TARUS TREMAINE HENRY, SR.,

APPELLANT

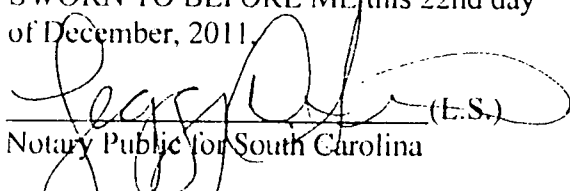
\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and upon Tarus Henry this 22nd day of December, 2011.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 22nd day  
of December, 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 Florence County  
Ralph King Anderson, Jr., Circuit Court Judge  
\_\_\_\_\_

THE STATE,

Respondent,

vs.

TARUS TREMAINE HENRY, Sr.,

Appellant.

\_\_\_\_\_  
**RETURN TO PETITION FOR REHEARING**  
\_\_\_\_\_

Respondent objects to the petition for rehearing, and would argue the petition for rehearing is not in compliance with Rule 221, SCACR. Rule 221 requires a petition for rehearing to "state with particularity the points supposed to have been overlooked and misapprehended by the court." The Petition for Rehearing fails to do this. Instead, it appears that Appellant has cut and pasted the same argument from their Final Brief. Respondent believes that the Court did not overlook Appellant's entire brief and therefore, the petition for rehearing should be denied.

Respondent, rather than reiterating every point made in its Final Brief, would crave reference for this Court and incorporate Respondent's the Statement of Facts and Argument previously presented in the Final Brief. Respondent will attempt to summarize these points as follows:

- (1) Evidence supports the trial court's ruling that the statement was given freely and

voluntarily.

The trial judge's determination of whether a statement was knowingly, intelligently, and voluntarily made requires an examination of the totality of the circumstances surrounding the waiver. State v. Avery, 374 S.C. 524, 649 S.E.2d 102 (Ct. App. 2007). On appeal, the conclusion of the trial judge on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion. Id.

The record amply supports that Henry's will was not overborne. The videotape of the statement is perhaps the best evidence of this. None of the law enforcement officers threatened, or even raised their voices to Henry. Henry speaks clearly and does not exhibit any signs of mental illness.

Note Henry's own defense witness, Dr. Frierson, testified that Henry did not appear to be suffering any symptoms of mental illness that would impair Henry's knowledge of wrongfulness when Henry brutally attacked his wife with a machete earlier that day. Henry's arguments focus primarily on his mental history. Dr. Frierson testified that "it's really the symptoms that impair knowledge of wrongfulness, not the actual diagnosis." ROA. p. 411.

Also, the record fails to reflect that Henry's brain surgery several years before impacted his ability to understand his rights or result in his will being overborne by law enforcement. The record is capable of a reverse interpretation, that the surgery helped Henry, which was presumably the purpose of the surgery years ago.

Ultimately, Henry's past mental health issues do not entitle him to automatic suppression of the statement, as he seems to suggest, as it is only one factor to consider in the totality of circumstances. State v. Doby, 273 S.C. 704, 709, 258 S.E.2d 896, 899 (1979).

Further, Henry's statement was not rendered involuntary merely because law

enforcement offered to bring his cooperation to the attention of the court. “An officer may suggest broadly that it would be ‘better’ for a suspect to tell the truth, may indicate that the person’s cooperation would be brought to the attention of the public officials or others involved, or may state in general terms that cooperation has been considered favorably by the courts in the past.” Commonwealth v. Tolan, 904 N.E.2d 397, 406 (Mass. 2009) (finding statements that “You can do yourself a lot of good if you tell us what happened”, “We’ll help you because that’s why we’re here, to find the truth”, “Now it’s time to help yourself out”, and “You need to help yourself by telling the truth” were not impermissible by offering leniency or that a confession would assist in the defense) *quoting* Commonwealth v. Mehan, 387 N.E.2d 527 (1979) *cert dismissed*, 445 U.S. 39, 100 S.Ct. 1092 (1980).

Contrary to Henry’s assertions, the record amply supports the trial court’s ruling and the admission of the statement was not error. Accordingly, this Court should deny the petition for rehearing as to this issue.

(2) Henry claims it was error to not charge assault and battery of a high and aggravated nature (ABHAN) as a lesser included offense of assault and battery with intent to kill (ABWIK). He further claims that “intent to burn” should have been charged as a lesser included offense of arson.<sup>1</sup> However, evidence does not support either lesser charges.

This Court cited State v. Gibson, 390 S.C. 347, 356, 701 S.E.2d 766, 770 (Ct. App. 2010) for the proposition that a charge for a lesser-included offense should be declined where “it very clearly appears that no evidence whatsoever exists tending to reduce the crime”.

At trial, Henry claimed he was entitled to an ABHAN instruction because of his testimony that he blacked out. See ROA. p. 470. Henry is not entitled to a charge on

---

<sup>1</sup> Henry is likely referring to the statute proscribing attempts to burn, S.C. Code Ann. § 16-11-190.

ABHAN merely because he cannot recall what happened.

Henry also argues that the charge should be given because he testified that his wife attacked him with the machete. That testimony goes to self-defense, but does not support a charge on the lesser offense of ABHAN.

A lesser included offense should be charged only where evidence warrants the instruction. State v. Coleman, 342 S.C. 172, 536 S.E.2d 387 (Ct. App. 2000). "It is not error to refuse to charge the lesser included offense unless there is evidence tending to show the defendant was guilty *only* of the lesser offense." Id., 342 S.C. at 175, 536 S.E.2d at 389 (emphasis in the original).

A charge on assault and battery of a high and aggravated nature is appropriate when the evidence demonstrates the defendant lacked the requisite intent to kill. Id., 342 S.C. at 176, 536 S.E.2d at 389. However, only a general intent to kill is necessary to support a charge for assault and battery with intent to kill. Id.; State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996).

Assault and battery with intent to kill (ABWIK) is an unlawful act of a violent nature to the person of another with malice aforethought, either express or implied. Foust, 325 S.C. at 14, 479 S.E.2d at 51 (1996). ABWIK also requires the intent to kill. Id., 325 S.C. at 15, 479 S.E.2d at 51. Intent is demonstrated by acts and conduct from which a jury may naturally and reasonably infer intent. Id. Intent may be proved with evidence of the character of the means or instrument used. Id., at 16, n. 4, 479 S.E.2d at 52, n. 4.

Assault and battery of a high and aggravated nature (ABHAN), on the other hand, requires an unlawful act of violent injury accompanied by circumstances of aggravation. State v. Coleman, *supra*. An ABHAN charge is appropriate when the evidence demonstrates the defendant lacked the requisite intent to kill. State v. Hilton, 284 S.C. 245, 249, 325

S.E.2d 575, 577 (Ct. App. 1985) *overruled on other grounds by Foust*. However, as noted above, State v. Foust, holds that only a general intent to kill is necessary to support an ABIK charge.

In the instant case, the evidence of Victim's severe, near-fatal injuries, was uncontroverted. Victim testified she was blind-sided. Henry testified at trial that he blacked out and could not recall what happened after he disarmed her. In his statement, Henry said Victim swung the machete at him, he caught it and took the machete from her. Then Henry said "don't go", "and **then** that was when it escalated". State's Exhibit #74, (emphasis added). Henry set fire to the apartment while Victim was still inside. The evidence presented did not require a charge on ABHAN, and therefore, the trial court did not err.

Further, any error was harmless beyond a reasonable doubt, as evidence of guilt for ABWIK was overwhelming. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial).

As to the issue of whether attempt to burn should have been charged, no evidence supports that Henry committed this offense to the exclusion of arson. This Court previously has determined that attempts to burn is a lesser included offense of arson in the second degree. Pelzer v. State, 381 S.C. 217, 672 S.E.2d 790 (S.C. App. 2009).

In its opinion, this Court cited State v. Lindsey, 394 S.C. 354, 714 S.E.2d 554, 558 (Ct. App. 2011) for the proposition that an issue is abandoned on appeal when it is conclusory and made without supporting authority. Henry has made no attempt to provide this Court with additional authority and has not addressed whether or not the issue was sufficiently addressed in his brief. Further, Henry does not point to any evidence that Henry merely attempted to burn his apartment building and has not responded to this argument



made by Respondent in its brief. This Court should consider the issue no further and deny the petition for rehearing.

### CONCLUSION

For all of the foregoing reasons, the petition for rehearing should be denied.

Respectfully submitted,

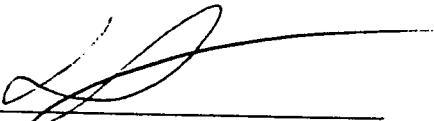
ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

DAVID SPENCER  
Senior Assistant Attorney General

E. L. CLEMENTS, III  
Solicitor, Twelfth Judicial Circuit

BY: 

DAVID SPENCER

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 30, 2011

# The South Carolina Court of Appeals

The State,

Respondent,

v.

Tarus Tremaine Henry, Sr.,

Appellant.

The Honorable Ralph King Anderson, Jr.  
Florence County  
Trial Court Case No. 2008-GS-21-01877

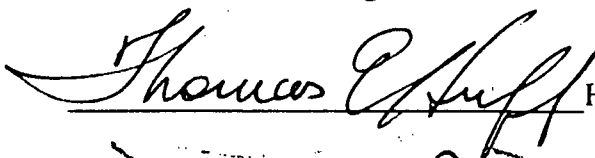
---

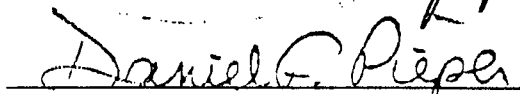
## ORDER DENYING PETITION FOR REHEARING

---

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.

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

 Huff, J.

 Pieper, J.

 Lockemy, J.

Columbia, South Carolina

cc: Appellate Defender LaNelle Durant  
Assistant Attorney General David Spencer

FILED

JAN 13 2012

---

STATE OF SOUTH CAROLINA

In The Court of Appeals

---

APPEAL FROM FLORENCE COUNTY

Ralph King Anderson, Jr., Special Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

TARUS TREMAINE HENRY, SR.,

APPELLANT

---

RECORD ON APPEAL

---

LANELLE CANTEY DURANT  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

Attorney for Appellant

HENRY DARGAN MCMASTER  
Attorney General

JOHN W. MCINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

DAVID SPENCER  
Assistant Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211  
(803) 734-3727

EDGAR L. CLEMENTS, III  
Solicitor, Twelfth Judicial Circuit  
MSC-Q, Room 1101  
180 N. Irby Street  
Florence, SC 29501-3431  
(843) 665-3091

Attorneys for Respondent

## INDEX

|                                            |    |
|--------------------------------------------|----|
| INDEX.....                                 | i  |
| TRIAL TRANSCRIPT                           |    |
| BLAIR HEARING .....                        | 2  |
| TESTIMONY                                  |    |
| KATHLEEN STREETT                           |    |
| Direct Examination – by Mr. Hill .....     | 6  |
| Cross Examination – by Ms. Parrott .....   | 17 |
| DONNA MCDANIEL                             |    |
| Direct Examination – by Mr. Hill .....     | 30 |
| Cross Examination – by Ms. Parrott .....   | 33 |
| TRIAL TESTIMONY                            |    |
| SCOTT MCALEESE                             |    |
| Direct Examination – by Mr. Hill .....     | 42 |
| Cross Examination – by Ms. Parrott .....   | 49 |
| Redirect Examination – by Mr. Hill .....   | 52 |
| Recross Examination – by Ms. Parrott ..... | 53 |
| GARY PACE                                  |    |
| Direct Examination – by Mr. Hill .....     | 54 |
| Cross Examination – by Ms. Parrott .....   | 57 |
| STEVE MCCORMICK                            |    |
| Direct Examination – by Mr. Hill .....     | 61 |
| Cross Examination – by Mr. Parrott .....   | 70 |
| Redirect Examination – by Mr. Hill .....   | 76 |
| DARREN YARBOROUGH                          |    |
| Direct Examination – by Mr. Hill .....     | 78 |
| Cross Examination – by Ms. Parrott .....   | 83 |
| MATTHEW L. HUGGINS                         |    |
| Direct Examination – by Mr. Hill .....     | 86 |
| Cross Examination – by Ms. Parrott .....   | 91 |
| BRETT CAMP                                 |    |
| Direct Examination – by Mr. Hill .....     | 94 |

|                                              |     |
|----------------------------------------------|-----|
| Cross Examination – by Ms. Parrott .....     | 97  |
| AMY CORBETT                                  |     |
| Direct Examination – by Mr. Hill .....       | 98  |
| Cross Examination – by Ms. Parrott .....     | 105 |
| KEITH LUTCKEN                                |     |
| Direct Examination – by Mr. Hill .....       | 110 |
| Cross Examination – by Ms. Parrott .....     | 114 |
| Redirect Examination – by Mr. Hill .....     | 116 |
| ADAM MOORE                                   |     |
| Direct Examination – by Mr. Hill .....       | 119 |
| Cross Examination – by Ms. Parrott .....     | 144 |
| Redirect Examination – by Mr. Hill .....     | 149 |
| Recross Examination – by Ms. Parrott .....   | 150 |
| J. KIM COCKFIELD                             |     |
| Direct Examination – by Mr. Hill .....       | 152 |
| Cross Examination – by Ms. Parrott .....     | 155 |
| LARRY H. QUICK                               |     |
| Direct Examination – by Mr. Hill .....       | 156 |
| Cross Examination – by Ms. Parrott .....     | 158 |
| BECKY GREEN                                  |     |
| Direct Examination – by Mr. Hill .....       | 160 |
| Cross Examination – by Ms. Parrott .....     | 163 |
| MAUREEN NOGY                                 |     |
| Direct Examination – by Mr. Hill .....       | 165 |
| Cross Examination – by Ms. Parrott .....     | 167 |
| BERT TURNER                                  |     |
| Direct Examination – by Mr. Hill .....       | 169 |
| Voir Dire Examination – by Ms. Parrott ..... | 170 |
| Cross Examination – by Ms. Parrott .....     | 183 |
| JEFF PARROTT                                 |     |
| Direct Examination – by Mr. Hill .....       | 188 |
| Cross Examination – by Ms. Parrott .....     | 193 |
| LORI GILES                                   |     |
| Direct Examination – by Mr. Hill .....       | 197 |
| Cross Examination – by Ms. Parrott .....     | 203 |
| JASPER HUMBERT                               |     |
| Direct Examination – by Mr. Hill .....       | 206 |
| Voir Dire Examination – by Ms. Parrott ..... | 207 |

|                                                                                        |     |
|----------------------------------------------------------------------------------------|-----|
| Cross Examination – by Ms. Parrott .....                                               | 230 |
| Redirect Examination – by Mr. Hill .....                                               | 237 |
| ADAM MOORE                                                                             |     |
| Direct Examination – by Mr. Hill .....                                                 | 240 |
| BERT TURNER                                                                            |     |
| Direct Examination – by Mr. Hill .....                                                 | 252 |
| Cross Examination – by Ms. Parrott .....                                               | 268 |
| Redirect Examination – by Mr. Hill .....                                               | 288 |
| Recross Examination – by Ms. Parrott .....                                             | 291 |
| DONNA MCDANIEL                                                                         |     |
| Direct Examination – by Mr. Hill .....                                                 | 301 |
| Cross Examination – by Ms. Parrott .....                                               | 305 |
| KATHLEEN STREET                                                                        |     |
| Direct Examination – by Mr. Hill .....                                                 | 307 |
| Cross Examination – by Ms. Parrott .....                                               | 330 |
| DR. MARK REYNOLDS                                                                      |     |
| Direct Examination – by Mr. Hill .....                                                 | 337 |
| Cross Examination – by Ms. Parrott .....                                               | 356 |
| CAROL PARKER                                                                           |     |
| Direct Examination – by Mr. Hill .....                                                 | 359 |
| Cross Examination – by Ms. Parrott .....                                               | 379 |
| MOTION FOR DIRECTED VERDICT – by Ms. Parrott .....                                     | 388 |
| TESTIMONY                                                                              |     |
| DR. RICHARD FRIERSON                                                                   |     |
| Direct Examination – by Ms. Parrott .....                                              | 389 |
| Cross Examination – by Mr. Hill .....                                                  | 403 |
| Redirect Examination – by Ms. Parrott .....                                            | 416 |
| TARUS T. HENRY, SR.                                                                    |     |
| Direct Examination – by Ms. Parrott .....                                              | 417 |
| Cross Examination – by Mr. Hill .....                                                  | 464 |
| Redirect Examination – by Ms. Parrott .....                                            | 468 |
| COURT’S EXHIBIT #2 .....                                                               | 473 |
| INDICTMENT .....                                                                       | 478 |
| CERTIFICATE OF COUNSEL .....                                                           | 481 |
| ***STATE EXHIBIT #74 (CD OF STATEMENT) HAS BEEN TRANSPORTED TO THE COURT OF APPEALS*** |     |

|                           |   |                           |
|---------------------------|---|---------------------------|
| STATE OF SOUTH CAROLINA   | ) |                           |
|                           | ) | COURT OF GENERAL SESSIONS |
| COUNTY OF FLORENCE        | ) |                           |
|                           | ) | 2008-GS-21-1877           |
|                           | ) |                           |
|                           | ) |                           |
| State of South Carolina   | ) | )                         |
|                           | ) |                           |
| vs.                       | ) | TRANSCRIPT OF RECORD      |
|                           | ) |                           |
| Tarus Tremaine Henry, Sr. | ) | )                         |
| <u>DEFENDANT</u>          | ) |                           |

July 27-31, 2009  
Florence, South Carolina

B E F O R E:

THE HONORABLE RALPH KING ANDERSON, JR., judge and a jury.

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

STEPHEN HILL, Assistant Solicitor  
Attorney for the State

KAREN PARROTT, Assistant Public Defender  
Attorney for the Defendant

KESHIA REED  
Circuit Court Reporter



1 criminal procedure and under Brady, we have the continuing  
2 obligatory production and I hereby order that before we  
3 begin the testimony of the trial testimony. And it is so  
4 ordered. Next matter, please.

5 MS. PARROTT: Thank you, Your Honor. We did have  
6 Mr. Henry evaluated pursuant to State vs. Blair and we  
7 would need to put the Blair hearing on the record, Your  
8 Honor.

9 THE COURT: Order, pursuant to State vs. Blair,  
10 B-L-A-I-R and section 44-23-410 et sequitur of the Code of  
11 Laws of South Carolina, a mandatory hearing is to be held  
12 once a Blair hearing is conducted.

13 The Blair hearing is now to be held. And it is so  
14 ordered. Please present the evidentiary showing under  
15 44-23-410 and State vs. Blair, please.

16 MR. HILL: Your Honor, at the sake of looking very  
17 unprofessional, I'm looking for a copy of my report that I  
18 received from the state hospital. I have torn my file a  
19 part in preparation and that's what I'm looking for at  
20 this time.

21 (WHEREUPON, a pause in the proceedings.)

22 THE COURT: Ms. Parrott, do you have a copy of the  
23 report?

24 MS. PARROTT: I've given it to actually Mrs. Van  
25 Lutcken, Your Honor, is making a copy of it at this time.

1 THE COURT: Thank you.

2 (WHEREUPON, a pause in the proceedings.)

3 THE COURT: The State offers into evidence a medical  
4 report in regard to 44-23-410 et sequitur and State vs.  
5 Blair. It is marked as Court's Exhibit Number 1 --  
6 Court's Exhibit Number 2 from the defendant.

7 (WHEREUPON, Court's Exhibit No. 2 was marked for the  
8 record.)

9 THE COURT: Thank you. All right. Anything further  
10 from the State in regard to a medical report from the  
11 department?

12 MR. HILL: No, thank you, Your Honor, I appreciate  
13 your patience. I ask the Court to take notice of the  
14 contents of that report and accept it as a finding in  
15 regards to competency in this case.

16 THE COURT: Any response from the defendant?

17 MS. PARROTT: No, Your Honor. Offer without  
18 objection.

19 THE COURT: Order, pursuant to State vs. Blair 275  
20 S.C. 529, 273 S.C. Second 536 and section 44-23-430. The  
21 Court has reviewed Court's Exhibit Number 2. The medical  
22 report reveals with exactitude that competency to stand  
23 trial is affirmatively responded with quote, yes, end of  
24 quote. The sections two and three are included with a  
25 clinical history, medical history, social history, mental

1 status examine, conclusion regarding competency to stand  
2 trial and recommendations. The exhibit is signed by  
3 Dr. Richard L. Frierson, professor of clinical psychiatry,  
4 University of South Carolina School of Medicine.

5 Based on the entirety of Court's Exhibit Number 2,  
6 the Court concludes that the defendant is competent to  
7 stand trial. And it is so ordered. All right. Any other  
8 matters, please?

9 MS. PARROTT: Your Honor, Mr. Henry did give a  
10 statement as part of this investigation. And, Your Honor,  
11 only one of the investigators that was actually present at  
12 the time is present here today. Obviously, one would be  
13 unavailable because as I understand it he's in  
14 Afghanistan. The second one is available at least  
15 certainly available, but I believe had a conflict of  
16 scheduling today. But I would certainly defer to the  
17 Court's judgment in this matter as to whether or not to  
18 convene early regarding a Jackson v. Denno tomorrow, so  
19 that I could address the second investigator as well or if  
20 you would just go forward with the first investigator who  
21 in all honesty, Your Honor, was present during the whole  
22 recording session of this time, but would not have been  
23 present, I believe, for the whole period.

24 THE COURT: All right. What says the State in that  
25 regard?

1 MR. HILL: Your Honor, the State understands that  
2 there were three officers involved in the taking of the  
3 statement. The statement that the State plans to offer  
4 was attended by Officer Kathleen Streett, who is present  
5 today. She was there during the entirety of the recording  
6 and giving of the statement. Second Officer Bert Turner  
7 is unavailable today due to his wife having surgery. He  
8 is available tomorrow, but he could not come today because  
9 he needed to be with his wife while she was at the  
10 hospital. The third officer, Calvin Timmons, is  
11 unavailable, he's presently in Afghanistan. We believe  
12 that the testimony offered by Mrs. Streett would be  
13 sufficient in order to allow the Court to make a finding  
14 regarding the admissibility of the statement under Jackson  
15 vs. Denno. We ask that we be allowed to proceed today  
16 with her testimony.

17 THE COURT: All right. Pursuant to Jackson vs. Denno  
18 378, U.S. 368 84 Supreme Court 1774 Twelve Lawyers Edition  
19 Second 908 and State vs. Benny site omitted, State vs.  
20 Rochester site omitted, State vs. Childs site omitted,  
21 State vs. Washington site omitted, and State vs. Miller  
22 375 S.C. 370 652 S.C. Second 444, we now hold a hearing  
23 pursuant to the mandate of Jackson vs. Denno. A thorough  
24 review in regard to the Denno hearing process is to be  
25 conducted and we now proceed to swear witnesses in that

1 regard with the hearing pursuant to the Denno procedure.

2 And it is so ordered. Call your first witness please.

3 MR. HILL: Your Honor, the State would call  
4 Investigator Kathleen Streett of Florence County Sheriff's  
5 Office.

6 THE CLERK: Do you swear to tell the truth, the whole  
7 truth and nothing but the truth so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Please be seated and state your full name  
10 for the record.

11 THE WITNESS: My first name is Kathleen with a K.  
12 Middle name is Vargovich. You need me to spell that for  
13 you? V as in victory A-R-G-O, V as in victory C-H-I-K  
14 Streett S-T-R-E-E-T-T.

15 THE COURT: Proceed.

16 MR. HILL: Thank you, Your Honor.

17 WHEREUPON,

18 Kathleen Streett,  
19 after first having been duly sworn, testified as follows:

20 DIRECT EXAMINATION IN-CAMERA

21 MR. HILL:

22 Q Mrs. Streett, were you involved in the interrogation  
23 of the defendant, Mr. Henry, in this case?

24 A Yes, sir.

25 Q Did you have copies of the statement that he gave as

1 well as waiver of rights forms that you brought with you  
2 today?

3 A Yes, sir.

4 Q Are these copies of those documents?

5 A Yes, sir, these are those.

6 Q Might they be helpful to you during the testimony  
7 that you give today?

8 A Yes, sir.

9 Q Mrs. Streett, do you have documents that were signed  
10 by Mr. Henry indicating that he understood his rights  
11 under the South Carolina and U.S. Constitutions and that  
12 he wish to waive those rights in speaking with you on  
13 June 23rd 2008?

14 A Yes, sir, I have the Miranda warning form.

15 MR. HILL: Your Honor, the State would ask what's  
16 been identified as a waiver of rights form be admitted  
17 into evidence as State's, I believe, one. There's no  
18 objection from the defense.

19 THE COURT: State's Exhibit Number 1 in evidence  
20 without objection?

21 MS. PARROTT: Correct, Your Honor.

22 THE COURT: Thank you.

23 (WHEREUPON, State's Exhibit No. 1 was admitted into  
24 evidence.)

25 BY MR. HILL:

1 Q Mrs. Streett, I'm going to hand you what's been  
2 marked as State's Exhibit Number 1. Were you present when  
3 that document was signed?

4 A Yes, I was.

5 Q In that statement that he signed, what rights did he  
6 agree to waive?

7 A . All of his constitutional rights under Miranda.  
8 Would you like me to read them?

9 Q No, I think for the purposes of this hearing that  
10 testimony is sufficient. What time of day did the  
11 statement begin?

12 A 2015 military time.

13 Q Which is in civilian time?

14 A 8:15 p.m.

15 Q What time of day did the incident that bring us here  
16 happen?

17 A It was that afternoon, after lunch.

18 Q Okay. So you're speaking an interrogation of him  
19 began approximately eight hours later?

20 A Correct.

21 Q At the time that you spoke to him, were you made  
22 aware of any physical difficulties that may be keeping him  
23 from understanding what he was doing?

24 A As far as him physically?

25 Q Uh-huh.

1 A No.

2 Q Were you aware or made aware by him or anyone else of  
3 any mental difficulties that may prevent him from making a  
4 knowing and intelligent statement?

5 A He hold us that he had had surgery a few years prior  
6 to on his brain for a seizure disorder but other than that  
7 no.

8 Q What, if anything, did that do to you or the other  
9 officers in regards to continuing to take the statement  
10 from him?

11 A We continued to take the statement.

12 Q Did he indicate that he wish to stop talking with you  
13 all during that time?

14 A No.

15 Q Did he ever request any assistance either from a  
16 lawyer or from any other person while he made the  
17 statement?

18 A No, sir.

19 Q If he had, what would you have done?

20 A We, at that time, would have stopped.

21 Q In fact, have you been involved in the taking of many  
22 statements during your career?

23 A Yes, sir.

24 Q Have you been trained in the proper methods and  
25 techniques for obtaining statements from witnesses and



1 defendants?

2 A Yes, sir.

3 Q Are you aware of the consequences of not following  
4 those procedures when you take statements from witnesses  
5 and defendants?

6 A Yes, sir.

7 Q And what might those consequences be?

8 A Well, they may not be used in court and various  
9 different things.

10 Q So it's important -- so would you say it's important  
11 that you follow the law correctly while you take these  
12 statements?

13 A Yes, sir.

14 Q What is your opinion regarding whether or not that  
15 was done in this case?

16 A It was.

17 Q And simply for the purposes of this hearing, did  
18 Mr. Henry give a confession regarding the incident in this  
19 case?

20 A He did.

21 Q How long did it take for the statement to be  
22 recorded?

23 A Time was 2005, which could have been 8:05 when we  
24 started and we ended -- bear with me for just a second.  
25 9:02 p.m., so not quite an hour.

1 Q And it does to take place in an interview room at the  
2 Florence County detention center in Effingham?

3 A It did.

4 Q Was this interview recorded on videotape?

5 A On video, no.

6 Q Was it monitored by other officials in the  
7 department?

8 A No, sir, not to my knowledge.

9 Q What time was Mr. Henry taken into custody?

10 A I am not sure of the exact time, that probably is  
11 reflected somewhere in the incident report. We had gotten  
12 information from the scene that he was actually in another  
13 county and we travel from Florence County to that county.

14 Q And was that Kershaw County?

15 A That was Kershaw County, yes. And there was the  
16 issue of the two minor children that we had to tend to, so  
17 he was there in Kershaw County for a little bit of time  
18 before he was brought back to Florence County.

19 Q And after he was taken into custody in Kershaw County  
20 where was he delivered?

21 A To the Florence County sheriff's office.

22 Q What delay, if any, was there between his arriving at  
23 the detention center and the taking of your statement?

24 A When we took his statement in the interview room, he  
25 was -- he may have gone into the restroom, I'm not sure

1 about that. But the walk from the car into the interview  
2 room would have been about it.

3 Q How long of a period of time passed from the time he  
4 entered the interview room until you begin to record the  
5 statement?

6 A Maybe five, six, seven, ten minutes just long enough  
7 to introduce ourselves and everything.

8 Q Do you recall whether or not there was anything that  
9 was said during that intervening time for six minutes that  
10 you just stated that is not contained in the statement  
11 that Mr. Henry gave?

12 A No.

13 Q Does the statement contain everything that you all  
14 discussed in the intervening time for six minutes?

15 A In the actual statement?

16 Q Uh-huh.

17 A Probably not because it was all just, you know, I'm  
18 telling him who we were as far as that goes and that, you  
19 know, we asked him if he wanted to give a statement. He  
20 said yes, so then we turn the tape recorder on and did the  
21 Miranda and then started the actual interview  
22 interrogation process.

23 Q Did you ask him about his educational background?

24 A He was ask that.

25 Q And how far had he gone in school?

1 A I have to refer back 12th grade and one year of  
2 college, so 13 years.

3 Q Was there anything -- did he mention whether or not  
4 he was on any medications?

5 A He was ask that also. He was asked if he was under  
6 the influence of drugs and alcohol and he replied no.

7 Q Now, one of the investigators that was involved in  
8 the recording of the statement, which we're discussing is  
9 Calvin Timmons; is that correct?

10 A Yes, sir.

11 Q Where is Mr. Timmons today?

12 A He's in Afghanistan.

13 Q So he's unavailable to be here?

14 A That's correct.

15 Q Okay. Were you present during the entire time that  
16 Mr. Calvin Timmons was present?

17 A Yes, sir.

18 Q Okay. Now, we need to go ahead and cover this. Was  
19 Officer Timmons the individual that took Mr. Henry into  
20 custody in Kershaw County and delivered him back to  
21 Florence County detention center?

22 A He was, yes, sir.

23 Q Okay. To your knowledge, are we attempting to put  
24 into evidence anything that Mr. Timmons might have heard  
25 Mr. Henry say?

1 A During the time that they were in transit?

2 Q During that drive.

3 A Whatever questions he asked him in the statement that  
4 Investigator Timmons asked him in the statement are the  
5 ones that were discussed. I don't know what they said in  
6 the car.

7 Q Okay. So we're not testifying about anything that  
8 happened in that car?

9 A Correct.

10 Q And Officer Bert Turner was he also present during  
11 the recording of the statement?

12 A He was.

13 Q Was he present during the entire time?

14 A To the best of my knowledge, yes.

15 Q Were you -- did you ever leave the room during the  
16 recording of the statement?

17 A Not to my knowledge I don't recall.

18 Q So you were there when all questions were asked and  
19 answered?

20 A Yes, sir.

21 Q Did you have an opportunity to review the statement  
22 after it was transcribed?

23 A I did.

24 Q Did you learn about a blank spot in the  
25 transcription?

1 A I did.

2 Q Can you address that issue with the Court?

3 A As far as?

4 Q What your knowledge is about that particular blank  
5 space?

6 A Whenever we do our interviews on audio and or  
7 videotape, which in this case was audiotape. We'll tag  
8 the tapes and then give them to our office coordinator,  
9 which is Donna McDaniel for transcription and  
10 proofreading. And basically, she was in the transcription  
11 process and she came to me and told me that there was a  
12 blank spot on the tape. And that's how that came to be as  
13 far as me learning about that.

14 Q Is this something that -- how often does something  
15 like this occur?

16 A In my cases, in all the interviews and stuff that I  
17 have given to Donna and the others, this is the first time  
18 in nine years that has happen to me.

19 Q So would you term it as an accident?

20 A Yes, sir.

21 Q So there wasn't anything intentional or malicious or  
22 purposefully done to erase something out of this tape, is  
23 it?

24 A Not to my knowledge, no, sir.

25 Q What steps, if any, were taken to rectify or to

1 correct the situation?

2 A We went back and listen to the tape and there was no  
3 way that we could think of to try and put something back  
4 that, you know, was no longer there. So she did went  
5 ahead with the transcription from the point where the tape  
6 begin again and on to the end.

7 Q And is there an affidavit or a statement that she  
8 prepared that accompanies the statement?

9 A Yes.

10 Q And it is just from that that she explained what  
11 happened to the best of her recollection?

12 A That is correct.

13 Q Do you recall based on your work in this case whether  
14 or not there was anything exculpatory, that fancy word  
15 means, it would show that Mr. Henry wasn't responsible for  
16 this crime that was erased out of that portion of the  
17 tape?

18 A No, sir.

19 Q What steps, if any, would have your office have taken  
20 had there been something exculpatory or important in that  
21 blank spot?

22 A That I don't know because it's never happened to me  
23 and I've never experience that before.

24 Q In looking at the statement in totality and  
25 especially the area where this blank occurs, what topic

1 was being discuss shortly before the eraser portion?

2 A I need to get to where it was. Investigator Timmons  
3 was asking Mr. Henry or they were talking about the  
4 children.

5 Q And then shortly after the statement, what did they  
6 begin discussing?

7 A About whether or not his wife was leaving, whether or  
8 not she was upset.

9 Q Regardless of the blank, was there anything that  
10 happened in that interview room that indicated Mr. Henry  
11 didn't want to continue with the statement, that he didn't  
12 want to give or that it was being given against his will?

13 A No, sir.

14 MR. HILL: Thank you. Answer any questions that the  
15 defense may have.

16 CROSS-EXAMINATION

17 BY MS. PARROTT:

18 Q Investigator Streett, you are saying that he -- that  
19 you met up with witnesses at Kershaw County Hospital; is  
20 that correct? Is that what your investigation was?

21 A Repeat that.

22 Q Did you ever go to Kershaw County Hospital?

23 A I did.

24 Q Okay. And did you meet Mr. Henry then?

25 A He was there, yes, ma'am.



1 Q You were with Bert Turner at the time, weren't you?

2 A And Adam Moore, Corporal Moore.

3 Q But where was Investigator Timmons?

4 A He was also there.

5 Q Okay. Did Investigator Timmons take -- you say he  
6 actually took physical possession of Mr. Henry to bring  
7 him back to Effingham?

8 A I believe he did that from the Kershaw County  
9 detention center.

10 Q Okay. What's the approximate time that it would take  
11 to travel from Kershaw County detention center to  
12 Effingham, the jail at Effingham?

13 A An hour and 15, 20 minutes perhaps. He was in  
14 Camden.

15 Q And you weren't present for any part of that  
16 transport, were you?

17 A No, ma'am.

18 Q And to your knowledge, Investigator Timmons didn't do  
19 any kind of recording of Mr. Henry while that transport  
20 was occurring?

21 A Not to my knowledge.

22 Q And no one else was present in Investigator Timmons'  
23 car?

24 A Not to my knowledge.

25 Q Okay. Then you met back up with Investigator Timmons

1 back at Effingham later in the day?

2 A Correct.

3 Q And you're saying that would be 7:30, 8:00 o'clock  
4 somewhere along in there?

5 A Around in there.

6 Q All right. You stated that he went from the car to  
7 the interview room; is that correct?

8 A As far as I know. I know the next time I had contact  
9 with Mr. Henry we were in the interview room.

10 Q All right. So his having been booked in at 7:26  
11 would be consistent with what your memory is or  
12 inconsistent?

13 A I don't know what time he was booked in. I know that  
14 Calvin was bringing him back. And then when I got into  
15 the interview room, we started the interview whenever the  
16 statement said like at 8:05.

17 MS. PARROTT: Permission to approach, Your Honor?

18 THE COURT: Sure.

19 BY MS. PARROTT:

20 Q Does this look what is, I guess, the web site  
21 information for your sheriff's office?

22 A Uh-huh.

23 Q And -- I'm sorry I'm going to need you to speak yes  
24 or no.

25 A Yes.

1 Q And is that Tarus Henry's booking information?

2 A Yes, it is.

3 Q And that's from what date?

4 A The 23rd.

5 Q Okay. And what information has the sheriff's office  
6 entered in there for a booking time?

7 A It shows 6-23-08 at 1926.

8 Q Okay. But you weren't part of that booking process?

9 A No, I was not.

10 Q Do you know who would have been?

11 A Have no clue.

12 Q You figure somewhere though right after that cause  
13 you're saying eight o'clock or so whenever you start the  
14 interrogation?

15 A About 8:05 according to the statement.

16 Q Is it customary for investigators to discuss with  
17 potential defendants what the story is or what they  
18 believe the story is about the incident that was suppose  
19 to have occurred?

20 A At times.

21 Q And that being prior to any kind of recording?

22 A Sometimes.

23 Q So that sometimes you have an informal interrogation  
24 or an informal talk. Did you do anything like that with  
25 Mr. Timmons here excuse me -- with Mr. Henry here?

- 1 A I did not.
- 2 Q Do you know if Mr. Timmons did?
- 3 A I don't know.
- 4 Q You had an opportunity to review the statement have  
5 you not?
- 6 A Yes, ma'am.
- 7 Q Okay. You stated that this wasn't videoed either; is  
8 that correct?
- 9 A Not to my knowledge.
- 10 Q You do have the capability of doing a video interview  
11 out there at the sheriff's office, do you not?
- 12 A At times.
- 13 Q There is one room that's equipped for it; correct?
- 14 A When it works.
- 15 Q Okay. Do you know if it was at this time?
- 16 A I don't know.
- 17 Q All right. All three of you though were in an  
18 interview room with Mr. Henry?
- 19 A When the statement began, yes, ma'am.
- 20 Q How big is this interview room?
- 21 A Well, it has seating for one, two, three, four, five,  
22 six, seven, eight, nine, ten people.
- 23 Q Which interview room is this?
- 24 A The one next to investigations.
- 25 Q To the left of the door?

1 A Correct.

2 Q Okay. So is it just the three of you and Mr. Henry  
3 in this room or more people involve?

4 A Just those four.

5 Q Okay. How were y'all situated three on one wall and  
6 him on the other?

7 A I believe, Calvin Timmons was on one side of the  
8 desk. There's a desk here. Mr. Henry was on this side of  
9 the desk. Bert Turner was over here and I was over here.

10 Q Okay. All three of you had equal access to Mr. Henry  
11 in asking him questions; correct?

12 A Yes, ma'am.

13 Q All right. You have your copy of your statement in  
14 front of you?

15 A I have the transcribed copy, yes, ma'am.

16 Q All right. And you were involved in giving him the  
17 rights, but you witnessed Investigator Timmons doing so;  
18 correct?

19 A That's correct. I was there when he did that.

20 Q So you are saying that you actually witnessed  
21 Mr. Henry signing those sheets of the Miranda form?

22 A I was in there, I believe, when he signed it, yes,  
23 ma'am.

24 Q Okay. And making his initials beside each  
25 constitutional right?

1 A Yes, ma'am.

2 Q But that's Calvin Timmons' signature at the bottom;  
3 is it not?

4 A Correct.

5 Q All right. Was Investigator Turner there also during  
6 that time?

7 A He was when I was in there.

8 Q All right. You stated that you don't believe that  
9 anything that was discussed during the car ride as part of  
10 this statement, is that what you -- am I stating that  
11 correctly?

12 A I don't know what was discussed in the car ride. I  
13 don't know that's -- Calvin was in the car with him and I  
14 can't tell you what was discussed in the car.

15 Q And you also stated that he -- he stated that he  
16 wasn't on any medication, but you don't recall him stating  
17 anything about medication either?

18 A He was ask the question of whether he was under the  
19 influence of any drugs or alcohol and he stated no.

20 Q Okay. Could I direct your attention to page six.  
21 And about middle way of the page Investigator Turner says,  
22 All right, are you prescribed to take any medication?  
23 Mr. Henry is suppose to have responded not that I know of.  
24 I know that Investigator Turner kind of continues with him  
25 and a little bit further down the page he says I was on

1     Zyprexa and I was on metamoric (sic) for my diabetes, but  
2     I lost enough weight to get off the diabetes medication.  
3     Says, All right, what other medication? Again, goes back  
4     to the Zyprexa and later it says it was prescribed for his  
5     schizophrenia. And a little bit further on down the page  
6     it's for psychosis; is that not what was stated during  
7     that interview?

8     A     That's correct, but then he -- Investigator Turner  
9     goes on to say, but you're not taking that because of some  
10    of the side effects or something else. And he --  
11    Mr. Henry stated that the doctor discontinued his  
12    medication.

13   Q     But at that time, you had been informed by his answer  
14   that he had had at least been diagnosed or possibly been  
15   diagnosed with schizophrenia and psychosis at some point  
16   in his past; correct?

17   A     He made a statement that the doctor had told him  
18   that.

19   Q     And schizophrenics don't usually cure themselves, do  
20   they?

21   A     I have no clue, I'm not a psychiatrist.

22   Q     But in your experience as an investigator in dealing  
23   with people with antisocial disorders or psychotic  
24   disorders, do you believe a schizophrenic to do that?

25   A     I didn't know what he had at the time, if he had

1 anything at all.

2 Q Okay. And on page ten, if I could direct your  
3 attention there. Did he not tell you that he was also  
4 still bleeding as part of this interview? It's about  
5 right up maybe a quarter of a page, not even that far from  
6 the bottom.

7 A He said he was still bleeding.

8 Q Okay. Were there any other obvious physical problems  
9 with Mr. Henry?

10 A Not that I noted.

11 Q He had at least the wrap around his hand for where he  
12 had been cared for at Kershaw Medical; correct?

13 A He had received medical treatment at Kershaw for a  
14 cut on his hand.

15 Q Had you talked with anybody there at Kershaw County  
16 about what his status and condition was, what medications  
17 they may have given him?

18 A No.

19 Q So as far as you know, he could have been on  
20 something you don't know?

21 A I don't know.

22 Q And if I could direct your attention to page 12 as  
23 well. Investigator Timmons after Investigator Turner  
24 gives a soliloquy says, And don't just like I told you,  
25 Tarus, in the car, man, don't spoon feed us any



1 information, okay. You just telling us a little bit from  
2 true feeling, we're gonna to back down from you, but we  
3 are not. So that's referring to at least some kind of  
4 conversation that occurred between Investigator Timmons  
5 and my client; is it not?

6 A Yes, but I wasn't there. I can't tell you what they  
7 said and what they didn't say.

8 Q As far as the break in the statement that occurs on  
9 pages 31 to 32 -- let me make sure I got the page number  
10 correct, I'm sorry. You gone back and listen to the  
11 statement?

12 A It's been a while since I listen to it.

13 Q Okay. But were you following it with this  
14 transcribed statement as well?

15 A Yes.

16 Q And at that time, you found that it just cut off as  
17 well?

18 A It's blank.

19 Q Because -- how long did you believe that it stays  
20 blank?

21 A I don't know I didn't time it.

22 Q If I told you it's about two minutes, maybe two  
23 minutes and six seconds or so, would that seem about right  
24 to you?

25 A I don't know.

1 Q Do you recall from your memory what was actually said  
2 during that two minute time span?

3 A No, I'm sorry, I don't.

4 Q When did you discover that this was a missing section  
5 here?

6 A When Donna McDaniel notified me of it. In her...

7 Q When she transcribed it?

8 A Right. The type date is 12-2 of '08, but it was  
9 before that when she told me about it.

10 Q Okay. Did you make any handwritten notes as part of  
11 this time whenever you were interviewing Mr. Henry?

12 A No.

13 Q Do you know if Investigator Turner or Investigator  
14 Timmons did?

15 A I don't know.

16 Q If I could also direct you to page 37 with  
17 Investigator Timmons about half way the page. It's like  
18 Investigator Turner said, He's the one that would help you  
19 out, man. You might as well tell us everything. Don't  
20 you remember what I said about the spoon feeding comment,  
21 don't spoon feed us, man. Okay, I mean, that is what we  
22 are here for. I mean, we don't honestly sit in here and  
23 expect everybody to tell us the truth. So is that not yet  
24 again the time when you were present and they're referring  
25 back to another car conversation or prior conversation?

1 A Prior conversation.

2 Q And Investigator Timmons even continues to say we can  
3 help you out man. I mean, the judge takes our word very  
4 serious. Okay, did he not?

5 A That's what's transcribed here.

6 Q So at that point and multitudinous other times, y'all  
7 were just trying to get Mr. Henry to tell y'all the story;  
8 correct?

9 A The truth.

10 Q And this was an hour long time or approximately 57  
11 minutes or so that y'all had done this interview?

12 A That's correct.

13 Q Do you recall Investigator Turner talking with  
14 Mr. Henry about what y'all could do to help him in court?

15 A What are you referring to?

16 Q The different times within the interview -- if you  
17 want a specific page, you can go back to number 13.  
18 Investigator Turner says, You don't want us to end up in  
19 the courtroom, you know, with 12 people, you know,  
20 listening and hanging on to every word we say. Is that  
21 why we know this is a lie that you told us, you know, when  
22 we ask you this believe me, you know, we don't want that  
23 for you, you don't want that for you? Because I can tell  
24 you that our judge and a jury, they have absolutely no  
25 problem with handing down a guilty verdict and a pretty

1 severe sentence when we make people out, you know, to be  
2 lying in court. Were you present when that was said?

3 A Yes.

4 Q If you will turn to page 34. Investigator Timmons  
5 says, that, I mean, if you going to tell a story like that  
6 that you just told us the jury would say, man, this guy  
7 he's not working with a full deck. Okay, but you have to  
8 be real with us because the people -- we real people and  
9 in the jury box is real people. Yet, again that's  
10 Investigator Timmons in the room trying to get him to  
11 talk?

12 A Get him to tell the truth.

13 Q After he's been in there for about an hour, y'all  
14 never took a break during this whole time?

15 A Not to my knowledge.

16 Q Never offered him water?

17 A I don't -- I didn't.

18 Q Or any kind of food that you know of?

19 A I didn't.

20 Q Are there any other threats or coercion that was made  
21 that wasn't recorded?

22 A There were no threats or coercion made at all.

23 MS. PARROTT: Nothing further, Your Honor.

24 THE COURT: Redirect?

25 MR. HILL: No, thank you, Your Honor.

1 THE COURT: You may step done down.

2 (WHEREUPON, the witness leaves the witness stand.)

3 THE COURT: Next witness, please?

4 MR. HILL: Donna McDaniel.

5 THE CLERK: Ms. McDaniel, if you will stand. You can  
6 stand right there. Place your left hand on the Bible and  
7 raise your right. Do you swear to tell the truth, the  
8 whole truth, and nothing but the truth so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Please be seated and state your full name  
11 for the record.

12 THE WITNESS: My name is Donna McDaniel.

13 WHEREUPON,

14 Donna McDaniel,

15 after first having been duly sworn, testified as follows:

16 DIRECT EXAMINATION IN-CAMERA

17 BY MR. HILL:

18 Q Ms. McDaniel, are you employed by the Florence County  
19 sheriff's office in the investigations department?

20 A Yes, I am.

21 Q And as part of your duties, do you transcribe  
22 statements that have been recorded?

23 A Yes, I do.

24 Q And did you transcribe the statement involved in this  
25 case against Mr. Tarus Henry?

1 A Yes, I did.

2 Q Can you explain to the Court what you recall about  
3 the existence of a blank in the transcription or the  
4 report?

5 A Yeah, I brought the transcription -- the dictaphone  
6 with me.

7 Q Would it help you to demonstrate?

8 A Yes. This is a dictation phone, dictaphone and it's  
9 very simple. I was typing the tape, went and answered the  
10 phone or the radio and slightly touch this button. This  
11 button is a record button. If I would have touch this  
12 button, it would have erase totally, but I touched the  
13 record button and that's what happened. It has a rewind,  
14 a play, stop. And I don't know whether I was stopping the  
15 machine or going, but when I turn, I press the wrong  
16 button and that's what happened.

17 Q And so you press a small record button towards the  
18 top of the machine?

19 A Uh-huh.

20 Q And was that done purposefully or accidentally?

21 A That was done accidentally.

22 Q Okay. Did you know Mr. Henry before this occurred?

23 A No.

24 Q Did you have any interest whatsoever in this case?

25 A No.

1 Q Has anything like this ever happened with any of your  
2 transcriptions?

3 A No, that I'm aware of, no.

4 Q Okay. So what period of time passed before you  
5 discovered the eraser?

6 A It was almost immediately that I discovered after I  
7 -- I don't know what I was doing talking on the phone or  
8 reaching to get something. I don't recall what I was  
9 doing, but immediately when I saw it, I stopped it.

10 Q And then what did you do?

11 A I said, Oh, no. When I saw Kathleen again, I told  
12 her. I said you want believe what I did, I erase a  
13 portion of the tape, but immediately afterwards, I typed  
14 in the area where I -- where the blank came in it.

15 Q So in the statement, you typed a statement explaining  
16 that there was an eraser?

17 A Yes.

18 Q Okay. Was there another document that you attached  
19 to the back of the statement?

20 A Yes.

21 Q And what was that?

22 A I put in there that the proof reader would have  
23 problems reading this portion of the tape because it was  
24 erase. And I put approximately exactly where the tape was  
25 erased.

1 Q So did you report this episode to your supervisor?

2 A Not to my supervisor. I report it to Kathleen. And  
3 I was talking to others in the office, I say you wouldn't  
4 believe what happened to me today.

5 Q Okay. Were you reprimanded or punished in anyway?

6 A No.

7 MR. HILL: Answer any questions that the defense may  
8 have.

9 CROSS-EXAMINATION

10 BY MS. PARROTT:

11 Q Had you listen to the tape prior to transcribing it?

12 A No.

13 Q So you were just listening and typing as it went?

14 A Yes.

15 Q And you were right on that time, you weren't  
16 listening ahead to what you were typing either?

17 A Well, the dictaphone it rewinds things back and  
18 forward. So as you press the peddle, it rewinds it back  
19 and forward.

20 Q Okay. Had you done that at this time when this  
21 little break occurs?

22 A Yeah, the peddle takes it back for you.

23 Q Okay. Did you hear any of what was suppose to be  
24 there on that time that was erased?

25 A I wasn't certain what it would say or I would have



1 put it in the statement.

2 Q All right. So what you have as part of what you --  
3 for the statement is what you know to have been on that  
4 statement?

5 A Yes.

6 Q And you just simply put that break in there for -- to  
7 alert everybody about what had occurred?

8 A Yes.

9 Q And there's no backup tape?

10 A No.

11 Q No backup recording that the dictaphone makes?

12 A No.

13 Q And can you approximate the time that was erased?

14 A You mean how long?

15 Q Correct.

16 A It couldn't have been that long. I was probably  
17 doing something else and then just turn back around and  
18 just started getting ready to type again. And, you know,  
19 notice that I had the record button.

20 MS. PARROTT: Nothing further, Your Honor.

21 THE COURT: Redirect?

22 MR. HILL: None, thank you, Your Honor.

23 THE COURT: You may step down.

24 (WHEREUPON, the witness leaves the witness stand.)

25 THE COURT: Next witness, please?

1 MR. HILL: We don't have any.

2 THE COURT: Defense desire to put up any testimony?

3 MS. PARROTT: No, Your Honor.

4 THE COURT: All right. The State desire to be heard  
5 in regard to argument?

6 MR. HILL: Yes, Your Honor, briefly. It is my  
7 understanding that the law in our state that at this  
8 juncture the issue before the Court is whether or not the  
9 constitutional rights afforded to each individual in this  
10 country were followed during the giving of the statement.  
11 Our belief is that all his rights were freely and  
12 voluntarily, knowingly and intelligently waived and the  
13 statement was freely and voluntarily given. If there's a  
14 question regarding the weight of the evidence, that should  
15 go and be an issue and question for the jury. So at this  
16 juncture, the State would respectfully request that the  
17 Court find that the evidence presented supports a finding  
18 that the statement was freely and voluntarily given  
19 knowingly and intelligently made.

20 THE COURT: Defense.

21 MS. PARROTT: Your Honor, obviously, I'm going to  
22 argue that it was not. They have information that was  
23 given as part of the interview, that he certainly had been  
24 under doctor's medication for at least psychosis or  
25 schizophrenia by his telling them. He wasn't sure about

1 his diagnosis. And he gave Zyprexa as well as some other  
2 medications that he had been under while he was under  
3 doctor's care. This is an interview that is 50 pages in  
4 length, Your Honor, and that's without the skipped part or  
5 the erased part. It's something that occurred over about  
6 an hours worth of time with three people in a room and  
7 it's on the hills of an hour and 15 minutes by law  
8 enforcement's own approximation ride from Camden to  
9 Effingham.

10       Wherein, it is certainly obvious by this statement  
11 Investigator Timmons did talk with my client and speak  
12 about this case by his own statements as part of this. So  
13 I don't know exactly what was discussed in an hour and 15  
14 minute ride, but I certainly know that by what was in here  
15 it was. I believe even in his own incident report as part  
16 of his supplement here, he discussed part of this as well.  
17 Of course, he's not here for us to discuss that with or to  
18 question and to cross examine, but I would ask that the  
19 Court take into consideration that this does not appear to  
20 have been a statement that was given freely and  
21 voluntarily nor easily. Otherwise, it wouldn't take 50  
22 something pages or an hour worth of time with three  
23 investigators. Certainly, after he has been possibly  
24 threatened or you can put whatever kind of  
25 characterization you want to with it, but certainly having

1 the sway of the Court and sway of the jury held over his  
2 head, having been deprived of the freedom of movement,  
3 water, restrooms, food, all of these sorts of things,  
4 while also already having been booked into custody, so  
5 that he understands that he is already booked now at this  
6 time.

7 And also, Your Honor, I would bring to the Court's  
8 attention or bring back to the Court's attention, that he  
9 had been treated at the facility over in Kershaw County,  
10 but they do not know what the extent of treatment was and  
11 what medications may have been given at that time. So  
12 they're simply going off of his ability to respond to  
13 them, but that's still being triggered by they're  
14 controlling all the circumstances. He also told him that  
15 he's diabetic, Your Honor. And, of course, food and water  
16 certainly play a huge part in that in somebody sugar  
17 dropping and their ability to function, so it's the  
18 totality of the circumstances, Your Honor, that I would  
19 ask you to consider.

20 THE COURT: Anything further from the State?

21 MR. HILL: No, thank you, Your Honor.

22 THE COURT: Order, the process for determining  
23 whether a statement is voluntary and thus admissible is  
24 bifurcated. It involves determinations by both the judge  
25 and the jury. First, the trial judge must conduct an

1     evidentiary hearing, outside the presence of the jury,  
2     where the State must show the statement was voluntarily  
3     made by a preponderance of the evidence. Jackson vs.  
4     Denno 378 U.S. 368, 84 Supreme Court 1774 Twelve Lawyers  
5     Edition Second 908. If the statement is found to have  
6     been given voluntarily, it is then submitted to the jury,  
7     where its voluntariness must be established beyond a  
8     reasonable doubt, State vs. Washington 296 S.C. 54, 370  
9     S.C. Second 611.

10         A statement obtained as a result of custodial  
11     interrogation is inadmissible unless the suspect was  
12     advised of and voluntarily waived his rights. Miranda vs.  
13     Arizona 384 U.S. 436 86 Supreme Court 1602 Sixteen  
14     Lawyer's Edition Second 694; State vs. Saltz 346 S.C. 114  
15     551 S.C. Second 240. If a suspect was advised of his  
16     Miranda rights but made a statement, the burden is on the  
17     State to prove by a preponderance of the evidence that his  
18     rights were voluntarily waived. A statement is not  
19     admissible unless it was voluntarily made. State vs.  
20     Vondohan 322 S.C. 234, 471 S.C. Second 689. Under Jackson  
21     vs. Denno, a defendant is entitled to a reliable  
22     determination as to the voluntariness of his statement by  
23     a tribunal other than the jury charge with deciding his  
24     guilt or innocence. In South Carolina, the judge makes  
25     this initial determination of voluntariness required by

1 Jackson vs. Denno.

2 In order to secure the admission of a defendant's  
3 statement, the State must affirmatively show the statement  
4 was voluntary and taken in compliance with Miranda.

5 During the Jackson vs. Denno hearing, the trial  
6 judge must examine the totality of the circumstances  
7 surrounding the statement and determine whether the State  
8 cared its burden -- showing the statement was made  
9 voluntarily.

10 The test of voluntariness is whether a defendant's  
11 will was overborne by the circumstances surrounding the  
12 giving of a statement. The due process test takes into  
13 consideration the totality of all the surrounding  
14 circumstances both the characteristics of the accused and  
15 the details of the interrogation.

16 In the case sub judice, the Court concludes one that  
17 the defendant was advised of his Miranda warnings. And  
18 two, the statements made by the defendant were freely and  
19 voluntarily given. This conclusion is made based on a  
20 preponderance of the evidence.

21 Under the precedent extant emanating from the United  
22 States Supreme Court and the South Carolina Supreme Court  
23 once the Court concludes that the statement is admissible,  
24 it is submitted to the jury based on proof of the  
25 statement beyond a reasonable doubt. The statement will

1 be submitted to the jury in this case with a charge to the  
2 jury in reference to the admissibility that is under a  
3 charge where the State is required to prove the  
4 admissibility of the statement beyond a reasonable doubt.  
5 And it is so ordered. All rights are protected. All  
6 rights are reserved for purposes of appellate review. And  
7 it is so ordered. All right. The next matter, please?

8 MS. PARROTT: Your Honor, it's kind of a sub, I  
9 guess, a sub motion to that one. It would simply be  
10 whether or not you would suppress this statement based  
11 upon the fact it is incomplete due to the erased portion  
12 and the fact it's left to anybody's guess as to what  
13 occurred during that two minute time period.

14 THE COURT: Order, the motion made by the defendant  
15 is that the statement that is proffered by the State is  
16 incomplete because a portion of the statement was deleted.

17 The Court concludes that the deletion of a portion of  
18 the statement was inadvertent and not presented by the  
19 State or the State's witnesses as done on purpose.  
20 Rather, it is an act that was simply inadvertent and does  
21 not prevent the admissibility of the statement in  
22 totality. The right is served and protected for purposes  
23 of the defendant and defendant's counsel to cross examine  
24 the State witness as to a deletion of a portion of the  
25 statement and that may be done in regard to the

1 presentation of the matter to the jury. And it is so  
2 ordered.

3 MS. PARROTT: Objection, Your Honor, obviously.

4 THE COURT: Yes.

5 MR. HILL: Your Honor, regarding the statement and  
6 defense forgive me if I'm jumping ahead. Since, the Court  
7 has ruled that the statement is admissible, I do think  
8 that it is appropriate that we now address whether or not  
9 a redaction is appropriate from page 23 of the statement.

10 THE COURT: All right. What's on page 23? I don't  
11 have it before me.

12 MR. HILL: Your Honor, I will hand it up to you. It  
13 addresses a prior criminal domestic violence charge. And  
14 while I think that might be admissible should the  
15 defendant testify, I don't think it's admissible as a part  
16 of the State's case in chief and the State has no  
17 objection and that's -- and we're offering to make that  
18 redaction with cooperation of defense counsel. I didn't  
19 want to have any surprises or problems during the trial.

20 THE COURT: What about that counsel for defense?

21 MS. PARROTT: Thank you, Your Honor. I would have no  
22 objection.

23 THE COURT: The Court rules that the information  
24 contained on page 23 must be redacted. And it is so  
25 ordered.



1 THE COURT: Call your first witness, please.

2 MR. HILL: Thank you, Your Honor. I call my first  
3 witness as Scott McAleese. And I'd ask the Court for  
4 leave to have my assistant set up the screen so I can show  
5 the pictures.

6 THE CLERK: Place your left hand on the Bible and  
7 raise your right hand. Do you swear to tell the truth,  
8 the whole truth, and nothing but the truth so help you  
9 God?

10 THE WITNESS: I do.

11 THE CLERK: Please be seated right there on the  
12 witness chair. State your full name for the record.

13 THE WITNESS: My name is Scott Michael McAleese.  
14 WHEREUPON,

15 Scott McAleese,  
16 after first having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HILL:

19 Q Okay. Mr. McAleese, did you live in Florence County  
20 up until last year?

21 A Yes, sir.

22 Q Okay. Would you tell the jury a little bit about  
23 you?

24 A I just graduated from Francis Marion University with  
25 a major in marketing.

1 Q Where do you currently live?

2 A I'm currently living in Fort Mill.

3 Q Is that where your family lives?

4 A Yes, sir.

5 Q Do you have a sister that still attends Francis  
6 Marion?

7 A Yes, sir, I do.

8 Q All right. And if you would, I just need you to  
9 speak up a little louder for me.

10 A Yes, sir, I apologize.

11 Q No problem. When you were attending school at  
12 Francis Marion, did you live on campus or did you live in  
13 an off campus complex?

14 A For two years, I lived on campus and for the rest I  
15 lived off campus.

16 Q Okay. All right. And what apartment complex did you  
17 live on June 23rd of 2008?

18 A I lived in the Apartments.

19 Q And just in case some members of the jury aren't  
20 familiar where that is, is it near Francis Marion?

21 A Yes, sir, it's right across the street.

22 Q Okay. Do you recall what happened on June 23rd 2008?

23 A I do.

24 Q Had you attended class that morning?

25 A No, sir, I was not currently enrolled in school.

1 Q Were you familiar with Tarus Henry and his wife  
2 Carol?

3 A Familiar, can you elaborate? I mean, I have seen  
4 them around.

5 Q Did they live in the same apartment complex as you?

6 A Yeah, they lived upstairs and to the right.

7 Q I think he'll be able to show a photograph to the  
8 jury in a few minutes. A photograph is going to be shown  
9 to you. Do you recognize this photograph?

10 A Yes, sir.

11 Q And what does it depict?

12 A Well, both of our apartments are on the far backside.  
13 You can't see it, it's over where the two trucks are.

14 Q So is this the street that goes ---

15 A This is actually the parking lot where all of us  
16 park.

17 Q All right.

18 THE COURT: Mr. Solicitor, for the record, we need  
19 the exhibit number. What number is that?

20 MR. HILL: Your Honor, I'd ask that this be presented  
21 as State's Exhibit Number 1.

22 THE COURT: Number 1 and the following will also be  
23 State's Exhibit Number 2. No, we've already got something  
24 marked as State's Exhibit Number 1.

25 MR. HILL: This will be two and three.

1 THE COURT: Two and three.

2 Ms. Parrot, I assume without objection.

3 MS. PARROTT: Your Honor, if I could make sure what  
4 they are?

5 THE COURT: Yes.

6 MS. PARROTT: Thank you, Your Honor. Yes, Your  
7 Honor, without objection.

8 THE COURT: Thank you.

9 Proceed.

10 (WHEREUPON, State's Exhibits Nos. 2 and 3 was  
11 admitted into evidence.)

12 BY MR. HILL:

13 Q Scott, you're looking at a photograph that's been  
14 marked as State's Exhibit Number 2. Again, does this  
15 depict the parking lot outside of the apartment complex?

16 A It does.

17 Q Okay. And I believe there's another photograph  
18 marked as State's Exhibit Number 3. Do you recognize this  
19 photograph?

20 A Yes, sir. My apartment's the apartment on the bottom  
21 left where you can see the window of the apartment that  
22 defendant lives on the top right.

23 Q Okay. So the stairwell going up to the open door is  
24 the apartment which the defendant lived?

25 A Yes, sir.

1 Q And the window on the bottom left is your apartment;  
2 is that correct?

3 A Yes, sir.

4 Q Thank you. I have a few other questions now. You  
5 slept in a little bit that morning I believe; is that  
6 correct?

7 A Yes, sir.

8 Q And you woke up around 11 maybe just a little after?

9 A Yes, sir.

10 Q Do you recall whether or not you saw Carol and  
11 Mr. Henry on that morning?

12 A The first time I saw Mr. Henry by himself he had  
13 gotten into his car, pulled over to the dumpster, threw  
14 something in the dumpster, and then backed his car into  
15 the first parking space.

16 Q All right. Were there any children with him at that  
17 time?

18 A I did not see any children.

19 Q So after you saw him throw an item in the dumpster  
20 and back the car into the parking space, what was the next  
21 thing you observed?

22 A He walked back up, I guess, to his apartment and the  
23 next thing I know I'm walking -- we're crossing paths, I  
24 was walking back to my apartment and he was coming down  
25 with his wife and I realize she was just covered in blood.

1 And I was in complete shock.

2 Q So you saw her coming down the steps with the  
3 defendant and tell me her condition?

4 A She looked pretty bad, a picture I'll never get out  
5 of my head. She was covered in blood. I just saw the  
6 fear of God in her eyes. It was ---

7 MS. PARROTT: Objection.

8 THE COURT: I overrule the objection on the grounds  
9 that he can descriptively respond insofar as what he saw  
10 and what he observed. And I'm letting that in based on  
11 his observation. Proceed.

12 BY MR. HILL:

13 Q And as they continued down the step, what did you  
14 see?

15 A Well, I saw her, I thought -- I think she was in a  
16 bathing suit and she looked like from the stairs she  
17 looked wet, like she was wet. And when I got closer, I  
18 realize it was all blood. And I asked her one question,  
19 Oh, my God, are you okay? And she said -- I said what  
20 happened and she said we got into a fight. And then he  
21 took a blanket and threw it over her back and he said  
22 someone tried to break into the apartment.

23 Q When did you first see the children?

24 A I didn't see any children.

25 Q And after he placed the blanket around her, do you

1 know where they went?

2 A I just saw they put -- I just saw him put her into  
3 the car that was it.

4 Q What did you do after that?

5 A Went inside my apartment and grab my cell phone,  
6 called my roommate who had just left for class maybe 15  
7 minutes before that, ten minutes before that. And I  
8 walked outside and by that time, I looked up and I saw  
9 smoke just billowing out of the apartment and it couldn't  
10 have been more than a minute at the most.

11 Q While you were outside that morning, did you see  
12 anyone go inside the apartment after Mr. Henry left with  
13 his wife?

14 A I did not.

15 Q Did you observe smoke before you went in to get your  
16 cell phone or after?

17 A It was after.

18 Q Did you see anyone leaving the apartment after you  
19 came back out with the cell phone?

20 A No, sir.

21 Q And did you give a statement to law enforcement about  
22 what happened?

23 A I did.

24 Q And as your testimony this morning covered the  
25 statement that you gave to law enforcement?

1 A Yes, sir.

2 Q Is there anything that I haven't asked you that was  
3 in that statement?

4 A No, sir.

5 Q Have the questions that I've asked allowed you to  
6 tell your story this morning?

7 A I believe so.

8 Q Is there anything that I've not asked you?

9 A No, sir.

10 MR. HILL: Answer any questions that the defense  
11 might have.

12 CROSS-EXAMINATION

13 MS. PARROTT:

14 Q Good Morning, Mr. McAleese.

15 A McAleese, yes, ma'am.

16 Q I'm sorry, I may butcher that in the process. What  
17 time of the morning would you say this was that you were  
18 seeing Mr. Henry and Mrs. Henry?

19 A It was probably a little after 11, that was a year  
20 ago or so.

21 Q Sure. And so the testimony you're giving today is to  
22 the best of your recollection?

23 A Exactly.

24 Q Have you refreshed your memory with your statement  
25 that you gave to law enforcement?



1 A I just received the statement this morning.

2 Q But you looked at it prior to testifying here today?

3 A Yes, ma'am.

4 Q All right. Is it what you recalled whenever you read  
5 it?

6 A This is -- I mean, I will remember this day for the  
7 rest of my life.

8 Q Okay. All right. I'm not trying to put words in  
9 your mouth, but when I was in college, sleeping until 11  
10 o'clock in the morning wasn't necessarily out of the  
11 question for me. Had you been asleep 'til pretty close to  
12 whenever you saw Mr. and Mrs. Henry?

13 A Yes, ma'am.

14 Q Okay. And you were outside walking an animal?

15 A Yes, ma'am.

16 Q How long do you think it was before or between the  
17 times when you first saw Mr. Henry with the car backing it  
18 into the parking space and when you see him walking his  
19 wife down with a blanket over her?

20 A Probably a minute.

21 Q So pretty close in time?

22 A Pretty quick.

23 Q Everything is happening?

24 A It was pretty quick.

25 Q And what you remember is you saw a lot of blood;

1 correct?

2 A Yes, ma'am.

3 Q You saw him with putting a blanket over her?

4 A Yes, ma'am.

5 Q And taking her to the car?

6 A Uh-huh.

7 Q Getting her in the car and driving off; is that  
8 correct?

9 A Yes, ma'am.

10 Q So what you saw was him helping her?

11 A I did.

12 Q Okay. And then you saw smoke from the other  
13 apartment; correct?

14 A From his apartment, yes, ma'am.

15 Q But you hadn't been watching that whole apartment  
16 whenever you were out walking your animal whatever? Was  
17 it a cat?

18 A No, I was at -- yeah, it was a cat.

19 Q Okay. Were you watching the apartments at the time?

20 A No, ma'am.

21 Q So you don't know what had happened up there?

22 A No, ma'am, not at all.

23 Q And did you ever go up there?

24 A Up to the apartment?

25 Q Up to that apartment.

1 A No, ma'am.

2 Q Up to their apartment?

3 A No, ma'am.

4 MS. PARROTT: Nothing further.

5 THE COURT: Redirect?

6 MR. HILL: Thank you, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. HILL:

9 Q Mr. McAleese, in response to the questions you were  
10 asked, were you fully awake and aware of what was  
11 happening on that morning?

12 A Yes, sir.

13 Q Was there anything about you that clouded your  
14 judgment or your ability to pay attention?

15 A No, sir.

16 Q While you were outside that morning, did you see  
17 anyone else approach the apartment?

18 A No one.

19 Q Were you in a position where you could have seen  
20 anyone else approach the apartment and go into it?

21 A I was.

22 Q And you didn't see that happen?

23 A No, sir.

24 MR. HILL: Thank you. That's all the State has at  
25 this time.

1 THE COURT: Recross?

2 RECROSS-EXAMINATION

3 BY MS. PARROTT:

4 Q Just for clarification. You're saying you never saw  
5 anybody, but you also told me that you weren't watching  
6 either; is that correct?

7 A I was -- I mean, I was in the front, I mean, so I  
8 wouldn't have seen anyone go up the staircase, but...

9 MS. PARROTT: Okay. That's all. Thank you, Your  
10 Honor.

11 THE COURT: All right. Thank you.

12 (WHEREUPON, the witness leaves the witness stand.)

13 THE COURT: Next witness, please.

14 MR. HILL: Your Honor, the State would ask that Mr.  
15 McAleese be excused?

16 THE COURT: Suitable?

17 MS. PARROTT: Absolutely, Your Honor.

18 THE COURT: He's excused.

19 MR. HILL: Officer Gary Pace.

20 THE CLERK: If you will, sir, place your left hand on  
21 the Bible and raise your right hand. Do you swear to tell  
22 the truth, the whole truth, and nothing but the truth so  
23 help you God?

24 THE WITNESS: I do.

25 THE CLERK: Please be seated and state your full name

1 for the record.

2 THE WITNESS: My name is Gary Lawrence Pace, Jr.

3 WHEREUPON,

4 Gary Pace,

5 after first having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. HILL:

8 Q Okay. Are you employed or volunteer with the Windy  
9 Hill Fire Department?

10 A I am.

11 Q Were you employed there on June the 23rd 2008?

12 A I was.

13 Q Did you respond to a fire call that went out for  
14 Apartments?

15 A Yes, I did.

16 Q Have you had an opportunity to review your report?  
17 Do you know the address of that fire?

18 A I do not without looking at the report.

19 Q Do you have a copy with you?

20 A Yes, I do.

21 Q Do you know of your own knowledge who live in that  
22 apartment?

23 A Not other than what I was told.

24 Q All right. What were your duties that day in  
25 responding to the fire?

1     A     I assume command, I was actually in charge of the  
2     overall operation.

3     Q     Who was the lead fireman going in to fight the fire?

4     A     Firefighter Steven McCormick.

5     Q     Were you involved in any law enforcement  
6     investigation within this case?

7     A     No.

8     Q     Was your job merely to help put out the fire and  
9     oversee the fire?

10    A     My job was to oversee the fire operations, that is  
11    correct.

12    Q     How many fireman responded to that call and how many  
13    trucks?

14    A     Give me just a moment. I had ten personnel on scene,  
15    three fire apparatus and several personal vehicles.

16    Q     Do you know how long it took to put out the fire?

17    A     I'm sorry.

18    Q     How long did it take to put out the fire?

19    A     We arrived on scene at 11:52. We had it under  
20    control at 12:07 and we actually cleared the scene at  
21    1433.

22    Q     Did you actually enter inside the building?

23    A     No, sir.

24    Q     Were there any personal injuries as a result of the  
25    fire?

1 A Not to any of my personnel.

2 Q Were you aware of any civilians?

3 A I was told when we first arrived on scene by a  
4 witness ---

5 MS. PARROTT: Hearsay.

6 THE COURT: Unless, it comes to the exception to the  
7 hearsay rule known as the excited utterance exception, I  
8 sustain the objection.

9 MR. HILL: Your Honor, I don't believe it will.

10 THE COURT: All right. Objection sustained.

11 MR. HILL: Thank you.

12 BY MR. HILL:

13 Q Mr. Pace, the rules of evidence we can't discuss what  
14 someone might have told you, but you aren't personally  
15 aware of any injuries?

16 A None that I saw or was aware of.

17 Q Who notified law enforcement regarding the fire?

18 A Actually, law enforcement was already on scene when  
19 we arrived Francis Marion law enforcement. I'm assuming  
20 they got it through dispatch.

21 Q And then the Florence County Sheriff's Department was  
22 there as well?

23 A Yes, sir.

24 Q And your main job on this day was just to oversee the  
25 operations and putting out of the fire?

1 A That is correct.

2 MR. HILL: Thank you. Answer any questions the  
3 defense might have.

4 CROSS-EXAMINATION

5 BY MS. PARROTT:

6 Q Thank you, Officer Pace. I'm sorry, what's your  
7 rank?

8 A District chief.

9 Q Okay. You never ever went inside the building  
10 whatsoever?

11 A No.

12 Q You stayed outside and watched as nine other firemen  
13 took care of whatever it was inside?

14 A That is correct.

15 Q And when you're saying that you arrived at 11:47 and  
16 excuse me -- the alarm was 1147. You arrived at 11:52; is  
17 that correct?

18 A That is correct.

19 Q Okay. And then controlled you say at 12:07. What  
20 exactly do you mean by control?

21 A Control means the majority of the fire has been put  
22 out. We are at that stage doing what's called overhaul,  
23 which is searching for hidden fires or embers that could  
24 restart later.

25 Q So at that point, you're pretty confident that you



1 got everything under control as it were?

2 A That is correct.

3 Q You're pretty safe in the environment and safe as you  
4 can be without the possibility of flair ups?

5 A Yeah, that is correct.

6 Q And then you didn't clear it until 2:33 in the  
7 afternoon or 1433 by military time; is that correct?

8 A That is correct.

9 Q But that's because y'all actually standard of  
10 practice for what you do, you wait around to make sure  
11 that nothing else flairs up; correct?

12 A And it takes a considerable amount of time to  
13 actually overhaul a structure. You could possibly be  
14 pulling walls, moving furniture. It's actually the harder  
15 part of the work of the fire.

16 Q But that's after everything has been taken care of  
17 within where the fire first was, you're looking at the  
18 whole structure then; correct?

19 A We start in the room or area of involvement and  
20 spread out and make sure it hasn't spread, that's correct.

21 Q Did you stay there the whole time that that was  
22 occurring?

23 A Yes, I did.

24 Q Until 1433?

25 A Yes, I did.

1 Q Did you ever see anyone besides law enforcement or  
2 fire personnel go in or out of that apartment?

3 A No, I did not.

4 Q And for clarification, you stated that it was at 4711  
5 Patriot Lane?

6 A That is correct.

7 Q Is that not the address for the whole apartment  
8 complex?

9 A The whole apartment complex.

10 Q Do you know specifically what apartment this was?

11 A No, I do not.

12 Q Okay. You stated that Francis Marion police was  
13 already on the scene whenever you got there?

14 A That is correct.

15 Q Had they set up a perimeter or the crime scene tape?

16 A Not yet. They were actually assisting, clearing the  
17 other apartments.

18 Q All right. Was the sheriff's office or highway  
19 patrol or city units on scene whenever you got there?

20 A No.

21 Q So Francis Marion only whenever you got there.  
22 Anybody else comes after you?

23 A That is correct.

24 Q But nobody had actually isolated the scene?

25 A No.

1 MS. PARROTT: Nothing further, Your Honor.

2 THE COURT: Redirect?

3 MR. HILL: Your Honor, not at this time.

4 THE COURT: All right. You may step down.

5 (WHEREUPON, the witness leaves the witness stand.)

6 THE COURT: Next witness, please.

7 MR. HILL: Your Honor, the State would call Steven  
8 McCormick.

9 THE CLERK: If you will, sir, place your left hand on  
10 the Bible and raise your right hand. Do you swear to tell  
11 the truth, the whole truth, and nothing but the truth so  
12 help you God?

13 THE WITNESS: Yes, ma'am, I do.

14 THE CLERK: Please be seated and state your full name  
15 for the record.

16 THE WITNESS: Christopher Steve McCormick.

17 MR. HILL: Your Honor, the State has had a  
18 conversation with defense counsel. At this time, I do not  
19 believe there's an objection and State would move to enter  
20 the following photographs into evidence sequentially.

21 (WHEREUPON, a pause in the proceedings.)

22 THE COURT: Four through 12 in evidence without  
23 objection. Is that correct, Counsel?

24 MS. PARROTT: It is, Your Honor, thank you.

25 THE COURT: All right. As you publish, identify the

1 number.

2 MR. HILL: Yes, Your Honor.

3 (WHEREUPON, State's Exhibit Nos. 4 through 12 was  
4 admitted into evidence.)

5 WHEREUPON,

6 Steve McCormick,  
7 after first having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. HILL:

10 Q Okay. Are you employed or were you working as a  
11 volunteer fireman for Windy Hill Fire Department on June  
12 23rd 2008?

13 A Yes, sir, I am employed.

14 Q How long have you worked as a firefighter?

15 A I have two roles. I work with the city 30 years and  
16 I been seven years with Windy Hill.

17 Q And you're in civilian clothes this morning. But are  
18 you still with the City of Florence as well?

19 A Yes, sir.

20 Q But this morning you're testifying in your capacity  
21 as a volunteer or a fireman for Windy Hill on the date of  
22 this occurrence?

23 A Yes, sir.

24 Q Were -- how would you describe your role in fighting  
25 the fire on this date?

1     A     My role on this date was, I guess, a senior person.  
2     There was no, what we call, coming officers available. We  
3     had somewhat unseasoned crew that day during the summer  
4     time, so it was a young crew there ---

5           THE COURT: Mr. McCormick, a little louder and a  
6     little slower, please. We got to take down every single  
7     word you're saying, pull the mic just a little closer. A  
8     little louder and a little slower, please.

9     A     Yes, sir. My role as senior person on scene due to  
10    my years of experience, I came up on the second truck and  
11    I notice we had a young crew there, so I ask permission to  
12    go inside with the crew and let someone else -- usually  
13    the second truck would handle water supply to the first  
14    truck. So I ask for permission to go in with the crew. I  
15    contacted Chief Basen on the radio to say -- advise what  
16    we had in this apartment fire because on the first floor  
17    our concern with that would be getting in the attic and  
18    burn the whole complex down possibly, so, you know, we had  
19    to make hasty decisions to get into this fire quickly or  
20    it be worse damage. He gave me permission to do that. So  
21    I got off the truck, got my gear on, and started making my  
22    way to the fire apartment. There's already two firemen in  
23    front of me pulling the hose advancing what we call the  
24    tack hose up the stairwell. When I made it to the front  
25    door, they already had the door open when I got there.

1 And they was waiting on me to advance the hose line on  
2 inside. As soon as I seen the door was open, we noticed  
3 what appeared to be -- I guess, what appeared to be, to my  
4 knowledge, was blood all over the floor. Notified command  
5 there was some bad situation here weren't sure yet, but we  
6 was going to advance in. But it was what appeared to be  
7 massive amounts of blood on the floor. Gave us permission  
8 to go in and make an entry. We started entering into the  
9 living room. As we went, what we do is a primary search  
10 as we advance the hose line, we search even if someone  
11 tell us the house is clear, we always search to make sure.  
12 We don't take anybody's word for it. So we started doing  
13 a quick search of the living room as we advanced down  
14 towards the hallway. We made it to the hallway and we  
15 seen the fire coming down the hallway towards us from one  
16 of the back -- appear to be one of the back rooms. We  
17 then started basically what we call attacking the fire.  
18 We opened the nods and started knocking the fire back,  
19 pushing it back to the -- from the unburn to the burn  
20 side, started pushing it back to the fire room. And then  
21 pushed it back into the room and knock it down. We call  
22 it knocks down fairily quick, I think, it didn't take us  
23 too long we had the fire down wasn't progressing. At that  
24 time, we started doing more -- more man power started  
25 coming in, started getting more help. We started doing

1     what we call a overhaul checking fire extensions. The  
2     main thing in that attic was we were worried about it  
3     getting into the attic and ruining the whole roof. Attics  
4     burn in multiple apartments, started pulling ceilings,  
5     started checking for extensions. We kind of stopped to  
6     figure out what we had with the first situation we saw.  
7     We ask for permission law enforcement was called and  
8     started coming in ---

9             MS. PARROTT: Objection.

10            THE COURT: Just a second.

11            MS. PARROTT: This is more a narrative. If we can  
12     have more of a question and answer going on.

13            THE COURT: I would overrule the objection in regard  
14     to the narrative as long as it stays within the rules of  
15     evidence. And right now he's staying within the rules of  
16     evidence because he is describing what he saw and what he  
17     did. So I will allow him to proceed.

18            But once again, Mr. McCormick, don't talk so fast.  
19     Please, a little slower, a little slower, okay.

20            MR. MCCORMICK: I'm trying, I do that anytime.

21            THE COURT: I see.

22            Proceed.

23     BY MR. HILL:

24     Q     So the fire knock backs on and you all treated, and  
25     law enforcement been called?

1 A Yes.

2 Q What happened next?

3 A After that all the particulars, I just kind of went  
4 to work. I'm the kind of person to start working, start  
5 pulling ceilings and floors, checking carpet, make sure to  
6 pull walls. And then we at one time, we did I think was  
7 communication about, you know, how much we can do because  
8 we was worried about the fire not being totally out, but  
9 there was some, I think, law enforcement not too sure the  
10 verbiage is concern about us, you know, messing up too  
11 much evidence if there was any. But most of what we saw  
12 was in the front room and the fire was in the back of the  
13 house, so it gave us permission to do a full overhaul of  
14 that room.

15 Q Mr. McCormick, I'm going to show you some photographs  
16 before we display to the jury. Would you look at these  
17 they're State's Exhibits four through 12. Are you  
18 familiar with the scenes depicted in those photographs?

19 A Yes, sir, I am.

20 Q While you weren't there when they were necessary  
21 taken, did they reflect what you saw in fighting the fire  
22 shortly after the fire?

23 A Yes, sir, I did.

24 MR. HILL: Your Honor, State would ask permission to  
25 display exhibits four through 12 to the jury?



1           THE COURT: You may do so, but once again,  
2 identifying the exhibit number as you go, please.

3           MR. HILL: I will, Your Honor.

4 BY MR. HILL:

5 Q       Mr. McCormick, we're going to show photographs to you  
6 exhibits that have been marked. The first exhibit is  
7 State's Exhibit Number 4. Do you recognize what's  
8 contained in this photograph?

9 A       Yes, sir, I do.

10 Q       And do you know what it displays or what it shows?

11 A       Yes, sir, it's the hallway of the apartment. It  
12 shows the -- where we put the hole in the ceiling check  
13 for extension and the smoke was -- the progression of it  
14 coming down the hallway when we got there.

15 Q       Next one let me show you what's been displayed as  
16 State's Exhibit Number 5. Let's back up a minute. Do you  
17 recognize this photograph?

18 A       Sir, I believe so.

19 Q       Okay. I'm showing you what's been marked as State's  
20 Exhibit Number 5. Is this a photograph also of the  
21 hallway?

22 A       Yes, sir.

23 Q       Do you recognize what's depicted in State's Exhibit  
24 Number 6?

25 A       Yes, sir.

1 Q What is it?

2 A It is entry to the bathroom.

3 Q I'm now showing you what's been marked as State's  
4 Exhibit number 7. Do you recognize what's contained in  
5 this photograph?

6 A Yes, sir.

7 Q What is it?

8 A It's what's left of a bedframe, that be in the room  
9 of what we call onvorging (sic) where most of the fire was  
10 started, contained at.

11 Q All right. So you believe that this is a point of  
12 origin?

13 A Yes, sir, because it's the most damaged room.

14 Q Now, showing you what's been marked as State's  
15 Exhibit Number 8. Describe what's in that photograph for  
16 the jury?

17 A Again showing the bedframe, showing where we pull all  
18 the ceiling. We did all the ceiling pull to make sure it  
19 wasn't in the attic, shows the char, the upper area in the  
20 walls.

21 Q And just four more I believe. Now, showing you  
22 what's been marked as State's Exhibit Number 9. Do you  
23 recognize this photograph?

24 A I believe I work mostly in the back room, I believe  
25 that might be in the kitchen area is in the same

1 apartment, I'm sure, but I don't know.

2 Q Let me show you the photograph.

3 A It appears to be the closet, but I can't say for  
4 sure.

5 Q So you believe that maybe the closet?

6 A Yes, sir.

7 Q You can't say for sure?

8 A Yes, sir.

9 Q Do you recognize that's been marked as State's  
10 Exhibit Number 10?

11 A Yes, sir, I do.

12 Q And what is it?

13 A It's the back right bedroom of that apartment.

14 Q Okay. And is the window knocked out?

15 A Yes, sir.

16 Q And what was the purpose of that?

17 A The purpose of that is most times if we want to -- if  
18 we have to do any rescue for ourselves, we clear out the  
19 window. Sometimes with ventilation to get the smoke out,  
20 sometimes be for if we have to rescue with a ladder. We  
21 have it for our safety to bail out. Sometimes when we  
22 remove products in side. If the furnitures in there,  
23 sometime we throw it out the window to get it out of the  
24 apartment. We open it up for other reasons.

25 Q Do you recognize what's been marked as State's

1 Exhibit Number 12?

2 A Yes, sir, it's the outside of that apartment.

3 Q Do you know if that's the window that was knocked out  
4 of the bedroom?

5 A Yes, sir, it is.

6 Q And then finally I'm wanting to show you what's been  
7 marked as State's Exhibit Number 11. Do you recognize  
8 that photograph?

9 A Yes, sir, I do.

10 Q And what's depicted in that photograph?

11 A That's the belongings that we removed from the  
12 apartment.

13 Q Why were they -- why did you need to remove them from  
14 the apartment in that fashion?

15 A When we talk about overhaul, we throw like a lot of  
16 that's clothes or fabrics or mattresses. We remove the  
17 amount because they could start back, we can only soak  
18 them down so much. But the more water we apply, it's  
19 going to go downstairs too, so water damage to the  
20 downstairs apartment. So we remove that stuff and get it  
21 outside so we can soak it down that way more damage to the  
22 property.

23 Q The photographs that were depicted, did all of those  
24 depict the fire that you fought inside this apartment?

25 A Yes, sir.

1           MR. HILL: Thank you. Answer any questions that the  
2 defense may have.

3                               CROSS-EXAMINATION

4 BY MS. PARROTT:

5 Q       Mr. McCormick, you're stating you came in on the  
6 second truck. First truck was already there?

7 A       Yes, ma'am.

8 Q       But no one from that truck had actually entered into  
9 the apartment?

10 A       No, ma'am, not yet.

11 Q       All right. So that's what you mean when you're  
12 saying you ask for permission from, I guess, your district  
13 chief?

14 A       Yes, ma'am.

15 Q       Can you go ahead and take the lead and go in first;  
16 is that right?

17 A       Yes, ma'am.

18 Q       All right. So when you're saying they're feeding  
19 you the line, you're still the first one up, it's just  
20 there's people giving you the line to go ahead and take it  
21 on in?

22 A       There's someone right behind me, and there's someone  
23 at the door feeding line. So there was two of us going in  
24 at the same time for safety and there's another person at  
25 the door feeding excess hose.

1 Q Who actually got to the door entry itself first then?

2 A It had been Adam Raynor, I believe.

3 Q All right. But you're still the first person who  
4 actually went in?

5 A Yes, ma'am.

6 Q All right. And you state whenever you were looking  
7 at the pictures, you said you spent most of the time in  
8 the back of the apartment?

9 A Yes, ma'am.

10 Q But you're clearing it out as you go; correct?

11 A We are clearing it out as we move in. Mostly say  
12 been back overall after the fire was down. And it was --  
13 when I was clearing out, I really didn't stay in that back  
14 area the whole time. I really didn't -- we had other  
15 crews assign to different parts of the apartment. They  
16 check the other bedroom. They check the kitchen for  
17 extension and all that stuff. I just stayed in the fire  
18 room mostly and did all the overhaul in that particular  
19 area.

20 Q All right. And since, I don't know your terms of  
21 art, I apologize. But it's just you go in, you were  
22 heading for where the fire was worst, but you're dealing  
23 with whatever you encounter in the process?

24 A Yes, ma'am, we search as we go.

25 Q Right. And you didn't find anybody else in the

1 apartment?

2 A No, ma'am, we did not.

3 Q You -- as you're searching, you're noticing smoke  
4 damage; correct?

5 A Not necessarily smoke damage, but the smoke -- we  
6 watch the progression of the smoke as it coming more  
7 closely to the floor, is it getting thicker, blacker.

8 Q So you can determine where the fire is worst?

9 A Yes, ma'am.

10 Q And you can get to that first?

11 A Yes, ma'am.

12 Q And in this case, you decided that it was in the  
13 bedroom; correct?

14 A Well, we knew it was in the living room and we went  
15 past the living room. And, of course, we got the hallway  
16 we can see it coming down the hall, so it found us  
17 basically.

18 Q There is an apartment, so can you -- I mean, it  
19 wasn't anything large that you had to go rambling through?

20 A No, ma'am. Once we walk through the living room, we  
21 went five more feet we could see the fire in the hallway.  
22 It wasn't a long extended search.

23 Q So the hallway maybe 15 feet, 20 feet?

24 A Ten or 15 at the most probably.

25 Q All right. And when you got into the last bedroom,

1     you're stating that the window, that that's something that  
2     y'all do, right, to break it out?

3     A     Yes, ma'am. There's smoke coming from it. I'm not  
4     sure if -- sometimes the heat can break it. I'm not sure  
5     how. If it clears that picture, we did that usually cause  
6     there's a middle sash in there. And it would be in there  
7     and we would break that out, so we don't have to fight it.  
8     If we had to do what we call an emergency belt, wear a  
9     belt where we have to jump out of the window or something  
10    we move the sash out ---

11    Q     Hold on. You're going so fast. I'm not sure I  
12    understood what you said.

13           THE COURT: You're really are going a little too  
14    fast, Mr. McCormick. Help me now. First, we have to take  
15    down every single word you say, that's our responsibility.  
16    And then the jury needs to hear every single word. If any  
17    of you jurors on the back over there cannot hear, raise  
18    your hand immediately, please.

19           Proceed.

20    BY MS. PARROTT:

21    Q     I'm sorry I just want to make sure I understand?

22    A     Like I said, the fire could have damaged the window,  
23    but the clearance of it we did all that for safety  
24    reasons.

25    Q     Okay. So you would have broken the sash that you're



1 talking about that's in the middle of the window?

2 A Yes, ma'am.

3 Q And thrown all of the stuff out?

4 A Yes, ma'am.

5 Q That's not something that happen before you got  
6 there?

7 A No, ma'am.

8 Q And the pictures they're showing so much of where the  
9 ceilings falling a part and all this kind of stuff, that's  
10 what you mean by like pulling on the ceiling?

11 A Yes, ma'am, we remove all of the sheetrock from the  
12 ceiling to check for fire extension in the attic.

13 Q Y'all have a special tool that y'all use to...

14 A Yes, ma'am.

15 Q Okay. And you did that in pretty much every room  
16 that you thought it could have spread to?

17 A Yes, ma'am, correct.

18 Q To try and contain it or to see if you had to contain  
19 it; is that right?

20 A Yes, ma'am, correct.

21 Q And it's not only this apartment, but it's the whole  
22 building that you would do that for or at least if you saw  
23 it going for another building?

24 A Yes, ma'am, if we thought it was in there, we try to  
25 limit the damage as possible.

1 Q Okay. Same time your hose is coming in with you, you  
2 got water coming at some point, don't you?

3 A Where we have a valve and we don't open it until we  
4 get too close to the fire where you want to see the fire.  
5 We hold off to open the water until we get near the fire  
6 and hit the seat of the fire.

7 Q Okay.

8 A We can cut the water on the firemen do.

9 Q All right. All right. But it is you and eight other  
10 guys in this apartment, right?

11 A Yes, ma'am.

12 Q That's in this case?

13 A Eventually, yes, ma'am.

14 Q Okay. You don't know what all they were doing in the  
15 back or the other part of the apartment?

16 A No, ma'am, as far as -- I know when you say overhaul,  
17 I know what their definition is, but I'm not sure of their  
18 every action. No, ma'am.

19 Q Okay. And you don't know what they may have strewn  
20 around in the apartment?

21 A No, ma'am, I do not.

22 Q Basically, I mean, you're not necessarily worried  
23 about boxes or clothes as much as you are where fire is?

24 A Yes, ma'am, that's correct.

25 Q Did you ever see anybody go in and out of the

1 apartment as you were trying to prepare and get into the  
2 apartment?

3 A No, ma'am, I did not.

4 Q But the door was already open when you got there?

5 A Yes, ma'am.

6 MS. PARROTT: Nothing further, Your Honor.

7 THE COURT: Redirect?

8 MR. HILL: Yes, thank you, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. HILL:

11 Q Mr. McCormick, when you first entered, did you see  
12 what appeared to be blood to you?

13 A Yes, sir, I did.

14 Q What steps, if any, did you all take to try to  
15 preserve evidence of a crime?

16 MS. PARROTT: Your Honor, objection.

17 THE COURT: I sustain the objection, that's struck  
18 from the record, Counsel.

19 MR. HILL: Yes, Your Honor, I apologize. It was not  
20 deliberate and I apologize for that, Your Honor.

21 THE COURT: I understand.

22 BY MR. HILL:

23 Q Let me rephrase it in a proper manner. Did you take  
24 any steps to avoid damaging or messing up the areas that  
25 concerned you?

1 A Besides notifying command of it, not much cause we  
2 had a fire to go fight. We had to get in there, it was  
3 only going to get worse. We did notify them that we had  
4 something here, but we need to do our jobs.

5 Q So that was your main priority was putting out the  
6 fire?

7 A Yes, sir.

8 MR. HILL: That's all I have.

9 THE COURT: Recross?

10 MS. PARROTT: None, Your Honor.

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

12 (WHEREUPON, the witness leaves the witness stand.)

13 MR. HILL: Again, Your Honor, I apologize.

14 THE COURT: No problem. Next witness, please.

15 MR. HILL: Darren Yarborough.

16 Your Honor, the State has no objection to Mr.

17 McCormick being excused.

18 THE COURT: Suitable, Counsel?

19 MS. PARROTT: Certainly, Your Honor.

20 THE COURT: He's released.

21 THE CLERK: Place your left hand on the Bible and  
22 raise your right hand. Do you affirm to tell the truth,  
23 the whole truth, and nothing but the truth so help you  
24 God?

25 THE WITNESS: I do.

1 THE CLERK: Please be seated and state your full name  
2 for the record.

3 THE WITNESS: Darren Demetrius Yarborough.

4 MR. HILL: Your Honor, as we begin, I've approach  
5 counsel for defense. I do not believe there's an  
6 objection to the admission of the following photograph.  
7 State would ask that it be admitted into evidence. I  
8 believe it would be State's 13.

9 THE COURT: Thirteen in evidence without objection?

10 MS. PARROTT: Yes, Your Honor.

11 THE COURT: All right.

12 (WHEREUPON, State's Exhibit No. 13 was admitted into  
13 evidence.)

14 MR. HILL: And then the State would also ask leave to  
15 be able to display the photograph to the jury with the  
16 conditions that the proper exhibit number be given during  
17 the display.

18 THE COURT: Proceed.

19 MR. HILL: Thank you, Your Honor.

20 WHEREUPON,

21 Darren Yarborough,  
22 after first having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. HILL:

25 Q Mr. Yarborough.

1 A Yes, sir.

2 Q Are you currently employed with the Florence County  
3 sheriff's department?

4 A Yes, sir.

5 Q How long have you been employed with them?

6 A A little over ten years.

7 Q All right. And during your ten years, what positions  
8 have you held?

9 A Started off as a patrol deputy, was promoted to  
10 investigator for six years. My last two years are in  
11 violent crimes. I was promoted from investigator to  
12 patrol lieutenant in which I'm currently a patrol  
13 lieutenant now.

14 Q Do you have an independent recollection -- those are  
15 fancy words. Do you remember what happened on June 23rd  
16 2008?

17 A Yes, sir.

18 Q Were you present at Apartments?

19 A Yes, sir.

20 Q Were you the first deputy to arrive at the scene?

21 A Yes, sir.

22 Q Do you have your report with you that might help you  
23 testify?

24 A Yes, sir, I do.

25 Q Have you reviewed it prior to coming into court

1 today?

2 A Yes, sir.

3 Q Do you remember this case?

4 A Yes, sir.

5 Q Tell the jury, please, what you remember?

6 A I received a call from our central dispatch in  
7 reference to a structure fire. Upon arriving there, I met  
8 with a witness or someone who was there during the course  
9 of the fire.

10 Q And do you know if that was Scott, the young man that  
11 testified earlier today?

12 A Yes, sir.

13 Q So you met with Scott McAleese?

14 A Yes, sir.

15 Q What else happened?

16 A After talking with him, I went up to the apartment  
17 and was able to make my way through the front living room  
18 part, but I couldn't go in the back part because  
19 firefighters had just put the fire out and it was still  
20 kind of hot. So I just kind of looked around, notice it  
21 was some blood on the floor, some blood in the living  
22 room. At which time, I came back out and that's when I  
23 notified forensics and investigators that, you know, we  
24 had a possible arson and definitely an assault.

25 Q All right. I like, at this time, to show you what's

1     been marked as State's Exhibit Number 13 and before I  
2     display it to the jury. Do you recognize that exhibit?

3     A     Yes, sir.

4     Q     Are you familiar with what's depicted in that  
5     exhibit?

6     A     Yes, sir.

7     Q     I'm now going to display it to the jury. What does  
8     this scene depict?

9     A     That's what I describe in my narrative as far as a  
10    lot of blood on the floor and bloody towels inside of the  
11    living room area.

12    Q     And was this the first thing you would have seen when  
13    you open the door to go into the apartment?

14    A     Yes, sir.

15    Q     Thank you. Continuing now with your testimony, after  
16    you walk through and after you spoke to Mr. McAleese, did  
17    you go anywhere else or talk with anyone else?

18    A     I did. I responded to McLeod.

19    Q     McLeod Hospital?

20    A     Yes, sir.

21    Q     And without repeating hearsay, which we know is not  
22    allowed. You received notice that you needed to go there?

23    A     Yes, sir, that according, I believe, to our  
24    dispatchers that's where the victim went.

25    Q     All right. So based upon dispatches telling you to



1 go to McLeod, what did you find there, with whom did you  
2 speak?

3 A I spoke with an Officer Huggins I believe.

4 Q And do you know what his job was?

5 A He was a security officer at the location.

6 Q All right. And I believe he's going to testify later  
7 this morning.

8 A Yes, sir.

9 Q So without going into his testimony, did you speak  
10 with anyone else?

11 A No, sir.

12 Q Did you take any other action in regard to the case  
13 after you went to McLeod?

14 A No, sir, it was -- actually, it was turned over to  
15 investigations and forensics at that time.

16 Q And is that the normal course of procedure for it to  
17 be turned over?

18 A Yes, sir.

19 Q And did that relieve you of your responsibilities at  
20 that time?

21 A Yes, sir.

22 Q So summarize, you arrived at the scene and then you  
23 spoke to Mr. McAleese; is that correct?

24 A Yes, sir.

25 Q You walk through the apartment?

1 A Yes, sir, and the living room area.

2 Q Did you speak to anyone else at the scene?

3 A Not that I can recall.

4 Q If you had, would it be in your report?

5 A Yes, sir.

6 Q Then you responded and went out to McLeod Hospital?

7 A Yes, sir.

8 Q And did you speak to the victim there?

9 A No, sir, I couldn't speak to her. She was in the  
10 back being worked on by McLeod emergency staff.

11 MR. HILL: Thank you. Answer any questions the  
12 defense might have.

13 CROSS-EXAMINATION

14 BY MS. PARROTT:

15 Q Officer Yarborough, can you estimate was it about  
16 12:00, 12:01 whenever you arrived on scene?

17 A Yes, ma'am.

18 Q Okay. And you met Francis Marion police there; is  
19 that correct?

20 A Yes, ma'am.

21 Q And the fire department was already there?

22 A Right.

23 Q But as far as outside other law enforcement, you're  
24 the first person there?

25 A Yes, ma'am, as far as I recall.

1 Q Did you secure the scene?

2 A As far as I could with the fire department on the  
3 inside, yes, ma'am.

4 Q You didn't set up crime scene tape, did you?

5 A No, ma'am.

6 Q In fact, you called because you thought it could have  
7 been a possible crime scene and ask for investigations and  
8 forensics to respond?

9 A Yes, ma'am.

10 Q So you weren't certain of exactly what it was you  
11 were dealing with, but you thought they needed to look at  
12 it?

13 A Right.

14 Q You stated you never even made it into the back?

15 A No, ma'am.

16 Q So the only place you saw was the door way in that  
17 living room area?

18 A Right.

19 Q With firemen around, running around?

20 A Right.

21 Q Did you take Mr. McAleese's statement?

22 A Mister who?

23 Q Mr. McAleese?

24 A The -- Scott?

25 Q Yes.

1 A Yes.

2 Q He gave you his written statement?

3 A Well, I jotted it down on my notes and put it in my  
4 report and advise investigation of the witness.

5 Q Okay. So the actual written statement that you gave  
6 to law enforcement you didn't take that?

7 A No.

8 Q All right. And you only spoke with Officer Huggins  
9 at McLeod and you didn't take any statement from him?

10 A Didn't take any statements from him.

11 Q Is that the extent of your involvement?

12 A Pretty much.

13 MS. PARROTT: Nothing further.

14 THE COURT: Redirect?

15 MR. HILL: No, thank you, Your Honor.

16 THE COURT: You may step down.

17 (WHEREUPON, the witness leaves the witness stand.)

18 MR. HILL: Mr. Yarborough, would like to be excused,  
19 the State as no objection.

20 THE COURT: Suitable, Counsel?

21 MS. PARROTT: Yes, Your Honor.

22 THE COURT: All right. He's excused.

23 Next witness, please.

24 MR. HILL: Matthew Huggins. Your Honor, the witness  
25 is in my conference room, he's being fetched.

1 THE CLERK: If you will, Mr. Huggins, come over to  
2 the witness stand. Sir, stop right there. Place your  
3 left hand on the Bible and raise your right hand. Do you  
4 swear to tell the truth, the whole truth, and nothing but  
5 the truth so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Please be seated right there in the  
8 witness chair.

9 MS. PARROTT: Your Honor, may we approach?

10 THE COURT: Sure.

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

14 THE CLERK: And state your full name for the record.

15 THE WITNESS: Matthew L. Huggins.

16 THE COURT: We've had a bench conference at this time  
17 we proceed.

18 WHEREUPON,

19 Matthew L. Huggins,  
20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. HILL:

23 Q Good morning, Mr. Huggins, how are you?

24 A Good morning.

25 Q I believe this is a new experience for you; isn't it?

1 A Yes, sir.

2 Q You look kind of nervous?

3 A A little bit.

4 Q All right. Don't pass out on us, take a deep breath.  
5 I think you will be all right. Mr. Huggins, I believe the  
6 State sent a subpoena and asked you to come testify today;  
7 is that correct?

8 A Yes, sir.

9 Q All right. Are you familiar with what happened on  
10 June 23rd 2008?

11 A That's the day that this incident occurred.

12 Q That's correct. Do you recall talking to  
13 investigators, the police officers about what happened  
14 what you saw at McLeod that day?

15 A Very vaguely. I did an incident report on it.

16 THE COURT: Mr. Huggins, keep your voice up now. We  
17 need to take down every single word you say. Please help  
18 in that regard.

19 A Very vaguely I wrote down the incident report as to  
20 what I saw and what happened.

21 MR. HILL: Your Honor, may I have permission to  
22 approach the witness?

23 THE COURT: Sure.

24 BY MR. HILL:

25 Q Mr. Huggins, I'm going to hand you a sheet of paper

1 and ask if you review it and then ask if you recognize  
2 it?

3 A Yeah, I recognize it.

4 Q And what is it?

5 A That's the incident report I wrote that day.

6 Q Does it help refresh your recollection about what  
7 happened that day?

8 A Yes, sir.

9 Q Okay. As we begin, where are you employed at this  
10 time?

11 A I'm not currently employed at the hospital at this  
12 time.

13 Q Okay. Are you working anywhere at this time?

14 A Yes, sir.

15 Q Where?

16 A I rather not say at this time.

17 Q All right. But moving on, you were employed at the  
18 hospital, McLeod Hospital on June 23rd 2008?

19 A Yes, sir.

20 Q All right. Would you tell the jury what did you see  
21 that day regarding Carol Parker and Mr. Henry?

22 A Just go ahead and tell what I saw?

23 Q Yeah, what did you see?

24 A Basically, what I saw was a car had pulled up and a  
25 male had jumped out and said I need a wheelchair, my

1 girlfriend's been stabbed. So I got up and went and got a  
2 wheelchair and brought it out to the car. And he open the  
3 door, there was this female, Miss Parker, she was covered  
4 in a blanket. At first, I didn't see any stab wounds or  
5 anything like that, but as I was assisting her getting  
6 into the wheelchair, that's when her blanket opened up and  
7 I saw stab wounds and cuts and whatnot.

8 Q How about blood?

9 A Yes, sir.

10 Q Did you help her into a wheelchair?

11 A Yes, sir.

12 Q So what happened next?

13 A As I was helping her wheeling her in, I ask from both  
14 of them I said, well, what happened to you. It was kind  
15 of unusual for somebody just to come up and be cut up like  
16 that. There was no reply from neither one of them. I  
17 helped wheel her into the ER, got her up to the ER desk  
18 and got the nurse's attention and they started helping  
19 her. After that, they got her back to the ER and I went  
20 back to the desk. As I got back to the desk, the car was  
21 gone and the male that was with her was gone.

22 Q Did you see any children in the car?

23 A I couldn't tell the windows were too tinted or  
24 whatnot.

25 Q The focus was -- what were you focusing on



1 primarily?

2 A Miss Parker.

3 Q It was pretty horrific what you saw?

4 MS. PARROTT: Objection.

5 THE COURT: Sustained. Don't describe it yourself,  
6 Counsel, let him do it.

7 MR. HILL: Yes, sir.

8 BY MR. HILL:

9 Q Do you have a memory about how long you were with  
10 Miss Parker until you walked outside and discovered that  
11 the car was missing?

12 A Matter of minutes.

13 Q But it wasn't there?

14 A It wasn't there, it was gone.

15 Q Did anyone tell you that they were going to park the  
16 car, that they be right back? Any indication about where  
17 they were going and what they were going to do?

18 A No, sir.

19 Q Is there anything else that you remember about that  
20 day that I haven't asked you to tell us?

21 A No, sir.

22 Q Have you in your own mind told us everything you  
23 remember about that day?

24 A Yes, sir.

25 MR. HILL: Thank you. Answer any questions the

1 defense may have.

2 CROSS-EXAMINATION

3 BY MS. PARROTT:

4 Q Mr. Huggins, I can't help but notice the uniform.

5 You are involved with the National Guard?

6 A Yes, ma'am.

7 Q But you were involved in this case was because of  
8 your employment at McLeod at the time; correct?

9 A Yes, ma'am.

10 Q All right. You were a security guard. And at this  
11 particular date, you were actually working the ER desk?

12 A Yes, ma'am.

13 Q Which is the desk right there inside the doors as you  
14 enter the ER; correct?

15 A Yes, ma'am.

16 Q Okay. Is it fair to say that people pull up to the  
17 ER doors right there try -- will sometimes try and get  
18 people in pretty quickly, so that they would go ahead and  
19 get in the ER after all it is an emergency room?

20 A Yes, ma'am.

21 Q And you said that whenever you saw -- I guess, you  
22 saw this person trying to get a wheelchair; was that  
23 correct?

24 A No, ma'am. When the car pulled up, the gentleman got  
25 out and said I need a wheelchair.

1 Q Okay. But he told you that he did need a wheelchair?

2 A Yes, ma'am.

3 Q All right. And that was for her, right?

4 A Yes, ma'am.

5 Q To get her into the ER?

6 A Yes, ma'am.

7 Q And so you assisted him with getting the wheelchair  
8 and getting her into the wheelchair?

9 A No, ma'am. I went and grabbed the wheelchair and  
10 actually he was kind of just -- I'm not sure if it was  
11 shock or what.

12 Q So but she gets into the wheelchair and goes -- and I  
13 believe, it was probably set up. I know it was set up the  
14 same way, goes over to the left over to the ER desk?

15 A Yes, ma'am.

16 Q And you got the nurse's attention and she needs to go  
17 on back?

18 A Yes, ma'am.

19 Q And people can't just leave their cars right there in  
20 front of the ER doors, can they?

21 A No, ma'am. But in some cases depending on how bad  
22 the emergency is, you know, we will make exceptions.

23 Q But you can't block that entrance for any extended  
24 period of time?

25 A Not an extended period of time.

1 Q You wrote this statement for law enforcement;  
2 correct?

3 A Yes, ma'am.

4 Q In fact, it's addressed to Investigator Bert Turner;  
5 correct?

6 A Yes, ma'am.

7 MS. PARROTT: Nothing further.

8 THE COURT: Redirect?

9 MR. HILL: None.

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

11 (WHEREUPON, the witness leaves the witness stand.)

12 MR. HILL: Your Honor, at this time, may the State  
13 and defense approach the bar?

14 THE COURT: Sure. You want to excuse him?

15 MS. PARROTT: Exactly, Your Honor.

16 MR. HILL: No objection.

17 THE COURT: He's excused.

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

21 THE COURT: Jurors, we'll take a morning recess here  
22 now, 20 minute recess.

23 (WHEREUPON, the jury retire to the jury room.)

24 (WHEREUPON, a break was taken.)

25 THE COURT: You ready to proceed, Mr. Hill?

1 MR. HILL: I am, Your Honor.

2 THE COURT: Ms. Parrott?

3 MS. PARROTT: Yes, Your Honor.

4 THE COURT: Proceed. Bring the jury out.

5 (WHEREUPON, the jury return to the courtroom.)

6 THE COURT: All jurors, okay? Everybody all right?

7 Next witness, please.

8 MR. HILL: Thank you, Your Honor. State would call  
9 Captain Brett Camp.

10 THE CLERK: If you will, sir, place your left hand on  
11 the Bible and raise your right hand. Do you swear to tell  
12 the truth, the whole truth, and nothing but the truth so  
13 help you God?

14 THE WITNESS: Yes, I do.

15 THE CLERK: Please be seated and state your full name  
16 for the record.

17 THE WITNESS: Bret Stewart Camp.

18 WHEREUPON,

19 Brett Camp,

20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. HILL:

23 Q Captain Camp, in June of 2008, were you assigned or  
24 were you the supervisor over the investigation that we  
25 discussed here in this trial?

1 A Yes, I was.

2 Q Did you have any -- what were your responsibilities  
3 in regards to this case?

4 A Well, as lieutenant over criminal investigations, our  
5 responsibilities at that particular time were the day to  
6 day operations of what goes on in investigations. I  
7 responded to the scene that day in actually two  
8 capacities. Number one, as again the lieutenant over  
9 investigations to give support to the investigators that  
10 were there on the scene. And as well as, I was acting  
11 public information officer for the sheriff's office at  
12 that time as well.

13 Q Were you responsible for providing directions or  
14 orders for your investigators during this time?

15 A That's correct, I was.

16 Q Okay. Did you -- who were the investigators working  
17 with you in this case?

18 A At that time, it was Investigator Kathleen Streett  
19 and Investigator Bert Turner. Kathleen was working the  
20 domestic violent portion of it. Investigator Turner was  
21 working with the arson, fire portion of it. And I was  
22 also there with Lieutenant Keith Lutcken and Corporal Adam  
23 Moore.

24 Q Was there another investigator involved as well?

25 A Yes, later on during the investigation, they needed

1 assistance and I knew it was going to go late into the  
2 evening, so I contacted the on-call investigator, which  
3 was Investigator Calvin Timmons.

4 Q Is Calvin Timmons still with the sheriff's  
5 department?

6 A No, sir, he is not.

7 Q And could you tell the jury where he is?

8 A He is presently -- he resign from the sheriff's  
9 office and went on a security detail with a corporation  
10 and he is in Afghanistan. Afghanistan serving in that  
11 capacity at this time.

12 Q So he is unavailable?

13 A Yes, he is definitely unavailable.

14 Q The other officers involve though will they testify  
15 during this trial?

16 MS. PARROTT: Objection.

17 THE COURT: Sustained.

18 Q Is he the only other officer that's not available?

19 A To my knowledge, yes, sir.

20 Q And so your job was to supervise those individuals  
21 that were working on this case?

22 A Yes, sir. Again, support them in anything they  
23 needed to get them any further assistance. And I was also  
24 as well one of my primary duties is I am there to relay  
25 information to the sheriff to let him know of any major

1 crime scenes. I was there to relay information to him  
2 that was going on during this particular case.

3 MR. HILL: Thank you. Answer any questions that the  
4 defense may have.

5 CROSS-EXAMINATION

6 BY MS. PARROTT:

7 Q Did you prepare any report in this matter?

8 A No, I did not.

9 Q Did you deal with any evidence in this case?

10 A No, I did not.

11 Q You went to the scene and you talk with the people  
12 that work for you is that it?

13 A That's correct.

14 MS. PARROTT: Nothing further.

15 THE COURT: Redirect?

16 MR. HILL: No, thank you, Your Honor.

17 THE COURT: You may step down.

18 (WHEREUPON, the witness leaves the witness stand.)

19 THE COURT: Next witness, please.

20 MR. HILL: Your Honor, the State would have no  
21 objection to the witness being excused.

22 THE COURT: Suitable?

23 MS. PARROTT: Yes, Your Honor.

24 THE COURT: He's excused.

25 MR. HILL: Your Honor, the State would call Ms. Amy



1 Corbett.

2 THE CLERK: If you will, ma'am, place your left hand  
3 on the Bible and raise your right hand. Do you swear to  
4 tell the truth, the whole truth, and nothing but the truth  
5 so help you God?

6 THE WITNESS: Yes, I do.

7 THE CLERK: Please be seated and state your full name  
8 for the record.

9 THE WITNESS: It's Amy Anderson Corbett.

10 WHEREUPON,

11 Amy Corbett,

12 after first having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. HILL:

15 Q Okay. Good morning, Ms. Corbett.

16 A Good morning.

17 Q Are you employed at the Kershaw County Medical  
18 Center?

19 A Yes.

20 Q And what is your title?

21 A Charge nurse, one of the charge nurse there.

22 THE COURT: Ms. Corbett, you got to give me more  
23 volume then that now. Get a little closer to the mic and  
24 speak up, please. The jurors need to hear you and we need  
25 to take down every word you say. Please, a little more

1 volume.

2 A I am one of the charge nurses at the emergency room.

3 THE COURT: Charge Nurse?

4 MS. CORBETT: Yes.

5 BY MR. HILL:

6 Q What differentiates the charge nurse from another --  
7 from any other nurse I might see?

8 A Now, at this time, I was not a charge nurse, I was  
9 one of the staff nurses.

10 Q Okay. So you were a staff nurse at the time that  
11 this happened?

12 A Yes.

13 Q All right. And how long had you been at Kershaw  
14 County Medical Center?

15 A Since February of '05.

16 Q And did you work in the trauma unit or emergency  
17 room?

18 A I've always worked in the emergency room.

19 Q So during that time, I assume you seen lots of  
20 different things walk through that door?

21 A Yes, sir.

22 Q All right. Do you have an independent recollection  
23 or memory of what happened on June 23rd 2008, in the  
24 afternoon at your hospital?

25 A Yes, sir.

1 Q All right. That's what we need to talk about.

2 A Okay.

3 Q Did you bring any notes with you that you made in  
4 regards to this case?

5 A I did.

6 Q And have you reviewed those notes prior to coming  
7 today?

8 A Yes, sir.

9 Q Now, how did you become involved in this case? Why  
10 did I call you to testify?

11 A I was Mr. Henry's nurse that day.

12 Q All right. So you know what time he arrived at your  
13 hospital?

14 A He arrived at 1355 to the triage area.

15 Q And what time would that be in civilian time?

16 A 1:55.

17 Q Was anyone with him?

18 A Yes.

19 Q Who?

20 A His mother and two small children.

21 Q And tell us what happened when you met him?

22 A He came back to one of my assigned rooms. I went in  
23 to do my assessment.

24 Q And what did you find?

25 A In my assessment, I always ask open-ended question

1 basically what happened.

2 Q And is that important for you to treat the patient?

3 A Yes, I have to do my assessment in two parts. I have  
4 to know what happened from their point of view or what  
5 their symptoms are from their point of view. And then I  
6 have to obviously look at the patient and take in my own  
7 assessment from a nursing point of view. And he explain  
8 to me that -- and showed me that he had wounds on his  
9 hand.

10 Q Would you tell the jury about those wounds?

11 A They were on the palmer side of his hands. There  
12 were approximately four to five lacerations, two that  
13 needed to be repaired by the doctor and the other ones  
14 were very superficial, so he only needed two repairs and  
15 those were the most extensive, but were sutured that day.  
16 And that was basically the extent of the wounds. On his  
17 left hand ---

18 Q How many needed to be sutured for or stitched?

19 A Two.

20 Q How many were total?

21 A I believe there are four or five.

22 Q Did you contact law enforcement after you met with  
23 Mr. Henry?

24 A Immediately after I talk with him.

25 Q And who did you call first?

1 A I contacted Kershaw County dispatch that is our  
2 obligation to report the incident that I called in an  
3 error because it didn't happen in Kershaw County.

4 Q So who did you call next?

5 A I after I spoke with Kershaw County and they informed  
6 me that it did not happen in Kershaw County, so they  
7 wouldn't be able to get involved. I found out exactly  
8 where it happened and the county that it happened in. And  
9 I called my dispatch back to see if I could get the number  
10 to Florence County dispatch that's who I called.

11 Q All right. And were you present when law enforcement  
12 officials arrived from Florence County?

13 A Florence County, no.

14 Q Was he arrested by Kershaw County deputy?

15 A I believe he was arrested by Camden police.

16 Q And that's Kershaw County?

17 A Well, it's different. They have a Kershaw County  
18 deputies and Camden City police and we're in their  
19 jurisdiction.

20 Q So after you called Florence County, police officers  
21 from Camden came to the hospital and arrested Mr. Henry?

22 A They basically came and stood by at my request  
23 because I was worried about the staff in the ER.

24 Q And what concerned you?

25 A The concern was that I found out from Florence County

1       dispatch that ---

2           MS. PARROTT:  Objection.

3           THE COURT:  Sustained.

4       BY MR. HILL:

5       Q     We can't talk about what they told you?

6       A     I was concerned because I felt like he was a suspect  
7     and he was a suspect in -- you know, these wounds that  
8     took place on him and just everything that was involved, I  
9     just felt like the staff was in danger.  I wanted the  
10    police there to stand by, so that if anything did happen,  
11    the police would be there because we were waiting on  
12    everything to go through Florence County so that they  
13    could detain him.

14    Q     So I can't put words in your mouth.

15           MS. PARROTT:  Objection.

16           THE COURT:  I sustain the objection.  Mr. Hill, posit  
17    pristine query now.  You're on direct exam, please.

18           MR. HILL:  I'm about to and I wasn't going to suggest  
19    hearsay or lead her.

20    BY MR. HILL:

21    Q     Bearing all these rules in mine and not wanting to  
22    suggest an answer to you, I'm not doing that.  What were  
23    your feelings while you were dealing Mr. Henry?

24           MS. PARROTT:  Your Honor, could we ---

25           MR. HILL:  That's a wide open of a question as I can

1 ask.

2 THE COURT: I would allow that query. What were your  
3 feelings. Proceed.

4 MR. HILL: Thank you.

5 THE COURT: No hearsay just your feelings.

6 A My feelings in regard to what exactly?

7 Q Dealing with Mr. Henry?

8 A We were treating Mr. Henry for his wounds. And at  
9 the same time, I felt like there was something not being  
10 said. I -- what we call in my business red flags went up  
11 every where.

12 Q Such as?

13 A He was there from a different county with wounds on  
14 his hand, with two small children telling me that him and  
15 his wife got into a fight, and someone attacked him with a  
16 machete. His wife's friend is what he said. And telling  
17 me that she went to a different hospital and he's in  
18 Kershaw County, a county that he does not live in. He has  
19 no business in really. Telling me that the only reason he  
20 came there was because he spoke with his brother who works  
21 for Lee County sheriff's department is what he told me.  
22 And that he told him to come to Kershaw County because it  
23 was closer. And I'm thinking closer to what. So it was  
24 just not consistent and I felt like it's just that gut  
25 feeling. I thought that something was wrong.

1 Q So those are the motions or things that concerned you  
2 and prompted you to call the police?

3 A Yes, absolutely.

4 Q Do you know what became -- do you know whether or not  
5 the children were taken into custody for their own safety  
6 and protection for a while?

7 A Yes, while he was being treated and while they were  
8 waiting on the police to do whatever they had to do, the  
9 children mainly remained with his mother, but Investigator  
10 Corey from Kershaw County got involved and he was the one  
11 that called DSS. And he was the one that basically took  
12 it from there. The children remained in his custody and  
13 DSS custody. And from that point, I was out of the  
14 situation.

15 MR. HILL: Please answer any questions that the  
16 defense might have.

17 MS. PARROTT: Thank you.

18 CROSS-EXAMINATION

19 BY MS. PARROTT:

20 Q Ms. Corbett, you said he got to you I'm sorry -- was  
21 it about 1:55 in the afternoon?

22 A Yes, ma'am.

23 Q And the notes that you're referring to that you said  
24 you used to refresh your memory is that the medical  
25 records in this case?



1 A It is.

2 Q Okay. All right. Whenever you first took his blood  
3 pressure was it not higher than normal?

4 A Well, I didn't take his blood pressure initially the  
5 triage nurse did.

6 Q Okay. But you reviewed those records as part of your  
7 taking care of Mr. Henry, didn't you?

8 A Yes, ma'am.

9 Q All right. And did you not find his blood pressure  
10 to be higher than normal?

11 A Higher than normal. The normal being less than 140  
12 over 80.

13 Q 120 over 80, 130 over 80, yeah.

14 A Yes.

15 Q And you said his mother was also there with him?

16 A Yes.

17 Q And what you found were defensive wounds on his hand,  
18 wound that be true?

19 A I don't know if they were defensive wounds, I just  
20 know that they were lacerations on the palm side of his  
21 hand.

22 Q But wounds to the palms of the hands as oppose to the  
23 front of the hand; correct?

24 A Correct.

25 Q And on the left hand would be the only hand I believe

1     you stated?

2     A     Right.

3     Q     All right. And as your chart reflected, there's at  
4     least a three centimeter laceration to the left index  
5     finger?

6     A     To the left index finger.

7     Q     Yes, ma'am.

8     A     Are both one and a half centimeters.

9           MS. PARROTT: Excuse me permission to approach, Your  
10    Honor.

11           THE COURT: Sure, yes.

12    BY MS. PARROTT:

13    Q     Is this your signature, ma'am?

14    A     Yes.

15           MR. HILL: May I see what ---

16    A     Three centimeters for both, it's all inclusive.

17    Q     So the three centimeters I'm sorry -- you said was  
18    all inclusive?

19    A     Each laceration was separate, but three centimeters  
20    altogether.

21    Q     All right. So one and a half centimeters  
22    approximately for the two that you said need sutures?

23    A     On the left index.

24    Q     Thank you for clearing that up. Treated it with  
25    Betadine dressing and isotroin (sic); is that correct?

1 A Yes.

2 Q And you state that part of your job as a staff nurse  
3 that you try and ask questions for the person to find out  
4 what their story is and also it allows you time to look at  
5 the person and make your own observations; correct?

6 A Yes.

7 Q How long did you talk with his mother?

8 A Not very long.

9 Q And when you state that red flags went up, those are  
10 things that you determine were things that scared you;  
11 correct or things that made you alert?

12 A Yes.

13 Q That's your opinion of it, right?

14 A Yes, that is my opinion.

15 Q And yet you felt comfortable with the children  
16 staying with mom outside in the waiting room?

17 A She was sitting directly in front of the triage  
18 nurse. I made the triage nurse aware of what was going  
19 on. And it wasn't very long with Kershaw County getting  
20 there and Investigator Corey getting there and they went  
21 to our conference room.

22 Q All of them?

23 A All of them while he remained in the treatment room.

24 Q But they didn't place him under arrest, did they?

25 A Not at that time they didn't.

1 Q And they didn't arrest his mother for anything?

2 A Not that I'm aware of.

3 Q And you didn't check her story against his?

4 A She wasn't there, she told me she wasn't there.

5 Q As far as how he got to the hospital since that was  
6 one of your red flags? Did you check her story as to how  
7 they got there?

8 A I asked her if she knew anything about the wounds and  
9 she said no and that was pretty much the end of my  
10 assessment with her.

11 Q Did you know where she worked?

12 A No.

13 Q How far is it between Bishopville and Camden?

14 A 25 miles, 30 miles, I'm not sure exactly.

15 MS. PARROTT: Nothing further.

16 THE COURT: Redirect?

17 MR. HILL: None, thank you, Your Honor.

18 THE COURT: All right. You may step down. You want  
19 to excuse her?

20 MR. HILL: No objection.

21 THE COURT: Suitable?

22 MS. PARROTT: None, Your Honor.

23 THE COURT: Thank you very much.

24 (WHEREUPON, the witness leaves the witness stand.)

25 THE COURT: Next witness, please.

1 MR. HILL: Lieutenant Keith Lutcken.

2 THE CLERK: You will, sir, place your left hand on  
3 the Bible and raise your right hand. Do you swear to tell  
4 the truth, the whole truth, and nothing but the truth so  
5 help you God?

6 THE WITNESS: I do.

7 THE CLERK: Please be seated and state your full name  
8 for the record.

9 THE WITNESS: My name is Keith Lutcken,  
10 L-U-T-C-K-E-N.

11 WHEREUPON,

12 Keith Lutcken,

13 after first having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. HILL:

16 Q Mr. Lutcken, what is your title with the Florence  
17 County sheriff's department?

18 A Lieutenant.

19 Q And how long have you been employed with that  
20 department?

21 A I've been with the sheriff's office for 24 years.

22 Q And over the last few years, what have been your  
23 duties particularly?

24 A I am lieutenant over the forensics in the crime scene  
25 division.

1 Q Are you familiar with the case in which we are trying  
2 today?

3 A Yes, I am.

4 Q Okay. So you were involved in the investigation in  
5 this case?

6 A Yes.

7 Q Have you had an opportunity to review your notes or  
8 the records in this case?

9 A Yes, sir.

10 Q Moving ahead to what your involvement. What did you  
11 do, what was your job, what were your responsibilities in  
12 regard to this case?

13 A My main responsibility was responding to the scene.  
14 I was the supervisor that was in charge of the scene. I  
15 acted more in a supervisory capacity toward the crime  
16 scene personnel that would be responding to the scene.

17 Q Now, was there someone that assisted you that you  
18 supervised?

19 A Yes, sir, Corporal Adam Moore.

20 Q All right. And did Mr. Moore join you at the scene?

21 A Yes, sir, he did.

22 Q Did the two of you work together in assessing the  
23 scene and gathering evidence or did you divide  
24 responsibilities?

25 A Pretty much supervised him as he was going to the

1 scene and relying information back to me.

2 Q Okay. Did you enter -- did you go inside the  
3 apartment.

4 A Yes, sir, I did.

5 Q And in that regard, do we know who lived in this  
6 apartment?

7 A At that time, I do not believe we did at that point.

8 Q Okay. Did you subsequently find out who lived in  
9 that apartment.

10 A Yes, sir, we did.

11 Q Who lived in that apartment?

12 A Tarus Henry, his wife and two children, I believe.

13 Q And is Tarus Henry the defendant in this case?

14 A Yes, sir, he is.

15 Q Okay. And do you happen to know the exact address of  
16 that apartment?

17 A Right off top of my head, no. It's  
18 Apartments on Highway 76 east.

19 Q But we do know that that's where he lived?

20 A Yes, sir, that's correct.

21 Q That's where she was living?

22 A Yes, sir.

23 Q In regards to the collection of evidence in this  
24 case, did you receive any evidence or take possession of  
25 any evidence yourself in this case?

1 A Yes, I did.

2 Q What was that item?

3 A I responded to McLeod Regional Medical Center at a  
4 later point in time. Corporal Moore was still processing  
5 the scene. As I responded up there, I collected the  
6 blanket and some clothing articles that she was clothed  
7 with.

8 Q Now, you done this a long time?

9 A Yes, sir.

10 Q Would you explain to the jury while we are concerned  
11 about who retrieves evidence and what happens with it?

12 A Main concern with the evidence is maintain the  
13 integrity of that evidence for the later analysis. The  
14 more hands that touch it, the more chance for destruction  
15 of any type of evidence that may be present on the  
16 articles. Furthermore, the destruction of evidence can  
17 take place, you know, if it's not handled properly or  
18 packaged properly, so time is of the essence in this those  
19 cases.

20 Q And there protocols that you all follow -- do you  
21 know if those were followed in this case?

22 A Yes, they were.

23 Q And so you retrieve items from the hospital?

24 A Yes, sir.

25 Q And do you know what you did with those items?



1 A Those items were taken back to the Florence County  
2 sheriff's office to be air dried in the evidence drying  
3 cabinet and to be packaged for later analysis.

4 Q And do you know the name of the officer that was in  
5 charge of the evidence -- collecting evidence at the  
6 sheriff's department?

7 A Our evidence custodian was Kim Cockfield at that  
8 time. And also Adam Moore would be handling most of the  
9 evidence in the case.

10 Q All right. Does that conclude your involvement in  
11 this case?

12 A Yes, sir, it does.

13 Q Is there anything I neglected to ask you?

14 A No, sir.

15 Q Anything that you need to add?

16 A No, sir.

17 MR. HILL: Thank you. Please answer any questions  
18 that the defense may have.

19 CROSS-EXAMINATION

20 BY MS. PARROTT:

21 Q Thank you, Lieutenant. As part of forensics, you  
22 take the crime scene as you find it; correct?

23 A Correct.

24 Q It's not something that you're trying to contribute  
25 to whatever it is, you just simply are processing the

1 evidence that you find and what you believe to be  
2 evidence; correct?

3 A That's correct.

4 Q And did you actually touch anything on the scene at  
5 Patriot's Place?

6 A No, I did not.

7 Q The only time that you ever came into contact with  
8 evidence on this case would be at McLeod Hospital?

9 A That is correct.

10 Q And do you know how it got to you at McLeod?

11 A Yes.

12 Q How many people touched it before you?

13 A We maintain chain of custody, you know, as to what  
14 they stated on their chain of custody only one individual  
15 touched the clothing and it was turned over to me.

16 Q Okay. But you weren't there to see how it was being  
17 processed from the time she went in the ER to when it got  
18 to you; correct?

19 A No, it was not.

20 Q So you relying on what they say?

21 A Yes.

22 MS. PARROTT: Nothing further, Your Honor.

23 THE COURT: Redirect?

24 MR. HILL: Yes, Your Honor. I just need a moment to  
25 withdraw the evidence from its packaging.

1 THE COURT: Okay.

2 REDIRECT EXAMINATION

3 MR. HILL:

4 Q Hand you a box of gloves and a pair of scissors. Ask  
5 if you would to open the container.

6 A I'm only going to need one glove.

7 THE COURT: Do you want to tell how you got hurt like  
8 that? I mean, was it at home?

9 MR. LUTCKEN: We want go into that right now. I will  
10 plead the fifth on that one.

11 A The form that I remove from the box is Florence  
12 County sheriff's office it's an evidence log sheet, it's  
13 what we record everything on that we take into evidence.  
14 And we turn in the evidence the way we can also maintain  
15 chain of custody on this stuff. Inside the bag itself is  
16 a one bra, a pair of panties, and a black tank top. You  
17 want me to remove these from the bag.

18 Q At this time, I just ask if you would examine the  
19 contents of the bag let us know if you have everything?

20 A In the biohazard bag is a blanket that she was  
21 wrapped with, that she went into the ER with.

22 Q Okay. Mr. Lutcken, are those the items that you  
23 recall receiving from the McLeod emergency room?

24 A Yes, sir, I received them from a Becky Green.

25 Q Okay. And do you know Ms. Green's position at the

1 hospital?

2 A She's an RN.

3 Q You may have a seat. So the items that were in that  
4 box were items that were taken into evidence from McLeod  
5 Hospital?

6 A Yes, they were. As I said, it is a bra, a pair of  
7 panties, a black tank top and also the blanket that she  
8 went in with.

9 Q And do you know what you did with those items?

10 A Those items were taken back to the sheriff's office  
11 to be processed in our laboratory. First process would  
12 have been to air dry them and then package them to be  
13 analyzed.

14 Q So in terms of the people that handle them, they came  
15 to you from the nurse at the hospital. And then you took  
16 them to the evidence room Florence County sheriff's  
17 office?

18 A Yes, sir.

19 MR. HILL: Your Honor, I just would request at this  
20 time I'm not sure if there's an objection. I can continue  
21 through other witnesses to lay a foundation, but would  
22 there be an objection at this time to admitting the  
23 evidence that we had discussed with Officer Lutcken?

24 THE COURT: Well, you offered into evidence and then  
25 she will have a chance to object. You offer it into

1 evidence?

2 MR. HILL: I do.

3 THE COURT: You object?

4 MS. PARROTT: I do, Your Honor. I believe we're  
5 going to need the ---

6 THE COURT: Objection is sustained. The chain of  
7 custody is a strict rule in terms of chain by chain, link  
8 by link. Proceed.

9 MR. HILL: Thank you. With that in mind, that  
10 concludes questions I have for Mr. Lutcken.

11 THE COURT: Okay.

12 MS. PARROTT: I'm sorry excuse me, nothing further.

13 THE COURT: Okay.

14 MS. PARROTT: And no objection to his being excused  
15 either.

16 THE COURT: He's excused.

17 (WHEREUPON, the witness leaves the witness stand.)

18 THE COURT: Next witness, please.

19 MR. HILL: Your Honor, in terms of schedule, my next  
20 witness is Corporal Adam Moore.

21 THE CLERK: Do you swear to tell the truth, the whole  
22 truth, and nothing but the truth so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Please be seated and state your full name  
25 for the record.

1 THE WITNESS: Adam Moore.

2 WHEREUPON,

3 Adam Moore,

4 after first having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HILL:

7 Q Officer Moore, were you involved in the investigation  
8 of this case?

9 A I was.

10 Q And was Lieutenant Lutcken your supervisor during  
11 this investigation?

12 A He was.

13 Q All right. And do you have with you your reports and  
14 logs and evidence sheets with you to testify today?

15 A Yes, I do.

16 Q Were you responsible for the collection of evidence  
17 at the scene?

18 A Yes, sir.

19 Q Okay. Did you also take numerous photographs during  
20 your investigation?

21 A I did.

22 Q And you had a chance to review those paragraphs?

23 A I have.

24 Q Mr. Moore, I need to show you copies of photographs.  
25 Would you examine those quickly and just let us know if

1 you recognize those. And if they're photographs that you  
2 took?

3 A All of those are photographs that I took.

4 Q Did you also take photographs of an automobile that  
5 was collected as evidence in this case?

6 A I did.

7 Q And ---

8 MR. HILL: Your Honor, the numerous photographs with  
9 which we reviewed with the Court, there's no objection to  
10 the photographs that I've shown defense counsel.

11 THE COURT: Numbers, please?

12 MR. HILL: The next number will be 14.

13 THE COURT: Fourteen through 49 in evidence without  
14 objection, Counsel?

15 MS. PARROTT: Yes, Your Honor.

16 (WHEREUPON, State's Exhibits Nos. 14-49 was admitted  
17 into evidence.)

18 THE COURT: Proceed.

19 BY MR. HILL:

20 Q Okay. In regards to your training, what instruction  
21 have you received in the handling and processing of  
22 evidence in crime scenes?

23 A From 2001 until 2004, I interned with Florence County  
24 sheriff's office as an intern in the evidence room. I  
25 learned a great deal about packaging and handling of

1 evidence through that. When I graduated from Francis  
2 Marion University in 2004, I went full-time with the  
3 sheriff's office in evidence room capacity. I was the  
4 evidence technician from 2004 through 2006. In 2006, I  
5 was promoted to the forensic technician, which is  
6 basically crime scene investigator. So I've had from 2001  
7 until present day hands on numerous classes regarding to  
8 preservation, collection, processing of evidence.

9 Q The numerous boxes here are you responsible for the  
10 items in these boxes?

11 A Initially, when I collect them, I'm responsible for  
12 them. Once I take them and turn them whether it be drying  
13 them out if they're wet, wet clothing, bloody clothing,  
14 has to be tried out or it will mold and therefore, ruin  
15 potential evidence. Any evidence that is wet or mold or  
16 bloody will be dried out in our drying cabinet at our  
17 laboratory at the sheriff's office. Then it is turned  
18 over to the evidence technician. At that time, the  
19 evidence technician was Kim Cockfield. So the evidence I  
20 would have collected it, plus taken it to the lab, air dry  
21 everything in our drying cabinet. And then turn the  
22 evidence over to Kim Cockfield in the evidence room. And  
23 then she's responsible for maintaining it after that.

24 Q I like at this point to show you the items. As we  
25 did with earlier witnesses, just ask you to -- if you can



1 identify the contents of each package?

2 THE COURT: Don't pull it out officer just look at  
3 it.

4 MR. MOORE: It's inside of another package.

5 THE COURT: All right. You understand we haven't got  
6 into the point of in evidence yet.

7 MR. MOORE: Yes, sir.

8 THE COURT: Known as chain of custody.

9 A In this package is a stack of napkins that was taken  
10 by me from the car at -- during a search warrant at our  
11 impound yard.

12 Q All right.

13 A In this package is a pair of black leather gloves  
14 also taken from the vehicle's trunk during that search  
15 warrant at our impound yard. This is one pair of blue  
16 jeans taken from the apartment at apartments  
17 by me on June the 25th 2008.

18 THE COURT: Counsel, so that you will be aware of the  
19 ultimate ruling on this matter for purposes of  
20 inculcation, right now I'm following the rule in State vs.  
21 Robert Carter, that is chain by chain, link by link chain  
22 of custody rule. It may be at some point we hit the case  
23 of Freeburger. And obviously, when we get to Freeburger,  
24 we talking about fungibility as juxtapose to  
25 non-fungibility. Maybe some of these items forward in the

1 non-fungibility rule articulated and enunciated in  
2 Freeburger, just where we are.

3 MR. HILL: Yes, sir.

4 A In this box and bag is clothing from the defendant,  
5 Tarus Henry, taken by myself from -- after he had been  
6 booked in at our detention center in Effingham. It's one  
7 charcoal lighter fluid bottle taken from the trunk of the  
8 vehicle at our impound yard during the search warrant. It  
9 is one hammer taken from the apartment at  
10 Apartments on June 23rd. Those are two 20-pound dumbbells  
11 also taken from the apartment on June 23rd at

12 Apartment. In this bag is one pair of Nike shoes  
13 taken when the subject was booked into the Florence County  
14 detention center from the defendant, Tarus Henry. One tan  
15 colored shirt taken from the apartment at  
16 Apartments. Two wash cloths, rags taken from the  
17 apartment. It's one pair of blue jeans taken from the  
18 apartment. And one wallet containing ID of driver's  
19 license of Tarus Henry that was in the pants collected  
20 from the apartment.

21 Q I'm sorry this is such a laborious task.

22 A That is one machete taken from the apartment at  
23 Apartments.

24 THE COURT: Let the record show, I'm handing that to  
25 the bailiff. Lock it in the evidence room until we need

1 it again. Hand it to the bailiff.

2 BY MR. HILL:

3 Q Moving on with the evidence. Corporal Moore, which  
4 items of evidence were not delivered to SLED for testing?  
5 Do you have those items listed?

6 A The dumbbells, the two 20-pound dumbbells, one  
7 hammer, one purse, the bra, pair of panties, black tank  
8 top, and blanket from Miss Parker taken from McLeod.  
9 Those are not sent to SLED. The bottle of charcoal  
10 lighter fluid was not sent to SLED. The clothing that was  
11 taken from Tarus Henry except his shoes were not sent to  
12 SLED. His shoes were sent to SLED. The pair of blue  
13 jeans from the apartment taken on June 25th 2008, that  
14 were the victim's jeans were not sent to SLED -- well,  
15 they were sent to SLED I'm sorry. So those were the items  
16 not sent to SLED.

17 Q And the items that you just listed that weren't sent  
18 to SLED you examine those this morning?

19 A Yes, sir.

20 Q And are those items in the same condition they were  
21 in at the time you took them into evidence and placed them  
22 into evidence room Florence County sheriff's office?

23 A Yes, they are.

24 MR. HILL: Your Honor, based upon that representation  
25 and testimony, the State would move those following items

1 be admitted into evidence.

2 THE COURT: What says defense?

3 MS. PARROTT: Your Honor, I object.

4 THE COURT: What grounds?

5 MS. PARROTT: To one, just one item. And I would  
6 like to approach if we could on that.

7 THE COURT: Well, let me take care of the items.  
8 There is no objection in terms -- can you tell me the  
9 numbers of the items that there are.

10 MS. PARROTT: No objection to the purse, the bra,  
11 panty's, tank or blanket, charcoal fluid or Mr. Henry's  
12 clothes at booking.

13 THE COURT: All right. Can you give me those  
14 numbers? Do you know them?

15 MR. MOORE: They haven't been entered into evidence.

16 COURT REPORTER: They are not marked.

17 MS. PARROTT: Your Honor, may I approach, so I can  
18 know what...

19 THE COURT: Sure, yes, yes.

20 (WHEREUPON, a pause in the proceedings.)

21 THE COURT: Clothing number 50. All right, in  
22 evidence without objection. Proceed.

23 (WHEREUPON, State's Exhibit No. 50 was admitted into  
24 evidence.)

25 THE COURT: Fifty-one, 52.

1 MR. HILL: Your Honor, there's no objection to the  
2 machete being entered into evidence as well.

3 THE COURT: All right, Miss Court Reporter, the  
4 machete is marked into evidence without objection at the  
5 recess. Please, place a number on that item. Fifty-three  
6 is the machete.

7 (WHEREUPON, State's Exhibits Nos. 51 and 53 was  
8 admitted into evidence.)

9 MR. HILL: And, Your Honor, while we're at the bench,  
10 I believe there is an objection to one of the items. It's  
11 been referenced. At this time, the State does not intend  
12 to offer that item into evidence.

13 THE COURT: Draw it back get it away from the pile.

14 MS. PARROTT: Thank you, Your Honor.

15 MR. HILL: Your Honor, since these items have been  
16 admitted into evidence, the State would ask permission to  
17 present those to the jury.

18 THE COURT: You may do so.

19 MR. HILL: Thank you, Your Honor.

20 THE COURT: Jurors, you probably understand this, but  
21 let me make it crystal clear. In regard to items that are  
22 presented into evidence, you will have all of those in the  
23 jury room when I give you the case for decision. So as  
24 you look at photographs or items in evidence, just bear in  
25 mind you will have the right to inspect those personally

1 in the jury room. Proceed.

2 A This is the charcoal lighter fluid bottle that was  
3 taken from the trunk of the vehicle during a search  
4 warrant. It, of course, was not found in that condition.  
5 It has been processed by myself with cyanoacrylate fuming,  
6 which is superglue fuming for fingerprints. And then I  
7 applied black fingerprint powder to the bottle attempting  
8 to find any type of fingerprints that may have been on the  
9 bottle. There were no fingerprints found on this bottle.  
10 Charcoal lighter fluid...

11 Q What's your next itemed?

12 A Okay. This is the clothing from the Florence County  
13 detention center booking. This is what the defendant,  
14 Tarus Henry, was wearing when he was booked in our  
15 detention center. This is a shirt. There are a pair of  
16 underwear and a pair of black socks in the box as well, a  
17 pair of blue jeans. That was all we marked.

18 Q Officer, at this time, I also like to publish to the  
19 jury the following photographs.

20 THE COURT: Seriatim by number, so that the record  
21 will be pristine.

22 MR. HILL: Yes, Your Honor.

23 BY MR. HILL:

24 Q Beginning what's been marked as State's Exhibit  
25 Number 14, you recognize this photograph?

1 A I do, that is a photograph of the front license plate  
2 of the vehicle during the search warrant at our impound  
3 yard.

4 Q Do we know that that was the vehicle driven in this  
5 case?

6 A Yes, sir, we do.

7 Q Next photograph is State's Number 15. This is the  
8 door leading into the apartment?

9 A Yes, sir, that is. It was apartment  
10 Apartments.

11 Q And the following will be State's Exhibits 16 and 17.  
12 What does that show?

13 A That is a close-up photograph of the entrance way.  
14 There was some linoleum, a little small square, that is a  
15 partial shoe impression in blood or a red substance. I  
16 scaled and photographed that for -- in case shoes were  
17 found we could try and do a comparison to see if the shoes  
18 were similar and to eliminate any type of -- if the  
19 fireman may have entered in with wearing those shoes, we  
20 could also eliminate them as walking through since there  
21 were numerous firemen in and out of the apartment as well.

22 Q And while we're on that subject, what can you tell  
23 us, if anything, about work that was done with a shoe  
24 impressions in this case?

25 A As far as shoe impressions go, we haven't entered the

1 shoes as evidence.

2 Q But were shoe impressions made?

3 A No, impressions made as far as warrant from our known  
4 sample. They were examined, there's not enough to make an  
5 affirmative to say, yes, these shoes that subject Henry  
6 was wearing were the same.

7 Q All right. And next line, please?

8 A That was a second photograph of a separate shoe  
9 impression on the linoleum tile at the front little area  
10 at the front door.

11 Q Next is State's Number 18?

12 A That is a photograph of the -- if you're standing at  
13 the door to the left of the entrance way once you step  
14 inside, is a dining room type area that is looking to the  
15 left of the door into the dining room area of the  
16 apartment.

17 Q State's Exhibit 19?

18 A That is a photograph of the shirt, tan shirt, blue  
19 jeans that contained a wallet with the ID's of Tarus  
20 Henry, a rag, and the machete that was also the picture  
21 that was previous to this one that was in the floor in  
22 that area in the living room in a pile. We had moved the  
23 blue jeans and the tan shirt out of the way to photograph  
24 what was under it and that was under it.

25 Q And those items went to SLED, I believe; is that



1 correct?

2 A Yes, sir, they did. They did go to SLED.

3 Q Number 20, State's Exhibit 20?

4 A That is a photograph in our laboratory doing a scale  
5 of the machete. I took everything and photographed it  
6 separately with scales to show what it look spread out  
7 instead of in a hep.

8 Q Next is State's Number 21?

9 A That is a pair of the blue jeans that were in the two  
10 pictures previous on the floor. Those are the -- I can't  
11 tell from looking, I don't know if that's the front or the  
12 back of those jeans kind of a glare.

13 Q Next is State's Exhibit Number 22?

14 A That is a picture -- once again, I can't tell if it's  
15 the front or the back of the tan shirt.

16 Q Next is State's Exhibit Number 23?

17 A That is a picture again looking to the left, that is  
18 the left corner where the right corner of the dining room  
19 looking to the left of the entrance way.

20 Q So we progress from the door around to the left?

21 A Yes, sir.

22 Q Next is State Number 24?

23 A That is a photograph of the kitchen area of the  
24 apartment.

25 Q Next is State's Number 25?

1     A     That is a picture of the kitchen sink and what  
2     appears to be blood in the kitchen sink.

3     Q     Was a swab made of that?

4     A     Yes, sir, a swab was taken from that area.

5     Q     And that was taken to SLED?

6     A     Yes, sir.

7     Q     Next is State's Number 26?

8     A     That is a picture looking into the kitchen at another  
9     angle, that is actually from the living room of the  
10    apartment, that would be to the right. And then the  
11    hallway looking at that picture, the hallway is  
12    immediately to the right, kitchen is straight ahead. The  
13    front door would be to your left if you're standing  
14    looking at that picture.

15    Q     So we gone through the photographs, we turn to the  
16    left, walk through the dining room, through the kitchen  
17    and now back out in the den; is that correct?

18    A     Yes, sir.

19    Q     Okay. Next is State's Number 27.

20    A     That is a picture showing the living room floor. The  
21    doorway is actually the doorway to the left walking  
22    through that hall would be the kitchen, straight ahead is  
23    the -- through that doorway is the hallway leading back to  
24    the bedrooms and the bathroom, that is a -- those are  
25    piles of different clothing and towels on the floor. The

1 victim's jeans can be seen in that picture on the floor  
2 beside the pink tube. You want me to point to it?

3 Q That's fine. What else the significance was in that  
4 picture?

5 A There right under where the towels are is a blood  
6 pool. There were three distinct pools of blood on the  
7 floor from where a body would have been bleeding for few  
8 minutes, not just moving. It would been -- the victim  
9 would have had to been there for a few minutes and bleed.  
10 And then was moved to a different area and bled, move to a  
11 different area and bled to create pools like that.

12 Q Next State's Number 28?

13 A That is looking through the front door to the right  
14 is the -- that's the front door -- standing at the front  
15 door that's looking straight ahead. And this is the  
16 right-hand corner where that window and then all of the  
17 furniture is there.

18 Q Next is State's Number 29?

19 A That is just to the right of the front door, that is  
20 a smaller dresser and a little -- a children's toy. All  
21 of that has a considerable amount of blood spatter on it  
22 to the left. You can see the John Deer little toy tractor  
23 is in the paper or towel under that is a pretty soaked in  
24 blood spatter.

25 Q Next is State's Number 30?

1 A That is the -- right there to about the center left,  
2 that's the little linoleum landing right in front of the  
3 front door, that is one the second or third blood pools in  
4 the apartment and that's showing one of the 20 pound  
5 dumbbells.

6 Q Next is State's Number 31?

7 A That is a picture of the inside of -- the front door  
8 has been closed and that is a picture shooting from --  
9 taken from standing behind the close door shooting towards  
10 the front of the apartment.

11 Q Next are State's Numbers 32 and 33?

12 A This is in the Florence County detention center  
13 booking area, that is a picture of the left shoe of Tarus  
14 Henry.

15 Q Next will be State's Number 36?

16 A Again, in the detention center, that is a picture of  
17 the right shoe of Tarus Henry.

18 Q Next is State's Number 35?

19 A You have the hard copy? State's Exhibit 36 is the  
20 bottom of the left shoe showing the tread pattern on the  
21 bottom of that shoe.

22 Q Next is State's Number 37? Next will be State's  
23 Number 38, this will be our number 70?

24 A That is a picture of the vehicle. Again, you can see  
25 the front license plate was the very first picture, that

1 is at our impound facility in Florence.

2 Q Next will be State's Number 39?

3 A That is a picture showing the front seat of the  
4 vehicle that's the driver side.

5 Q Next will be State's 40, our number 74?

6 A That picture is showing the passenger side front seat  
7 of the vehicle, the red notebook, and the napkins on top  
8 of that. The napkins did have what appeared to be a red  
9 substance.

10 Q Next will be State's Number 42, our 77?

11 A That is the backseat passenger side of the vehicle.

12 Q Next will be State's 44, our number 79?

13 A That is the left side of the trunk compartment of the  
14 vehicle.

15 Q Next will be State's 45, our number 80?

16 A That is the right side of the trunk compartment of  
17 the vehicle.

18 Q Next will be State's 46, our number 82?

19 A That is a close up of the left side of the trunk  
20 showing the charcoal lighter fluid bottle.

21 Q And then next is State's 47, our number 83?

22 A Again, a close up of the charcoal lighter fluid  
23 bottle.

24 Q State's 48, our number 84?

25 A That's a picture showing the front of the charcoal

1 lighter fluid bottle.

2 Q And finally, State's Number 49, our number 100?

3 A That is a photograph of the victim in McLeod Regional  
4 Medical Center taken July the 1st one of 2008.

5 Q Thank you. Officer Moore, did you make a diagram in  
6 reference to the investigation in this case?

7 A I did.

8 MR. HILL: Your Honor, the State would move into  
9 evidence the next consecutive number, this is a diagnose  
10 prepared by Officer Moore. It's a large version of it.  
11 However, there's no objection from the defense.

12 THE COURT: Fifty-four in evidence without objection;  
13 correct, Counsel?

14 MS. PARROTT: Yes, Your Honor.

15 THE COURT: Thanks.

16 (WHEREUPON, State's Exhibit No. 54 was admitted into  
17 evidence.)

18 BY MR. HILL:

19 Q Mr. Moore, would you step down, please. And would  
20 you describe to the jury what we're looking at?

21 A This is a, of course, not to scale diagram of the  
22 apartment, that in the very just a brief sketch of what  
23 all was on scene as I -- when I found it. The address is  
24 here Apartment I documented areas  
25 where I had collected and photographed selected evidence.

1 The -- of course, the front door of this is where the shoe  
2 impressions were in blood, I think the second or third  
3 photographs that we looked at. The three blood pools that  
4 I was describing are here along with the victim's pants  
5 that were also in the photographs described. The blood  
6 stains in this corner would have been the shoe cubby, the  
7 little John Deer toy tractor that would have been here  
8 with the little small chester drawers or dresser there in  
9 this area.

10 Q Officer Moore, in regard to the blood pools or blood  
11 stains that you noted, how was evidence taken and how was  
12 that processed and where is that evidence and what are  
13 we...

14 A The blood evidence was process or collected by  
15 myself. We take sterile swabs, which are basically  
16 Q-tips, long single ended Q-tips. They're sterile until  
17 the packages open. And then, of course, they become  
18 exposed to the environment. We use -- if it is wet blood,  
19 we just take the swabs and get a blood sample off the  
20 evidence, whatever we need to collect on the swabs.  
21 They're then taken back to our office in a secured  
22 capacity and air dried. After that, they're packaged in  
23 envelopes and sent to SLED for processing for DNA. They  
24 can do a number of different DNA processes at SLED. In  
25 this case, it would have been blood DNA to determine who's

1 blood it was. At the blood pool here, I collected a set  
2 of swabs at the blood stains around the shoe. I also  
3 collected a set of swabs. I have to refer to my notes.

4 Q We will do that in just a moment.

5 A But all of the samples were collected in that manner.  
6 The dried blood stains that were like around the shoe  
7 cubby, we used sterile water and dip the Q-tips in sterile  
8 water and then rub it on the area to remoisten it and that  
9 way we can actually collect a good sample of the blood.  
10 And that's how those were taken from here and the blood  
11 drops at the kitchen and the kitchen sink were also  
12 collected in that same manner.

13 Q Were there other areas where you located blood?

14 A Yes, sir, blood was located from basically the entire  
15 house. There was -- the majority of blood was here.  
16 There was blood in the kitchen. There was an electrical  
17 outlet in the hallway and just -- I choose that as a  
18 sample. We can only submit a certain number of samples to  
19 SLED, so we kind of are limited in how much we can  
20 actually collect. They only take a certain number of  
21 samples, so I had to kind of pick and choose where I  
22 needed to take samples from. But I collected samples from  
23 the majority of the house even back into this back bedroom  
24 in the pictures you saw looking down the hallway a very  
25 small two-door, two-drawer filing cabinet that had actual



1 smears on it that was -- it was sent to SLED as well. And  
2 there was blood located from the bedroom on the bathroom  
3 door, all the way down the hallway, the kitchen, and then  
4 the majority was in this front living room area.

5 Q And I think there is also -- when was the machete  
6 found?

7 A The machete was here where the clothing and the  
8 machete was altogether in a pile here.

9 Q All right. Thank you. You may have a seat. Mr.  
10 Moore, regarding the evidence that was taken and collected  
11 sent to SLED, have -- has that been presented to you so  
12 far in your testimony or is that elsewhere? The evidence  
13 that was sent to SLED has that been presented to you to  
14 testify about yet?

15 A The evidence that was sent to SLED? Oh, yes, sir,  
16 some of it has been returned and it was -- we did go  
17 through it today.

18 Q Okay. All right. Some of it however has not been  
19 entered into evidence; is that correct?

20 A That's correct.

21 Q All right. And is that because possibly another  
22 person handled it as well?

23 A Yes, that is correct.

24 Q And some of it was tested as well; is that correct?

25 A Yes.

1 Q And are you able to testify about that evidence or  
2 would that need come from the person that actually handled  
3 it and tested it?

4 A I can testify that I actually collected it and that  
5 it was turned over to our evidence technician and then our  
6 evidence technician transported the evidence to SLED. And  
7 after that, we cannot testify to anything that happens at  
8 SLED.

9 Q All right. I believe -- I know this is a lot of  
10 evidence and I just -- did you collect swabs from a file  
11 cabinet in a front door?

12 A Yes.

13 Q And a kitchen sink?

14 A Yes, sir.

15 Q And locations inside the automobile the passenger  
16 side seat and the driver side door handle?

17 A Yes.

18 Q Okay. Was there an occasion where you took a swab of  
19 DNA from the victim Carol Parker?

20 A I did. On Tuesday July the 1st of 2008, I had gone  
21 -- I went to McLeod Regional Medical Center to meet with  
22 the victim. And I talk to her and told her who I was, why  
23 I was there what I needed to do is actually take -- again,  
24 the sterile swabs, Q-tips, and get a set of mucle (sic)  
25 swabs, which is basically just cheek skin cells for DNA.

1 SLED can take DNA either from blood or from mucle swabs  
2 and I collected a set of mucle swabs from the victim,  
3 Carol Parker, on July the 1st. And those were submitted  
4 to SLED as a known comparison sample.

5 Q Was blood taken from the defendant in this case?

6 A It was.

7 Q And what role, if any, did you have in the collection  
8 of processing of that item?

9 A On -- the investigator in the case got a Schmerber  
10 order, which is basically a court order for the subject to  
11 give us his blood. You can either -- there's certain ways  
12 that you can go about getting blood, you can ask someone  
13 if you'll give us permission to get blood from you and  
14 consent. In this case, the investigator got a Schmerber  
15 order or a court order. It's a order issued from a judge,  
16 so that the person has got to give us his blood. And I  
17 had that court order given to me and I executed the court  
18 order on 8-1-2008, August the 1st 2008. Basically, the  
19 way we go about getting a court order is for a purple top  
20 tube of blood, that's the little glass vials with purple  
21 tops that they draw blood from like at hospitals, like at  
22 doctor's offices that type of thing. A certified nurse  
23 has to perform that. And on August the 1st, I took that  
24 court order to our nurse's station in the detention center  
25 and in Florence County and I gave it to her and Subject

1 Henry was brought up to the nurse's station and presented  
2 with a court order. He gets -- got a copy of it so that  
3 he could have it for his records. And our nurse, Maurene  
4 Nogy, actually draw the blood while I was present. I  
5 observed her draw the blood from Subject Henry, that blood  
6 was then -- as soon as it was drawn, it was put in a bag,  
7 a bubble wrap type, so it want bust. And it's given to me  
8 as evidence. And then I took it and put it in our  
9 refrigerator in the evidence room and logged it in so that  
10 we can take it to SLED as the known DNA comparison sample  
11 for the defendant.

12 Q So all of the blood swabs were taken by you and  
13 placed into evidence; is that correct?

14 A Yes.

15 Q And then later delivered to SLED by one of your  
16 agents; is that correct?

17 A Yes.

18 Q You took all the photographs that we viewed today; is  
19 that correct?

20 A Yes.

21 Q To your knowledge, was there anyone else other than  
22 Nurse Nogy that took the evidence, the blood, and a nurse  
23 at McLeod that took the victim's clothes that were  
24 involved in the handling of the evidence here in Florence  
25 County?

1 A The victim's clothing was again like as Lieutenant  
2 Lutcken said it was collected by Becky Green, but I took  
3 the mucle (sic) swabs from the victim myself and I  
4 transported them back to the sheriff's office as evidence.

5 Q And you handled all the other evidence; is that  
6 correct?

7 A Yes, sir, except for the ones aforemention by  
8 Lieutenant Lutcken.

9 Q There's a lot to go over. Do you recall testifying  
10 about the charcoal lighter fluid bottle that you found?

11 A Yes.

12 Q Tell us about the fingerprints, were any found?

13 A No, no fingerprints were found.

14 Q Why not? Do you have an answer for that?

15 A Fingerprints are basically water and proteins and  
16 sweat that is secreted from pores in your fingerprints.  
17 They are fairly resilient at times, but they also can be  
18 very easily wiped away. They can be destroyed very  
19 easily, wiped away numerous ways to get rid of  
20 fingerprints.

21 Q Was there any items submitted to SLED regarding  
22 fingerprints?

23 A The black machete was submitted for latent  
24 fingerprints at SLED.

25 Q All right. Is -- there's so much evidence that we

1     looked at. To your knowledge, is there anything that you  
2     handled that we have not discussed with you?

3     A     Not that I have seen.

4     Q     Other than the evidence that went to SLED and it's  
5     still there; is that correct?

6     A     Yes, sir.

7     Q     Officer Moore, did you make any comparisons of shoe  
8     prints based on what you saw on the linoleum?

9     A     The only thing that we could do because they were  
10    partial shoe impressions was just kind of look to see if  
11    the impressions were similar. And the patterns on the  
12    shoes collected from the subject at the detention center  
13    appeared to be a similar pattern to the shoe impressions  
14    in blood on the linoleum floor at the front porch. But I  
15    can't say, yes, these are the exact shoes, but they are a  
16    consistent pattern with the -- the pattern in blood.

17    Q     Are you able to say that -- what can you say  
18    regarding exclusion, if anything?

19    A     The shoes certainly could not be excluded. It is a  
20    very -- I mean, the same type of pattern of shoe, so the  
21    shoes that Subject Henry was wearing very well could have  
22    made those impressions.

23           MR. HILL: Your Honor, at this time, that's all the  
24    State has on direct.

25           THE COURT: Cross-exam.

CROSS-EXAMINATION

1

2

BY MS. PARROTT:

3

Q And again, you work forensics, but what you do is you take the scene as you find it; correct?

5

A That's correct.

6

Q Okay. But in this case, you also said that you're only allowed to submit so many samples to SLED?

8

A That's correct.

9

Q So you choose what to send by what you believe to be evidence or what you think might be evidence; is that correct?

11

12

A I conferred with Lieutenant Lutcken and we collected the best samples from the apartment that would enable us to go forward with prosecution with the case.

14

15

Q Okay. But you're saying you collected the best samples for prosecution, but you're still making that determination as to what you think you need to prosecute the case; correct?

18

19

A Yes, from based on experience combined with Lieutenant Lutcken and myself.

20

21

Q You knew the firefighters had been in there. In fact, you arrived when firefighters were still on the scene; correct?

23

24

A Yes, there were still firefighters there when I arrived.

25

1 Q So you don't know how the scene looked prior to them  
2 being in there?

3 A No, ma'am.

4 Q Whenever you go and you take pictures of things when  
5 they're even not at the scene of it as it is, but like the  
6 car in this case. Again, you're taking it as you find it,  
7 right?

8 A Yes.

9 Q But you have no idea who might have had access to  
10 that scene or that car?

11 A In certain cases, we may know who was in the car with  
12 this case. The subject arrived in Lee County with the  
13 vehicle and his two children and left it at his brother's  
14 house.

15 Q So you can account for a day -- a day or so or the  
16 date of this occurrence or at least once we're in Lee  
17 County, but you have no idea who had been into it prior to  
18 that?

19 A Previous?

20 Q Right.

21 A No.

22 Q And same thing for the apartment you have an idea who  
23 may have been around?

24 A No, ma'am.

25 Q And since you arrived after firefighters, you don't



1 know what happened prior to them or prior to you, would  
2 you?

3 A No.

4 Q Be outside of what you would have any idea of, right?  
5 Okay. You collected some things, but not everything was  
6 sent to SLED?

7 A No, again, we're limited by SLED only what we can  
8 send.

9 Q But as the investigation progresses also, you kind of  
10 still make more determinations about what you believe to  
11 be evidence; correct?

12 A Yes.

13 Q And that's the reason you went back on June 25th?

14 A Yes.

15 Q And collected what were her jeans, I believe?

16 A Yes.

17 Q Do you have any idea who had been in there between  
18 the 23rd when this occurred or after you left after  
19 closing out the scene?

20 A On the 23rd?

21 Q Right.

22 A No, the scene was secured and locked until we got  
23 back.

24 Q You say on your crime scene data sheet you say you  
25 leave at 4:12 p.m; is that what you recall?

1     A     That is what my sheet says we left from there and  
2     then proceeded to Kershaw County Medical Center and then  
3     went to Lee County to get the vehicle and then back to  
4     Florence.

5     Q     But -- and can you define -- can you tell everybody  
6     what a CAD report is?

7     A     CAD report is a sheet generated by dispatch that has  
8     times and numerous things. I really don't know exactly  
9     how it works, but...

10    Q     But this is something that details how people arrive  
11    and how ---

12    A     It has what their computer says or the time of  
13    arrivals and departures and time the cases are completed  
14    and that type of thing.

15    Q     Do you know what time the scene was actually closed  
16    out on the CAD report?

17    A     I do not.

18           MS. PARROTT: Permission to approach?

19           THE COURT: Sure.

20           MR. HILL: Your Honor, as a technicality and  
21    objection, he can testify as to his own knowledge. I  
22    would object to his testifying as to what someone else may  
23    have given.

24           MS. PARROTT: I'll rephrase.

25           THE COURT: Okay.

1 BY MS. PARROTT:

2 Q Do you consider the scene close when you leave even  
3 though firefighters may still be checking in on it?

4 A There were no firefighters there when I left.

5 Q Okay. You've talked about fingerprints on this  
6 charcoal lighter fluid bottle?

7 A They were none on the lighter bottle.

8 Q And you say that sometimes they get destroyed, but it  
9 just may be that the surface itself just want record them;  
10 correct?

11 A It can be. There are certain surfaces that do not  
12 hold a fingerprint the -- in some cases, yes, that is  
13 true.

14 Q So it may be that a bunch of people have held this  
15 bottle, it may be that no one has held this bottle. It  
16 just -- you don't have any idea when you have no  
17 fingerprints; correct? It doesn't mean that it was  
18 destroyed?

19 A Well, rephrase the question.

20 Q You have no idea how many people have handled that  
21 charcoal bottle excuse me -- lighter fluid bottle many or  
22 none?

23 A It's possible.

24 Q It's not that the evidence may have been destroyed,  
25 it's just it may not even be there?

1 A That could be.

2 Q The shoe impressions that you talked, you said that  
3 it's a partial that you couldn't make a full impression of  
4 it because it was a partial; isn't that right? You can't  
5 make an actual mold of the impression?

6 A No, it was on a flat surface.

7 Q Okay. And you said you also can't make a certain  
8 determination as to it because it was a partial; correct?

9 A That is correct.

10 Q So all you can say is that this shoe is consistent  
11 with something that was there on the scene that may be  
12 even mass marketed?

13 A Well, it is, there's tons of Nike shoes out there  
14 that have that same tread pattern.

15 MS. PARROTT: Nothing further.

16 THE COURT: Redirect?

17 MR. HILL: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. HILL:

20 Q Corporal, were all the items that were collected that  
21 required testing was sent to SLED for testing?

22 A Yes, they were.

23 Q So every item you collected was tested?

24 A It was. We were limited to our -- what the SLED  
25 policy stated, but they actually went around their policy

1 and actually tested more than what we're allowed to send.

2 Q So they tested everything?

3 A They did everything that we needed tested, they would  
4 test it.

5 Q So everything you collected was -- everything was  
6 tested.

7 MR. HILL: That's all I have. Thank you, Your Honor.

8 THE COURT: Recross?

9 MS. PARROTT: Yes, Your Honor.

10 RECROSS-EXAMINATION

11 BY MS. PARROTT:

12 Q You stated that somethings you did not send to SLED;  
13 correct?

14 A Not everything was sent to SLED. The items that we  
15 needed tested that were sent to SLED and items that were  
16 not needed to be tested were not sent to SLED.

17 Q And again, it's your determination as to what you  
18 need to be tested?

19 A Yes.

20 Q In fact, in this case didn't you send dumbbells and a  
21 hammer; correct?

22 A Yes, that's correct.

23 Q And determine that those aren't even evidence of the  
24 case; correct?

25 A No, found no cause to have those that they were used

1 in any capacity in this case?

2 MS. PARROTT: Thank you.

3 THE COURT: All right. You may step down.

4 (WHEREUPON, the witness leaves the witness stand.)

5 MR. HILL: Your Honor.

6 THE COURT: Yes.

7 MR. HILL: Regarding Corporal Moore, I'd ask if  
8 possible that he not be excused. He may be needed just in  
9 terms of chain later on in order to put in some evidence.

10 THE COURT: Hang with us.

11 MR. HILL: So we'd ask that he be allowed to be  
12 recalled simply for those purposes.

13 THE COURT: Jurors, we'll stop here for the lunch  
14 respite. Please remember my instructions from yesterday  
15 concerning the two rules. Do not discuss the case among  
16 yourselves under any circumstances. Do not let anyone  
17 discuss it with you, any outsider. And today there has  
18 been television coverage of the trial from Channel 15. Do  
19 not watch Channel 15 during your lunch break. 1:45, can  
20 everybody be back by 1:45? It's almost 12:30 that gives  
21 you a little more than an hour. And this afternoon, I'll  
22 run it down to five o'clock make as much progress as we  
23 can. You may leave now. No one but the jury, please.

24 (WHEREUPON, the jury was excused for a lunch break.)

25 THE COURT: The State need to put anything on the

1 record?

2 MR. HILL: Not on the record.

3 THE COURT: 1:45, 1:45.

4 (WHEREUPON, a lunch break was taken.)

5 THE COURT: I hope everyone had a nice lunch.

6 Next witness, Mr. Hill.

7 MR. HILL: Thank you, Your Honor. At this time, the  
8 State would call Ms. Kim Cockfield.

9 THE COURT: Okay.

10 THE CLERK: If you will, ma'am, place your left hand  
11 on the Bible and raise your right hand. Do you swear to  
12 tell the truth, the whole truth, and nothing but the truth  
13 so help you God?

14 THE WITNESS: Yes, ma'am.

15 THE CLERK: Please be seated and state your full name  
16 for the road.

17 THE WITNESS: Jennifer Kim Cockfield.

18 WHEREUPON,

19 J. Kim Cockfield,

20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 MR. HILL:

23 Q Okay. Ms. Cockfield, were you employed by the  
24 Florence County Sheriff's Department in 2008?

25 A Yes, I was.

1 Q In what capacity?

2 A I was the evidence technician.

3 Q All right. And did that require you to take  
4 possession of the evidence that's been collected in this  
5 case?

6 A Yes, sir.

7 Q Have you had an opportunity to review documents  
8 containing your signature prior to your testimony today?

9 A Yes, sir.

10 Q Have those help refresh your recollection about what  
11 happened in this case?

12 A Yes, sir.

13 Q What particular training did you have in regards to  
14 evidence collection and or handling at the sheriff's  
15 department?

16 A Prior to being an evidence technician, I was a crime  
17 scene technician at the sheriff's office.

18 Q And so you been certified through SLED and those  
19 sorts of things?

20 A Yes, sir.

21 Q Did you have an opportunity to receive evidence that  
22 was collected in this case?

23 A Yes, sir, I did.

24 Q Ms. Cockfield, I'm going to show you documents, I  
25 believe, copies of which you have. Would you examine that



1 document and tell me if you recognize it?

2 A These are items that were submitted to SLED.

3 Q All right. I'm going to show you this as well?

4 A It's a submission form for items that were sent to  
5 SLED.

6 Q Okay. Would you describe the process that you have  
7 to follow for delivery of these item at SLED for testing?

8 A They're log out the evidence computer, taken by me to  
9 SLED in Columbia, it's on Broad River Road. They're  
10 logged in to a particular person, their evidence  
11 technician.

12 Q And once they are collected by the evidence  
13 technician at SLED, do you have any other involvement with  
14 those items?

15 A No, sir, not once I return them from SLED.

16 Q How many items -- how many trips if you could  
17 estimate did you make to SLED involving deliveries of  
18 evidence to SLED?

19 A It's usually every week if not twice a week for the  
20 entire time I was the evidence technician.

21 Q All right.

22 MR. HILL: Your Honor, I've had discussions with  
23 defense counsel and based upon testimony from  
24 Ms. Cockfield, I'd ask lead to enter these into evidence  
25 as State's Exhibits? These are forms showing that the

1 items that were placed into evidence or will be placed  
2 into evidence were delivered to SLED.

3 THE COURT: Fifty-five and 56 in evidence without  
4 objection. Suitable?

5 MS. PARROTT: Yes, sir.

6 THE COURT: Okay.

7 (WHEREUPON, State's Exhibit Nos. 55-56 was admitted  
8 into evidence.)

9 MR. HILL: Please answer any questions that the  
10 defense may have.

11 CROSS-EXAMINATION

12 BY MR. PARROTT:

13 Q Ms. Cockfield, when you handled the evidence, you did  
14 not in anyway tamper with any seals that may have been on  
15 the evidence; is that correct?

16 A Correct.

17 Q Would have tried to open it up even at SLED?

18 A No, ma'am.

19 Q You just -- you were basically the delivery person  
20 taken it from where you received it in Effingham up to  
21 SLED for SLED to test it?

22 A Yes, ma'am.

23 Q And then possibly coming back with it?

24 A Yes, ma'am.

25 MS. PARROTT: Nothing further, Your Honor.

1 THE COURT: Redirect?

2 MR. HILL: None, Your Honor.

3 THE COURT: You may step down. You want to excuse  
4 her out right.

5 MR. HILL: Yes, Your Honor.

6 THE COURT: Thank you very much.

7 (WHEREUPON, the witness leaves the witness stand.)

8 THE COURT: Next witness, please.

9 MR. HILL: Officer Larry Quick.

10 THE CLERK: Do you swear to tell the whole truth, the  
11 whole truth, and nothing but the truth so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Please be seated and state your full name  
14 for the record.

15 THE WITNESS: I'm Larry Howard Quick.

16 WHEREUPON,

17 Larry H. Quick,

18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. HILL:

21 Q Mr. Quick, prior to working with the sheriff's  
22 department, where were you employed?

23 A I was employed with the detention center, I work  
24 there for almost approximately six years.

25 Q Okay. And when did you go to work with the sheriff's

1 department?

2 A July 1st.

3 Q All right. In what capacity, do you work there?

4 A I am the evidence technician.

5 Q All right. And you began your work there on July  
6 1st?

7 A Yes, sir.

8 Q All right. Did you have any involvement in the case  
9 that we're trying today?

10 A Just one time -- well, actually twice where I kind of  
11 showed like each of the items to each of the lawyers and  
12 also when one time went to Columbia to carry some swabs to  
13 Columbia to Broad River.

14 Q All right. I'm going to approach you and show you a  
15 document as if you recognize this one?

16 A Yes, sir. This is a copy of the swabs that we  
17 carried.

18 Q Were these items that are listed on the report items  
19 that were contained in the Florence County sheriff's  
20 office evidence room?

21 A Yes, sir.

22 Q And did you take them -- well, describe to the jury  
23 what you did with them?

24 A The items were pulled and they were sealed and each  
25 was kind of logged out of our computer stating it as

1 carrying it to SLED in Columbia and basically just took it  
2 up there and dropped it off to the SLED technician when  
3 she logged them in.

4 Q And did you sign a document indicating that you  
5 delivered them and dropped them with an evidence  
6 technician at SLED?

7 A Yes, sir.

8 Q And is that your signature on this document?

9 A Yes, sir.

10 MR. HILL: Your Honor, at this time, the State would  
11 move to have this document, SLED Laboratory Forensics  
12 Request, admitted into evidence I believe without  
13 objection.

14 MS. PARROTT: Without objection.

15 THE COURT: Fifty-seven in evidence.

16 (WHEREUPON, State's Exhibit No. 57 was admitted into  
17 evidence.)

18 BY MR. HILL:

19 Q Mr. Quick, does that conclude your involvement in  
20 this case?

21 A Yes, sir, it does.

22 MR. HILL: Answer any questions that the defense may  
23 have.

24 CROSS-EXAMINATION

25 BY MS. PARROTT:

1 Q Officer Quick, basically, the same thing you don't  
2 tamper with any evidence whatsoever, do you?

3 A No, ma'am.

4 Q You open some evidence myself, as well as for Mr.  
5 Hill so that we could expect it for the trial?

6 A Yes, ma'am.

7 Q But it was sealed back?

8 A Yes, ma'am.

9 Q And then placed right back -- all it stayed in the  
10 evidence room; correct?

11 A Correct, yes, ma'am.

12 Q And when you took the request and the items up to  
13 SLED, same thing you never opened it?

14 A No, ma'am.

15 Q And never touched any of it except to hand it to a  
16 tech up there?

17 A Correct, yes, ma'am.

18 MS. PARROTT: Nothing further, Your Honor.

19 THE COURT: Redirect?

20 MR. HILL: Nothing, thank you, Your Honor.

21 THE COURT: You may step down.

22 (WHEREUPON, the witness leaves the witness stand.)

23 THE COURT: Next witness, please.

24 MR. HILL: Your Honor, no objection to Mr. Quick  
25 being excused.

1 THE COURT: Suitable?

2 MS. PARROTT: Yes, sir.

3 THE COURT: He's excused.

4 MR. HILL: Next witness, Your Honor?

5 THE COURT: Yes.

6 MR. HILL: Thank you. The State would call Ms. Becky  
7 Green.

8 THE COURT: If you will, ma'am, go to the witness  
9 stand. Place your left hand on the Bible, raise your  
10 right hand. Do you swear to tell the truth, the whole  
11 truth, and nothing but the truth so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Please be seated and state your full name  
14 for the record.

15 THE WITNESS: Becky Joe Green.

16 WHEREUPON,

17 Becky Green,  
18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 Q Okay. Ms. Green, I can see by your clothing that you  
21 work as a nurse; is that correct?

22 A I do.

23 Q And which hospital were you employed at?

24 A McLeod Emergency Room.

25 Q Were you employed ER there in -- on June 23rd of

- 1 2008?
- 2 A Yes, sir.
- 3 Q In what capacity?
- 4 A I'm a registered nurse.
- 5 Q Okay. And which department were you working in on
- 6 that day?
- 7 A I'm in the emergency room.
- 8 Q Thank you. Ms. Green, I'm going to show you a
- 9 document and ask if you recognize that document?
- 10 A I recognize what I put on the document.
- 11 Q Okay. Is this a document, that is furnish by the
- 12 hospital?
- 13 A Yes.
- 14 Q Okay. And describe for me why this was completed and
- 15 what items were taken and listed on that document?
- 16 A The police wanted her stuff and we have to write the
- 17 stuff down and I did.
- 18 Q And what items did you take?
- 19 A Miss Carol Parker's items. She showed up in the
- 20 emergency room in bra, a black tank tube top, her panties
- 21 and a blanket, that's how she showed up in the emergency
- 22 room.
- 23 Q And do you know what happened to those items?
- 24 A I had to put them in a bag and they had to be sealed.
- 25 Q And did -- to whom did you give the items?



1 A I gave the items to Keith ---

2 THE COURT: Lutcken.

3 A Lutcken.

4 Q And is your signature on those -- on these documents?

5 A Yes, sir.

6 Q And is this complete just as you recall filling it  
7 out?

8 A Yes, sir, that's me printed and signature. And I  
9 also relinquished it and gave it to her.

10 Q Thank you.

11 MR. HILL: Your Honor, I don't believe there's an  
12 objection State would ask ---

13 THE COURT: Fifty-eight in evidence without  
14 objection.

15 (WHEREUPON, State's Exhibit No. 58 was admitted into  
16 evidence.)

17 MR. HILL: Your Honor, based upon the testimony from  
18 Miss -- we would ask that the items previously inspected  
19 by Corporal Moore be admitted into evidence leaving the  
20 chains been properly established at this time.

21 THE COURT: What say you for defense?

22 MS. PARROTT: I believe we're talking about the items  
23 in State's 52?

24 MR. HILL: Yes.

25 MS. PARROTT: I have just a couple of questions, Your

1 Honor, regarding.

2 THE COURT: Of this?

3 MS. PARROTT: Yes, Your Honor.

4 THE COURT: Proceed.

5 CROSS-EXAMINATION

6 BY MS. PARROTT:

7 Q Ma'am, whenever you got the items from whom did you  
8 get them?

9 A The patient arrived in the emergency room with those  
10 items on her. When she had to be assisted from the  
11 wheelchair, she was placed on the stretcher. When we had  
12 to remove some of the clothing, that's where those items  
13 came from.

14 Q Okay. So you were actually part of the team that ---

15 A I was right smack dab in the middle of it.

16 Q Okay. So you just got them straight from her to you?

17 A That's correct.

18 Q Into a bag?

19 A That's correct.

20 Q And then to Lieutenant Lutcken?

21 A That's correct.

22 MS. PARROTT: No further questions for her on that.

23 THE COURT: All right. You may step down.

24 (WHEREUPON, the witness leaves the witness stand.)

25 MS. PARROTT: And, Your Honor, because I think we

1 established chain, I would have no objection to number 52  
2 coming in at this time.

3 THE COURT: All right. Is that the multiple exhibit,  
4 three items? What's involved?

5 MR. HILL: Yes, Your Honor.

6 THE COURT: You want them marked separately ---

7 MR. HILL: We marked them collectively since they are  
8 stored that way.

9 THE COURT: Collectively?

10 MR. HILL: Yes, Your Honor.

11 THE COURT: What number? Is it 56?

12 MS. PARROTT: Fifty-two, Your Honor. We're talking  
13 about the bra, the panties, the tank top, and the blanket.  
14 I mean, please check behind...

15 THE COURT: Court reporter says 52, she rules around  
16 here.

17 (WHEREUPON, State's Exhibit No. 52 was admitted into  
18 evidence.)

19 MR. HILL: We ask that she be allowed to be excused?

20 THE COURT: Suitable?

21 MS. PARROTT: No objection, Your Honor.

22 THE COURT: She's excused, have a nice day.

23 (WHEREUPON, the witness leaves the witness stand.)

24 MR. HILL: Next witness?

25 THE COURT: Yes.

1 MR. HILL: Maureen Nogy.

2 THE CLERK: Place your left hand on the Bible and  
3 raise your right hand. Do you swear to tell the truth,  
4 the whole truth, and nothing but the truth so help you  
5 God?

6 THE WITNESS: I do.

7 THE CLERK: Please be seated and state your full name  
8 for the record.

9 THE WITNESS: Maureen Nogy.

10 WHEREUPON,

11 Maureen Nogy,

12 after first having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. HILL:

15 Q Okay. Ms. Nogy, are you employed at the Florence  
16 County Detention Center?

17 A Yes, sir, I am.

18 Q And are you a nurse at the detention center?

19 A No, sir. I'm a phlebotomist.

20 Q Okay. And for my information, what does that mean?

21 A A phlebotomist is -- I collect -- a blood collector.

22 Q Okay. And under what circumstances or why would you  
23 be required to collect blood?

24 A At the detention center usually -- sometimes it's  
25 for the DNA that is and other times just for -- if someone

1 is ill and we need to collect a blood sample to send it to  
2 the lab for testing.

3 Q All right. As the phlebotomist, did you collect  
4 blood in this case?

5 A Yes, sir, I did.

6 Q I'm going to ask you to review this document. Do you  
7 recall drawing blood from the defendant in this case?

8 A Yes, sir, I did.

9 Q Do you know what day that blood was drawn?

10 A Yes, it was August the 1st of 2008.

11 Q And can you tell the jury why it was drawn?

12 A We had a court order to do a -- get a blood sample  
13 from Mr. Henry to send to the state lab for testing.

14 Q All right. And where was the blood drawn at the  
15 detention center?

16 A In the medical department.

17 Q And was anyone present other than you and Mr. Henry  
18 when that blood was drawn?

19 A Yes, I had Officer Adam Moore was with me and I'm not  
20 sure if there was maybe Mr. Officer Lutcken.

21 Q Okay. When the blood was drawn, to whom did you give  
22 it?

23 A I gave it to Adam Moore.

24 Q Did that conclude your involvement in this case  
25 regarding a blood draw?

1 A Yes, sir, it did.

2 Q Did you have any other dealings with the blood in  
3 this case?

4 A Not that tube of blood, no, sir.

5 Q When you draw it, to your knowledge was it  
6 contaminated in anyway?

7 A No, sir, it was not.

8 MR. HILL: No other questions of Ms. Noggy.

9 MS. PARROTT: Okay.

10 CROSS-EXAMINATION

11 BY MS. PARROTT:

12 Q Ms. Noggy, ma'am, correct me if I'm wrong. For you to  
13 draw blood, it's immediately going into the tube; isn't  
14 it?

15 A Yes, ma'am, it is.

16 Q All right. You never touch it in anyway if you do  
17 it; correctly?

18 A No, ma'am. Drawn out through vacuum in the tube?

19 Q Okay. And then all you have to do is somehow seal  
20 off that tube as well?

21 A The tube is already sealed. And when you pull the  
22 tube off the vacuum off, the needle is automatically  
23 sealed, so it has a rubber top.

24 Q And that's what you gave to Corporal Moore?

25 A Yes, ma'am.

1 Q All right. Have you had any other interaction with  
2 Mr. Henry?

3 A Yes, ma'am, I work in the medical department and  
4 numerous occasions he comes in for checkups.

5 MS. PARROTT: All right. Thank you.

6 THE COURT: Redirect?

7 MR. HILL: None, Your Honor.

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

9 MR. HILL: No objection to her being excused.

10 THE COURT: Suitable?

11 MS. PARROTT: Yes, sir.

12 THE COURT: She's excused.

13 (WHEREUPON, the witness leaves the witness stand.)

14 MR. HILL: Your Honor, may we quickly approach?

15 (WHEREUPON, a bench conference was held in the  
16 presence of the jury, but out of the hearing of the  
17 jury.)

18 THE COURT: Next witness, please.

19 MR. HILL: Thank you, Your Honor. Your Honor, at  
20 this time, the State would call Investigator Bert Turner.

21 THE CLERK: If you will, sir, place your left hand on  
22 the Bible and raise your hand. Do you swear to tell the  
23 truth, the whole truth, and nothing but the truth so help  
24 you God?

25 THE WITNESS: I do.

1           THE CLERK: Please be seated and state your full name  
2 for the record.

3           THE WITNESS: My name is Bertrum Lee Turner.

4 WHEREUPON,

5                               Bert Turner,

6 after first having been duly sworn, testified as follows:

7                               DIRECT EXAMINATION

8 BY MR. HILL:

9 Q       Okay. Mr. Turner, were you employed at the Florence  
10 County Sheriff's Department in June of 2008, as an  
11 investigator and an arson investigator?

12 A       I was.

13 Q       Were you involved in the investigation in this trial?

14 A       I was.

15 Q       And at the time, what was your rank and position?

16 A       My position or current duty assignment at that time  
17 was that of fire investigator or arson investigator with  
18 the criminal investigation division.

19 Q       And how long did you have that position and what kind  
20 of training did you have regarding arson investigation?

21 A       At that point, I had that position for eight years  
22 training to include fire investigation, arson  
23 investigation conducted at the Criminal Justice Academy in  
24 Columbia as well as training through various organizations  
25 that I have memberships with them.



1 Q How many arson investigations have you been involved  
2 in?

3 A I don't have a specific number. I been involved with  
4 many investigations initially fire investigation and  
5 through the investigation of those particular scenes  
6 determine whether it's arson or not.

7 Q Have you been ask to testify as a expert regarding  
8 arsons?

9 A I have.

10 Q Have you been so qualified?

11 A I have.

12 Q And have you given expert opinions in the past during  
13 trials regarding the existence of a fire being set by an  
14 arson?

15 A I have.

16 MR. HILL: Your Honor, at this time, the State would  
17 ask that Mr. Turner be accepted as a expert in arson  
18 investigations for purposes of this trial and able to give  
19 his opinion in that regard.

20 THE COURT: The defendant has a right to voir dire  
21 before I rule. Do you desire to exercise voir dire?

22 MS. PARROTT: I do, Your Honor.

23 THE COURT: Proceed.

24 VOIR DIRE EXAMINATION

25 BY MS. PARROTT:

1 Q Mr. Turner, you said that you had worked in that  
2 capacity as an arson investigator for eight years?

3 A That's correct.

4 Q And that was primarily what your investigation duty  
5 was, but you did continue other investigations?

6 A That is correct.

7 Q Like when you were the on-call investigator, I would  
8 assume?

9 A Well, that particular position was considered on call  
10 all the time.

11 Q All right, certainly. Have you written any articles  
12 regarding arson or arson investigations?

13 A I have not published any articles if that's what  
14 you're asking.

15 Q Certainly. No books?

16 A No books.

17 Q Have you conducted trainings regarding arson  
18 investigation?

19 A I have attended many trainings and participated in  
20 some, but I wouldn't consider me as the trainer for arson  
21 investigations.

22 Q So you haven't led arson education program?

23 A That would be a correct statement.

24 Q Okay. And I'm sorry cause I miss the answer. How  
25 many arson investigations do you believe that you may have

1 conducted over all these years?

2 A It would be speculation on my part to give you any  
3 particular number. I've never actually researched, but I  
4 can tell you over the course of eight years many.

5 Q Okay. Help me quantify it if you can. We're talking  
6 like 25 to 50 do you think over a period of eight years?  
7 Are we talking even more than that?

8 A I would say even more than that. The majority of the  
9 cause by far start with contact of law enforcement by a  
10 fire department and some of that fire department needs aid  
11 in trying to determine origin of a fire and not all of  
12 those fires are arson some in fact are accidental.

13 MS. PARROTT: Okay. Nothing further.

14 THE COURT: You want to be heard in regard to the  
15 ruling?

16 MS. PARROTT: Your Honor, I have a problem with him  
17 actually been qualified as an expert in this matter  
18 because I don't have necessarily the substance of what it  
19 would take to be that expert. He can't tell me exactly  
20 how many he's worked over the period of eight years while  
21 that may have been what his job was, it wasn't his sole  
22 job. And the fact that he's participated in trainings,  
23 but not lead any doesn't necessarily lend itself to having  
24 been an expert either, so I would simply ask that  
25 obviously have no problem with him being someone who

1 testifies in this case as the investigator, but not as an  
2 expert.

3 THE COURT: The objection goes to the weight of the  
4 testimony rather than to admissibility based on his  
5 testimony under Rule 702, 703 and 704, he may give opinion  
6 testimony posited under the rule. Proceed.

7 MR. HILL: Thank you, Your Honor.

8 BY MR. HILL:

9 Q Okay. Investigator Turner, in regards to your  
10 involvement in this case, how did you -- what led you to  
11 become involved in this case?

12 A Actually, when I received notification about the  
13 details of this particular incident myself as well as  
14 Investigator Streett happen to be riding together that day  
15 and we both responded to the scene at the request of law  
16 enforcement on the scene.

17 Q And while preparing to demonstrate what you found,  
18 what acts, if any, did you take in order to determine  
19 whether or not this fire was deliberately set or  
20 accidentally set?

21 A Well, upon our arrival at the scene, actually I  
22 wanted to take a look at the specific location of the fire  
23 that basically started once I exited the vehicle there in  
24 the parking lot actually taking a look at the exterior or  
25 structure and then gradually and working my way to the

1 interior.

2 Q Okay. Was the fire still hot when you arrived?

3 A I can tell you that the apartment was still very  
4 warm, that's correct.

5 Q All right. Was it possible to easily detect the  
6 origin of the fire and where it begin?

7 A Yes, sir, it was.

8 Q All right. However, prior to your investigation, had  
9 you received information -- can't allow you to tell me  
10 what someone told you, but had you already received  
11 information regarding the origin and or information that  
12 might have been fluent to your initial work in this case?

13 A Not for a particular determination as to how the fire  
14 occurred, no.

15 Q At this time, there photographs that have been taken  
16 and admitted into evidence I like to review with you.  
17 Beginning with what's been marked as State's Exhibit  
18 Number 20 our number 57, do you recognize this area, this  
19 scene?

20 A Could we dim the lights a little bit? This is what I  
21 considered to be the room of fire origin. It's also  
22 considered as the master bedroom in that particular  
23 apartment.

24 Q All right. And State's Number 6 our number -- is  
25 there anything significant about that photograph?

1     A     That is the bathroom of the apartment. I can tell  
2     you that there is a good bit of heat damage, heat and  
3     smoke damage in that particular room. But that's not what  
4     I consider to be the room of fire origin.

5     Q     How much heat would it take in order to generate the  
6     kind of damage that you observed there?

7     A     Well, understand, you know, that is the bathroom.  
8     What you have there is a bath tub and a tub surround. Lot  
9     of those materials are plastics and what you actually are  
10    looking at in that photo is some of that tub surround that  
11    has been exposed to some radiant heat and actually started  
12    to melt.

13    Q     Next I like to show you what's marked as State's  
14    Exhibit Number 9 our number 56. Do you recognize that  
15    area?

16    A     I do. Actually, that is the closet located in the  
17    room of fire origin which match the bedroom closet. What  
18    you'll see actually notice some of the hanging bars for  
19    the hangers, which clothes would have been hanging on and  
20    directly opposite the door or the shot from where that  
21    photo was taken, you will see some damage to the wall  
22    that's not cause by the fire, but actually that's from the  
23    fire department suppression efforts and to make sure there  
24    was no extenuation of any fire beyond that room.

25    Q     Do you have an opinion as to what caused the black

1 coloration on the walls? Were they that way naturally or  
2 did something else cause it?

3 A My opinion would be that they were not that way  
4 naturally and that is from smoke and soot.

5 Q Next, I like to show you what's been marked as  
6 State's Exhibit Number 7 our number 34. And is this also  
7 the bedroom?

8 A That's correct. That is the master bedroom or the  
9 room of fire origin.

10 Q And in your opinion is there any evidence -- what was  
11 the cause of the damage that we see in that room?

12 A Cause of the damages you see primarily in that room  
13 is going to be the fire that was set to the bedding or the  
14 mattress and bedding materials.

15 Q All right. Thank you. Officer Turner, as you begin  
16 your investigation and you found the point of origin in  
17 the fire, did you look for a source of ignition something  
18 that would have caused it?

19 A We did. Actually, during the course of that  
20 investigation as I stated earlier, it's not just -- you're  
21 looking at one particular area, but the whole picture in  
22 general tried to make a determination location of the fire  
23 or fires as well as any cause accidental or incendiary.

24 Q Okay. You mention accidental, was there any evidence  
25 that this fire may have been accidental?

1     A     I wasn't able to determine that there was any  
2     evidence to indicate that this fire was accidental in  
3     nature.

4     Q     What steps did you take in order to make that  
5     determination?

6     A     Well, what we do is make -- do a as thorough of scene  
7     investigation as we can, naturally on different scenes you  
8     different amounts of evidence. Naturally, the most  
9     important issue is the fires suppression and  
10    extinguishment to prevent any further damage. Sometimes  
11    some scenes give more evidence than others simply because  
12    of the duration of the fire, the destruction of any  
13    evidence consume by the fire as well as destruction of  
14    evidence or any problems with anything due to conditions  
15    of the fire departments extinguishment or suppression of  
16    the fire.

17    Q     Okay. Were there any conditions regarding the  
18    structure of an apartment that would have cause this fire?

19    A     None that I could come up with, no. Naturally, we  
20    look for, like I said for any accidental and that involves  
21    examining various things trying to come up with a cause  
22    for the fire.

23    Q     Lots of times, we as civilians -- what about the  
24    wiring, was there any wiring or electric problem that  
25    would have caused this fire?



1 A There was nothing to indicate that there would have  
2 been any problem whatsoever with any electrical problems  
3 particularly in that room nothing stood out. There was no  
4 indication to me that this fire involved anything  
5 electrical.

6 Q Was there any indication that this was accidentally  
7 set by somebody playing with matches?

8 A Based on the evidence that I have at that point and  
9 still to this day, no. No indication to me that this  
10 would have been an accidental fire or negligent fire set  
11 from somebody playing with misuse of matches, no.

12 Q So negligence is also another criteria that you  
13 examine?

14 A Sure. It's not always a conclusion of arson or  
15 accidental. Sometimes, you have fires that are set by  
16 human, but they are accidentally set or negligently set.

17 Q Did that exist here?

18 A Not that I could indicate or not that I could come up  
19 with, no.

20 Q All right. In examining the evidence, was there  
21 anything -- well, you saw the evidence that had been  
22 thrown out of the window; is that correct?

23 A That's correct.

24 Q Was there any action based on your experience taken  
25 by the firefighters that compromised your investigation of

1 the fire or the cause of the fire?

2 A Not at all. Naturally, it would have been nice to  
3 have those materials still in, but considering the -- all  
4 the factors that day, the protection of structure as well  
5 as protection of people living within the structure  
6 nothing that the fire department did that day compromise  
7 the investigation whatsoever.

8 Q In which room was most of the fire contained?

9 A This is what I consider or what I call a room of  
10 contents fire, that is the master bedroom.

11 Q Okay. Did you prepare a diagram to assist you?

12 A I did.

13 MR. HILL: Your Honor, there's no objection the State  
14 would ask that the following diagram be admitted into  
15 evidence.

16 THE COURT: Fifty-nine in evidence without objection.  
17 Mr. Hill, you going to let my court reporter mark it?

18 MR. HILL: Yes, sir, that be nice.

19 THE COURT: Thank you.

20 (WHEREUPON, State's Exhibit No. 59 was admitted into  
21 evidence.)

22 BY MR. HILL:

23 Q What was the purpose of this diagram, that's been  
24 marked as State's Exhibit Number 59?

25 A The purpose of this particular diagram was to show

1 the area of origin of the fire.

2 Q And you determine that to be which area?

3 A That would be this room here, which is also  
4 identified as the master bedroom the fire of origin.

5 Q And is it that particular room marked with pencil to  
6 darken it as oppose to the other rooms?

7 A It is that area is shaded there is actually the  
8 mattress and bedding in that particular room.

9 Q Now, also on the drawing is the kitchen. Ms. Joe is  
10 going to hand you a ruler. In regards to the kitchen, did  
11 you determine if the fire began in the kitchen?

12 A The kitchen as well as the rest of the rooms in  
13 particular apartment always -- and there was no indication  
14 that there was a fire set in the kitchen.

15 Q But they're really black and smokey?

16 A They are, they are. I can tell you that anybody ever  
17 experienced a fire realizes that it doesn't take very long  
18 for fire to burn to start generating some real oily sooty  
19 blood smoke. It's not necessarily like we see it on TV.  
20 A lot of times TV likes to show, you know, bright flames  
21 and no smoke. Actually, it's quite just the opposite,  
22 there's the bright flames for just a brief period, but  
23 everything gets so sooty and smokey and dark where you  
24 really can't see, that's why our fire department members  
25 actually had to crawl around on the floor way because

1 smoke is heated from the fire. And it actually has a lot  
2 of people realize hot air and warm air rises, so the  
3 hotter temperature air which contains the smoke and the  
4 soot actually goes up at the ceiling and starts coming  
5 down and that's the reason that you see the rooms, the  
6 walls throughout the apartment smoke and soot.

7 Q All right. Was there anything actual burning in the  
8 kitchen?

9 A No.

10 Q And which rooms was the burning confined?

11 A In the master bedroom, that would be this room here.

12 Q How about what we saw in the bathroom there any  
13 burning there?

14 A What you saw in the bath if you'll notice the doorway  
15 to the master bedroom and the bathroom are pretty much  
16 opposite the hallway. This is the bedroom of the master  
17 bedroom is where the fire is at. This is where all the  
18 flames are it. The damage that you get over here is going  
19 to be primarily from that photo, which that photo shows  
20 the tub surround. It's actually melting or softening up  
21 and dripping or dropping down, that would have been  
22 directly across from the room with all the flames. If you  
23 ever been at a bonfire or if you live out in the country  
24 and farmers burn off any of the fields, you realize you  
25 don't have to be very close to feel the heat or the

1 effects from a fire that's what they call radiant heat.

2 Q Thank you. You may have a seat. We going to have to  
3 interrupt your testimony in a few minutes, but were you  
4 able to eventually determine what caused the fire?

5 A I was able to determine what the first materials  
6 ignited in the room of origin and specifically a area of  
7 fire origin in that room.

8 Q And were you able to find an object that might have  
9 cause that?

10 A Be a little more specific.

11 Q We'll get to that later. Let me with draw that  
12 question.

13 MR. HILL: Your Honor, at this time that would  
14 conclude the State's testimony -- let me back up.

15 BY MR. HILL:

16 Q Were you able to form an opinion to a reasonable  
17 degree of certainty because of your expertise in arson  
18 investigation as to the cause of this fire?

19 A I was.

20 Q And what is that opinion?

21 A That this fire is in fact arson and not accidental in  
22 nature.

23 MR. HILL: Your Honor, at this time that would  
24 conclude the State testimony. At this time, we'd ask to  
25 be allowed to recall him at a later time.

1           THE COURT: I understand that. I may finish  
2 cross-examine query on this point. What do you say,  
3 Ms. Parrot, you want to do the cross-examine? You got  
4 SLED witnesses ---

5           MR. HILL: We don't have any problem with  
6 cross-examine. As the State, I think it would be actually  
7 proper to continue on cross exam on this point.

8           MS. PARROTT: However, Judge.

9           THE COURT: Let's cross-examine.

10                           CROSS-EXAMINATION

11 BY MS. PARROTT:

12 Q     Mr. Turner, at what time did you arrive on the scene,  
13 do you know?

14 A     I don't have that information in front of me, but I  
15 can tell you that it was what I consider to be early  
16 afternoon or just after lunchtime.

17 Q     You think you got called within an hours time of fire  
18 the department arriving on scene?

19 A     That would probably be safe to assume so.

20 Q     The fire department was still there whenever you  
21 arrived?

22 A     That's correct.

23 Q     Did you discuss this fire with firemen?

24 A     When I arrived on the scene as a fire investigator,  
25 naturally the first person that I want to speak with is

1 the fire chief or whoever's in command or in charge of the  
2 fire.

3 Q And is that to get kind of an idea of where the  
4 layout of things is and where the hot spots are?

5 A Well, that would be inclusive of the information that  
6 I like to receive. I like to get any and all information  
7 pertaining to a particular location or fire that they  
8 could offer me.

9 Q All right. So did they go ahead and tell you that  
10 it's a two bedroom, two bath structure and so that you can  
11 know what you're walking into?

12 A I don't recall if they told me exactly how many  
13 bedrooms or how many baths. No, I don't recall.

14 Q So this is the diagram that you did all on your own?

15 A That is my diagram specifically to show the area of  
16 fire origin, that's correct.

17 Q And the 930 square feet where are you getting that  
18 number from?

19 A That number comes from actually the brochure or  
20 pamphlet provided to me from the park management itself,  
21 that is their actual blue print or for that particular  
22 unit.

23 Q So this whole unit then is 930, we're not excluding  
24 any territory or any information that you got here?

25 A I can tell you that that's not going to be to scale

1 and I don't -- I didn't intend for it to be, but actually  
2 that is the best depiction of the floor plan for that  
3 particular unit. I didn't measure every room to come up  
4 -- make sure it did come up with 930 square feet, if  
5 that's what you're asking.

6 Q Okay. But as far as it goes, you're saying the point  
7 of origin is solely right here in the master bedroom?

8 A I said the area of fire origin is in the bedroom,  
9 that's correct in the master bedroom.

10 Q So you don't believe that fires were set in multiple  
11 places in this apartment?

12 A There was nothing that I saw indicated to me that we  
13 had multiple fires set in other rooms of the apartment,  
14 no.

15 Q And you stated that the smoke has traveled and, of  
16 course, in 930 square feet it probably wouldn't take it  
17 that long either to travel the full length of the  
18 apartment would that be correct?

19 A That's correct depending on what fuel consumed by the  
20 fire.

21 Q And mentioning that, some materials actually burn at  
22 higher temperatures and faster than other materials might,  
23 wouldn't they?

24 A That would be a safe assumption, that's correct.

25 Q And you're saying that the materials in the bathroom



1 are such that with them being plastic base, it doesn't  
2 take much for them to dealt down?

3 A Well, not only for the temperatures themselves, but  
4 also as I stated a little earlier from radiant heat.

5 Q Okay. Such that that would come from maybe this  
6 master bedroom?

7 A That's correct.

8 Q Okay. Did you determine what the bedding was set on  
9 fire with from on this scene?

10 A Not from that scene, no, I did not.

11 Q And was there anything that told you from this scene  
12 who you believe to have set it?

13 A No, other than the fire was actually arson and not  
14 accidental.

15 Q Okay. But there wasn't -- sometimes you hear about  
16 somebody having a signature way that they do a crime or a  
17 signature way that they might set a fire. There's nothing  
18 about this that makes it -- makes it set with a signature  
19 is it?

20 A Not as what you see on TV, no.

21 MS. PARROTT: Okay. Thank you.

22 THE COURT: Redirect?

23 MR. HILL: Not on this issue, Your Honor.

24 THE COURT: All right. And as I understand it,  
25 you're reserving the right to call him later on another

1 issue?

2 MR. HILL: Yes, Your Honor.

3 THE COURT: All right. You may step down.

4 (WHEREUPON, the witness leaves the witness stand.)

5 THE COURT: All right. Mr. Hill, it may be we need a  
6 short recess here now because some of the next testimony  
7 in order to provide continuity will be lengthy want it?

8 MR. HILL: Potentially.

9 THE COURT: Twenty minute recess for everyone.

10 (WHEREUPON, a break was taken.)

11 THE COURT: Bring the jury out.

12 (WHEREUPON, the jury return to the courtroom.)

13 THE COURT: For the record, Counsel, to buttress my  
14 ruling in regard to the qualification of the arson expert,  
15 there are three cases that are the bottom and premise of  
16 my ruling. The first seminal case of great significance  
17 in regard to arson is Rutledge vs. St. Paul Fire  
18 Insurance, Smoak S-M-O-A-K vs. Lieberher America is the  
19 second one. And the third one is Knoke K.N.O.K.E. vs.  
20 South Carolina Department of Parks and Recreation. All  
21 three are fire cases, all three relate to expert testimony  
22 in regard to fires.

23 Mr. Hill, call your next witness, please.

24 MR. HILL: Thank you, Your Honor. Your Honor, the  
25 State would call Mr. Jeff Parrott.

1 THE CLERK: If you will, sir, place your left hand on  
2 the Bible and raise your right hand. Do you swear to tell  
3 the truth, the whole truth, and nothing but the truth so  
4 help you God?

5 THE WITNESS: I do.

6 THE CLERK: Please be seated and state your full name  
7 for the record.

8 THE COURT: Full name?

9 THE WITNESS: Yes, sir. My name is Jeff Parrott,  
10 last name spelled P-A-R-R-O-T-T.

11 THE COURT: You got that, Ms. Parrott?

12 MS. PARROTT: I do and for the record, I don't think  
13 we related.

14 THE WITNESS: First time I ever met another Parrott.

15 THE COURT: I hope y'all feel comfortable now.

16 WHEREUPON,

17 Jeff Parrott,  
18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 Q Okay. Mr. Parrott, were you employed at the SLED in  
21 September of 2008?

22 A Yes, sir.

23 Q And in that capacity, did you examine evidence in  
24 this case?

25 A Yes, sir, I do.

1 Q And what was your position at SLED at that time?

2 A I was a senior agent assign to the latent print crime  
3 scene unit.

4 Q And in that position had you examined fingerprints  
5 numerous occasions?

6 A Yes, sir, been involved with either crime scene  
7 fingerprinting, crime scene reconstruction, crime scene  
8 processing, evidence process now for 17 years, over 4,000  
9 hours of training, over 66 hours advance courses in those  
10 areas, those fields of science as well.

11 Q You been qualified as an expert in that area and  
12 testified as such?

13 A Yes, sir, both state and federal courts.

14 MR. HILL: Based upon Mr. Parrott's testimony at this  
15 time, the State would request that he be accepted as an  
16 expert in the area of latent prints and forensics.

17 THE COURT: What says defense?

18 MS. PARROTT: No objection, Your Honor.

19 THE COURT: He's qualified.

20 MR. HILL: Thank you, Your Honor.

21 BY MR. HILL:

22 Q Mr. Parrott, do you have a copy of your report?

23 A I do, yes, sir.

24 Q Did you examine it?

25 A Yes, sir.

1 Q What items were you ask to examine in this case?

2 A I was ask to examine -- it was SLED item 12 which was  
3 a black machete in this case.

4 Q All right. And from whom did you receive it?

5 A I received it from what is called our lay-in box.  
6 It's a box where evidence is placed for the agents to  
7 receive it. It comes from evidence process, evidence log  
8 into that box and I receive it from there.

9 Q So then how did you test it?

10 A I first received that item of evidence notice that  
11 that particular item was wrapped inside a paper bag bound  
12 by tape and opened that particular item up, looked at it  
13 carefully under oblique lighting, just regular lighting  
14 and cross lighting, that we have there in the lab with  
15 forensic light sources. I notice that it had a coding on  
16 it somewhat which in my experience would appear to be  
17 blood or other types of contaminates, sweat, oils that  
18 sort of thing and that's when I started processing it  
19 first for the purpose of DNA. Took two swabs, one swab  
20 from the handle area of the machete and the other swab  
21 from the blade area of the machete. I collected those and  
22 then transferred those to DNA. Then I begin my latent  
23 print processing, which is the process to try to find  
24 fingerprints on that particular item.

25 Q Just define latent print for us?

1 A Latent is actually a Latin term. It's a term which  
2 you have to actually use some sort of developed type of  
3 developer whether it's powder or chemical to enhance that  
4 to where you can see it.

5 Q And so you use some type of chemical or powder or  
6 scientific process to discover if prints were on the item?

7 A Yes, sir, on this particular item once I did collect  
8 the swabs from the machete. I fumed it sand, which you  
9 may have seen on TV. We're famous now for CSI where you  
10 see them looking into the little box and it's a cloud.  
11 What that is is the superglue that is heated and it forms  
12 a vaporous cloud, which adheres to any type of moistures  
13 or moisture or liquid on the item that you process it, we  
14 did that first. If you should find something, it will  
15 form like a white-type impression of a latent fingerprint.  
16 It quite often does that. Then the next step -- of  
17 course, I visually examine that. Then I try to use black  
18 powder to try to enhance anything else that might be on  
19 there from the cyano technique. From that point, I  
20 visually examine again and there was no ridge detail that  
21 could be developed on that item.

22 Q What does no ridge detail mean and why is that  
23 important?

24 A The fact it's no ridge detail. The terminology is  
25 that there's no ridge detail developed that can be used

1 for the purpose of any type of identification or  
2 comparison in a particular case, so therefore it's of no  
3 value.

4 Q So what was your final conclusion?

5 A My final conclusion was that there was item 12 the  
6 black machete was of no value for identifications as far  
7 as latent print.

8 Q And is that in your experience would that be usual or  
9 unusual?

10 A It's quite common. Unfortunately, fingerprints are  
11 very fragile. Just because you hold something, doesn't  
12 mean that you going to leave fingerprints and especially  
13 if it does have a lot of contaminates blood, sweat, it  
14 really varies.

15 Q So there's something about the nature of the  
16 fingerprint that will cause it not to last or stay  
17 somewhere?

18 A That's correct. It could be forms of heat, could dry  
19 it because it is moisture, water, 98 percent is water.  
20 Then you have oils that are there. And, of course, both  
21 of those dry. And could be as far as packaging if it's  
22 package improperly, it could rub those areas off as well.  
23 The matrix the -- whatever you have on your hands at the  
24 time, you touch that item whatever that is could have, you  
25 know, vary in your ability to actually develop some sort

1 of usable latent print at that point. It's difficult,  
2 it's not like TV you don't get it every time.

3 Q Okay. So as a worker and expert in this area, is it  
4 still important to examine the item whether it has prints  
5 or not?

6 A Most definitely. You do everything you can on every  
7 item of evidence. Again, that's what -- seeing that it  
8 had the liquid, potentially blood to me throws up a red  
9 flag right there, you're liable to get some good DNA off  
10 this particular item. And because of that too, I'm  
11 thinking it's a probability of latents might not be high,  
12 but still do that to try to get everything you can off  
13 that item of evidence.

14 Q And it is still important to do it for -- is it still  
15 important to do it for justice reasons too just to make  
16 sure?

17 A You should do it for all reasons. You should do  
18 everything 100 percent, that's the only way to do it.

19 MR. HILL: Thanks. Answer any questions the defense  
20 might have.

21 CROSS-EXAMINATION

22 BY MS. PARROTT:

23 Q Mr. Parrott.

24 A Yes, ma'am.

25 Q Agent Parrott, whenever you actually tested the



1 machete, you said you also did DNA testing on it?

2 A I actually did the DNA testing first on that. It's  
3 what our evidence processing unit would normally do, but  
4 given the fact we had a latent print request on it as well  
5 in latent, that's our unit, so it's given to us and we do  
6 the evidence processing portion as well. We're crossed  
7 trained there at the latent prints department. We're  
8 actually cross -- have to be considered competent in seven  
9 fields of forensic science and then we're also crossed  
10 trained in several fields of forensic science. And then  
11 we're as cross trained in several fields of forensic  
12 science as far as evidence processing, the collection of  
13 trace evidence, DNA serology. We're a one stop shop. We  
14 pretty much have to do it all and then we dish it out to  
15 the correct departments.

16 Q So is it fair to say then that you are -- you're  
17 using every bit of knowledge you have from all these  
18 various fields to test what has been submitted to you for  
19 any evidence that you think?

20 A That's correct, we have that ability.

21 Q Okay. But, again, it's whatever is submitted to you,  
22 it's not what you go out and get?

23 A Well, if we go out and get it, of course, we'll  
24 follow the same rules as well, but that on this particular  
25 item this was something that was delivered to us to

1 process with that request.

2 Q Okay. And you're stating on this one that you did  
3 try and process it for DNA you did the handle and the  
4 blade?

5 A Yes, ma'am.

6 Q And what did you find?

7 A Well, I collected swabs from each of those areas.  
8 Now, when I do that, I don't do the analysis on the actual  
9 swab that I collect. I just simply collect that item,  
10 collect it in a way that it will be safe, free from  
11 contamination and then I submit it to the DNA department  
12 for the actual analysis.

13 Q So the results from this test are not necessarily  
14 yours, it's just whatever evidence you think you found  
15 you're submitting to another department within SLED?

16 A That is correct. Based on my experiences, I see  
17 something I collected maybe something, it might not be,  
18 but I collected it just to be on the safe side.

19 Q Okay. And for the machete, you doing the handle and  
20 the blade, you also doing to bottom, I guess?

21 A I've actually typically on the cards that I collect  
22 the swabs -- well, actually on the cards in which I put  
23 the swabs, I typically draw a little diagram as to where I  
24 actually collected that swab from. I don't have those in  
25 front of me to be able to give you.

1 Q But it's safe to say that you would at least -- you  
2 would look at the whole item?

3 A Correct. The area that I feel has the evidence I  
4 need, yes. Keeping in mind, of course, the potential for  
5 latent evidence print as well.

6 Q But sometimes you're from what you're saying prints  
7 maybe -- they may just evaporate or they may have problems  
8 keeping it on the item just because of what fingerprints  
9 are made out of, but it's also sometimes is it not that  
10 the item itself just want hold prints?

11 A It's possible. It's possible.

12 MS. PARROTT: Thank you nothing further.

13 THE COURT: Redirect?

14 MR. HILL: None, Your Honor.

15 THE COURT: You may step down.

16 (WHEREUPON, the witness leaves the witness stand.)

17 THE COURT: Next witness, please.

18 MR. HILL: Your Honor, he like ---

19 MR. PARROTT: Sir, I'm sorry am I excused?

20 THE COURT: I'm sorry.

21 MR. PARROTT: I was just asking if I was excused?

22 THE COURT: Well, are you riding with the other  
23 group?

24 MR. PARROTT: No, sir.

25 THE COURT: Riding alone?

1 MR. PARROTT: Yes, sir.

2 THE COURT: Have a good trip back to Columbia.

3 MR. PARROTT: Thank you, sir.

4 MR. HILL: Lori Giles.

5 THE CLERK: If you will, ma'am, place your left hand  
6 on the Bible and raise your right hand. Do you swear to  
7 tell the truth, the whole truth, and nothing but the truth  
8 to so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Please be seated and state your full name  
11 for the record.

12 THE WITNESS: Lori Giles, G-I-L-E-S.

13 WHEREUPON,

14 Lori Giles,  
15 after first having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. HILL:

18 Q Ms. Giles, I need to use this podium because there's  
19 a lot of paper work I need to look at as we talk together.  
20 Are you currently employed with SLED in Columbia?

21 A Yes, I am.

22 Q And that's the South Carolina Law Enforcement  
23 Division?

24 A That's correct.

25 Q And how long have you been so employed?

1 A A little over a year.

2 Q And what is your job there?

3 A I'm a evidence lab technician for the DNA department.

4 Q And what qualifications have you received in order to  
5 work in that job?

6 A I have been trained through SLED for the evidence  
7 processing. I done proficiency testing for competency in  
8 that area. Prior to my employment with SLED, I also  
9 performed evidence processing techniques for the Alabama  
10 Department of Forensic Sciences for four years.

11 Q Okay. So you've worked in Alabama as well?

12 A Yes, sir.

13 Q In similar position?

14 A That's correct.

15 Q Were you allowed in given evidence to examine in  
16 regards to this case?

17 A Yes, I have.

18 Q Do you have your reports and notes with you today?

19 A Yes, sir, I do.

20 Q And you examine those prior to coming today?

21 A Yes, sir.

22 Q In regards to this case, I like to discuss what you  
23 did. How did you come into possession of the evidence  
24 that you examined?

25 A I received the evidence from evidence control. They

1 receive the evidence from an officer that brought the  
2 evidence in. From that point, I receive the evidence,  
3 took it in my custody and I began examination on the items  
4 that I received.

5 Q And do you have a list of the items that you received  
6 in this case?

7 A Yes, sir, I do.

8 Q Would you tell the jury what items you received?

9 A Okay. I received clothing items, jeans belonging to  
10 the suspect, shirt belonging to the suspect, shoes  
11 belonging to the suspect, also rags, jeans belonging to  
12 the victim, pairs of gloves -- a pair of gloves, stack of  
13 napkins, and also a wallet belonging to suspect.

14 Q All right. Now, I've learned some things in working  
15 on this case. We've had several scientists from SLED that  
16 have come today to testify. We've had one in latent  
17 prints that just testified Mr. Parrott. And we'll have  
18 another in a few minutes about DNA. Where do you fit  
19 into the work that's happening in these cases?

20 A Okay. Initially, I'm in the prescreening stage for  
21 DNA.

22 Q What's that mean?

23 A I get the evidence initially and I also when I open  
24 up the evidence, I do a visual examination. I can use  
25 magnification or alternate light source, whatever the

1 request is from evidence control whether it be for trace  
2 hair, possible hair, possible body fluids I look for that.

3 Q All right. And that's what you did on the items you  
4 just told us that you examined?

5 A Yes, sir.

6 Q All right. What do you do?

7 A First of all, I do a visual. And if there's any  
8 staining, I would test it, do a presumptive chemical test  
9 to see if possibility there's a body fluid there blood or  
10 possible semen. And that point on if the test proves  
11 positive in a since it's not confirmatory test, it's a  
12 presumptive test, I would do cuttings or swabs and send  
13 those items to the DNA analysis for further process of  
14 that.

15 Q All right. The items that you examined you performed  
16 test on those then to determine if there was a substance  
17 that needed to be further examined for DNA?

18 A Yes, sir, if there's a possibility of a substance  
19 there, yes.

20 Q The items that you examined how many of them contain  
21 substances that appeared to be positive for DNA?

22 A Actually, there were several items that were positive  
23 possibly positive. All the items that I listed had  
24 potential evidence collected on those.

25 Q All right. And what happened to those items of

1 potential evidence?

2 A I submitted them to the DNA analyst, that was running  
3 the test on that case.

4 Q All right. How did you protect these items from  
5 being contaminated in anyway?

6 A Each item is treated separately. I enclosed in a  
7 separate container as far as envelope or something like  
8 that. I, of course, wearing gloves and all that. Then I  
9 take the seal out and initial it and date it and put in a  
10 heatseal pouch or some kind of container, so each thing is  
11 secured before I transfer out of my custody.

12 Q Okay. So your testimony -- well, so the items of  
13 evidence that you tested in this case were then sealed and  
14 delivered to SLED -- I mean, to DNA; is that correct?

15 A That's correct.

16 Q For purposes of our record, I need to ask you  
17 specifically about the items and there aren't too many.  
18 First item you have listed is item number three jeans  
19 belonging to a suspect. Did you make a cutting from those  
20 jeans?

21 A Yes, sir, I did three cuttings.

22 Q That means that you take out fabric and test those  
23 to see if there's DNA?

24 A Yes, sir, I do a presumptive test on those.

25 Q Okay. And were those cuttings taken and sent to the



1 DNA lab?

2 A That's correct.

3 Q Okay. And were those preserved as they should have  
4 been?

5 A Yes, sir.

6 Q All right. Item number four, did you make a cutting  
7 from a shirt that belong to the suspect?

8 A Yes, sir, I did.

9 Q And after your presumptive test, was that cutting  
10 collected and preserved and sent to DNA?

11 A Yes, it was.

12 Q Was the same done for shoes that belong to him?

13 A That's correct.

14 Q You said the shoes weren't cut; is that correct?

15 A Right, I also utilize swabs for that also.

16 Q What about the rags and the dish towel items six and  
17 6.1?

18 A Yes, those were cuttings also?

19 Q And were those collected and properly sent to the DNA  
20 lab?

21 A Yes, sir.

22 Q There were jeans item number 11, item 13 and a pair  
23 of gloves, and item 14 a stack of napkins and finally item  
24 number 15 a wallet belonging to suspect. How were those  
25 items collected and how did you preserved those?

1 A Yes, sir, I use the same procedure and all of those  
2 items and collected the cuttings and the swabs for all  
3 those items and submitted them.

4 Q Okay. And that was done because you had presumptive  
5 test that appeared to be positive for DNA?

6 A That's correct.

7 Q Or that might be helpful in some way in further  
8 analysis; is that correct?

9 A That's correct.

10 Q Does that conclude your involvement in the  
11 investigation of this case?

12 A Yes, it is.

13 Q Did you do anything else that I haven't asked you  
14 about?

15 A No, sir.

16 MR. HILL: Please answer any questions the defense  
17 might have.

18 CROSS-EXAMINATION

19 BY MS. PARROTT:

20 Q Good afternoon.

21 A Hi.

22 Q Whenever you receive these items from -- I'm sorry,  
23 where did you say you received them from?

24 A Evidence control.

25 Q Okay. Are they sealed at the time you received them?

1 A Yes, ma'am.

2 Q So evidence control doesn't try to open anything so  
3 you don't have to do that?

4 A No, ma'am.

5 Q You unseal it and then do this preliminary testing?

6 A Right.

7 Q Are you the only person who is then touched it from  
8 the unsealing it to testing?

9 A Yes, ma'am.

10 Q And then you say you send it on to the next part of  
11 the process?

12 A Right.

13 Q But it's -- are you told where to test or is it  
14 something that you're doing whenever you do your visual  
15 examination?

16 A Through my training, we look for whatever's requested  
17 on those items and we look for that particular request  
18 also. And like I said, we do also trace possible hair to  
19 see, if anything, that would be probative for the case.

20 Q Okay. So then forensics from the sheriff's office  
21 ask for specific testing to be done on this item delivers  
22 it to you and you then do a preliminary test, but you're  
23 saying you also may look it for other test that might be  
24 possible as well?

25 A Only for trace, do we collect also trace possible

1 hair, items like that maybe fiber if it's -- it might be a  
2 trace request on it also, we would possibly be involve  
3 with that.

4 Q But again, you're doing the test -- mainly, you're  
5 doing the test that they're asking you to on the item that  
6 they're asking you to, but you're choosing what part of it  
7 you test?

8 A Well, we look at the whole item, yes.

9 MS. PARROTT: Nothing further, Your Honor.

10 THE COURT: Redirect?

11 MR. HILL: None, Your Honor.

12 THE COURT: You may step down.

13 (WHEREUPON, the witness leaves the witness stand.)

14 THE COURT: Next witness, please.

15 MR. HILL: Your Honor, the State has no objection to  
16 her being excused.

17 THE COURT: She is excused. Suitable, Ms. Parrott?

18 MS. PARROTT: Yes, sir, Your Honor.

19 MR. HILL: Jasper Humbert.

20 THE CLERK: Place your left hand on the Bible, raise  
21 your right hand. Do you swear to tell the truth, the  
22 whole truth, and nothing but truth so help you God?

23 THE WITNESS: Yes, I do.

24 THE CLERK: Please be seated and state your full name  
25 for the record.

1 THE WITNESS: Jasper Humbert, H-U-M-B-E-R-T.

2 WHEREUPON,

3 Jasper Humbert,

4 after first having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HILL:

7 Q Okay. Are you employed with the South Carolina Law  
8 Enforcement Division?

9 A Yes, I am.

10 Q All right. And how long have you been working with  
11 them?

12 A Approximately three and a half years.

13 Q All right. And what's your job there?

14 A I'm a forensic DNA analyst.

15 Q Sounds fancy, but where did you receive your  
16 training?

17 A I received my training for forensic DNA analysis at  
18 SLED.

19 Q How about did you graduate from a university or  
20 college before you got to that point?

21 A Yes, I had.

22 Q Where did you go?

23 A My educational background is I have a bachelor's of  
24 science from Armstrong Atlantic State University in  
25 Savannah, Georgia. I have a master's degree in biology

1 from the University of Iowa. And I have a further three  
2 years of graduate of education in genetics program at the  
3 Pen State Medical College.

4 Q Have you been qualified as an expert in DNA analysis  
5 and testified as an expert before?

6 A Yes, I have.

7 Q Have you worked in that area in any other states  
8 besides South Carolina?

9 A No, I have not.

10 Q How many times have you testified as an expert?

11 A Twice before.

12 MR. HILL: Your Honor, at this time based upon his  
13 testimony, the State would request that Mr. Humbert be  
14 allowed to testify as an expert in the area of DNA  
15 analyst.

16 THE COURT: Counsel, do you desire to voir dire?

17 MS. PARROTT: I'm sorry, Your Honor.

18 VOIR DIRE EXAMINATION

19 BY MS. PARROTT:

20 Q How long have you been working at SLED, sir?

21 A Approximately three and a half years.

22 MS. PARROTT: Yes, Your Honor, if I could just ask a  
23 couple more questions.

24 THE COURT: Proceed, yes.

25 BY MS. PARROTT:

1 Q Have you written any articles in this matter?

2 A I worked on -- I've written probably 100 reports  
3 involving DNA analysis. As far as scientific  
4 publications, no, but I have -- do have approximately four  
5 publications in scientific literature involving DNA, but  
6 not in relation to forensic science.

7 Q Okay. So just in the whole area of DNA not  
8 necessarily as it relates to just this?

9 A That's correct.

10 Q Okay. But you have four articles there you done?

11 A Last time, I checked I believe it was four.

12 MS. PARROTT: Nothing further, Your Honor.

13 THE COURT: You desire to be heard?

14 MS. PARROTT: No, sir.

15 THE COURT: He's qualified in the area of DNA  
16 analysis. You may posit query that will elicit opinion  
17 testimony in regard to DNA.

18 MR. HILL: Thank you very much, Your Honor.

19 BY MR. HILL:

20 Q Mr. Humbert, let's begin if you don't mind with an  
21 explanation of DNA and why we're even concerned about it?

22 A Okay. The letters DNA stand for deoxyribonucleic  
23 acid, which is a chemical in every one of our cells. DNA  
24 is basically a blue print for who we are. So if we get  
25 brown hair or blue eyes, our DNA determines that because

1     how we are made is basically determine by our DNA. And we  
2     get half of our DNA from -- basically each parent, so you  
3     get half from your mother, half from your father. So if  
4     someones says you look like your mother and father,  
5     there's a good reason. As far as DNA in relation to what  
6     I do, I basically examine evidence items and DNA standards  
7     to develop what's called a DNA profile from those items.  
8     And basically, a DNA profile is a set of numbers that I  
9     get from an item that corresponds to the item or the  
10    standard.

11    Q     Let's dig a little deeper.

12    A     Okay.

13    Q     You explain what DNA is, but how does it exist? How  
14    do we obtain it from an object? How does it get there?

15    A     Well, for instance all of -- for each individual  
16    basically all of our cells contain DNA, so if someone say  
17    cuts themselves or is cut and bleeds somewhere or say  
18    certain cells on their body are released on an item, you  
19    can get DNA from their cells on those items.

20    Q     And so the cells can be taken from blood. Can the  
21    DNA be obtained from any bodily fluid?

22    A     Essentially, yes.

23    Q     It can come from the saliva inside the mouth?

24    A     Yes.

25    Q     Or it could come from blood?



1 A Yes, it could.

2 Q We've heard testimony about nucule (sic) swabs are  
3 those used to obtain DNA?

4 A Yes, they are.

5 Q And just what is that?

6 A It's basically a swab taken from the inside of  
7 someone's mouth and you basically get cells and saliva on  
8 it from their mouth and that's how we get DNA from it  
9 because it has cells on it.

10 Q All right. So once a cell containing DNA is  
11 delivered to you, how do you determine who's cell that is  
12 or to whom that DNA belongs?

13 A Well, what I do is I match it to say a standard, so  
14 I'll get an item -- so first let's deal with standard,  
15 let's take a standard from a person.

16 Q So let me -- define a standard for me. I think we  
17 know what that means?

18 A A DNA standard is just a known sample taken from an  
19 individual, so for instance a buckle swab from a person  
20 will be used as a DNA standard to compare to evidence  
21 items in a case.

22 Q Might it be compared to what use to be used as blood  
23 samples? Could you compare a DNA sample to a blood  
24 sample?

25 A Yes, blood samples are used as well.

1 Q Okay. So you've obtained a DNA sample from a known  
2 person?

3 A Yes.

4 Q Is that that first thing you do?

5 A Well, I don't obtain them, I extract DNA from those  
6 standards, but I do them separately. I do the standards  
7 and the evidence separately and get the DNA from those  
8 items.

9 Q So you take a known standard from DNA from a person  
10 you know it belongs to; is that first step?

11 A Yes. It's submitted to me as -- from a person.

12 Q So you're given something, you know, came from say  
13 John Smith and then you test his DNA to see what it looks  
14 like?

15 A Yes, that is correct.

16 Q How do you do that? You use the word extraction and  
17 testing what's all that about?

18 A Well, the extraction is basically where we subject  
19 those cells to chemicals and it breaks down the cells, the  
20 walls and membranes of the cells. Then the DNA comes out.  
21 Once we have that DNA out of the cells, then we can do a  
22 test on that DNA to get the DNA profile. So when I say I  
23 extract it, that's just basically breaking down the cells.  
24 And then to get the DNA profile, you further test to get a  
25 DNA profile, which is basically a series of numbers that

1 correspond to all the different locations I tested on the  
2 person's DNA.

3 Q All right. So you break it down and then numbers are  
4 assign to specific parts on this DNA?

5 A Yes, that I tested.

6 Q That still seems a little complicated. Can you help  
7 me understand a little better?

8 A Sure. I can attempt to. So I'll start with a DNA  
9 profile, so a DNA profile is essentially numbers that you  
10 get from testing 15 different areas on a person's DNA and  
11 16 if you count the sex chromosome. Because you get half  
12 your DNA from your mother and half from your father you  
13 have two numbers, one from the chromosome that your mother  
14 gave you or the DNA that your mother gave you and one from  
15 your father, so you should have two numbers at each  
16 location. Okay. So when we test the DNA, we do it --  
17 basically, we look at the DNA of each of those locations  
18 and we get two numbers. And at the end, all the DNA  
19 profile is a series of numbers that correspond to those 15  
20 locations on their DNA that I tested. So once I done that  
21 and I done a standard, then I have a set of numbers an  
22 item, then I can compare them and say whether they match  
23 each other. So if I have a match, all the numbers from  
24 the standard will be the same as all the numbers from the  
25 item.

1 Q So forgive me if this is too simplistic, so is it a  
2 matching game of the item that you don't know against the  
3 standard?

4 A That's basically what I'm doing.

5 Q And if numbers from the standard match to the unknown  
6 specimen, what conclusion can you make?

7 A If it matches the other DNA profile, I call it a  
8 match.

9 Q All right. Now, you've given a good explanation in  
10 terms of helping us understand. Is there anything else we  
11 need to know to help us understand your testimony in a few  
12 minutes?

13 A I do not believe so.

14 Q Okay. So you feel like you might have explained it  
15 given us a good enough background to go forward with your  
16 testimony?

17 A I do believe so.

18 Q Okay. All right. I notice in front of you there a  
19 lot of envelopes. What's in those envelopes?

20 A These are the items that I received for testing.

21 Q All right. And do you have a report that list those  
22 items?

23 A Yes, I do.

24 Q For legal purposes, we need to first just examine how  
25 you receive those items. How did you receive the items

1 that you're testing or that you're going to testify about?

2 A I receive them in these heat-seal pouches.

3 Q All right. And who delivered them to you in that  
4 manner in those heat-seal pouches?

5 A A technician in the lab delivered them to me.

6 Q All right. So those items -- do you know how those  
7 items arrived in the lab at SLED?

8 A Yes, they -- well, I didn't observe them, I received  
9 them. And the technician their job is to give them to me  
10 and they will be -- basically, they will scan it into  
11 their custody when they bring the item to my holding box  
12 in our DNA lab, which is a secured area. And then I get  
13 them from there and take them into my custody.

14 Q To your knowledge, was there any compromising of any  
15 of the evidence that you examined?

16 A No, when I receive them, they appeared to be well  
17 sealed.

18 Q Okay. In regarding your laboratory, is it accredited  
19 and it is reviewed and made -- what steps are taken to  
20 make sure it is up to standards that it should follow?

21 A Well, we have a national accreditation every five  
22 years from the official accreditation agency for DNA labs  
23 in this country, it's called ASCLAB (sic). And every year  
24 each analyst is required to do two DNA proficiencies,  
25 which are unknown samples. And we do that information

1 submit it to make sure that we have submitted the correct  
2 results on those items. And we do a serology proficiency  
3 once a year to make sure that we can do the correct  
4 presumptive test.

5 Q And have you been subject to those tests?

6 A Yes, I have.

7 Q And what were the results of your test, did you pass  
8 them?

9 A They were passed.

10 Q Okay. To your knowledge, is the lab in good  
11 standing?

12 A Yes, it is.

13 Q When you receive the items for testing, they arrived  
14 to you in a sealed container that had not been open prior  
15 to examining it; is that correct?

16 A That is correct.

17 Q Do you have a list of the items that you examined?

18 A Yes, I do.

19 Q I understand that it's quite a lengthy list. So for  
20 our purposes, could you tell the jury the items that you  
21 examined?

22 A Yes, I can.

23 Q What are those?

24 A I analyzed a blood standard from Tarus Henry, which  
25 is item one on my report, a buckle swab from Carol Parker,

1 three cuttings from jeans from Tarus Henry, two cuttings  
2 from a shirt from Tarus Henry, swabs from shoes two swabs,  
3 cutting from a dish towel, cutting from a wash cloth,  
4 swabs from apparent blood pool in the living room, swabs  
5 from a hallway electrical outlet, swabs from the front  
6 doorknob, swabs from the kitchen floor, cuttings from  
7 jeans from living room, which I indicated Carol Parker  
8 based on analyzing the paperwork that I received. A swab  
9 from a blade or black machete, a swab from the handle of a  
10 black machete, a swab from the outside -- from of the  
11 outside of a right glove, swab from the outside of a left  
12 glove, a swab from the inside of a right glove, swab from  
13 the inside of a left glove. I also analyzed cuttings from  
14 a stack of napkins. A swab from the outside of a brown  
15 wallet belonging to Tarus Henry and swabs from a file  
16 cabinet, swabs from floor at the front door, swabs from  
17 wall at a shoe cubby, swabs from kitchen sink. Swab from  
18 passenger side front seat and swab from a driver-side door  
19 handle inside.

20 Q Prior to us continuing with your results, after you  
21 tested these items, were they reviewed -- were your  
22 results reviewed?

23 A Yes, they were.

24 Q And why is that done?

25 A They are reviewed to ensure that the report and

1 everything in it was done correctly and the results are  
2 correct.

3 Q Was that done in this case?

4 A Yes.

5 Q All right. Was that report deem to be correct and  
6 done properly?

7 A Yes, it was.

8 Q You tested the items that you just described to us.  
9 The first question is not the proper question forgive me,  
10 but based upon your examination, did you form an opinion  
11 as to whether or not the defendant's blood was found on  
12 any items in this case?

13 A Yes, I did.

14 Q And what is that opinion?

15 A Well, if I go back to my report, I did for item 3.1,  
16 which is the cuttings from his jeans, I had a presumptive  
17 test for blood that was positive and the DNA matched him.  
18 I also received had the presumptive test for blood on  
19 several other items that matched it as well. Cuttings  
20 from his shirt, cuttings from a dish towel, swabs from an  
21 electrical -- from hallway electrical outlet, swabs from  
22 the kitchen floor, cuttings from the stack of napkins --  
23 from a stack of napkins, and swabs from the kitchen sink,  
24 they all gave a positive presumptive test for blood and  
25 they matched his DNA profile. The DNA profile developed



1 from those items matched his DNA profile that I developed.

2 Q Were you able to develop an opinion regarding the  
3 existence of DNA for the victim, Miss Carol Parker, in  
4 this case?

5 A Yes, I was.

6 Q Were items -- were numerous items found to have her  
7 DNA on them?

8 A Yes, they were.

9 Q Okay. In that regard, is there something known as a  
10 mixture?

11 A Yes, there is.

12 Q And what's a mixture?

13 A So -- normally like if you had a single source of DNA  
14 you only get one set of numbers. So like because we get  
15 one number from our mother and one from our father at each  
16 location of the DNA, you're only expected most two  
17 numbers. And if you get the same number from your mother  
18 and father, one number. Okay. When you have more than  
19 two contributors of DNA to an item, then you have  
20 additional numbers. So instead of having only two numbers  
21 and most two numbers, you can have three or four or if you  
22 find that it's a mixture of even more people, you could  
23 have even more numbers. So mixture of DNA contains DNA  
24 from more than one source.

25 Q In that regard of all the items that you tested, was

1     there any DNA that was found that did not belong to either  
2     the defendant, Tarus Henry, or the victim, Carol Parker?

3     A     Yes, there was.

4     Q     Okay. And on what item was that DNA found and could  
5     you explain in regarding that item?

6     A     The item was item number 51 -- 15.1, which is a  
7     wallet that was listed belonging to the suspect, Tarus  
8     Henry.

9     Q     And did you find DNA on that wallet that belong to  
10    Mr. Henry?

11    A     No, I did not.

12    Q     Did you find DNA on that wallet that belong to  
13    Miss Parker?

14    A     No, I did not.

15    Q     Did you find DNA on that wallet that belong to a  
16    third person?

17    A     Yes, I did.

18    Q     And based upon your knowledge and experience, were  
19    you able to determine who may have contributed or to whom  
20    that DNA might belong?

21    A     Based on the DNA profile that that item had, in my  
22    opinion it is consistent with an offspring of these two  
23    people. Like I said previously, when you get one number  
24    from mother and one from your father for your DNA profile,  
25    on this wallet at every location in that DNA profile,

1     there was a number that came from either Tarus Henry or  
2     Carol Parker. And because of that in my opinion, that DNA  
3     profile is consistent with coming from the offspring.

4     This case specifically a son because it has a Y  
5     chromosome.

6     Q     So what is your expert opinion regarding the DNA  
7     mixture found on item 15.1 the wallet?

8     A     In my expert opinion, the major contributor, which is  
9     the only one that I can make a determination on is  
10    sufficient with being an offspring of those two  
11    individuals.

12    Q     You spoke a few minutes ago and explain that opinion.  
13    Going on to the other findings that you made, do you have  
14    an opinion regarding the DNA that you found on the items  
15    belonging to Mr. Henry? What is your opinion regarding  
16    DNA that belong to Mr. Henry?

17    A     Which items do you want me to...

18    Q     3.1 through 19?

19    A     Which items again do you want me to speak on?

20    Q     3.1, 4.2 through 19?

21    A     All right. If item 3.1, which was a cutting from  
22    jeans belonging from my paperwork to Tarus Henry, that  
23    again a profile developed from that matches Tarus Henry.  
24    Item 3.2, which was cutting from the jeans of Tarus Henry,  
25    which is one of the three cuttings from his jeans. I will

1 read from -- I will paraphrase from my report. The DNA  
2 profile came from item 3.2, which is that cutting is a  
3 mixture of at least two individuals. The DNA profile of  
4 the major contributor matches the DNA profile of Carol  
5 Parker. The partial DNA profile of the minor contributor  
6 also matches the DNA profile of Tarus Henry. Item 3.3  
7 just to speed things up, I received the same opinion as  
8 3.2. The major contributor matched Carol Parker and the  
9 minor contributor also matched Tarus Henry.

10 Q If I might, in regards to your final analysis, do you  
11 have an opinion or is there possible to place a numerical  
12 value on the likelihood or unlikelihood that the DNA in  
13 this case did not belong to Tarus Henry?

14 A All I can say is -- I can say that it's a match to  
15 the item and I can give a probability of a random person  
16 given that DNA profile.

17 Q Okay. How many items -- were there seven items that  
18 you were able to give an opinion stating that that DNA  
19 only belonged to Tarus Henry?

20 A Yes, I was.

21 Q And what was your opinion regarding the profiles on  
22 those seven items?

23 A I paraphrase from my report. The DNA profile  
24 developed from items 3.1, which is cutting from his jeans,  
25 4.2 which is cutting from his shirt, 6.11 which is

1 cuttings from dish towel, eight which is swabs from  
2 hallway electrical outlet, ten which is swabs from kitchen  
3 floor, for 2.1 cuttings from a stack of napkins, and 19  
4 which is a swab from kitchen sink. The DNA profiled  
5 developed from these items matches the DNA profile of  
6 Tarus Henry. The probability of randomly selecting an  
7 unrelated individual having a DNA profile matching these  
8 items is approximately one and 620 quadrillion.

9 Q Do you know how many people there are in the world?

10 A Approximately six billion.

11 Q I believe there were two items that matched Carol  
12 Parker only. And those were swabs from a blood pool in  
13 the living room item seven and item 16 a set of swabs on  
14 the file cabinet. Do you have an opinion or can you  
15 attach a number to probability that those DNA samples  
16 from those two areas belonged to anyone other than Carol  
17 Parker?

18 A Yes, I can.

19 Q And what is that number?

20 A The DNA I wouldn't paraphrase in my report here. The  
21 DNA profile developed from items seven and 16 matches the  
22 DNA of Carol Parker. The probability of randomly  
23 selecting an unrelated individual having a DNA profile  
24 matching these items is approximately one and 370  
25 quadrillion.

1 Q In all the items that were tested other than the ones  
2 that we just discussed regarding specifically Mr. Henry  
3 and Miss Parker and the wallet that we discussed belonging  
4 in your opinion to a son, were any of the items tested,  
5 any of the other items tested contained DNA that belong to  
6 a third unknown individual?

7 A Everyone that -- every one of the items besides  
8 those, I did not pick out another individual. One of the  
9 profiles that I developed was the DNA level, that I wasn't  
10 able to make an opinion. But of the other items that I  
11 developed DNA profiles except for the wallet, they were  
12 consistent with being from these two individuals.

13 Q Is it possible for you to give an opinion regarding  
14 the existence of other DNA in this case? Let me rephrase  
15 that question. Do you have an opinion to a reasonable  
16 degree of forensic DNA matching certainty in DNA profiling  
17 as to whether or not there was DNA from any other  
18 individual contained on the items that you examined in  
19 this case?

20 A I can't say whether there was if it was, I didn't  
21 detect it. It was below my level of testing, that's all I  
22 can determine.

23 Q So you're testing -- so what was the ultimate  
24 conclusion of your testing?

25 A Well, I received all of my -- aside from the items

1 that were only one DNA profile that I was able to match to  
2 individuals, I also receive -- had some items that were  
3 mixtures, okay. And some of those mixtures I mean I can  
4 go through each individual item. I was able to pick out a  
5 major contributor. And what that means is that when you  
6 have a mixture of two DNA's sometimes one person gives a  
7 lot more DNA than the other. And when I finish my test, I  
8 can tell that one amount of DNA is a lot higher because  
9 two of the numbers that come from the profiles appear to  
10 be higher in my test. So I can say this person's a major  
11 because they have much more DNA amplified then the other  
12 and I can also tell whether it's minor. And in each of  
13 the cases where I was able to do that, the results were  
14 consistent with these two individuals, so they cannot be  
15 excluded from these mixtures.

16 Q Because my questions may not have been very clear  
17 sometimes, what is your professional expert opinion in  
18 conclusions regarding the test that you made in this case.

19 A Well, I can paraphrase my report ---

20 Q Don't need do that?

21 A I do not -- of the items I tested, the only other  
22 profile that I could say conclusory was not from these two  
23 individuals was the profile from the wallet. The ones  
24 that were mixtures were those two individuals could not be  
25 excluded Tarus Henry and Carol Parker. Some of the items

1 look like that one item that I mentioned, the DNA was too  
2 low and my DNA profile was too low for me to make a valid  
3 conclusion, so it was insufficient for an interpretation  
4 meaning there were so few numbers returned to me, that I  
5 can't say whether the -- the validly matches one or the  
6 other. I also had one item where I received no DNA  
7 profile at all meaning I got back no result. And one item  
8 I stopped after extraction because when I tested to see if  
9 there was any DNA at all except no human DNA was there, it  
10 was just no DNA, so that is essentially a summation of my  
11 results for this case.

12 Q The envelopes in front of you do those contain the  
13 items that you tested?

14 A Yes, they do.

15 Q All right.

16 MR. HILL: Your Honor, at the time, the State would  
17 request that the items tested at SLED for DNA purposes be  
18 admitted into evidence. I think a sufficient chain has  
19 been established to show that those items were taken by  
20 Adam Moore with the Florence County Sheriff's office.  
21 They were then delivered to the evidence room at the  
22 Florence County Sheriff's office. They were delivered  
23 either by Kim Cockfield or Officer Larry Quick to the drop  
24 box at SLED for which they were either given to Lori Giles  
25 or delivered to Mr. Humbert for testing. And they --



1     there's no testimony at this point that they been tampered  
2     with and that they are -- the condition which they should  
3     have been in at the time either Ms. Giles or Mr. Humbert  
4     received them and ask that they be admitted into evidence  
5     and that a sufficient chain has been established.

6             THE COURT:   Defense.

7             MS. PARROTT:  Your Honor, is he planning on doing  
8     that as a collective thing or we going to go through this  
9     one by one?

10            THE COURT:  One by one, simply marking each package  
11     with a separate number for purposes of the record.

12            MS. PARROTT:  Thank you, Your Honor.

13            THE COURT:  Pass them to the court reporter, let her  
14     mark them starting with exhibit 60.

15            (WHEREUPON, a pause in the proceedings.)

16            THE COURT:  Sixty through 65 in evidence without  
17     objection.

18            (WHEREUPON, State's Exhibits Nos. 60-65 was admitted  
19     into evidence.)

20            BY MR. HILL:

21     Q     Mr. Humbert, I just have a few -- hopefully, a few  
22     more questions.  For purposes of the record, I believe the  
23     items marked as State's Exhibit 60 through 65 are labeled  
24     and you're able to read and tell us what's inside each of  
25     those; is that correct?

1 A With my paperwork I should be able to.

2 Q All right. Just what items did you examine? I just  
3 need to be able to identify each exhibit?

4 A May I have some scissors and possibly some gloves.

5 THE COURT: We can get you some and pass those to him  
6 ones we've used here before, some scissors and some new  
7 gloves. And Mr. Humbert, when you undue the package, make  
8 sure what you take out goes back in.

9 MR. HUMBERT: Yes, sir. I will keep these separate.

10 THE COURT: I would suggest you do that.

11 MR. HUMBERT: Yes, sir.

12 THE COURT: Don't want to get me upset this  
13 afternoon.

14 MR. HUMBERT: I don't want to do that.

15 THE COURT: Thank you, I don't want it either. For  
16 the record, the packages are simply being opened with  
17 scissors and gloves and the packages will remain in that  
18 condition in an evidentiary state. You lawyers agree to  
19 that?

20 MR. HILL: Yes, sir.

21 MS. PARROTT: Yes, Your Honor.

22 THE COURT: Thanks.

23 A This contains item 21.

24 MS. PARROTT: For clarification is that State's 60?

25 THE COURT: I'm interested in that. Is that ---

1 A State's Exhibit 60 on the sticker.

2 THE COURT: All right. Sixty is a court's exhibit  
3 and what you're referring to inside the package is the  
4 inner marking.

5 A Yes, these are -- I put my number and the case number  
6 and my initials on each of these items that I tested.

7 THE COURT: And for the record, so it will be crystal  
8 clear these are little packets.

9 A Yeah, they contain a swab. I can open them up and  
10 look at the swab.

11 THE COURT: Once again, put it back in pristine form.

12 A So that was item 21, which was a swab from  
13 driver-side door handle. This is a regular package it  
14 came in. This is item 16 swab from a file cabinet. You  
15 want me to open it? Item 19 swabs from the kitchen sink.  
16 Item 20 swab from passenger side front seat. Item 17  
17 swabs from floor to front door. Item 18 swabs from wallet  
18 shoe cubby. That was all of this container.

19 THE COURT: That completes item 60, Court's 60.

20 A Should I continue?

21 Q My only concern is whether or not you were able to  
22 just identify the items in the package as the items that  
23 you tested. And I believe I do so; is that correct?

24 THE COURT: From the outside of the package?

25 MR. HILL: Yes.

1 A Well, some of them I may have to open the inside  
2 because in our case managing, it has each item -- each bag  
3 with a letter, but I don't have that directly in front of  
4 me. I have my evidence worksheet, but if I open every  
5 one, I could identify every item.

6 Q That's fine. But is it your testimony that  
7 everything you tested are in those bags, it's been marked  
8 as State's Exhibit 60 and 65?

9 A Yes. And they also have the case number on it, so  
10 it's identified to this case and it has a package number.

11 Q Okay. Promise just a few more questions. If you  
12 have your report, was Carol's blood found on Mr. Henry's  
13 jeans, on the defendant's jeans?

14 A You have a paper napkin?

15 THE COURT: I believe she had some. Ms. Bailiff,  
16 where did you put those Kleenexes. Will that do it? I  
17 got some Florence County paper?

18 A That's too fancy for me. The cuttings from his jeans  
19 are items 3.1, 3.2 and 3.3. Items 3.2 and 3.3 I had a  
20 strong or a presumptive test, a positive presumptive test  
21 for blood. And I receive a mixture of DNA between Carol  
22 Parker and Tarus Henry. Because I received a mixture of  
23 DNA, I really can't tell you whether the presumptive --  
24 the blood that I had a presumptive for is for one  
25 individual or another because it's a mixture of those two

1 people, the DNA. There could be sweat from one person or  
2 blood from the other or vice versa because there's a  
3 mixture of DNA I cannot tell you...

4 Q But their DNA was -- both DNA's were found on that  
5 item?

6 A Yes, both DNA's were found on those items.

7 Q Regarding the machete item 12.1 and 12.2, I believe a  
8 mixture both DNA for Miss Parker and Mr. Henry were found  
9 on these items; is that correct?

10 A Yes, item 12.1 and 12.2 Tarus Henry and Carol Parker  
11 cannot be excluded as possible contributors to that  
12 mixture.

13 Q And finally, items seven of the set of swabs from a  
14 blood pool in the living room?

15 A The DNA profile developed from item seven matches the  
16 DNA profile of Carol Parker.

17 MR. HILL: I know it's been a long process, please  
18 answer any questions that the defense might have.

19 CROSS-EXAMINATION

20 BY MR. PARROTT:

21 Q Mr. Humbert, you talked pretty much over my head a  
22 little bit. So let me see if I can try and do this a  
23 little bit too. You're saying DNA is indicated on this  
24 item, this item, that doesn't mean it's all blood, does  
25 it?

1 A Well, for the -- some of the items I did serology  
2 testing, which mean I tested them to see if I had a test  
3 for blood, which is a presumptive test meaning I can't be  
4 100 percent certain. It's just a strong indication  
5 meaning blood gives chemical reaction that is positive in  
6 this test. And I visually limit it to see if it's the  
7 color of blood. If it's red, I do the presumptive test.

8 Q But again, it could be a skin cell, it could be  
9 something from saliva, it's just your finding DNA, right?

10 A On some items I get just DNA from a swab, it's not  
11 tested for blood.

12 Q And on some of these items even that were submitted  
13 to you that were even prescreened before they got to you,  
14 you didn't even find any DNA; is that correct?

15 A Well, they screened -- some of the items that  
16 screened positive for blood, I did not get a DNA profile  
17 or I got a insufficient for interpretation and that just  
18 means I didn't get enough DNA to get a valuable result.

19 Q Which means it's not enough for you to stand behind,  
20 right? It means you're not willing to testify to it and  
21 put it on a chart and say this is what it is?

22 A I'm not willing to say it matches anyone ---

23 Q Okay.

24 A --- from that item.

25 Q And even if you find DNA on something, you don't know

1 the circumstances of how it got there, do you?

2 A No, I only receive swabs. I don't know how -- I  
3 didn't see -- witness the crime scene or the crimes.

4 Q You mentioned that -- and this is under the big idea  
5 of DNA, I guess. That you test 15 different locations to  
6 come up with what you use for your standard to then  
7 compare your samples to?

8 A Yes.

9 Q How many locations are there on DNA?

10 A As far as -- these are -- what we test are called  
11 repeats, they're called short tandem repeats and we only  
12 test 15 of those locations. There are probably thousands  
13 or more.

14 Q So out of thousands within each cell, you're picking  
15 out 15?

16 A We pick 15 ones that are tested and there have been  
17 studies on, yes.

18 Q You said also that once you've prepared your report  
19 that somebody else will look at to see whether or not your  
20 comparisons and what your results are, is that somebody  
21 else who's in your own SLED; correct?

22 A Yes, there are two, actually two reviews after me.

23 Q So ---

24 A There's a technical review and an admen review, so  
25 there's three -- two more reviews after me.

1 Q But it's all done by your same agency, it's not like  
2 it gets shipped out?

3 A Yes, it's done by other analyst in the department.

4 Q All right. Given that you're finding DNA, but these  
5 two people live together, it wouldn't be unusual for  
6 somebody to have DNA on items where they live, would it?

7 A Well, it wouldn't be unusual if they had live there.  
8 I mean, yeah, if they live there.

9 Q Even I'm putting my hand right here on this podium  
10 today and this is where I work, by me having a sweaty palm  
11 or skin cell, I could leave my own DNA on this podium,  
12 would I not?

13 A You could leave you cells on that podium.

14 Q So even somebody just visiting an area could leave  
15 DNA?

16 A It's possible although it probably -- I don't know  
17 how much it would leave. I can't tell you.

18 Q Okay. In some of these items, you're calling them a  
19 mixture and some things you go on to say that they can't  
20 be excluded as possible contributors to it?

21 A Yes.

22 Q That doesn't mean it's only them, does it?

23 A Based on my opinion which I get from looking at the  
24 mixture, when I say it cannot be excluded the reason  
25 because the numbers from their profile are present in that



1 mixture and that is why I'm saying they cannot be  
2 excluded.

3 Q Okay. But their numbers aren't necessarily their own  
4 numbers. There are other people could have those same  
5 numbers on those same 15 locations out of the thousands  
6 that are out there, right?

7 A Well, we only test these 15 locations and the numbers  
8 from the other locations are not going to be tested in  
9 these locations. Could you repeat the question again?

10 Q What I'm saying is that you're looking at it and  
11 saying these people can't be excluded, right?

12 A Yes.

13 Q But that doesn't mean it is just them, it means they  
14 can be part of a huge group or a much larger group because  
15 you're only testing 15 locations?

16 A No, the reason I'm saying that they cannot be  
17 excluded is because there's -- in those locations there  
18 are not numbers that do not apply to those individuals.

19 Q Okay. Double negative in what was your answer just  
20 then, so let me switch it back to you. You're saying  
21 their numbers match something that popped up there in what  
22 you tested?

23 A What I'm saying is the numbers from their standards  
24 are present in that mixture.

25 Q Okay. But they're not the only people in this whole

1 universe who will have just those numbers, are they?

2 A There are other people with numbers at all these  
3 locations.

4 Q Okay. Thank you. On the machete though, it's just a  
5 mixture; isn't it?

6 A 12.1 and 12.2.

7 Q Correct.

8 A I can read off the results for them. The DNA  
9 profiles obtained from items 12.1 and 12.2 are mixtures of  
10 at least two individuals. Tarus Henry and Carol Parker  
11 cannot be excluded as contributors to these mixtures.

12 Q Okay. And what you found solely that you attribute  
13 to my client, Tarus Henry, you say are the cutting from  
14 his jeans, the cutting from his shirt, dish towels, and a  
15 rag or wash cloths excuse me, the hallway electrical  
16 outlet, the kitchen floor, the kitchen sink and a stack of  
17 napkins; is that correct?

18 A I believe that's correct.

19 Q And all of those things as far as you know are his or  
20 were found where he lives?

21 A Well, those were the only ones that only contain just  
22 the numbers from him. The other ones contain his numbers,  
23 but they contain more numbers of the mixture.

24 Q And again though you have no idea the circumstances  
25 upon how this happened or how it got DNA, it's just given

1 to you to test?

2 A That's correct.

3 Q Okay. You talked about the wallet in this matter  
4 that it came up in this item 15.1 for your notes as a  
5 mixture at least two individuals; is that correct?

6 A Yes.

7 Q And what you were stating was that you believed it to  
8 be from a third person with some DNA like theirs?

9 A I will say it's consistent with being an offspring.

10 Q A male offspring?

11 A A male offspring.

12 Q Given that they have a daughter and a son that's  
13 present here is only his son and not her's, do you have  
14 contamination in your lab or have you made a mistake?

15 A Well, it's not a mistake, I can walk through the  
16 profile with you and explain how it's consistent with from  
17 those two individuals.

18 Q But what you stated was you thought it was a male  
19 offspring to these two people, so I'm asking ---

20 A I'm saying it's consistent with being from those two  
21 individuals.

22 Q Okay. But given that there is no such child, you  
23 must be wrong; correct?

24 A No, that doesn't mean that I'm necessarily wrong, it  
25 just means that that profile is consistent with being from

1 those two people.

2 Q Okay.

3 A Meaning that if you look at the profile each number  
4 from each of those standards is present in that profile.

5 Q Okay. And that gets back to what I was just asking  
6 you about a little bit ago, which is that just because  
7 they have those numbers doesn't mean there's not a huge  
8 group of people out there that wouldn't have the same?

9 A Well, the probability of them having the same is  
10 about one in a very large number because when I did the  
11 matches, I was doing the probability of someone having the  
12 same profile.

13 MS. PARROTT: Thank you. I have nothing further,  
14 Your Honor.

15 THE COURT: Redirect.

16 REDIRECT EXAMINATION

17 BY MR. HILL:

18 Q Mr. Humbert, would you like to finish your  
19 explanation to last question?

20 A Sure. I was trying to explain that when a profile  
21 matches another profile, we get a statistic for each  
22 location or for the profile and it's not -- it's typically  
23 a very rare number.

24 Q All right. How certain and confident do you feel  
25 about the results that you returned in your report?

1 A I am very confident in them.

2 Q And they were review and passed on and supported by  
3 your superiors; is that correct?

4 A Yes, they were.

5 Q The items that you tested, they either had -- is it  
6 correct that the items you tested either had the  
7 defendant's blood, the victim's blood or a mixture of the  
8 blood or the DNA of those two I'm sorry, I misspoke?

9 A Yes, that is correct.

10 Q All right. And they cannot be excluded as a donor of  
11 the DNA in those -- they cannot be excluded as the donors  
12 of the DNA on the items that you tested; is that correct?

13 A On ones that I stated, yes.

14 Q And is it your opinion that there is no DNA from a  
15 third person on the items that you test other than DNA  
16 belong to Miss Parker or the defendant?

17 A None that I detected or was able to get a profile  
18 from.

19 MR. HILL: Thank you. I appreciate your testimony.

20 THE COURT: Recross?

21 MS. PARROTT: No, thank you, Your Honor.

22 THE COURT: You may step down.

23 (WHEREUPON, the witness leaves the witness stand.)

24 THE COURT: I assume you want to excuse him?

25 MR. HILL: I do, Your Honor.

1 THE COURT: Have a nice trip back to Columbia.

2 MR. HILL: Your Honor?

3 THE COURT: Yes.

4 MR. HILL: Might we take fair brief respite.

5 THE COURT: Yes, we'll do it in this fashion. I have  
6 been assign by the Chief Justice of the State Supreme Court  
7 what is called a possible class action activity of  
8 cases, 53 cases against various hospitals around the state  
9 alleging improper pricing. They are entitled to so-called  
10 hospital pricing cases. Some of those lawyers from as far  
11 away as Greenville, Charleston, Columbia, Greenwood and  
12 around are coming here at five o'clock today to do some  
13 preliminary motions. I don't want to waste 30 minutes,  
14 but if you need a recess right now ---

15 MR. HILL: I don't, I just needed to tell my witness  
16 goodbye and that was it. The jury been sitting here I  
17 didn't know if they needed a break.

18 THE COURT: Well, let's see if the jury's okay.

19 Are you jurors okay for 30 minutes? If you're not,  
20 raise your hand now. Are you okay for 30 minutes? All  
21 right, once again, five o'clock I'm going to stop and go  
22 to this hospital pricing litigation cases that are  
23 assigned to me.

24 MR. HILL: Thank you, Your Honor. At this time, the  
25 State would recall Officer Adam Moore.

1 THE COURT: He remains under oath retake the stand.

2 WHEREUPON,

3 Adam Moore,

4 after first having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HILL:

7 Q Officer Moore, primary purpose for your testimony at  
8 this point is really clerical or ministerial, you  
9 testified earlier and presented evidence that had been  
10 collected in this case. According to your records and the  
11 testimony that's been presented, is there any evidence  
12 outstanding that has not been admitted into evidence  
13 according to your records?

14 A Yes, there is.

15 Q What are those items?

16 A The items that the SLED agent spoke about the jeans  
17 belonging to suspect, shirt belonging to suspect, shoes  
18 belong to suspect, the rags which are a dish towel and a  
19 washcloth, the jeans belonging to the victim, one pair of  
20 gloves, one stack of napkins, and one wallet containing  
21 the ID of Tarus Henry.

22 Q And are those items present and did you examine those  
23 and are those here today?

24 A Yes, they are here today.

25 MR. HILL: Okay. Your Honor, at this time based upon

1 the chain being established after the testimony from all  
2 witnesses, I think a sufficient chain has been established  
3 for those items to now be admitted into evidence.

4 THE COURT: What say the defense?

5 MS. PARROTT: Without objection, Your Honor.

6 THE COURT: In evidence. How shall we mark them as a  
7 unit or separate and distinct?

8 MR. HILL: Whatever's most convenient for the Court  
9 and purposes of the record.

10 THE COURT: Probably separate and distinct. How many  
11 items are there four?

12 MR. HILL: Your Honor, while he's looking at this  
13 point, the State doesn't need to demonstrate them to the  
14 jury.

15 THE COURT: No.

16 MR. HUMBERT: Nine items.

17 THE COURT: Nine items?

18 MR. HUMBERT: Yes, sir.

19 THE COURT: List them.

20 MR. HUMBERT: There is jeans belonging to suspect.

21 THE COURT: That's 66.

22 MR. HUMBERT: Shirt belonging to suspect.

23 THE COURT: Sixty-seven.

24 MR. HUMBERT: Shoes belonging to suspect.

25 THE COURT: Sixty-eight.



1 MR. HUMBERT: Rags, there is a dish towel and  
2 washcloth.

3 THE COURT: Two rags 69.

4 MR. HUMBERT: Jeans belonging to victim.

5 THE COURT: Seventy.

6 MR. HUMBERT: One pair of gloves.

7 THE COURT: Seventy-one.

8 MR. HUMBERT: One stack of napkins.

9 THE COURT: Seventy-two.

10 MR. HUMBERT: One wallet belonging to suspect.

11 THE COURT: Seventy-three the wallet. Let her mark  
12 them.

13 (WHEREUPON, State's Exhibits Nos. 66-73 was admitted  
14 into evidence.)

15 THE COURT: Madam Forelady and members of the jury,  
16 these items marked in this fashion will be with you in the  
17 jury room. You may extricate them from the box, but  
18 please keep items separate and distinct as they are  
19 numbered. Thank you.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. HILL:

22 Q Corporal Moore, while you were at the scene, did you  
23 observe what any law enforcement terminologies known as  
24 blood splatter?

25 A Spatter, yes, sir.

1 Q Okay. Is that an area in which you have been  
2 trained?

3 A It is. I've had a class on blood spatter and the  
4 class went into detail.

5 Q All right. We looked at photographs earlier based  
6 upon your testimony and the review of the photographs, do  
7 you recall a particular area inside that apartment where  
8 blood spatter was evident?

9 A Numerous areas inside the apartment.

10 Q Why is blood spatter important and what does it  
11 indicate?

12 A Blood spatter can indicate where someone was shot,  
13 punched, kicked, stabbed, slashed any number of violence  
14 to the body that causes someone to bleed will create blood  
15 spatter.

16 Q Why is that significant in this case?

17 A In this case, the victim was violently attacked and  
18 the -- she was cut numerous times and there was massive  
19 amounts of blood throughout the apartment where she was  
20 attacked.

21 Q Would it be indicative of hard blows?

22 A The as far as ---

23 Q How much force would it take to cause blood spatter?

24 A A minor cut will bleed and may have like what we call  
25 90-degree drops, which straight down drops. If there's

1 any kind motion to the blood say a slashing wound coming  
2 across would leave what we call castoff, which would be  
3 directional blood. High velocity spatter is equivalent to  
4 like a gunshot victim. If they been shot when the bullet  
5 hits, it releases blood and then it shoots out. So it's  
6 very fine particles, which is very fast moving with the  
7 way a bullet will be traveling through a body and it exits  
8 and creates blood spatter.

9 Q In what areas of the apartment, did you notice each  
10 of those types of blood spatter?

11 A The -- just to the right of the door where the shoe  
12 cubby was, the photographs you saw earlier where the John  
13 Deer little children's toy tractor was, that was  
14 consistent with castoff blood and directional blood if  
15 somebody just being beaten and or slashed at that area.  
16 The directional, you can show direction in the picture.  
17 The -- there was also 90-degree drops in the kitchen,  
18 which is consistent with someone standing and bleeding  
19 straight down. And the kitchen sink was also a 90-degree  
20 blood drop which would be consistent with someone standing  
21 and bleeding straight down, they're not moving. The  
22 hallway there was directional blood spatter is very low  
23 velocity to medium velocity blood spatter, which is  
24 consistent with again a beating, slashing, swinging of any  
25 kind of movement. On the file cabinet, there was also

1 blood spatter which is consistent with a smear. And what  
2 a smear is is if I'm bleeding and I rub my face up against  
3 something or rub my arm up against something, I'm not  
4 going to leave just drops. I'm going to leave like an  
5 impression of my arm on the wall. On that filing cabinet  
6 was a smear, which is consistent with someone either --  
7 whatever part of the body that's bleeding has rubbed up  
8 against that and that is what was found on the filing  
9 cabinet in the very back bedroom.

10 Q The blood that was collected and sent to SLED that  
11 was taken by you in each of the areas that you pointed out  
12 on the diagram earlier?

13 A Yes, it was.

14 MR.HILL: Please answer any questions that the  
15 defense may have.

16 MS. PARROTT: I have none, Your Honor.

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

18 (WHEREUPON, the witness leaves the witness stand.)

19 THE COURT: Next witness, please.

20 MR.HILL: Your Honor, the next witnesses I have would  
21 regard areas in which we had motions yesterday afternoon.

22 THE COURT: Yes.

23 MR. HILL: Officer Streett, Officer Bert Turner and  
24 then the physician.

25 MS. PARROTT: Your Honor, may we approach?

1 THE COURT: Sure.

2 (WHEREUPON, a bench conference was held in the  
3 presence of the jury, but out of the hearing of the  
4 jury.)

5 THE COURT: Jurors, we'll stop here in regard to this  
6 case. Please remember my two instructions to you as to  
7 the rules that govern your conduct, please, please help in  
8 that regard. And add the additional factor that Channel  
9 15 did in fact have some television coverage of some  
10 nature of the trial. Do not watch Channel 15. Please be  
11 back at nine o'clock in the morning, nine o'clock in the  
12 morning. I'm told it's on South Carolina Now, I don't  
13 keep up with all that, but anyway some of you people know  
14 where that is, don't go there.

15 (WHEREUPON, the jury was excused for the day.)

16 THE COURT: In this case, what matters do you need to  
17 put on the record, Mr. Hill.

18 MR. HILL: Your Honor, I don't know that it needs to  
19 be on the record, but we did redact a statement according  
20 to agreement yesterday afternoon. That redaction is  
21 available for the Court to listen to if it would like to  
22 do so prior to it being presented to the jury, actually  
23 make the State comfortable to do so to make sure that  
24 there aren't any problems in presenting it to the jury if  
25 the Court would like us to do so. And I can do that in

1 the morning, that will be ready in morning.

2 THE COURT: I don't want to start first thing in the  
3 morning with the Court spending time outside the presence  
4 of the jury. What is the length of that redaction?

5 MR.HILL: All we would need to do is show you the  
6 statement. Play it is probably 30 seconds.

7 MS. PARROTT: It's only a page and a half as far as  
8 the transcription goes.

9 THE COURT: May we do that now?

10 MS. PARROTT: Certainly.

11 THE COURT: Let's do that now.

12 MR. HILL: I have to get my IT guy to come up, so we  
13 can play it for the Court.

14 THE COURT: Okay, where has he gone?

15 MR. HILL: Your Honor, may we approach?

16 THE COURT: Sure.

17 (WHEREUPON, a bench conference was held.)

18 THE COURT: Mr. Turner, would you please stand. You  
19 are subject to being recalled. We have unusual specific  
20 rules in regard to witnesses who have already testified,  
21 but are subject to recall. During the nighttime hiatus,  
22 do not discuss this case with any lawyer. Do not discuss  
23 it with anyone in regard to your possible testimony  
24 tomorrow. You understand?

25 MR. TURNER: Yes, sir.

1 THE COURT: Thank you.

2 MR. HILL: Your Honor, I called and Mr. Godbolt is on  
3 his way.

4 (WHEREUPON, a pause in the proceedings.)

5 MR. HILL: Judge Anderson.

6 THE COURT: Yes.

7 MR. HILL: While we're waiting, I just like to advise  
8 the Court of the State's anticipated witness schedule for  
9 tomorrow.

10 THE COURT: Okay.

11 MR. HILL: Mr. Turner and then Officer Streett, Donna  
12 McDaniel, who you recall testified in the Jackson vs.  
13 Denno hearing. Mr. Henry's statement will be presented to  
14 the jury probably through Mrs. Streett's testimony. Then  
15 I have Miss Parker, the victim, and then Dr. Reynolds.

16 THE COURT: Okay.

17 MR. HILL: I'm not sure how long that will carry us  
18 into the day, but I thought the Court might like to know.

19 THE COURT: Yes, just have them ready to go because I  
20 plan to run without stopping, so we can complete.

21 MS. PARROTT: Your Honor, then on that note should  
22 the defense choose to put up a case, obviously, Mr. Henry  
23 and his mother will be here. But one of the witnesses I  
24 did list is a gentleman from out of Columbia. I have him  
25 on telephone standby for tomorrow, but to be here

1 absolutely on Thursday if he didn't hear otherwise. Would  
2 you rather me go ahead and have him...

3 THE COURT: Tomorrow, tomorrow.

4 MS. PARROTT: Would it be okay with the Court then if  
5 I just told him maybe two o'clock tomorrow afternoon given  
6 the number of witnesses they have?

7 THE COURT: Yeah, I'll go with that.

8 MS. PARROTT: Thank you, Your Honor.

9 THE COURT: But definitely two o'clock tomorrow.

10 MS. PARROTT: Yes, sir, thank you.

11 THE COURT: And, of course, Ms. Parrott, I expect you  
12 to visit the Fifth Amendment issue with gargantuan  
13 specificity. And before we come to the point of his  
14 decision whether he will testify or not testify, I will  
15 engage in the procedure that is articulated in State vs.  
16 Orr and that will be done on the record under oath, so  
17 please during the nighttime hiatus spend sometime with him  
18 on that issue in reference to the Fifth Amendment  
19 Privilege.

20 MS. PARROTT: We were already doing that, Your Honor.

21 THE COURT: Thank you.

22 (WHEREUPON, a pause in the proceedings.)

23 THE COURT: What is the nature of the redaction?  
24 Counsel, give me your attention, Ms. Parrott.

25 MS. PARROTT: Yes, sir.



1       THE COURT: What is the exact language that we're  
2 talking about or something that is identifying what has  
3 been redacted?

4       MR. HILL: Your Honor, it's right here and I can mark  
5 it.

6       MS. PARROTT: Here he is.

7       THE COURT: Okay, all right. Put it up for me.

8       MS. PARROTT: Your Honor, just for your information,  
9 this is something that Mr. Hill and I actually did  
10 yesterday afternoon and agreed upon where it should start  
11 to be redacted and where it should end, so as long as  
12 that's what's been done, then it was agreed upon by  
13 counsel for the State and counsel for defense.

14       THE COURT: Well, I accept the redaction. I don't  
15 have to review it for my purposes as long you two officers  
16 of the Court have redacted the statement and it's going to  
17 be presented in a pristine form.

18       MR. HILL: It will. I just remember the Court's  
19 admonition to me and I wanted to make sure that I abided  
20 by it and let the Court know that I understood my  
21 directions.

22       THE COURT: Well, my admonition was simply do the  
23 redaction in a correct fashion and, Ms. Parrott, you agree  
24 it's been done?

25       MS. PARROTT: I know we agreed upon where it is in

1 the transcript, I haven't myself heard it, but I know  
2 that's what it was.

3 MR. HILL: They haven't heard it and that's what I  
4 was attempting to do.

5 MS. PARROTT: We will.

6 THE COURT: Listen over the nighttime hiatus, make  
7 sure it's done correctly and I will leave that alone.

8 (WHEREUPON, the proceedings were concluded for the  
9 day to be reconvened on July 29, 2009.)

10 THE COURT: Good morning, everyone. Bring the jurors  
11 out.

12 (WHEREUPON, the jury return to the courtroom.)

13 THE COURT: Good morning, jurors. Everyone feeling,  
14 okay, today? I hope so. Jurors, let me discuss something  
15 with you in regard to news coverage of this trial. There  
16 was some news coverage on at least one television station.  
17 There was an article in Morning News this morning. Did  
18 any of you come in contact with the Morning News or the  
19 television reporting, if so raise your hand? Anyone come  
20 in contact? Let the record show that there is no response  
21 in regard to any kind of news coverage concerning the  
22 matter.

23 Mr. Hill, call your next witness, please?

24 MR. HILL: Your Honor, we like to call Bert Turner  
25 once again, he's already been sworn.

1 THE COURT: Bertrum Lee Turner is the full name Miss  
2 Court Reporter, he has been sworn. Proceed.

3 MR. HILL: Thank you, Your Honor.

4 WHEREUPON,

5 Bert Turner,  
6 after first having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HILL:

9 Q Okay. Mr. Turner, we began with your testimony  
10 yesterday regarding the arson, but were you also involved  
11 in other aspects of the investigation in this case?

12 A I was.

13 Q And would you describe for the jury the other actions  
14 that you took in this case?

15 A Of course, as I stated yesterday during testimony,  
16 Investigator Streett and I happen to be riding together,  
17 we responded together to the scene. We arrived at the  
18 scene not only was I investigating the fire scene, but  
19 also we were trying to determine the location of the two  
20 small kids that were reportedly at the scene earlier that  
21 day. The investigation continued with statements from  
22 witnesses that were at the scene as well as information  
23 that we were receiving from the hospital, I believe, from  
24 Lieutenant Lutcken or Lieutenant Yarborough regarding the  
25 victim being dropped off at the hospital and the defendant

1 then leaving the scene with the two kids in the vehicle.

2 We were actually trying to determine what type vehicle and  
3 get as much information on that as we could to proceed  
4 with an Amber Alert.

5 Q Did you reach the point where an Amber Alert actually  
6 had to be given?

7 A No, we did not.

8 Q And was that because the children were found in  
9 Kershaw County?

10 A That is correct. We had received information that  
11 the defendant as well as the children were in Kershaw  
12 County.

13 Q And as a technical point, do you know the ages of the  
14 children?

15 A I do not recall the ages specifically. I can tell  
16 you they are small young children.

17 Q And did you arrive in Kershaw County?

18 A I did.

19 Q What roles or activities did you engage in while you  
20 were there?

21 A When we left the scene and proceeded to Kershaw  
22 County, at that time the on-call investigator who's duties  
23 began at 4:00 p.m., Investigator Timmons. Myself,  
24 Investigator Streett proceeded to Kershaw County in my  
25 vehicle. Investigator Timmons in his vehicle. And we

1 were followed by Crime Scene Technician Adam Moore in his  
2 vehicle. The purpose for that was to try to locate the  
3 vehicle that was used in this incident, locate the  
4 children try to attend to their welfare, as well as locate  
5 the defendant. We arrived in Kershaw County at the  
6 hospital, I believe in Camden there. At that time,  
7 Mr. Henry, the defendant, wasn't there, but actually, I  
8 think at the police department in Camden.

9 Q And you did not see him there?

10 A I did not.

11 Q In fact, you did not see him until you returned to  
12 Florence County?

13 A That's correct.

14 Q Did you locate an automobile believed it had been  
15 driven by Mr. Henry?

16 A We did.

17 Q Will you explain how you came to find that car?

18 A Sure. While we were at the hospital, the defendant's  
19 mother as well as the small kids were there at the  
20 hospital. Myself, as well as Investigator Streett spoke  
21 with her and the kids as well as a DSS worker in one of  
22 the conference rooms at the hospital. And she in turn  
23 relayed to us where the location of the vehicle was. The  
24 vehicle was located I think -- or initially the vehicle  
25 had been taken to the defendant's brother's house. And my

1 understanding was the brother had had it towed from his  
2 yard and it was located in a impound yard or a wrecker  
3 yard.

4 Q And who took possession of that vehicle once you  
5 found it in the wrecker yard when you found where it been  
6 towed?

7 A When we located the vehicle, we -- the sheriff's  
8 office actually made arrangements for the vehicle to be  
9 towed from there back to the impound yard in Effingham at  
10 the Florence County sheriff's office impound yard.

11 Q At some point, did you receive a search warrant to  
12 have permission legally to go through the automobile?

13 A We did. It wasn't that day, it may have been the  
14 next day or so. I don't recall exactly, but we did a  
15 search of the vehicle wasn't conducted until a search  
16 warrant was obtained.

17 Q And have you had an opportunity to review the  
18 photographs that were made in this case?

19 A I have briefly reviewed the photograph, yes, sir.

20 Q Were you present when photographs were taken by  
21 Corporal Moore of the vehicle at the impound yard in  
22 Florence County?

23 A I was.

24 Q And were you present whenever the vehicle was  
25 searched?

1 A I was.

2 Q Let's discuss a few items that were found inside the  
3 car. Beginning with the compartment, what, if anything,  
4 do you know was found in the front passenger compartment?

5 A The front passenger compartment, of course, you know  
6 the items that naturally were in the vehicle the seats and  
7 things like that. They displayed some -- what I -- what  
8 appeared to me as blood. So there was some blood evidence  
9 that was photographed as well as most likely taken for  
10 analysis by Corporal Moore.

11 Q So do you know if that -- do you agree that that  
12 evidence had been taken and submitted to SLED for testing  
13 for DNA purposes?

14 A That's correct.

15 Q What was found in the rear compartment, the rear  
16 passenger compartment?

17 A The rear passenger compartment, I believe we found  
18 probably the child seats, as well as other materials and  
19 other common...

20 Q And are there photographs, I believe, there are  
21 photographs of both of these sections of the automobile;  
22 is that correct?

23 A That is correct.

24 Q All right. And eventually, you searched the trunk of  
25 the automobile; is that correct?

1 A That's correct.

2 Q What, if anything, of significance, did you discover  
3 in the back -- in the trunk?

4 A During the search of the trunk compartment of the  
5 vehicle, there were several items some of which  
6 particularly stood out. One being a charcoal lighter  
7 fluid container as well as some other items with some --  
8 what appeared to be blood evidence on those.

9 Q Were you present during testimony yesterday when the  
10 charcoal lighter fluid bottle as displayed to the jury?

11 A I was.

12 Q And is that the bottle that was recovered from the  
13 automobile?

14 A It is.

15 Q And were you the person that took custody of that  
16 bottle or did Corporal Moore take custody of it?

17 A That would be Corporal Moore.

18 Q Did you later determine that the charcoal lighter  
19 fluid bottle was important in your investigation?

20 A We did.

21 Q Okay. Now, at the time that you were searching the  
22 automobile, had Mr. Henry already been taken into custody?

23 A He had.

24 Q And had he already made a statement to law  
25 enforcement?



1 A He had.

2 Q And had you been present when that statement was  
3 reported and transcribed for the court?

4 A I was.

5 MR. HILL: Your Honor, I just need a moment to  
6 retrieve a piece of evidence.

7 (WHEREUPON, a pause in the proceedings.)

8 BY MR. HILL:

9 Q Mr. Turner, I'm going to display to you what's been  
10 marked as State's Exhibit Number 1. Would you examine  
11 that and just let me know if you're familiar with that  
12 form?

13 A Sure. This is the Miranda Warning form with a --  
14 what we refer to as the waiver of rights section at the  
15 bottom of it.

16 MS. PARROTT: Your Honor, objection as previously  
17 raise in prior hearing.

18 THE COURT: Let the record show that we have  
19 heretofore held an in-camera hearing in regard to these  
20 issues. The objection is posited by the defendant. The  
21 defendant's objections run throughout this particular  
22 presentation. You agree, Mr. Solicitor?

23 MR. HILL: Yes, sir.

24 THE COURT: Suitable, Counsel?

25 MS. PARROTT: Yes, Your Honor.

1 THE COURT: Thank you.

2 MR. HILL: May I continue?

3 THE COURT: Yes.

4 BY MR. HILL:

5 Q Officer Turner, now let's focus on what happened  
6 after Mr. Henry was returned to Florence County. When you  
7 met with Mr. Henry, was anyone else with you?

8 A Yes, sir.

9 Q And who were those people?

10 A That would have been Investigator Kathleen Streett as  
11 well as Calvin Timmons.

12 Q Do you know if Mr. Timmons is available these days?

13 A My understanding that he is presently out of the  
14 country working security contract.

15 Q And do you know which country he's working in?

16 A Afghanistan, I believe.

17 Q So he's unavailable?

18 A I would say he's presently unavailable, yes, sir.

19 Q Were you present whenever Mr. Henry was given what we  
20 commonly refer to as our Miranda warnings?

21 A I was present for at least one of those, yes, sir.

22 Q Okay. Were you present when he had the opportunity  
23 to sign the form waiving his Miranda warnings and gave a  
24 statement?

25 A I was.

1 Q So what's been marked as State's Exhibit Number 1 was  
2 signed and executed in front of you; is that correct?

3 A That's correct.

4 Q Just ---

5 THE COURT: Just a second, Mr. Hill. Madam forelady  
6 and members of the jury, the testimony that has been  
7 presented now relates to Miranda warnings and a possible  
8 statement. I will give you a detailed charge on the law  
9 in that regard and that law will be very very specific  
10 concerning Miranda warnings and the issue of whether the  
11 statement is free and voluntary. I will cover that with  
12 you in the charge.

13 Proceed.

14 MR. HILL: Yes, sir.

15 BY MR. HILL:

16 Q You stated earlier that you been with the sheriff's  
17 department for a number of years?

18 A I was hired on in 1993, 1993 through November 2008,  
19 that's correct.

20 Q As a part of your experience, were you required to  
21 attend certification training to be certified as a law  
22 enforcement officer?

23 A That is correct.

24 Q And who provided the certification for you?

25 A Certifications as far as law enforcement officer are

1 through the South Carolina Criminal Justice Academy. I  
2 also hold certifications through other associations.

3 Q And during your work with the sheriff's department,  
4 did you receive continuing training in particular to our  
5 rights under the constitution, the laws that were to be  
6 followed and the taking and giving of statements?

7 A That is correct, continuing training and education  
8 pertaining to the field of our investigation as well as  
9 interview techniques and detective or investigator classes  
10 that is true.

11 Q All right. Some -- perhaps when the term or  
12 interview techniques is heard might raise some questions.  
13 What do you mean by that term and is there -- what  
14 techniques are employed is that a negative term -- just  
15 explain that term?

16 MS. PARROTT: Objection compound.

17 THE COURT: Proceed.

18 A No, there's no negative connotation whatsoever to  
19 interview techniques. This is well as myself, you know  
20 talking with anybody to gain any information that can very  
21 well -- you know, those techniques or procedures be  
22 applied to, you know, a witness who may be on the scene  
23 that we need to gain information from as well as, you  
24 know, a suspect or a defendant in a case.

25 Q Are you aware if there any sanctions that can be

1 imposed if you violate the rules in the taking of your

2 ---

3 MS. PARROTT: Objection, bolstering.

4 THE COURT: Sustained.

5 Proceed, Mr. Solicitor.

6 MR. HILL: Yes, sir.

7 A I'm sorry would you repeat the question.

8 THE COURT: No, no.

9 BY MR. HILL:

10 Q I can't repeat that. During the taking of the  
11 statement in this case, did you follow all the procedures  
12 that you were trained to follow?

13 A I did.

14 Q When the statement was given -- well, let me back up.  
15 Do you know what time the incident in this case occurred?

16 A My understanding and I can't quote you exactly  
17 without the CAD report or the incident report in front of  
18 me, but my understanding it would have been around the  
19 lunchtime or early afternoon of the day.

20 Q Do you recall what time the statement was taken from  
21 you -- by you?

22 A Not right off, but I can tell you that would have  
23 been in the evening hours of that day.

24 Q During your time with the defendant, did you have an  
25 opportunity to observe him and to determine whether or not

1 he suffering from any problems, if there was anything that  
2 concerned you prior to your taking the statement?

3 A Sure. I had an opportunity to observe him as well as  
4 Investigator Streett and Investigator Timmons who were  
5 also present.

6 Q Is there anything that concerned you that would have  
7 made you pause before you continued with a statement or  
8 interview?

9 A Not at all. In fact, the defendant had already  
10 received medical attention for I think maybe some wounds  
11 to his hand or injuries to his hand at that point.

12 Q Are persons of physical or mental condition something  
13 that are important to you when you take a statement?

14 A Sure.

15 Q Okay. Did you inquire about those either prior to or  
16 during the taking of the statement?

17 A Sure. It's very important to try to determine  
18 whether or not a person is under the influence of any  
19 alcohol or drugs at the time of a statement actually that  
20 would bear.

21 Q And was he?

22 A He stated, no, and didn't appear to be, no.

23 Q Describe the room or area in which the statement was  
24 taken?

25 A Room at the sheriff's office, we call it an interview

1 room. It's actually probably a room that was designed to  
2 be an office initially if you look back at the floor plans  
3 of the building. It's very non-threatening. There's a  
4 small desk, you know, with a tape recorder. There is a  
5 sofa-type couch as well as maybe a couple of other soft  
6 chairs or easy chairs kind of like what you had in your  
7 den at your home.

8 Q Was it well lit or was it dim?

9 A It was well lit.

10 Q Was there anything about the set up of the room or  
11 any materials in the room that would tend to make the  
12 defendant uncomfortable or purposefully make him  
13 uncomfortable?

14 A No, not at all. In fact, like I said a little  
15 earlier that is an interview room, that room is used to  
16 take statements from not only defendants involved in cases  
17 but witnesses or sometimes as used as just a conference  
18 room. There's nothing that could be perceived as  
19 intimidating from that room whatsoever.

20 Q Did Mr. Henry, the defendant, ever request that the  
21 interview stop or that he no longer wanted to speak with  
22 you?

23 A No, he didn't.

24 Q At any time, did he request the ability to leave to  
25 use the restroom to have some food or water given to him

1 or to seek further medical attention?

2 A No, he did not, but should he had, I mean, he would  
3 have been allowed to. We were right across the hall from  
4 a canteen as well as the restroom and water fountain.

5 Q Were you involved in other actions in this case  
6 besides the arson investigation which you testified and  
7 the interview process?

8 A My involvement in this case initially was the fire  
9 scene investigation or the investigation of the apartment  
10 because of the fire. Then as an investigator not  
11 necessarily the fire investigator, but as another criminal  
12 investigator. You know, I followed-up with other things  
13 involving the case. As I stated earlier, you know,  
14 primarily to locate the children and then the defendant or  
15 suspect.

16 Q All right. What were the concerns regarding the  
17 children?

18 A Well, you know, when we notify to respond to the  
19 scene, you know, naturally we were looking in an apartment  
20 that had not only sustained some fair damage. I mean, but  
21 there was a huge amount of blood, so naturally, you know,  
22 that gave us cause for concern. The victim was at the  
23 hospital with some pretty severe and what I would say life  
24 threatening injuries, so naturally, you know, that gave us  
25 a lot of concern for the welfare of the kids.



1 Q So did you feel the children that their safety was in  
2 peril or in danger?

3 A Absolutely.

4 MR. HILL: Excuse me just a moment.

5 Q Were you involved in any other interviews in this  
6 case?

7 A I was actually -- as I recall, I think I may have  
8 been one of the prime interviewers of Mr. McAleese  
9 initially at the scene.

10 Q And were you present when he testified yesterday?

11 A I was.

12 Q Did you take a written statement or ask him to  
13 provide a written statement?

14 A I did.

15 Q Were you also involved in interviewing Carol?

16 A I was.

17 Q Were you present, I believe, with Investigator  
18 Streett during her interview?

19 A I was. Actually, as I recall it, it was a period of  
20 some days before we were able to actually speak with the  
21 victim and that was because of her injuries that she had  
22 sustained during the attack.

23 Q In reviewing the statement from the defendant, we  
24 need to examine this area. Were you made aware of error  
25 in the transcript -- error in the transcription of the

1 statement or possible eraser in the statement that  
2 Mr. Henry gave?

3 A As I was reviewing the transcripts, I did notice  
4 that, yes, sir.

5 Q Okay.

6 MS. PARROTT: Your Honor?

7 THE COURT: Yes.

8 MS. PARROTT: Just to make sure that my objection  
9 previously also goes to this issue as well.

10 THE COURT: I want to make sure that is correct.  
11 Obviously, those appellate rules sometimes are difficult  
12 to apply. The objection has been posited by the defense  
13 counsel, that was done in the in-camera hearing. Rather  
14 than having the objections continued here in open court,  
15 I'm going to reserve those rights. Do you agree with  
16 that, Mr. Solicitor?

17 MR. HILL: Yes, sir.

18 THE COURT: No question about that is there?

19 MR. HILL: No.

20 THE COURT: All right. The objection runs to the  
21 entirety of this testimony including the issues  
22 surrounding the so-called statement.

23 MS. PARROTT: Thank you, Your Honor.

24 THE COURT: You welcome.

25 Proceed.

1 MR. HILL: Yes, sir. Please answer any questions the  
2 defense may have.

3 CROSS-EXAMINATION

4 BY MS. PARROTT:

5 Q Investigator Turner, this interview and this  
6 investigation actually went over a period of quite a few  
7 days, did it not?

8 A - Which particular interview are you asking about?

9 Q The whole process of this investigation went over a  
10 period of days, did it not?

11 A Yes, it did.

12 Q And you were involved in it basically from start to  
13 finish would you say that?

14 A I think that that would be most likely a safe  
15 assumption. I don't -- I'm a little hesitant to say about  
16 finish because naturally should any new evidence or  
17 anything arise, you know...

18 Q At least until November of 2008 whenever you left  
19 sheriff's office; correct?

20 A That is correct.

21 Q Okay. But there is something that you and  
22 Investigator Timmons and Investigator Streett all worked  
23 on together; correct?

24 A That is correct.

25 Q And actually forensics as well, SLED -- there's a

1 bunch of communication with a bunch of law enforcement in  
2 this case?

3 A Sure. We like to call it a team effort, that's  
4 correct.

5 Q All right. But the investigation and the interview  
6 of Mr. Henry was the three of you with just him in the  
7 room, was it not?

8 A If you're asking who was present during his  
9 statement, that is correct. It was myself and  
10 Investigator Streett and Investigator Timmons along with  
11 the defendant, that's correct.

12 Q And you had already met him up at Camden -- at the  
13 hospital at Kershaw County?

14 A No, ma'am, I hadn't met nor had I ever seen Mr. Henry  
15 until we arrived back at Effingham.

16 Q Okay. So Investigator Timmons was the only one who  
17 did that?

18 A That is correct.

19 Q And as far as you know, Investigator Timmons is the  
20 only person that transported him back to Effingham?

21 A When we arrived, that is correct. When we arrived at  
22 the medical center or the hospital there in Kershaw  
23 County, Investigator Timmons was directed to proceed to  
24 the police department and transport the defendant back to  
25 Effingham.

1 Q And as far as you know, he's the only one in the car  
2 with him?

3 A That's a pretty safe assumption, that's correct.

4 Q And could you approximate for me the amount of time  
5 it takes to travel from Camden to Effingham and the  
6 detention center?

7 A Well, it depends on what speed you drive. I would  
8 say ---

9 Q Let's go with the speed limit?

10 A I can tell you if there was a sense of urgency or  
11 exigency, it takes a little less time to get there, but on  
12 the way back, it should be normal. I would say maybe 45  
13 minutes to an hour, I'm not sure.

14 Q Okay.

15 A And that would just be a guess.

16 Q Okay. So we're going from like Exit 98, 92 depending  
17 on which one you use I-20 to Effingham; correct?

18 A I'm not sure what route Investigator Timmons took, so  
19 I'm really not sure how much time that's just an  
20 approximation. I would think that it would probably take  
21 around that time.

22 Q All right. So an hour give or take?

23 A An hour give or take, maybe.

24 Q Okay. And you don't know -- you can't testify as to  
25 what kind of conversations were held during that time that

1     those two were alone in a car, were you?

2     A     I cannot, no.

3     Q     And you're stating that you got involved in this case  
4     in -- if I told you 11:40, 11:50 in the afternoon when  
5     it's first called in would that seem about right for you?

6     A     Well, I don't have any reason to doubt you that would  
7     probably be in the time frame that I got in mind.

8           MS. PARROTT: May I approach, Your Honor?

9           THE COURT: Yes.

10     BY MS. PARROTT:

11     Q     Would you identify this for me, please?

12     A     Sure. This appears to be the report from the  
13     Florence County central dispatch center.

14     Q     And that's commonly known as a CAD report?

15     A     It has been referred to as a CAD report, that's  
16     correct.

17     Q     And the CAD report reports times and arrival of  
18     certain people; is that correct?

19     A     It does.

20     Q     At times of dispatch?

21     A     It does.

22     Q     And what time does it have for dispatch on the list?

23     A     Looking at the highlighted area for the incoming 911  
24     call that is 11:46, that would be 11:46 a.m.

25     Q     All right. And according to the information that

1 even what you said, the fire department arrived first;  
2 correct? They were already on scene when you got there?

3 A That is correct. I can't tell you that they actually  
4 arrived at the scene first, but they were present when I  
5 arrived; that's correct.

6 Q Okay. Do you know -- can you read from that CAD  
7 report about what time you arrived? Would the incident  
8 detail be necessary for you determine that?

9 A Sure. The CAD report shows -- and what I'm looking  
10 for, I'm looking for my radio call number on here and  
11 shown on scene and that looks like it was 1351, which  
12 would have been 1:51 p.m.

13 Q Thank you. And do you know what time it was that you  
14 got to Camden?

15 A I don't recall exactly. Naturally, we would have  
16 been out of radio communication with our dispatch center,  
17 so the CAD sheet wouldn't necessarily show a time that we  
18 called in on the scene.

19 Q Okay. Do you know how long you met Mrs. Resia Henry,  
20 Mr. Henry's mother?

21 A I can't give you an approximate or exact time, but I  
22 can tell you we were long enough to feel certain that the  
23 welfare of the children was being attended to.

24 Q And that is the conclusion you came to is it not?  
25 That the children were safe?

1 A That is correct at that time.

2 Q Had the children -- did the children have any cuts or  
3 bruises or scraps on them?

4 A No, they did not appear to have any injuries.

5 Q And when you inspected the car, you found the  
6 children's car seats in the car, did you not?

7 A That is correct.

8 Q So children weren't upset or agitated any more than a  
9 child might normally be being in a hospital?

10 A Well, I can't attest ---

11 MR. HILL: That's speculation for which I don't  
12 believe ---

13 THE COURT: I'm gone let her inquire in regard to  
14 some of this because we are looking at 63-5-70 and the  
15 subsections that may or may not be applicable, so I would  
16 overrule the objections. I'm going to allow some  
17 liberality so as to see if we come within the ambit of the  
18 statute.

19 Proceed.

20 BY MS. PARROTT:

21 Q If you can't answer, I mean, that's fine. I'm just  
22 asking did they seem to be any more agitated than they  
23 might be in -- like a child in a normal setting, in their  
24 normal home?

25 A I really can't say.



1 Q Okay. That's fine. His mother was taking care of  
2 them at that time?

3 A My understanding was that that is true.

4 Q And when you interviewed her, you found out that they  
5 had -- he had met her in Bishopville; is that correct?

6 A Actually, I think Investigator Streett probably spoke  
7 with the mother a little more than I did.

8 Q Okay. Were you not present at the time that that was  
9 occurring?

10 A Actually, I was trying to make an effort to locate  
11 the vehicle at that time and Investigator Streett was  
12 probably attending to the children's welfare and speaking  
13 with the mother along with the worker from DSS.

14 Q All right. So what you would have then are simply  
15 your visual observations and maybe a little bit of  
16 listening then to what -- how the children were?

17 A Correct.

18 Q Okay. You didn't ever have to issue that AMBER Alert  
19 for those children, did you?

20 A Thankfully not.

21 Q Right. Because you found out that they were being  
22 taken care of?

23 A That is correct. If it hadn't been for the  
24 notification from the Kershaw County Medical Center, most  
25 likely there would have been an AMBER Alert issue.

1 Q Okay. You were also involved in finding the car as  
2 you just referenced; is that correct?

3 A That is correct.

4 Q And when you did one of the things that you pointed  
5 to and had collected as part of this investigation was a  
6 lighter fluid bottle, is it not?

7 A The lighter fluid bottle was found at the execution  
8 of the search warrant, which occurred the day after or  
9 days after while the vehicle was located at the impound  
10 yard in Effingham.

11 Q You don't know what had happened with the car between  
12 or before it got to your impound, do you?

13 A I can tell you my understanding what was told to me,  
14 but I can testify that nothing happened to the vehicle  
15 other than it loaded up on a roll back and taken to the  
16 impound yard once we located the vehicle.

17 Q All right. So once you find it in Camden excuse me  
18 -- in Bishopville or where it was taken in Bishopville ---

19 A Actually, I think it was Brown Town maybe a little  
20 community where ---

21 Q Right outside of Bishopville, okay. In that area  
22 then, from that impound yard or lot it was towed to your  
23 impound yard and then thereafter, that's the only time you  
24 can vouch for who had access to this car, is it not?

25 A That would be a safe assumption, yes.

1 Q Okay. When you did find the charcoal -- the charcoal  
2 lighter fluid bottle, did it have any blood on it?

3 A It did actually appear to me to have what look like  
4 some blood.

5 MS. PARROTT: Beg the Court's indulgence, Your Honor.

6 THE COURT: Yes. It's got to stay back like that  
7 when you put it back.

8 MS. PARROTT: I certainly will, Your Honor. Thank  
9 you.

10 THE COURT: Okay.

11 BY MS. PARROTT:

12 Q Is this the item that you believe was collected?

13 A It is.

14 Q And you were present whenever Crime Scene Technician  
15 Moore would have taken this?

16 A That is correct.

17 Q Okay. And would you tell me where you believe you  
18 saw blood on this bottle?

19 A Sure.

20 Q Certainly.

21 A If you will see these spots on the side of it red in  
22 color from looking at just this portion, there appear to  
23 be five different spots?

24 Q So orange in brown color at this time?

25 A That's correct that's what I was referring to.

1 Q Okay.

2 MS. PARROTT: Permission to at least show the jury,  
3 Your Honor?

4 THE COURT: Yes.

5 BY MS. PARROTT:

6 Q And we're talking about if you were looking straight  
7 on at the bottle what's on the left side of it?

8 A It depends on how you reference the bottle.

9 Q If I'm looking straight at it and turn it, would it  
10 not be on the left side?

11 A You're displaying the correct side to the jurors.

12 Q All right. And this bottle is also covered in black  
13 dust, which it's indicative, but it's not a new bottle, is  
14 it?

15 A Well, the -- what you see on there and refer to as  
16 the black dust that was done during processing at the  
17 crime lab.

18 Q Okay. Thank you. That's the only spots that you see  
19 that you refer to what you thought might be blood?

20 A Would you like me to examine it more closely look for  
21 more?

22 Q Did you ask for any of it to be tested?

23 A I don't recall whether or not we ask it excuse me --  
24 whether I ask that to specifically be tested for blood.

25 Q But if it was something that you thought was

1 important, you would have sent it would you not?

2 A Well, I mean, it actually did go through processing  
3 as you can see not only for latents but...

4 Q But you would have specifically ask for that to have  
5 been done, would you not? You would want that to be  
6 tested?

7 A I would, yes.

8 Q Thank you. You state that you had no concerns about  
9 Mr. Henry and his ability to answer questions whenever you  
10 did the interview; is that correct?

11 A That's correct.

12 Q Do you ever check behind what someone tells you is  
13 there level of education whenever they're giving you this  
14 statement?

15 A Well, that is part of the job description trust but  
16 verify.

17 Q Okay. So let me be clear as part of this not only  
18 the Miranda form, you also did a statement and interview  
19 form; is that correct?

20 A That is correct. As a matter of fact at the  
21 beginning of the transcript, the questions that are asked  
22 name, address, age, date of birth, social all that is on  
23 the interview form. And actually, Investigator Timmons  
24 was asking those questions, you know, on that form and  
25 that was recorded in the transcript.

1 Q But you're taking that person's word for it, are you  
2 not?

3 A To an extent. We try to believe until it just  
4 doesn't make any sense any more.

5 THE COURT: Just a second, Counsel.

6 (WHEREUPON, a pause in the proceedings.)

7 THE COURT: All right, thank you, Counsel.

8 MS. PARROTT: Thank you, Your Honor.

9 BY MS. PARROTT:

10 Q Refreshing my memory also. You're taking their word  
11 for the answers they're giving you as part of that  
12 interview sheet or that interview start; correct?

13 A Well, naturally, we want the truth and we want them  
14 to tell us the truth, that's correct.

15 Q Okay. But you're not immediately, you know, taking a  
16 break and going and verifying everything that they're  
17 saying?

18 A No.

19 Q Okay. And you're saying you had no concerns about  
20 his physical or mental health at the time?

21 A Well, I didn't say that. Naturally, we have concern  
22 that's the reason that we ask those questions.

23 Q And you did state that he had been treated at Kershaw  
24 County, you saw some evidence of that?

25 A Sure. As a matter of fact, he had bandages on his

1 hand. We didn't remove the bandages and expect -- or  
2 inspect his injuries at that time during the interview,  
3 no. But it was pretty apparent that he had receive some  
4 medical treatment for some injuries to his hand.

5 Q Did you know the extent of the injury that he had  
6 received?

7 A I do not other than evidently medical personnel  
8 didn't see fit to keep him at the hospital and a bandage  
9 suffice.

10 Q So you don't know if they gave him any medication as  
11 part of the treatment at Kershaw County?

12 A Nothing other than what the defendant said and his  
13 response was no.

14 Q Okay. But you continued in the interview to then ask  
15 him if he was prescribed to take any medication, did you  
16 not?

17 A Sure, that's pretty much standard question during the  
18 course of an interview conducted by myself anyway.

19 Q And do you recall what his answer was?

20 A I believe that he said at one point, I think, there  
21 may have been made a couple references during the  
22 statement to some things. I think maybe immediately know  
23 and then maybe a pause. I have to look back at the  
24 transcripts to tell you exactly, but he made reference to  
25 some medications. But as I recall, the defendant stated

1     that it had been some years. In fact, I think maybe back  
2     in 2004 since he had been taken off the medication.

3     Q     Do you recall -- and tell me if this is provided to  
4     you, but do you recall who told you that he had been on  
5     Zyprexa?

6     A     I can't say -- he did -- if you're asking me was that  
7     the specific drug without looking back at the transcript,  
8     I couldn't tell you, but that very well may be the drug  
9     that he mentioned.

10           MS. PARROTT: Permission to approach?

11           THE COURT: Yes.

12     BY MS. PARROTT:

13     Q     Does this look like a portion of the statement that  
14     you took from Mr. Henry?

15     A     It does. This appears to be page six, seven and  
16     eight of the transcripts from the interview that day.

17     Q     Okay. And if you could look towards the bottom of  
18     that page when you're asking him if he's on any medication  
19     and I believe you do ask it multiple times, but does he  
20     not tell you that he was on Zyprexa?

21     A     He says he was on Zyprexa.

22     Q     And what other medication?

23     A     Some diabetes medication. He states metamoric (sic).  
24     I'm not sure that's -- appear -- I'm not sure if that's  
25     the correct pronunciation.



1 Q All right. And did he then go on to tell you why he  
2 had been prescribed Zyprexa? Did he not tell you that he  
3 been diagnosed as schizophrenic or maybe even psychotic  
4 previously.

5 A I think his statement was that he was prescribed for  
6 schizophrenia. I think he said he had problems sleeping  
7 and then psychosis, I think he says.

8 Q And at that point with him having told you that he  
9 has been at least diagnosed as schizophrenia and treated  
10 for it in the past, you didn't see fit to seize the  
11 investigation or the interrogation?

12 A No, actually, it did give me some cause for concern,  
13 you know, I wanted to make sure in my mind, you know, that  
14 we were proceeding and he wasn't under the influence. In  
15 fact, we asked him, you know, was he suppose to be taking  
16 any medications. And I think his statement was, no, his  
17 doctor took him off that medication back in 2004.

18 Q Okay. And also with him being diabetic, that's also  
19 a concern I would think and something that you need to be  
20 aware of as an investigator making sure that someone's  
21 insulin and everything is staying at the right level, so  
22 that they can give their interview?

23 A Sure. If he had any symptoms of, you know, going  
24 into any kind of diabetic condition naturally that would  
25 have gave us some cause for concern.

1 Q But you never offered him water or food as part of  
2 this whole interview process?

3 A Well, you know, we're there to speak with him,  
4 interview him and obtain the statement, not to necessarily  
5 feed him. But at any point, you know, he'd ask for, you  
6 know, any water or any food. You know, naturally, we  
7 would oblige. And I can't say for certainty that, you  
8 know, he wasn't offered a drink.

9 Q You just know you didn't do it; is that correct?

10 A Well, to be honest with you, I don't recall if I  
11 offered him a drink or not. I may have or I might not, I  
12 just don't recall.

13 Q Okay. You've had an opportunity to review your  
14 statement prior to today's testimony though, have you not?

15 A I have.

16 Q And do you recall seeing it in that -- in any of that  
17 50-page statement as to your offering him such?

18 A No, I do not, but naturally that's something that  
19 would have probably occurred once we entered the room and  
20 made preparations for his statement.

21 Q So all of your conversations with Mr. Henry were not  
22 recorded?

23 A Well, as I walk in the room and formalities, you  
24 know, I'm Investigator Turner and this is Investigator  
25 Streett, would you like something to drink or do you need

1 to use the restroom before we get started, no, that  
2 wouldn't necessarily be on tape.

3 Q Do you know if he was already booked in at the time  
4 that you were taking this statement from him?

5 A I don't know for sure, but I don't think so.

6 Q Your sheriff's office puts information out there on  
7 the web, is it not as to people who get booked and what  
8 they're booked for?

9 A They do.

10 Q And is this not the booking information for  
11 Mr. Henry?

12 A Well, I can tell this looks like a screen shot from  
13 -- if you went to the sheriff's office web site to their  
14 bookings page.

15 Q All right. And what time does it say that he was  
16 booked in?

17 A Booking date time 6-23, 2008 at 1926.

18 Q Okay. So 7:26 in the evening?

19 A 7:26 in the evening that's correct.

20 Q I'm sorry, thank you. And do you know what time your  
21 interview started with Mr. Henry?

22 A No, I do not right off without looking back at the  
23 statement.

24 Q Would you identify that information for me, please?

25 A We have the Miranda warning as well as the waiver of

1 right section on one sheet. There is the statement and  
2 interview form. Then we have looks like the cover sheet  
3 from the statement of Tarus Henry as well as page one and  
4 two of that statement.

5 Q And could you tell me the time that is actually  
6 recorded there on the interview sheet page one for what  
7 Investigator Timmons says at the time?

8 A Says June 23, 2008, time is now 2005 p.m., that would  
9 be 8:05 p.m.

10 Q And these are all done at the same time are they not  
11 or as part of the same process?

12 A Well, it's all part of a process I can tell you that.

13 Q Okay. So this statement and interview form does it  
14 not say 2005 as well?

15 A It does.

16 Q And yet on this waiver of rights form, what times are  
17 recorded on that?

18 A Down at the bottom of the sheet it has 2000, which  
19 would be 8:00 p.m. At the time, it's got 2015, which will  
20 be 8:15 p.m.

21 Q Thank you. By that time, would you not agree that  
22 he's already been in police custody for a few hours?

23 A No, I wouldn't say that not for a few hours.

24 Q Okay. He's been at Kershaw County with an officer  
25 there in the -- at least in the presence of, booked in

1 upon his release and taken by Investigator Timmons from  
2 Camden to Effingham, booked in at 7:26 p.m. and then the  
3 interview started at 8:05, you don't see that that might  
4 be a few hours time?

5 A I can tell you that my understanding that he was  
6 actually at the Camden police department. I would say  
7 well less than an hour before Investigator Timmons  
8 actually transported him back to Effingham. So hours,  
9 plural, I would say most likely not.

10 Q But he was not free to leave even at Camden, was he?

11 A No, while he was at Camden actually I think the  
12 police department had actually served a hit, an NCIC hit  
13 where they detained him pending our arrival.

14 Q And do you know how long your interview with  
15 Mr. Henry lasted?

16 A No, not looking back at the transcripts, I can't tell  
17 you exactly. I can tell you with a reasonable degree of  
18 certainty it was more than ten minutes less than two  
19 hours.

20 Q There's a lot of difference between ten minutes and  
21 two hours; isn't it?

22 A There is. Maybe, I can help clean that up for you a  
23 little bit. This is page 50 from the statement.

24 Q And what time does it report, does it have as the  
25 investigation or the interview having ended excuse me --

1 the interview having been ended?

2 A 9:02 p.m.

3 Q Thank you. So at least, it's 8:05 to 9:02 p.m. that  
4 it's the three of y'all and just him in a room with no  
5 breaks, no water, no food, no restrooms, and his having an  
6 injury and also having been told you that he has some sort  
7 mental illness in the past?

8 A I can tell you that the defendant received more  
9 breaks and more attention than the investigators who work  
10 this case.

11 Q In that hours time?

12 A Excuse me.

13 Q In that hours time, that he's doing the interview?

14 A During the interview, no, I'm talking about during  
15 that day.

16 Q Okay. I ask the question, sir. One last question  
17 you said mention something about the room and its  
18 contents. You said you something about that you would  
19 describe the chairs as a soft chair or an easy chair like  
20 you might have in your living room. You don't mean a  
21 La-Z-Bo, do you?

22 A No, naturally not a recliner, no.

23 Q So it is something that a person is comfortable in,  
24 but not too comfortable; correct?

25 A Something you can seat on and go to sleep.

1 Q Some of us can do that about anywhere, but at this  
2 point, what you're saying it's something that -- it's a  
3 sheriff's office, you're not going to be spending a lot of  
4 money on the contents therein unless y'all are blowing  
5 money, but it's a chair fit for an interview, is it not?

6 A It is.

7 Q Okay.

8 MS. PARROTT: Thank you. Nothing further.

9 THE COURT: Redirect?

10 MR. HILL: Thank you, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. HILL:

13 Q Mr. Turner, there were questions during the  
14 cross-examination regarding time, what was your first --  
15 when did you first see Mr. Henry?

16 A The first time that I saw Mr. Henry was when  
17 Investigator Streett and I arrived back at the sheriff's  
18 office and then that was after locating the vehicle and  
19 seeing that it was impounded and towed to our at facility  
20 in Effingham.

21 Q Had Mr. Henry already been booked into the Florence  
22 County detention center prior to your arriving?

23 A That I can't say for sure. Like I stated earlier, I  
24 don't know, but I don't think so.

25 Q Was your first contact with him in the interview room

1     however?

2     A     It was.

3     Q     How soon after you arrived in the interview room did  
4     the statement begin?

5     A     I would say probably within five minutes or less.

6     Q     Did you have any conversation with Mr. Henry prior to  
7     the formal statement being taken?

8     A     Nothing other than possible formal introduction, who  
9     I was and as well as Investigator Streett.

10    Q     Did you seek to gain any information from him prior  
11    to the statement being taken?

12    A     No, I did not.

13    Q     I like now to focus on the charcoal lighter fluid  
14    bottle. What information did you receive that made that  
15    important for you to take into evidence?

16    A     It's actually the defendant's statement stating that  
17    he had use charcoal lighter fluid to facilitate or set the  
18    fire at the apartment.

19    Q     Is that something for which you were aware or did you  
20    know that that was the case prior to your taking this  
21    formal statement?

22    A     No, we did not.

23    Q     So is it correct that based upon his statement during  
24    the interview that that was the reason for that piece of  
25    property being seized?



1 A That is correct.

2 Q During the interview process, there have been  
3 questions concerning the safety and welfare of the person  
4 being interviewed. What, if anything, did you do to  
5 affirmatively on your own initiative do to make sure that  
6 the person being interviewed, Mr. Henry, was all right. I  
7 know that is a large big term, but that he was okay?

8 A Sure. Well, naturally just from observation, you  
9 know, looking at Mr. Henry he was much as just as he  
10 appeared in court yesterday and today. You know, no  
11 outward appearance of any problems whatsoever. And then  
12 naturally, we also ask, you know, if they're currently  
13 under the influence of any alcohol and or drugs.

14 Q Was there an urgency to take the statement at that  
15 time or could it have been taken at another time?

16 A From my past experiences, it's always the sooner the  
17 better.

18 Q And why is that?

19 A Well, simply because it's a freshly committed  
20 incident. Naturally, you know, the longer the amount of  
21 time draws out, the less that a person or persons are  
22 likely to remember.

23 Q So it's important to solve the crimes as quickly as  
24 possible?

25 A Absolutely.

1 Q During the interview process with Mr. Henry, was  
2 there any affirmative action taken on his part to cease  
3 the interview?

4 A No, there was not.

5 Q Did he ever ask for an attorney?

6 A No, he did not.

7 Q Did he ever ask to use the restroom or water or food  
8 or any other break or necessity?

9 A Not that I recall, no.

10 Q When you arrived at the interview room, did you  
11 observe any other injuries to him other than to his hand?

12 A The bandage to the hand primarily was, you know, most  
13 obvious, I don't recall observing any other injuries.

14 Q Did he speak in a coherent voice, did he appear  
15 tired?

16 A He did not appear tired nor did he appear excited, he  
17 was, I guess, you could say pretty indifferent.

18 Q All right.

19 MR. HILL: Please answer any questions the defense  
20 might have on recross.

21 MS. PARROTT: Beg the Court's indulgence, Your Honor.

22 RECROSS-EXAMINATION

23 BY MS. PARROTT:

24 Q You were there during the whole time this interview  
25 was conducted; correct?

1 A That is correct.

2 Q And all three of you were asking questions all at the  
3 same time basically; correct? Or had opportunity to?

4 A I agree all three of us had the opportunity to that's  
5 correct.

6 Q And sometimes y'all bleed over on to one another, did  
7 you not?

8 A That would probably be a safe assumption at times.  
9 There may be instances where two of us are trying to talk  
10 at the same time.

11 Q But you're saying even with three of you in there two  
12 of you possibly going at the same time. You think you  
13 made sure of that -- and he was okay?

14 A Sure.

15 Q Do you not recall not only you, but also Investigator  
16 Timmons making observations about his state of being at  
17 the time and asking him questions about his state of mind  
18 at the time?

19 A I need for you to be more specific exactly what  
20 you're asking.

21 Q I present to you page 40. Were you not there when  
22 Investigator Timmons was making that comment about just  
23 look at him? Again, see that there's a problem. And I'm  
24 paraphrasing, I can read it directly.

25 A If you would, if you don't mind, I'll try to follow

1 where you talking about on the page.

2 Q All right. It's the highlighted portion right here  
3 where it says -- and this is Investigator Timmons;  
4 correct?

5 A That is correct.

6 Q Says, Tarus, you need some help man too, okay, I  
7 mean, I mean, I'm not a psychiatrist or a doctor or  
8 anything, you know, but I, I from just sitting across the  
9 table I can see you need some help, okay. Were you not  
10 there when that was said?

11 A I was there when that was said.

12 Q Okay.

13 A But I do agree with Investigator Timmons he is not a  
14 doctor.

15 Q But you also agree that as an investigator in having  
16 had years of experience in interviewing people, you can  
17 tell when somebody is uncomfortable?

18 A Absolutely.

19 Q And you can tell whenever you got somebody that might  
20 need some help?

21 A Absolutely.

22 Q Especially, if they told you that they been on  
23 medication?

24 A When they tell me that the medication ceased four  
25 years ago, that doesn't give me a lot of cause for

1 concern.

2 Q But you also know that people cease medication don't  
3 even take all their medication?

4 MR. HILL: Objection, Your Honor.

5 THE COURT: I'll allow some leeway in regard to the  
6 matter. Rephrase the question, it's cross exam.

7 MS. PARROTT: Thank you, Your Honor.

8 BY MS. PARROTT:

9 Q You know that some conditions lend itself to where  
10 people don't necessarily comply with the medical  
11 treatment?

12 A Sure. But the way I understood it and I think that  
13 the way that the transcript showed is actually -- he  
14 states that it was at is doctor's request and the doctor  
15 took him off of the medication.

16 Q But again, you don't always expect everybody to tell  
17 you the truth in everything they're saying, do you?

18 A I would like that they tell me the truth, we try to  
19 give everybody the benefit of the doubt.

20 Q Especially somebody with a mental condition. You're  
21 looking for the truth in all of their answers?

22 A I can tell you and to rephrase Investigator Timmons,  
23 he's not a doctor and I'm not a doctor. Evidently, the  
24 doctor made the decision to take him off the medication.

25 Q Had he previously told you that he also tried to cut

1 his wrist? This is not page 23?

2 A He did make that statement as well as some statements  
3 to a fire that occurred at his home when he was younger.

4 Q Okay. And all those things tend to go with mental  
5 illness, do they not?

6 A Not necessarily.

7 Q But they can, right?

8 A I would say they could. Of course, a doctor would be  
9 more oblige to testify as to that, but I would say that is  
10 possible, yes.

11 Q Okay. And during this whole interview time, do you  
12 maintain that you never put any pressure on Mr. Timmons  
13 whatsoever?

14 A No pressure whatsoever.

15 Q Yes, sir.

16 A That's what I maintain. I mean, there was no  
17 pressure, you know, whatsoever. Actually, it was a  
18 conversation much like what we're having now. There were  
19 no moments of any yelling or anything such as that, if  
20 that's what you're referring to as pressure.

21 Q Okay. He told you he was still bleeding, did he not?

22 A I don't recall if he said he was still bleeding or  
23 not, that doesn't... I can tell you naturally if we  
24 observed him bleeding we would have taken care to get that  
25 attended to.

1 Q This portion I underlined in blue down at the bottom.  
2 Does it say I'm still bleeding?

3 A He does make that reference to, I think, a  
4 conversation that he had had earlier that day with his  
5 brother. I can tell you that we observed no blood or any  
6 wounds. Like I said, he was bandaged if that's what he's  
7 referring to where he was bleeding at.

8 Q Okay. But the exact quote is I told him -- and he's  
9 talking to his brother. I told him I was bleeding real  
10 bad, which I'm still I'm bleeding. So I'm still I'm  
11 bleeding would be that time, would it not?

12 A I guess, you could see that as that, it's hard to  
13 understand if he's referring to the time earlier in the  
14 day when he was talking to his brother or then, but I can  
15 tell you we observed no blood.

16 Q Did you not tell Mr. Henry you don't, you don't want  
17 us to end up in the courtroom, you know, with 12 people,  
18 you know, listening, and hanging on to every word we say  
19 is that while we know this is a lie that you told us, you  
20 know, when we ask you this believe me, you know, we don't  
21 want that for you. You don't want that for you because I  
22 can tell you that our judge and a jury they have  
23 absolutely no problem with handing down a guilty verdict  
24 excuse me -- handing down a guilty verdict and a pretty  
25 sever sentence when we make people out, you know, to be

1     lying in court. We don't want it to go that far. Did you  
2     not tell him that?

3     A     I can tell you that there is a word in there that is  
4     totally out of character for me to say and I think that is  
5     the our judge. I would really like to listen to the  
6     portion of the audio. I think that is a judge instead of  
7     our judge.

8     Q     Okay. But you would maintain that you still told him  
9     that, so that you're trying to persuade him or at least  
10    coax him even possibly threaten or cause duress into how  
11    he gives his statement?

12    A     I want him to understand that it's better to tell the  
13    truth because if he is made out to be a liar in court,  
14    that judge and or jury tends to feel better about the  
15    outcome of the case.

16    Q     But you weren't concern with him lying; isn't that  
17    what you told me?

18    A     What concern with him lying?

19    Q     Right.

20    A     I don't understand.

21    Q     You told me you took his word for things?

22    A     I told you that we try to give everybody the benefit  
23    of the doubt. We like for them to tell us the truth.

24           MS. PARROTT: Again, beg the Court's indulgence, Your  
25    Honor.



1 THE COURT: All right.

2 BY MS. PARROTT:

3 Q Didn't you ask him about why he wouldn't just go  
4 ahead and tell you basically what you thought had  
5 happened?

6 A I'm sorry can I look at the transcript again to refer  
7 to what you're asking.

8 Q Okay.

9 MR. HILL: Page, please.

10 MS. PARROTT: Sorry, this is page 31.

11 Q Why don't you go ahead and tell us what happened.  
12 Isn't that what you said?

13 A I don't deny saying it, I'm just trying to find it on  
14 the sheet exactly what you are talking about.

15 Q Going back, that's why what happen happened, why  
16 don't you go ahead and say it. I mean, I can understand  
17 that think anybody else will to.

18 A Sure.

19 Q And you're telling him -- tell me what you think as  
20 long as I understand it, right?

21 A Tell the truth that way we can all understand it,  
22 that's true.

23 Q And again, you would have been present when  
24 Investigator Timmons says, but, I mean, if you gone tell a  
25 story like what you just told us, the jury would say, Man,

1 this guy he's not working with a full deck. Okay, but you  
2 have to be real with us because the people -- we real  
3 people and in the jury box is real people. Do you recall  
4 that statement?

5 A I can tell you that the transcript shows that that's  
6 what Investigator Timmons said and I believe that is in  
7 fact what he said because the transcript shows it.

8 Q Okay. Would you maintain that's just a normal part  
9 of questioning then to tell somebody about y'all can do  
10 with juries and judges and all that?

11 A It's common. I had made that statement to a person  
12 during the course of an interview before absolutely. I  
13 want them to understand that it makes them look bad in  
14 court when they lie and I proved that that is in fact a  
15 lie.

16 Q But you're telling them that after they been locked  
17 into a room with you and at least in this case two other  
18 investigators after they been booked possibly in this case  
19 and under all these afore-mention conditions with the  
20 mental state and no respite, no changes or nothing; is that  
21 right in an hour worth of questioning?

22 A I can tell you that if the defendant had shown any  
23 symptoms of any medical condition, physical or mental, the  
24 interview would have ceased and we would have attended to  
25 him.

1 Q He told you he was bleeding?

2 A We observed no blood. He was bandage at that time.

3 Q So it's what you believe and not even necessarily  
4 what he tells you?

5 A If we can't see any blood, you know, all he had to do  
6 is point it out to us. I don't recall that being a key  
7 issue during the statement. It's not like I'm bleeding,  
8 you know, or I need medical attention right now. He had  
9 already receive medical attention to his hand at that  
10 point had already been bandage and attended to.

11 Q But you're the one who control the keys to the door,  
12 do you not?

13 A I had heard that phrase before. I wouldn't  
14 necessarily say that I'm the key master or I control the  
15 keys to the door. I'm a small part of a process.

16 MS. PARROTT: No further questions.

17 THE COURT: Redirect?

18 MR. HILL: None, Your Honor.

19 THE COURT: You may step down.

20 (WHEREUPON, the witness leaves the witness stand.)

21 THE COURT: Next witness going to be lengthy? You  
22 want to take a recess here or you want to ---

23 MR. HILL: Your Honor, the next witness is Donna  
24 McDaniel, who was the transcriptionist. You might recall  
25 her testimony during the Jackson vs. Denno hearing. I

1 don't expect it will be any longer than that.

2 THE COURT: Is everybody on the jury, okay?

3 Everybody, okay?

4 Proceed.

5 MR. HILL: Thank you, Your Honor. Donna McDaniel.

6 THE CLERK: If you would place your left hand on the  
7 Bible and raise your right hand to be sworn. Do you swear  
8 the testimony you give in this case will be the truth, the  
9 whole truth, and nothing but the truth so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Be seated and state your name for the  
12 record.

13 THE WITNESS: My name is Donna McDaniel.

14 WHEREUPON,

15 Donna McDaniel,

16 after first having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HILL:

19 Q Okay. Ms. McDaniel, are you employed at the Florence  
20 County sheriff's office?

21 A Yes, I am.

22 Q And do you work specifically in the investigations  
23 division?

24 A Yes, I am the office manager.

25 Q And are you often asked to listen to recorded

1 interviews and to transcribe them into writing?

2 A Yes, I do transcribe them.

3 Q And were you asked to transcribe the defendant's  
4 statement in this case?

5 A Yes, I was.

6 Q During the transcription, did you discover that a  
7 area of the tape was erased?

8 A Yes.

9 Q Would you please explain to the jury your knowledge  
10 about that incident and the eraser?

11 A Can I have the dictaphone, please.

12 MR. HILL: Your Honor, permission for the witness to  
13 step down and display to the jury?

14 THE COURT: Yes.

15 Q If you would step down, please.

16 A This is a dictaphone this is what I transcribe ---

17 THE COURT: Ms. McDaniel, you got to talk a little  
18 louder now. All of us need to hear and especially the  
19 court reporter needs to take down everything help me.

20 A This is a dictaphone and this is what I transcribe  
21 tapes on. This is -- you stop, you forward and this is a  
22 recording button. I was very busy that day. I don't know  
23 quite what I was doing that day, but I was answering the  
24 phone. And I also have the radio on. So I'm thinking  
25 when I turn back around to press the listen button, I

1 accidentally hit the record button. Soon as I discovered  
2 that I hit the recording button, I stopped it and I noted  
3 in my hard copy that I made that mistake. I noted two  
4 places, I noted where I thought I stopped and also noted  
5 at the end of the statement that a proof reader of the  
6 statement would have problems because I press that button  
7 recording.

8 Q Is that the machine you used in this case?

9 A Yeah, this is the machine and it does have a peddle  
10 to it I also have that, but this is the machine I use to  
11 transcribe.

12 Q All right. You might have a seat in the witness box.  
13 You can hold that with you. Ms. McDaniel, how long have  
14 you been employed with the sheriff's department?

15 A Approximately 12 years.

16 Q When you discovered what happened with this  
17 transcript, did you report it to anyone?

18 A I immediately documented and I spoke with the  
19 investigator who was handling the case.

20 Q And the name of the investigator?

21 A Kathleen Streett.

22 MS. PARROTT: And again, Your Honor, since this is a  
23 different witness, I maintain my objection as well.

24 THE COURT: The objection is continuing. The  
25 objections are preserved for purposes of appellate review.

1 Proceed.

2 MR. HILL: Thank you.

3 BY MR. HILL

4 Q Ms. McDaniel, I'm going to show you a copy of the  
5 statement you wrote. Would you review it to make sure it  
6 is your statement and then read that to the jury. Would  
7 you read it to the jury?

8 A Please be advised that the record erase was pressed  
9 on the machine erasing a portion of the statement.  
10 Although, I believe the portion was already typed. The  
11 portion erased was unable to be proofed by a proof reader,  
12 Office Manager Ms. Donna McDaniel. The location of the  
13 erased portion is on line up on side B and then I put my  
14 initials DM.

15 Q Were there any punishments or sanctions given to you  
16 because of this?

17 A No, because it was an accident.

18 Q Did anyone discuss your method of transcribing this  
19 prior to you actually -- taking a tape and beginning your  
20 transcription. Did anyone give you instructions?

21 A No, basically she just told me that she needed this  
22 tape transcribed.

23 Q Were you aware of any -- had you been involved in any  
24 investigation in this case?

25 A No.

1 Q Have you discuss the case with any witnesses?

2 A No.

3 Q Had you discuss the case with any investigator?

4 A No, only that I made that error.

5 Q So the record or recording of the statement was given  
6 to you with no instructions just a request to transcribe?

7 A Just request that it be transcribed immediately.

8 MR. HILL: Thank you. Answer any questions that the  
9 defense might have.

10 CROSS-EXAMINATION

11 BY MS. PARROTT:

12 Q Good morning, Ms. McDaniel.

13 A Good morning.

14 Q Can you approximate how much time it was maybe that  
15 this space is on the tape?

16 A I'm not sure -- as soon as I -- I just turned over to  
17 do a couple of things probably was the radio going on, the  
18 phone going on and I just started back transcribing, so it  
19 was not much time.

20 Q Maybe two minutes give or take a little bit?

21 A Yeah, maybe two or three.

22 Q Okay. And you using the dictaphone it goes ahead a  
23 little bit, I believe?

24 A Yeah, it fast forwards back and it goes ahead for you  
25 to have a peddle also on the machine.



1 Q Okay. So did you hear any portion or even just on  
2 memory were you able to transcribe any of the portion  
3 that was transcribed?

4 A No, I didn't try to do it by memory because it has to  
5 be exact in what he says.

6 Q So although what is here and what you transcribed is  
7 what you know was on that tape?

8 A Yes.

9 Q But you also know there's a portion missing?

10 A Yes.

11 MS. PARROTT: Nothing further, Your Honor.

12 THE COURT: Redirect?

13 MR. HILL: None, thank you, Your Honor.

14 THE COURT: You may step down.

15 (WHEREUPON, the witness leaves the witness stand.)

16 THE COURT: Respit the morning recess, twenty  
17 minutes.

18 (WHEREUPON, the jury retire to the jury room.)

19 (WHEREUPON, a break was taken.)

20 THE COURT: Bring them in.

21 (WHEREUPON, the jury return to the courtroom.)

22 THE COURT: Everyone, okay. Everyone all right?

23 Next witness, please.

24 MR. HILL: Your Honor, at this time, the State would  
25 call Investigator Kathleen Streett.

1           THE CLERK: If you will place your left hand on the  
2 Bible and raise your right hand to be sworn. Do you swear  
3 the testimony you give in this case to be the truth, the  
4 whole truth, and nothing but the truth so help you God?

5           THE WITNESS: I do.

6           THE CLERK: Be seated and state your full name for  
7 the record.

8           THE WITNESS: My name is Kathleen Vargovchik Streett.  
9 WHEREUPON,

10                           Kathleen Street,  
11 after first having been duly sworn, testified as follows:

12                           DIRECT EXAMINATION

13 BY MR. HILL:

14 Q       Mrs. Streett, are you employed with the Florence  
15 County Sheriff's office?

16 A       I am.

17 Q       And are you a certified law enforcement officer?

18 A       Yes, sir, I am.

19 Q       Had you been trained at the South Carolina Law  
20 Enforcement Division?

21 A       Had I been trained by the South Carolina Law  
22 Enforcement Division?

23 Q       Right.

24 A       In what regard?

25 Q       Well, have you gone through training in certification

1 with the South Carolina Law Enforcement Division?

2 A Due to South Carolina Criminal Justice Academy.

3 Q Had you worked as an investigator -- how long you  
4 worked as an investigator for the sheriff's department?

5 A Since 2000.

6 Q And what other duties have you had in law  
7 enforcement?

8 A I was a uniform patrol deputy since -- from 1994  
9 until 2000.

10 Q Have you been employed by any other agencies other  
11 than the Florence County sheriff's office?

12 A Yes, sir, the Georgetown County sheriff's office.

13 Q What areas of investigation are you assign to work?

14 A Primarily criminal domestic violence, stalking cases,  
15 and also homicide cases with domestic implications.

16 Q Is that the reason you were called on this case?

17 A Yes, sir.

18 Q Do you have your notes and or reports with you as you  
19 testify today?

20 A Yes, sir, I have the transcribed statements and also  
21 the incident report.

22 Q And you reviewed them I trust?

23 A Yes, sir.

24 Q Let's talk about what happened on that day. You were  
25 notified and you reported to the scene at

1     apartments; is that correct?

2     A     That's correct.

3     Q     And do you know who resides at that apartment?

4     A     We learn once we were on the scene that it was the  
5     residence of Mr. and Mrs. Tarus Henry.

6     Q     And just to be clear for technical point, what was  
7     that address?

8     A     It was                                     apartment C1-C.

9     Q     Who resided in that home?

10    A     It was Mr. Henry, Mrs. Henry and their two small  
11    children, an infant and a four-year-old son.

12    Q     Who was the mother of the four-year-old son?

13    A     That would have been someone other than Mrs. Henry  
14    someone that resided in another town.

15    Q     But the four-month-old was the child of the defendant  
16    and Miss Parker; is that correct?

17    A     I believe she was six or seven months old at the  
18    time, but she was an infant, yes, that was their child.

19    Q     After you arrived at the scene, what was the first  
20    thing that you did?

21    A     The first thing that I did myself?

22    Q     Uh-huh.

23    A     When we first got the call, we actually had gone to  
24    lunch. I was riding with another investigator, which was  
25    actually the arson investigator. We were in the same

1 vehicle at the time. And when the call came out, it came  
2 out as an arson call. And so naturally, since I was  
3 riding with him, a lot of times when you get to a fire  
4 scene, you need an extra pair of hands depending on  
5 whether or not the fire department's there. So instead of  
6 him carrying me back to the office and then, you know,  
7 going all the way back to the scene, I just rode with him  
8 down there. And while we were in route, we got additional  
9 information the lieutenant had called asking me also to  
10 respond not knowing that I was already with the arson  
11 investigator, due to some information that Lieutenant  
12 Yarborough had ascertained from the hospital about there  
13 being an assault that had occurred also.

14 Q After you arrived and receive that information, were  
15 you directed to go elsewhere?

16 A Yes.

17 Q And by whom? Well, who gave you the order to direct  
18 you to go to Kershaw?

19 A We received information that Mr. Henry had been  
20 located in Kershaw County at the Camden -- or in Camden  
21 actually at Kershaw County Medical Center.

22 Q And so you -- did you do any actual forensics work at  
23 the scene of the fire?

24 A I walk through the scene and I also located a couple  
25 pieces of evidence that I pointed out to Corporal Moore.

1 Q And what were those items?

2 A The machete was one and there were also several areas  
3 of blood pooling and some other things we had discussed?

4 Q So you were the officer that discovered the machete?

5 A Yes.

6 Q Was it hidden or was it in plain view?

7 A It was partially hidden, it was under some clothing  
8 items on the floor in the dining room.

9 Q Had those items been displayed or entered into  
10 evidence?

11 A Yes, they have.

12 Q Do you know who's -- what those items were and to  
13 whom they belong?

14 A It was a pair of blue jeans and also a T-shirt that I  
15 believe belong to Mr. Henry.

16 Q And was there anything else next to the machete that  
17 you found?

18 A Not that I personally found. There were several  
19 things there, there were some rags and some other items  
20 that I believe that had some blood on it. But, you know,  
21 basically what I did was we had gotten information from  
22 Lieutenant Yarborough I believe had called me and told me  
23 that what we were looking for was an edged weapon perhaps  
24 because the injuries he had been told by the ER staff were  
25 of that nature knives, cutting instruments anything like

1     that. And so I was on my way from the living room into  
2     the kitchen, went to the dining room and saw the tip of  
3     the machete, so I pointed that out to Corporal Moore.

4     Q     And the machete that is entered into evidence is the  
5     one that you recovered at the scene?

6     A     That's correct.

7     Q     After you did that walk through and pointed out areas  
8     of evidence, is that -- did that conclude your work at  
9     that scene?

10    A     Yes.

11    Q     All right. And after you finished your work at the  
12    scene, is when you went to Camden?

13    A     We were very -- yes, we were very concern at that  
14    point about the children.

15    Q     And why were you concerned?

16    A     Because there was blood everywhere. I mean, just  
17    about -- I mean, just about every room I went into there  
18    was blood evidence everywhere, it was pooled in the living  
19    room blood, blood everywhere. A lot of children's toys,  
20    there was blood all over the children's toys and so I knew  
21    that we had at least an infant and we had a four year old  
22    and want to know where the kids were at, who had the kids,  
23    what was going on the with the kids. We had received  
24    information and it was sketchy at that point whether or  
25    not when Mrs. Henry was deposited at the hospital, whether

1 or not the children were actually in the car. We didn't  
2 know at that time. So we were trying to compile the  
3 vehicle information and possibly post an AMBER Alert to  
4 see if we could locate the children.

5 Q And what type of vehicle were you looking for?

6 A It's a silver Buick, I believe.

7 Q And that vehicle was found; is that correct?

8 A That's correct.

9 Q And is that the vehicle that was taken into custody  
10 and searched at the impound yard at the Florence County  
11 sheriff's department?

12 A It was.

13 Q Did you have any information that the children were  
14 inside of the home during this allege assault?

15 A At that time when I was on scene?

16 Q Right.

17 A That was an assumption on my part. Nobody had seen  
18 anybody remove the children before anything else happened,  
19 so we were going on the assumption that, yes, the children  
20 were there.

21 Q Now, prior to your leaving, were you aware of any --  
22 let me ask it this way, so it's a proper question. Prior  
23 to your leaving the apartment complex, had you developed  
24 any suspects?

25 A Yes, we did.



1 Q At that time, who was your primary suspect?

2 A Mr. Henry.

3 Q All right. Did that preclude or prevent you from  
4 considering the possibility of any other suspect?

5 A Not at that time.

6 Q So were you open to the possibility of someone else  
7 being involved in this case at that time?

8 A At that time, yes.

9 Q Did you have any information regarding some --  
10 another person being involved in this case entering into  
11 the house, did you have any information about that?

12 A One of the witnesses had told one of the other  
13 investigators that Mr. Henry had alluded to the fact that  
14 there had been somebody else there that had hurt his wife.

15 Q And was that Scott McAleese?

16 A That's correct.

17 Q He was the first witness that testified?

18 A I believe so.

19 Q And according to your information, the defendant told  
20 him someone else had come in. I don't want to put words.  
21 What did -- what was the information you received from  
22 Mr. McAleese?

23 A Can I refer back to his statement?

24 Q Yes.

25 A Mr. McAleese stated that he encountered Mr. and

1 Mrs. Henry. He asked her what happened because she was  
2 covered in blood and she stated that there had been a  
3 fight. He was shocked didn't know how to respond to her.  
4 And then the man who she was with, who was later  
5 identified as Mr. Henry, stated that somebody had tried to  
6 break into the apartment and that was all that he would  
7 say as he was taking her to the vehicle.

8 Q So at that point, the story was a third person had  
9 come into the house?

10 A Correct.

11 Q And so when you left the scene and went to Camden  
12 that was still a possibility; is that correct?

13 A That's correct.

14 Q As well as searching for the children and making sure  
15 they were safe?

16 A The children were number one priority. We knew where  
17 Mrs. Henry was, we knew she was receiving medical  
18 treatment. We knew she was being tended to. We wanted to  
19 know where the children were and what was going on with  
20 the children. And then also we needed to account for  
21 Mr. Henry and find out what happened in the apartment that  
22 day.

23 Q So what's the process that you followed in your  
24 investigation?

25 A The process?

1 Q Yes, after you left.

2 A First, when we were notified that he was there at the  
3 medical center in Camden, we went there with another  
4 investigator, Investigator Turner, Investigator Calvin  
5 Timmons, who was the on-call and myself, plus Adam Moore  
6 from forensics we went up there. Investigator Turner was  
7 focused on trying to located the vehicle number one. I  
8 was focused on trying to locate the children, which I did  
9 in the hospital. And they were in the care of Mr. Henry's  
10 mother. We also contacted DSS or requested that Kershaw  
11 County call DSS. They did, they had a DSS worker from  
12 their jurisdiction respond to the hospital, who in turn  
13 put a safety plan into effect allowing Ms. Henry to tend  
14 to the children until DSS -- since, they were residence of  
15 Florence County. Florence County office could get  
16 involved and they could tend to the issues with the  
17 children in their care.

18 Q Might we pause right there for a moment. When you  
19 arrived, the children were in custody of his -- of the  
20 defendant's mom?

21 A That's correct.

22 Q And the department of social services was also  
23 notified because the incident of the children being so  
24 young?

25 A That's correct.

1 Q And did DSS take a role in providing for the care of  
2 any of the children?

3 A They did. They initiated what they call a safety  
4 plan, which is basically a contract between the caregiver.  
5 They make sure that the caregiver doesn't have a criminal  
6 history and that there's no other issues in the home that  
7 could be detrimental, you know, to that person caring for  
8 the child. And once they're deemed acceptable to take  
9 custody and charge of the child, then there a written  
10 contract that signed between the two of them.

11 Q Now, Officer Streett, you've testified many times  
12 before; is that correct?

13 A Several times.

14 Q And understanding the rules that prevent us from  
15 entering a hearsay, I need for that to guide our testimony  
16 at this point. Did you have an opportunity to observe the  
17 children?

18 A I did.

19 Q Where did you see them?

20 A At the hospital there in Camden.

21 Q Okay. What there -- what room were they in?

22 A They were in like a conference room, private office  
23 type conference room if I remember correctly.

24 Q What did you observe?

25 A The -- Janessa, the baby naturally she was the

1     infant. She was fine. I mean, she was acting like any  
2     other normal six or seven month old would. The four year  
3     old was a different story, he was bouncing off the walls,  
4     very very, couldn't -- almost to the point of being  
5     uncontrollable. He was very very agitated about the whole  
6     thing. Couldn't carry much of a conversation on with him  
7     that you would think that you would be able to talk to a  
8     four year old, you know, in that same manner just wasn't  
9     able.

10    Q     Can you describe any other aspects of his emotional  
11    state? Was he tearful, was he happy, just describe it for  
12    me?

13    A     Agitated and bouncing off the walls is about the best  
14    descriptive way that I can say to try to describe how he  
15    was.

16    Q     As an investigator especially dealing with the  
17    children, what concern did that give you or why was that  
18    important to you or what might that have indicated?

19    A     Based on what I saw at the apartment and based on the  
20    demeanor of the child, the way that the child was acting,  
21    I was very very concerned about what he might have  
22    possibly seen or what he might possibly have been involved  
23    in, that's the only way I know how to put it.

24    Q     After you spent time with the children, did you leave  
25    them in the care and custody of DSS?

1 A No, Ms. Henry. DSS turned the custody and the care  
2 over to their grandmother.

3 Q And where did you go after that happened?

4 A We went back to Brown Town, I think, it is where the  
5 vehicle had been towed to.

6 Q At that time, had you seen or talk to Mr. Henry?

7 A I don't recall seeing him at the hospital. I don't  
8 know if he was there or if he had already been taken to  
9 the police department. I honestly cannot remember if he  
10 was there or if I saw him or not.

11 Q After you went to Brown Town, was the vehicle  
12 secured?

13 A It was within a gated fence like an impound fence.

14 Q Did you have any responsibilities at that point  
15 regarding the car?

16 A No.

17 Q And after you finish your work there, where did you  
18 all go?

19 A Came back to the sheriff's office.

20 Q All right. And were you still traveling with Officer  
21 Turner?

22 A That's correct.

23 Q And was Officer Moore with you?

24 A He was in his own vehicle.

25 Q So at this point, he wasn't involved directly with

1     you at this point?

2     A     Correct.

3     Q     Do you know who had -- with whom the defendant was  
4     traveling?

5     A     That would have been Investigator Calvin Timmons.  
6     When we were at the scene and we received the information  
7     about where he was, the lieutenant at the time, Brett  
8     Camp, had told us if we needed any more help to let him  
9     know. And he -- it was decided at that time that Calvin  
10    would help us with some of what we deemed leg work, some  
11    of the running around, and some of the other stuff that we  
12    had to do. And once we got a location on him, we were --  
13    we went ahead and sent Calvin on to Camden also, so he  
14    left before we did and he actually got there a little bit  
15    ahead of us. We went to the hospital and then I believe  
16    he went to either Kershaw County to the sheriff's office  
17    or to Camden PD one or the other.

18    Q     And then you came back to the sheriff's department in  
19    Effingham?

20    A     In Effingham, yes.

21    Q     And at that point, what were your -- what were you  
22    focusing on at that point?

23    A     We were getting ready to interview Mr. Henry.

24    Q     Had you been given instructions to do that by anyone  
25    else or was that something that you took upon yourself?

1 A No, that's the normal course of things. We usually  
2 once we have somebody that we need to talk to, we talk to  
3 them as soon as we can.

4 Q Were you involved in the booking process of Mr.  
5 Henry?

6 A No.

7 Q Have you booked someone in before?

8 A Have I formally booked someone in?

9 Q Right.

10 A No, I've taken prisoners to the jail to the booking  
11 counter and what we do is we bring them in and stand them  
12 at a particular point in the area in front of the counter.  
13 And then we fill out the paperwork, which is the warrant  
14 numbers and what they're charged with and the other  
15 information that booking needs and then the booking  
16 officer comes around and actually does the search, removes  
17 the handcuffs and then does all of the rest of the  
18 paperwork, hands us our handcuffs back and we leave.

19 Q Based on your experience, how long might that  
20 normally take?

21 A It depends, depends on how busy they are. If they  
22 got five or six people, it could take a little while. If  
23 they've only got one person that's standing at the counter  
24 and they've got plenty of booking personnel, it can go  
25 rather quickly.



1 Q Do you know where Mr. Henry was placed after he was  
2 booked?

3 A No.

4 Q Did you see him after he was booked?

5 A In the interview room.

6 Q Did you or any -- Officer Turner have any contact  
7 with him prior to seeing him in the interview room?

8 A No.

9 Q What's the distance from the booking area to the  
10 interview room?

11 A If you come through the back way, it's probably from  
12 -- if you left the jury box and went down the hall to  
13 solicitor's office at the end of the hall.

14 Q All right. And it's all enclosed in the same  
15 building and you don't have to go outside?

16 A That's correct.

17 Q And the room has been described and we know who was  
18 present during the interview process. Were you aware of  
19 any information or any statements that Mr. Henry had given  
20 or made before you began the interview with him?

21 A As far as any type of formal statements or anything?  
22 Calvin Timmons said that he read him his Miranda rights in  
23 the vehicle, but he didn't go into detail about if  
24 anything was discussed or what was discussed.

25 Q So you are not aware of what was discussed in that

1 vehicle with Officer Timmons and Mr. Henry?

2 A Not in the car, no, sir.

3 Q Before you took this formal statement, did anyone  
4 tell you what they discussed in the car?

5 MS. PARROTT: Objection.

6 THE COURT: On what grounds?

7 MS. PARROTT: Did anyone tell ---

8 MR. HILL: I'm just curious about whether or not she  
9 was told anything -- not what she was told, the purpose of  
10 which is to elicit whether or not she was influenced by  
11 other information prior to her taking the statement.

12 THE COURT: I will allow that query. Proceed.

13 A No, sir.

14 Q Were you present when Mr. Henry was given his Miranda  
15 warnings?

16 A I was.

17 Q And for the -- you're familiar with those, of course?

18 A Yes, sir.

19 Q Would you tell the jury what those are?

20 A Basically, those are everybody's rights under the  
21 constitution, that basically says that you're questioned  
22 by police and in your custody or custodial situation, that  
23 you have the right to remain silent. You have the right  
24 to have an attorney with you and that you do not have to  
25 make a statement if you don't want to.

1 Q And are you required to give those statements?

2 A Yes.

3 Q And do you -- how do you assure that someone  
4 understands those statements when they're given to them?

5 A We have a Miranda form, it's a eight and a half by 11  
6 sheet of paper that say Miranda Warning on the top. It  
7 list out all the Miranda rights and then it also has  
8 several questions on the bottom. And before we interview  
9 anybody in that sort of an interview, we fill this out  
10 with them, go over it, and read it to them, and then they  
11 sign off on it and they also initial. We cite each right  
12 and then they answer the questions on the bottom.

13 Q Is State's Exhibit Number 1 the form that you are  
14 discussing?

15 A That's it.

16 Q Were you present when that form was signed?

17 A Yes, sir.

18 Q After that form was signed, will you tell the jury  
19 what happened?

20 A After the form was signed, Mr. Henry was told that we  
21 were going to start the interview process and the audio  
22 cassette player was turned on with a microphone. In the  
23 room where we were, it -- there's a desk with a chair on  
24 either side and then you've got four or five upholstered  
25 chairs down one end. And then you have a sofa, a

1 three-cushion sofa down the other end in the back, so you  
2 got ample seating and they're also low to the ground. We  
3 use it a lot sometimes when we interview children, so the  
4 seats are lower than normal. Where we were positioned in  
5 the room, we basically told him Calvin was behind the  
6 desk, Mr. Henry was here. I was sitting over here and  
7 Investigator Turner was over here. We told him we were  
8 going to ask him some questions about what happened at the  
9 apartment that morning. He was then Mirandized again on  
10 tape once we turn the tape recording on. Investigator  
11 Timmons went over the Miranda sheet with him again and we  
12 proceeded to ask him question.

13 Q Is this interview room isolated from other areas in  
14 the sheriff's department?

15 A No.

16 Q Are there other offices around or near it?

17 A Yes, sir.

18 Q Is it connected to a hallway that is often used or  
19 seldom used?

20 A The main hallway.

21 Q So this interview room is on the main hallway in the  
22 sheriff's office?

23 A Correct.

24 Q Is there a window into that room?

25 A There's one on the door.

1 Q Now, there's been testimony regarding transcription  
2 error or problem with recording the recording of this  
3 statement. Were you made aware of that?

4 A I was.

5 Q You were present during the entire taking of the  
6 statement; is that correct?

7 A That's correct.

8 Q Do you have any independent recollection notes or  
9 anything to help you remember what was contained in that  
10 area that was accidentally erased?

11 A No, I'm sorry, I don't.

12 Q Regarding the eraser, was there any -- did you direct  
13 that that take place?

14 A Did I direct for the tape to be erased, no, sir.

15 Q To your knowledge, did anyone do that?

16 A No, sir.

17 Q Do you view this as purposeful or accidental?

18 A Accidental.

19 Q Do you have -- so we do not know what was erased or  
20 what was discussed during that eraser?

21 A I don't know, no, sir.

22 Q What is your belief regarding whether the erased  
23 material was helpful or beneficial for Mr. Henry?

24 A I don't know anything about what was erased, so I  
25 can't make any determination on whether it was beneficial

1 or not.

2 Q Were there any -- at any time during the interview  
3 process, was Mr. Henry abused or hurt or threatened and  
4 would that have been contained in the erased portion of  
5 this tape?

6 A At no point during the interview was he threatened,  
7 harassed, coerced or anything in any manner. And as far  
8 as the erased part, I don't know what was there, but I can  
9 tell you that he was not threatened, coerced or in anyway  
10 abused in the interview room.

11 Q So that was unplanned and accidental?

12 A That's correct.

13 Q Did anyone enter the interview room after the process  
14 began?

15 A Not that I recall, no.

16 Q Have you listen to the recorded interview?

17 A Not recently.

18 Q But you have listen to it?

19 A Correct.

20 Q And does that recording fairly and accurately depict  
21 and contain the interview that you were a part of?

22 A Yes.

23 Q Was there anything added to it that did not happen?

24 A No.

25 Q What concerns, if any, did you have regarding

1 Mr. Henry as you met him, interviewed him and recorded his  
2 statement?

3 A Concerns as far as?

4 Q You're correct, it's more specific. First regarding  
5 his ability to understand his rights?

6 A He didn't give any indication that he was confused.  
7 Didn't give any indication that he was anything other than  
8 absolutely like he is in the courtroom right now.

9 Q Was there any concern about his ability to fully  
10 understand what he was giving up?

11 A No, he answered questions and he actually answered  
12 them twice because he was -- not only was the sheet  
13 completed, but it was gone over again on tape when the  
14 tape was turned on. So he was actually -- and then plus  
15 in the car. If he was Mirandized in the car like Calvin  
16 indicated he was, then that's the third time.

17 Q At any time did you feel it was necessary to cease or  
18 interrupt the questioning and interview to allow him to  
19 seek some type of comfort?

20 A No. Usually -- and I'm pretty certain that I did  
21 when I first went into the interview room. I usually take  
22 a drink in with me and I usually ask anybody that I'm  
23 interviewing whether they're defendants, victims,  
24 witnesses or whatever. If they need to go to the bathroom  
25 or if they need a, you know, a drink, a Pepsi, Coke,

1 water, coffee whatever. And I believe I asked him if he  
2 wanted something to drink at that time.

3 MR. HILL: Your Honor, at this time, State would  
4 request that it be allowed to enter into evidence the  
5 recording of the statement that was made in this case.

6 THE COURT: It is entered into evidence over  
7 objection, rights are reserved as hereto for stated with  
8 specificity number 74.

9 MR. HILL: If I might confer with my IT.

10 THE COURT: I got to give it some marking 74.

11 (WHEREUPON, State's Exhibit No. 74 was admitted into  
12 evidence.)

13 MR. HILL: Your Honor, permission to publish this to  
14 the jury?

15 THE COURT: You may do so.

16 MS. PARROTT: Your Honor, may we approach?

17 THE COURT: Sure.

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

21 (WHEREUPON, the recorded statement of the defendant  
22 is played for the jury.)

23 BY MR. HILL:

24 Q Investigator Streett, the statement that we heard is  
25 that the same statement that you were a part of what was



1 played to the jury, what was recorded during your  
2 interview?

3 A Yes, it was.

4 MR. HILL: Please answer any questions that the  
5 defense may have.

6 CROSS-EXAMINATION

7 BY MS. PARROTT:

8 Q You were present whenever obviously with Investigator  
9 Turner at the scene and then also in Kershaw County and  
10 then back again at Effingham from what you stated; is that  
11 correct?

12 A Yes, ma'am.

13 Q Okay. And can you estimate that you got on scene  
14 probably maybe 12, 12:30 that afternoon?

15 A Without looking at the CAD report I don't know. I  
16 know it was after lunch.

17 Q All right. And then this statement is actually done  
18 and finished at 9:02 in the evening; is that correct?

19 A Later on that night.

20 Q So that's a pretty long day for you and for anybody  
21 involved in the case, is it not?

22 A I work two days straight on cases before without  
23 sleep.

24 Q But there's multiple hours that were involved in this  
25 even just on this one day that you were involve with

1 Mr. Henry, wouldn't you say that?

2 A As far as the interview process?

3 Q And the whole interview, I guess?

4 A The whole interview from the time that it started  
5 until the time that it ended.

6 Q Okay. And you state that you offered him somethings  
7 or you think you may have because that's just your usual  
8 process of doing things, but you don't know for certain in  
9 this case?

10 A I can't tell you for certain, but I usually do.

11 Q And you also heard him going through all of these  
12 medical conditions that he's had in the past, but you also  
13 didn't feel the need stop the tape or stop the interview  
14 in anyway?

15 A No, he was answering the questions coherently didn't  
16 appear to be under the influence of anything and this was  
17 2008. He had said the medication had been discontinued  
18 since 2004 or 2005 which was several several years prior  
19 to him being interviewed.

20 Q And you also noticed that he had the bandage at least  
21 on his left hand.

22 A He did.

23 Q Okay. And did look into how much treatment or what  
24 the level of treatment was that he received in Kershaw  
25 County?

1 A No.

2 Q So you don't know what kind of medications he was  
3 prescribed there either?

4 A He was treated and released that was the only thing  
5 that I knew.

6 Q Okay. When you got to Kershaw County, you said that  
7 you interviewed Mrs. Resia Henry, which is Mr. Henry's  
8 mother?

9 A Spoke with her.

10 Q Okay. And you were looking at the children who were  
11 there under her care at the time; correct?

12 A Yes, ma'am.

13 Q Cause they're at the hospital whenever you meet with  
14 them, are they not?

15 A Yes, ma'am.

16 Q Okay. And you state that the seven month old was  
17 fine?

18 A Yes, ma'am.

19 Q Okay. And -- but you're stating that the four year  
20 old was acting agitated, I believe is your word; is that  
21 correct?

22 A That is correct.

23 Q He's not in a normal place that he might be or at  
24 least we would hope not as a hospital, wouldn't you agree?

25 A That's correct.

1 Q Okay. So children outside of their normal  
2 circumstances sometimes just can't behave; correct?

3 A Depends on the child.

4 Q And especially, if there's been traveling or going  
5 from place to place for a little bit, would that be  
6 accurate?

7 A It could be.

8 Q And you didn't know this four year old prior to this  
9 case, did you?

10 A No, I did not.

11 Q So you wouldn't know is normal level of behavior or  
12 actions would be, did you?

13 A No, but I've got five children and two grandchildren,  
14 so I'm familiar with children.

15 Q Do they have any scrapes or bruises or marks on them?

16 A Not that I noted, no.

17 Q Any blood?

18 A Not at that time.

19 Q So they look like they were being taken care?

20 A At that time, when I say them, yes?

21 Q And as a matter of fact, DSS was called in from what  
22 you stated; correct?

23 A That's correct.

24 Q And if DSS had thought there was a real concern about  
25 the safety of those children, they would have taken them

1 into what's called emergency protective custody, wouldn't  
2 they?

3 A At that particular time.

4 Q But they didn't choose to do that, did they?

5 A No, and I really didn't deem that -- actually, DSS  
6 doesn't do EPC's law enforcement does. And if I had felt  
7 that there was a need, then I would have contacted Kershaw  
8 County Law Enforcement and had them do the EPC, but I had  
9 no problem whatsoever with Mr. Henry's mother taking  
10 custody of those two children.

11 Q Okay. And you're referring to it as an EPC and  
12 that's what -- I was just asking emergency protective  
13 custody?

14 A That's correct.

15 Q All right. So as far as you were concerned then, it  
16 was okay to leave the children with Mrs. Henry and DSS  
17 when they were called, just did a safety plan or contract  
18 with her about this is what we need for you to do with  
19 these children?

20 A Yes, ma'am.

21 Q When you were on the scene -- I'm sorry let me back  
22 up. When you were on the scene at the apartment at  
23 Patriot's Place, firefighters had already been in the  
24 apartment had they not?

25 A Yes.

1 Q Okay. So whenever you got there everything was kind  
2 of disheveled and the hoses had already been in all this  
3 sort of thing; is that correct?

4 A It's a fire scene, yes, ma'am.

5 Q So it's not necessarily the scene as it was at the  
6 end of this incident, is it?

7 A It was as I saw it when I first arrived there. I  
8 can't tell you what it look like before I got there and  
9 saw it.

10 Q But you know the firefighters did alter at least the  
11 appearance of the apartment by pulling down pieces of  
12 Sheetrock and all these sorts of things; correct?

13 A In their attempts to extinguish the fire, I'm sure  
14 they did, but I wasn't present didn't see them do that. I  
15 don't know what they did.

16 Q Okay. You got to him probably somewhere around eight  
17 o'clock that night since you're saying you didn't actually  
18 meet up with him until right before this taking of this  
19 statement occurred; would that be correct?

20 A Correct.

21 Q Okay. But while he was being booked and while he was  
22 then waiting for after booking to be interviewed, he had  
23 been cuffed that whole time, had he not?

24 A When they're brought into booking and they're  
25 processed, the cuffs are taken off of them at that time.

1 And they're either put in a little holding area on a seat  
2 or in a holding cell.

3 Q Okay. But they're still deprived of their freedom of  
4 movement by being locked into a place, are they not?

5 A Well, the holding cell is rather large and then the  
6 lobby area is a lobby area just like you would have in a  
7 lobby with several seats around a television.

8 Q But he just can't go where he wants to go, can he?

9 A No.

10 Q And just cover this again, the erased portion now  
11 that you've heard this full tape, you had nothing to do  
12 with that portion approximately about two minutes maybe or  
13 so?

14 A No, ma'am.

15 Q And you have nothing -- no recollection whatsoever of  
16 what might have been in that time period?

17 A No, ma'am, I am sorry.

18 Q And again, you were with him this whole time, but you  
19 never took a break and he never took a break in that whole  
20 hours worth of interview?

21 A It was just an hour, no.

22 Q And you don't know what kind of treatment he had  
23 received prior to being in there with the three of you, do  
24 you?

25 A No.

1 THE CLERK: Please be seated right there in the  
2 witness chair and state your full name for the record.

3 THE WITNESS: Mark Andrew Reynolds.

4 THE COURT: All right, Doctor, pull up a little  
5 closer to the mic please for me. And please speak slow  
6 enough so we can take down every single word you say.

7 THE WITNESS: Yes, sir.

8 THE COURT: Thanks.

9 WHEREUPON,

10 Dr. Mark Reynolds,  
11 after first having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HILL:

14 Q Dr. Reynolds, did you treat Carol Parker for her  
15 injuries sustained as a result of an event on June 23rd,  
16 2008?

17 A Yes, I did.

18 Q Where did that treatment occur?

19 A At McLeod Regional Medical Center.

20 Q Okay. And what is your job there?

21 A I'm a surgeon, I'm a trauma surgeon at McLeod.

22 Q And how long have you been employed there?

23 A Since September of 1997.

24 Q And how long have you worked as a -- well, how long  
25 have you been a physician?



1 A Since 1986.

2 Q Would you describe for the jury just your  
3 qualifications and your experience?

4 A Well, I went to Temple undergraduate in Philadelphia.  
5 I went to Temple Medical School in Philadelphia 1982  
6 through 1986. I was intern or resident at Temple  
7 University Hospital and I completed my general surgical  
8 training at the graduate hospital in Philadelphia. Then I  
9 performed two years of post-graduate training in trauma  
10 surgery and surgery critical care in Louisville, Kentucky.  
11 After which, I was on staff as a assistant professor at  
12 West Virginia University Hospital in Morgantown, West  
13 Virginia for three years. I then came to McLeod and I  
14 been here ever since.

15 Q And are you in charge of the trauma unit there or do  
16 you work in a -- with a group of doctors that assist the  
17 emergency room?

18 A Yes, I'm the director of trauma services at McLeod.  
19 And I work in concept with Pee Dee Surgical Group and we  
20 all take care of the critically injured patients that come  
21 in. And, of course, we do it in concept with a number of  
22 other physicians.

23 Q Have you had an occasion to testify in court before?

24 A Yes, I have.

25 Q Have you ever had the occasion to be qualified as an

1 expert witness before?

2 A Yes, sir.

3 MR. HILL: Your Honor, at this time, the State would  
4 move that Dr. Reynolds be accepted as an expert in the  
5 area of trauma surgeon -- trauma surgery and treatment in  
6 ER, emergency room procedure.

7 THE COURT: What says defense? You're entitled to  
8 voir dire before I rule.

9 MS. PARROTT: No objection, Your Honor.

10 THE COURT: He's qualified. You may proceed to posit  
11 query, that will elicit opinion testimony from the  
12 surgeon.

13 BY MR. HILL:

14 Q Dr. Reynolds, as a part of your treatment of Miss  
15 Parker, did you make notes in records which you brought  
16 with you today?

17 A Yes, I do.

18 Q As a part of your treatment, did you take photographs  
19 of the injuries that you observed?

20 A Yes, sir, I did.

21 Q Let me hand you a folder with photographs and ask if  
22 you would review and let me know after you've looked at  
23 them. Would these photographs be helpful for you in  
24 explaining and giving your testimony today?

25 A Yes, sir.

1 MR. HILL: Your Honor, in response to that ---

2 THE COURT: Yes.

3 MS. PARROTT: Your Honor, please note my objections  
4 previously stated.

5 THE COURT: I certainly recognize you have objected  
6 previously.

7 And, Mr. Hill, let me see that composite.

8 Doctor.

9 DR. REYNOLDS: Yes, sir.

10 THE COURT: Do you say now under oath that it is  
11 necessary and essential to use these photographs to  
12 demonstrate with clarity the injuries sustained by the  
13 victim?

14 DR. REYNOLDS: Yes, sir.

15 THE COURT: The objection is overruled. All rights  
16 are reserved. All rights are protected in that regard.  
17 The surgeon may use the photographs and simply identify  
18 them as you go in regard to numbers, Counsel.

19 MR. HILL: Yes. Your Honor, that in that regard as  
20 we begin our testimony...

21 BY MR. HILL:

22 Q Doctor, would it also be helpful or what manner might  
23 it be helpful to use a mannequin to display injuries that  
24 you observed and treated?

25 A Well, it would be helpful, we had so many injuries

1     sustained that it was difficult to keep track of all the  
2     different injuries.

3             MR. HILL: Your Honor, at this time, the Court -- I  
4     mean, the State move for the leave to use for  
5     demonstrative purposes only a mannequin to allow Dr.  
6     Reynolds to demonstrate the injuries he observed and  
7     treated.

8             THE COURT: Well, what says defense?

9             MS. PARROTT: Again, I am renewing the previous  
10    objection as stated and for the reasons stated previously.

11            THE COURT: All right. Have those been marked by my  
12    court reporter?

13            MR. HILL: No, not yet.

14            THE COURT: All right. Let her mark them, please.

15            MS. PARROTT: Your Honor, may we approach?

16            THE COURT: Sure.

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

20            THE COURT: In regard to prior objections posited by  
21    defense counsel, additional objections are now presented  
22    in regard to a response concerning a position that the  
23    evidence would be cumulative in that regard; is that  
24    correct, Counsel?

25            MS. PARROTT: Yes, Your Honor.

1 THE COURT: All right. Thank you and that's overrule  
2 respectfully.

3 MS. PARROTT: Thank you, Your Honor.

4 THE COURT: All right. The photographs marked?

5 COURT REPORTER: No, sir.

6 MS. PARROTT: And, Your Honor ---

7 THE COURT: Wait, she's marking photographs.

8 MS. PARROTT: I'm sorry.

9 (WHEREUPON, a pause in the proceedings.)

10 COURT REPORTER: They're 75 through 78 and 80 through  
11 82, we're going to skip 79.

12 THE COURT: Seventy-five through 78 and 80 through 82  
13 in evidence over objection rights are reserved, rights are  
14 protected. And for the record, 79 is an omission  
15 intentionally in regard to the marking of exhibits.

16 (WHEREUPON, State's Exhibit 75-78 and 80-83 was  
17 admitted into evidence.)

18 THE COURT: Anything further, Counsel?

19 MR. HILL: Nothing further, Your Honor.

20 THE COURT: All right. The final part of my ruling,  
21 Counsel, is that the mannequin that is used is at the  
22 present time in a pristine state IE no markings of any  
23 nature whatsoever at this time?

24 MR. HILL: That is correct.

25 THE COURT: You may proceed.

1 MR. HILL: Your Honor, leave to -- it's right here in  
2 the cubby, I need to ---

3 THE COURT: Proceed.

4 (WHEREUPON, a pause in the proceedings.)

5 THE COURT: Mr. Hill, in order to buttress the trial  
6 record, Miss Court Reporter, we will mark this as Court's  
7 Exhibit Number 3. It's not in evidence, not in evidence,  
8 but simply for recordkeeping purposes for utilization at a  
9 later time. Is that suitable?

10 MS. PARROTT: Yes, Your Honor.

11 THE COURT: And, of course, it will remain with the  
12 court in terms of custodial capacity, number 3.

13 (WHEREUPON, Court's Exhibit No. 3 was marked for the  
14 record.)

15 THE COURT: Ms. Bailiff, would you come help us there  
16 and just mark it down at the bottom. Thank you.

17 All right, proceed.

18 MR. HILL: Thank you, Your Honor.

19 BY MR. HILL:

20 Q Dr. Reynolds, do you have your report with you?

21 A Yes, I do.

22 Q When you first saw Miss Parker, did you see her in  
23 the emergency room at McLeod?

24 A Yes, I did.

25 Q What was her state when she first appeared in the

1 emergency room?

2 A She was an extremist, she was very very unstable.

3 Q What does that mean?

4 A Close to death.

5 Q How many wounds were you able to find on her?

6 A Approximately 28 wounds.

7 Q And on what side of the body were they located?

8 A They were located, the majority of them ran the left  
9 shoulder around the left axilla, the left neck, face,  
10 scalp. She also had lacerations down the left arm and  
11 major lacerations on the right arm, stab wounds to the  
12 right chest and to the left leg.

13 THE COURT: Please, keep your voice up for me please.

14 DR. REYNOLDS: Yes.

15 BY MR. HILL:

16 Q Would you mind stepping down to show the jury? You  
17 may need your report as well. Doctor, if you would, I'm  
18 going to hand you a roll of painter's tape ask if you  
19 would to place a piece of tape on each -- on this  
20 mannequin Court's Exhibit Number 1 for demonstrative  
21 purposes -- demonstrate where each injury occurred.

22 A Yes, sir. In order to keep track of all these  
23 injuries, we numbered them. And the first was a stab and  
24 slash wound approximately here.

25 THE COURT: Doctor, please give me a little more

1 volume. Please help me.

2 DR. REYNOLDS: Yes, sir.

3 THE COURT: Okay, all right.

4 A Approximately located here this is along the anterior  
5 aspect of the -- what we call the axilla. It exits  
6 through the pectoralis below the breast and did not enter  
7 into the thoracic cavity, but it did expose the axillary  
8 vessels in that location. The one that I have marked as  
9 injury number two was located by itself. And this is  
10 along the anterior lateral aspect of the deltoid muscle  
11 and that slice right through it. The one I have listed as  
12 a three is located just overlying the clavicle, the collar  
13 bone. And it was a stabbing sort of wound entering  
14 towards the base of the neck, but injuring some venus  
15 vessels, but not anything else. The one I have listed as  
16 number four was a stab type incision up on the right  
17 chest, but it did not enter the thoracic cavity. Number  
18 five was a long slash and shop wound on the left neck,  
19 sort of up towards the base of the skull and this went  
20 through the -- many of the muscles of the neck. It was  
21 all the way down to the cervical spine. In fact, you  
22 could feel that depths of the wound. And this was what  
23 transected the T-bow artery (sic), which cause the stroke  
24 that she suffered. The one that I have listed as number  
25 six was a stab and slash wound, that lay just anterior to



1 the ear. Number seven extended above the ear. And these  
2 were fairly superficial down to the skull, but they did  
3 not take off the ear. Going on to number eight and this  
4 was also a superficial wound just through the skin along  
5 the top of the trapezius muscle at the base of the neck.  
6 Going on to number nine, this was all along the armpit all  
7 the way around to the back and this was about seven inches  
8 long extending around. This subdivided the metizmus (sic)  
9 muscle, where it goes to attach to the humerus of the ear  
10 and again expose the axillary vessels. Fortunately, did  
11 not cut them. Laceration number ten was on the back of  
12 the left arm. And then we had laceration 11, 12, and 13  
13 and these were through the skin subcutaneous tissue and  
14 through the muscular fashion, but did injure anything  
15 else. There was number 14 was on the thorax. Fifteen was  
16 another laceration on the back of the deltoid, so almost  
17 had circle of lacerations around her left shoulder.  
18 Number 16 back on the shoulder blade region. Eighteen and  
19 19 were on the scalp. Seventeen was at the base of the  
20 neck towards the spine. Twenty was on the right arm in  
21 the back trapezius region. Twenty-one was a large  
22 laceration of the hand that's center to her extensive  
23 tendons all the way down to the bones on the back of the  
24 hand. Twenty-two was a smaller laceration on her hand.  
25 And then 23, 24, and 25 was smaller lacerations on the

1     fingers and thumb. The -- and that's all the lacerations  
2     that are listed.

3     Q     You can have a seat. Doctor, did you require  
4     assistance from other physicians in treating?

5     A     Yes, I did.

6     Q     Why was that needed?

7     A     Well, there were a lot of injuries to take care of.  
8     Plus, we had some tendon injuries and specialist who  
9     handles that kind of thing and that was Dr. Watford, I  
10    believe.

11    Q     Describe in a little more detail what type of injury  
12    that was and what was required?

13    A     That was injury to the right hand, which was  
14    transected all the extensor tendons. Those are the  
15    tendons that straighten out the fingers.

16    Q     So they were cut?

17    A     They were cut and required repair.

18    Q     If the repair had not been made, what would the  
19    result have been?

20    A     Her hand would be deformed as a sort of a fist or  
21    hook.

22    Q     All right. There were numerous injuries that you  
23    demonstrated. Other than the one to the hand, what was  
24    another that most alarmed you as a physician?

25    A     The -- I think the worse injury she suffered was the

1     lash to the base of the skull that entered the cervical  
2     spine and transected the vertebral artery.

3     Q     So ---

4           THE COURT:   What number is that one?

5           DR. REYNOLDS:   That is number five.

6     BY MR. HILL:

7     Q     What made that injury so severe?

8     A     Well, she had a stroke and that was in her base  
9     ganglia of her brain, but it was most likely due to that  
10    vertebral artery being transected.

11    Q     So an artery was cut by that blow?

12    A     Yes.

13    Q     And what -- when the artery was cut how might that  
14    cause a stroke?

15    A     In her state, she had lost a lot of blood. She had  
16    very little blood pressure, sort of like if you have a  
17    hose and you don't have full pressure, it makes it very  
18    difficult to reach all the way to the back loin. And so  
19    those areas that don't get sufficient blood during that  
20    period of time, may suffer some damage and that is what  
21    occurred and manifested as a stroke.

22    Q     How long did your treatment ---

23           THE COURT:   Before you leave that, Mr. Hill. What is  
24    a stroke? Describe that for the Court, a stroke?

25    A     A stroke is an area of the brain, which has received

1     insufficient blood. And as a result is either ischemic  
2     and that it's not functioning due to lack of blood and  
3     oxygen or it is dead because it did not receive sufficient  
4     blood or oxygen. And if this happens to your heart, you  
5     don't have the ability to pump blood. If it happens to  
6     your brain, you have areas of the body that become weak or  
7     become numb. In this victim's case, it was weakness of  
8     the left side of her body.

9     Q     How many day was she hospitalized?

10    A     She was at the McLeod Regional Medical Center from  
11    6-23-2008 through 7-11-2008, eighteen days.

12    Q     Was she instructed to receive any aftercare regarding  
13    after her discharge?

14    A     I believe she was discharged to a rehabilitation  
15    facility.

16    Q     And did you continue to follow her after her  
17    discharge?

18    A     Yes, I did.

19    Q     Is that continuing or been fortunate enough to  
20    discontinue that treatment follow-up?

21    A     She's welcome back any time she needs assistance.

22    Q     All right. How long did you see her after discharge?

23    A     I think the last time I saw her as a patient was  
24    probably in February 10, 2009.

25    Q     How long did it -- would assume that she underwent

1 surgical operations and repairs; is that correct?

2 A I'm sorry.

3 Q She under went surgery; is that correct?

4 A That is correct, yes.

5 Q How many surgeries was she required to undergo?

6 A The major procedure for that day in that she went to  
7 the OR and we washed and fixed every laceration and tried  
8 to repair the injuries that we found including the  
9 extensive tendon injuries, but she also required chest  
10 tubes on both sides. She also required large wall IV's  
11 for aggressive resuscitation. She was on the ventilator  
12 for a day and that's it.

13 Q I'm sorry, I didn't mean to interrupt you.

14 A Well, I was just reading the -- there was some  
15 extensive orthopedic repairs performed by Dr. Watford.

16 Q And what were those?

17 A These were pin fixations of the fractures of the  
18 right hand and this occurred under the same anesthesia  
19 same day.

20 Q The bones were broken in that hand as well?

21 A Yes.

22 Q Requiring orthopedic surgery?

23 A Correct.

24 Q Were there any other -- what other medical procedures  
25 was she required to undergo that perhaps you haven't

1 testified about?

2 A She has received rehabilitation services, I think it  
3 was the major problem in recovering from the stroke.

4 Q And, Doctor, you said that -- how severe were her  
5 injuries? Were they life threatening?

6 A Yes, they were.

7 Q Doctor, did you take photographs of her after she  
8 arrived at the hospital?

9 A Yes, I did.

10 Q For what purpose?

11 A This is something that fairly routine. I like to  
12 document the injuries as they are when they present, so  
13 that we can ensure that we take care of all the injuries  
14 that are there. We can sort of monitor how well the  
15 injuries are recovering and healing over the course of  
16 time.

17 Q So there was nothing unusual about taking  
18 photographs?

19 A No, no.

20 MR. HILL: Your Honor, if I might just have a moment  
21 to move this Court's Exhibit 1.

22 THE COURT: While you are doing that, Doctor, the  
23 last visit was February 10, 2009?

24 DR. REYNOLDS: Correct.

25 THE COURT: What residuals were present at that

1 particular time, would you describe those for the Court?

2 DR. REYNOLDS: I can review the note?

3 THE COURT: Please.

4 DR. REYNOLDS: At the time of the visit, she was  
5 ambulating, walking with some difficulty. And she had  
6 some difficulty moving the left upper extremity. The  
7 lacerations are healed. She had some keloid formation.  
8 Continues to have para-seizures that is numbness of the  
9 left upper extremity and weakness of the left lower  
10 extremity. But overall, she was doing well and appeared  
11 to be recovering from her post-traumatic stress disorder.

12 THE COURT: As I understand it, keloid is a special  
13 type of scarring; is that correct?

14 DR. REYNOLDS: That's correct. It's when scar forms  
15 very exuberantly and forms a mounding mass.

16 MS. PARROTT: Your Honor, may we approach?

17 THE COURT: Sure.

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

21 BY MR. HILL:

22 Q Doctor, I'm going to show you photographs and I'm not  
23 sure if you can see them from where you are seated. If  
24 you would position yourself to a place where you might see  
25 them on the screen. And I believe it would be proper if

1     you needed to stand. Doctor, State's Exhibit 75 our  
2     number is 86?

3             THE COURT: Well, our number is 75, let use our  
4     number for the record.

5             MR. HILL: We are.

6             THE COURT: Thank you.

7     BY MR. HILL:

8     Q     Doctor, do you recognize this photograph that's  
9     marked as State's Exhibit Number 75?

10    A     Yes, I do.

11    Q     What does that display?

12    A     That is -- illustrates the view of the patient axilla  
13    and that's with the arm raised and lacerations of the  
14    trapezius region and that's the slash, the bone goes all  
15    the way around. And at the base of that, you can see  
16    exposed vessels and that transected.

17    Q     Is there also a wound on the upper bicep or lower  
18    bicep?

19    A     Yeah, that's actually the back of the arm, it's  
20    raised up, so that's the trapezius region?

21    Q     What other wounds are visible?

22    A     And then if I can approach?

23             THE COURT: Yes.

24    A     This is the one I illustrated as number one. This is  
25    the pectoralis region and it's stab towards the chest.



1 This is the one of the upper neck and she's sort of faced  
2 away, so it's over here. And this is the one that went  
3 down to the cervical spine. This is one anterior to the  
4 ear and one above the ear.

5 Q Doctor, next I like to display what's been marked  
6 State's Exhibit Number 76?

7 THE COURT: Doctor, we have very up-to-date equipment  
8 here.

9 BY MR. HILL:

10 Q This is State's Exhibit Number 76. Doctor, will you  
11 described the injuries displayed in this photo?

12 A This is the left arm extended out and these are  
13 lacerations along the forearm and also the upper portion  
14 of the...

15 Q Next I like to show you State's Exhibit Number 77?

16 A This is a view of the neck again. And this is across  
17 the top of the neck and this is actually a portion of the  
18 carotid. And then this is a deep portion of the  
19 laceration extended towards the spine or so more  
20 superficial lacerations on the face.

21 Q Is the injury depicted in this -- the injury that you  
22 stated stroke?

23 A Yes, this is a deep wound extending through here and  
24 you could actually run your fingers all the way into the  
25 spine right there.

1 Q Doctor, I next like to show you State's Exhibit  
2 Number 78. Doctor, what do we see here?

3 A This is a view of the dorsal of the right hand and  
4 this is the laceration across like that. And these are  
5 the, actually the bones of the hand exposed and these are  
6 cuttings that the -- of the tendons, the extensive  
7 tendons. And then more minor lacerations here.

8 Q Finally, I like to show you State's Exhibit Number  
9 80. State's Exhibit number 80?

10 A And this is a view same wound to the hand, but now  
11 with the tendons have been repaired, so these are the  
12 suture, at least the tendons which have been repaired.  
13 This is prior to placement of the pins to stabilize the  
14 bones and closure of the skin.

15 Q And the objects that you pointed out as tendons,  
16 those were cut?

17 A Yes, they were.

18 Q And they were not -- and this after the repair?

19 A This is immediately after the repair of the tendons  
20 prior to stabilization of the fracture, the fractures and  
21 the closure of the skin.

22 MR. HILL: Thank you, Doctor. You might have a seat,  
23 please. Doctor, I appreciate your testimony and your  
24 time. Please, answer any questions that the defense may  
25 have.

1 THE COURT: Doctor, I have a bifurcated question. In  
2 regard to the permanency of any injuries, would you  
3 describe that in the way of impairment and disfigurement?

4 DR. REYNOLDS: Your Honor, as we go through life, we  
5 all pick up some scars. I think this disfigurement is in  
6 the eyes of the beholder and impairment is in the eyes of  
7 the beholder. However, there will be some permanence and  
8 residual scarring and some permanent residual impairment  
9 of function. And she has demonstrated tremendous spirit  
10 and has recovered wonderfully. And I would say that she  
11 is in access of 95 percent of her original capacity and  
12 she is doing wonderful.

13 THE COURT: All right. Ms. Parrott, you may  
14 cross-examine.

15 CROSS-EXAMINATION

16 BY MS. PARROTT:

17 Q Dr. Reynolds, I notice on your notes from February  
18 the 10th you have her coming back in six months; is that  
19 correct?

20 A Correct.

21 Q And that's just so that you can continue to monitor  
22 what her health condition is even though you believe her  
23 prognosis it sounds like probably fairly good?

24 A I believe it is, yes.

25 Q Okay. And if I'm understating that, then please

1 correct me?

2 A As I stated, disfigurement and impairment is in the  
3 eyes of the beholder. It will be some scarring. There  
4 will be some impairment, but it is up to her to be  
5 positive.

6 Q When you have people who come in and you work as a  
7 trauma surgeon, you don't necessary know the whole story  
8 behind what happened, do you?

9 A Correct.

10 Q And it is not necessary even your concern as much as  
11 what the injuries are in dealing with them?

12 A I take care of the injuries.

13 Q And you stated -- and I want to be clear about what  
14 the -- what I believe the standard to be that you believe  
15 that the cut caused the artery to be severed, which  
16 then -- this was in the basal ganglia of the brain from  
17 what you stated I believe; is that right?

18 A Correct.

19 Q And then that is what then led to the ischemic  
20 stroke?

21 A Well, when I state that the stroke was in the basal  
22 ganglia just stating where it was.

23 Q Right.

24 A The stroke is the area of ischemia.

25 Q Right. And the stroke -- and the stroke in just

1 simple terms is kind of brain attack as oppose to a heart  
2 attack; isn't it?

3 A Exactly, yes.

4 Q Okay. Can you state to a reasonable degree of  
5 medical certainty that that injury caused that stroke?

6 A Yes.

7 Q Okay. All right. And as far as the rest of the  
8 injuries that she had, you're saying she is 95 percent  
9 healed at this time?

10 A I believe so, yes.

11 Q But you still have hope that she may continue to  
12 progress, is that true?

13 A Yes, people continue to progress, yes.

14 MS. PARROTT: Nothing further.

15 THE COURT: Redirect?

16 MR. HILL: No, we would ask that the doctor be  
17 allowed to be excused.

18 THE COURT: Certainly, and thank you for coming,  
19 appreciate your time.

20 DR. REYNOLDS: Thank you, Your Honor.

21 (WHEREUPON, the witness leaves the witness stand.)

22 THE COURT: Next witness, please.

23 MR. HILL: Carol Parker.

24 THE CLERK: Do you swear to tell the truth, the whole  
25 truth, and nothing but the truth so help you God?

1 THE WITNESS: I do.

2 THE CLERK: Please be seated and state your full name  
3 for the record.

4 THE WITNESS: Carol Denise Parker.

5 WHEREUPON,

6 Carol Parker,  
7 after first having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. HILL:

10 Q You ready? Okay. I need you to speak up nice and  
11 loud just like you did a few minutes ago -- a few seconds  
12 ago. Miss Parker, are you still married to the defendant?

13 A No.

14 Q Okay. You were married?

15 A Yes.

16 Q Were you married to the defendant on June 23rd 2008?

17 A Yes.

18 Q What was the date of that marriage?

19 A August 30th 2007.

20 Q And I believe you all met while you each were  
21 attending Florence Darlington Tech; is that correct?

22 A Correct.

23 Q And were you fortunate enough to mother a child?

24 A Yes.

25 Q Was the defendant the father of that child?

1 A Yes.

2 Q And what's the child's name?

3 A Janessa Tra'neise Henry.

4 Q And she was how old on the date of June 23rd?

5 A Seven months.

6 Q When you first met the defendant -- let me back up.

7 During the time that you knew him and lived with him, were  
8 you aware of his -- did you ever see him take any  
9 medication?

10 A The only medication that I ever see him take was  
11 glucose pills for his diabetes.

12 Q Were you aware of any other medicines?

13 A No.

14 Q We need to get straight to the point about what  
15 happened on June 23rd. Beginning early that morning, what  
16 did you and the defendant do?

17 A I remember we were in bed and I got up out of bed and  
18 he got up out of bed. And we got the two children up  
19 because he said he wanted to go to the magistrate office.

20 Q Why did you need to go to the magistrate's office?

21 A Cause something to do with the eviction notice.

22 Q So there had been an eviction notice that's the  
23 purpose for the visit at the magistrate's office?

24 A Yes.

25 Q And which magistrate's office did you visit?

- 1 A Not sure.
- 2 Q You're not sure?
- 3 A Not sure.
- 4 Q Did you stop anywhere else after you left the  
5 magistrate's office before you got home?
- 6 A No.
- 7 Q Do you recall what you and the defendant discussed or  
8 talked about after you left the magistrate's office?
- 9 A We talked about the wellbeing of the children.
- 10 Q Was that a nice discussion, was it hard to discuss,  
11 was it -- just describe it for me?
- 12 A It was really hard to discuss.
- 13 Q Was there yelling or fussing?
- 14 A No.
- 15 Q What happened when you got home?
- 16 A When I got home -- when we all got home, we decided  
17 just to lie back down in bed, you know, just to get some  
18 extra rest and the children we put them down and put them  
19 in the bed.
- 20 Q Okay. Now, the bedroom that you used was that the  
21 master bedroom?
- 22 A Yes.
- 23 Q Was that the one that was the origin of the fire?
- 24 A Yes.
- 25 Q Is that the one where the fire began?



- 1 A I believe so.
- 2 Q There was another bedroom and who slept in that  
3 bedroom?
- 4 A Tarus' son.
- 5 Q Okay. And what was his name?
- 6 A Tarus Jr.
- 7 Q And how hold was he?
- 8 A He was four at the time.
- 9 Q And where did Janessa sleep or stay?
- 10 A She was in my bedroom in her bassinet.
- 11 Q After you all arrived home laid down for a nap, what  
12 happened next?
- 13 A I remember getting up out of bed and I see Tarus is  
14 still asleep. I remember getting up and I call my mother  
15 on the phone.
- 16 Q I need to ask you about the phone, okay?
- 17 A Okay.
- 18 Q How many telephones were in the house?
- 19 A Just one.
- 20 Q And the telephone that you used to call your mother  
21 was located where?
- 22 A In the last master bedroom.
- 23 Q Okay. Was it on a nightstand next to the bed?
- 24 A Yes.
- 25 Q So you called your mother?

1 A Yes.

2 Q What happened as a result, what happened next?

3 A I call my mother I ask her would she take care of my  
4 daughter Janessa and she said she would. And I told her  
5 that I was going to bring her by her home and that was the  
6 end of the conversation.

7 Q After you hung up with your mother, where did you go  
8 or what did you do?

9 A I remember leaving the master bedroom, walk down the  
10 hallway, and I went into the living room and I remember  
11 taking some clothes out and that's when I saw ---

12 Q I need you -- would you mind repeating that for me  
13 again? What did you do with the clothes?

14 A I just remember taking some clothes out of the living  
15 room.

16 Q Now, before we go another step, I like to ask you  
17 this question.

18 A Okay.

19 Q Prior to that phone call, did you call anyone else  
20 other than your mother?

21 A No.

22 Q Were you dating anyone else?

23 A No.

24 Q Were you, the vernacular, running around on your man?

25 A No.

1 Q You weren't seeing anyone -- were you seeing anyone  
2 behind his back?

3 A No.

4 Q Do you recall how much you weighed at the time?

5 A I say maybe 120, 130.

6 Q And how tall are you?

7 A 5'3, 5'4.

8 Q So you didn't call anyone that morning except your  
9 mom?

10 A Right.

11 Q After you go in the living room in the den and begin  
12 sorting clothes, what happened next?

13 A I saw Tarus Henry standing behind me. When I turned  
14 around, and I saw him.

15 Q You saw who?

16 A Tarus.

17 Q Where were the children?

18 A Tarus Jr. was in his room. I remember leaving the  
19 living room.

20 Q You left the living room where did you go?

21 A In the master bedroom.

22 Q Back to the bedroom?

23 A Uh-huh.

24 Q All right. Then what happened?

25 A I remember taking Janessa out of her bassinet, my

1 daughter.

2 Q And where did you and Janessa go?

3 A I went back into the living room.

4 Q All right. And what happened then?

5 A I put her in the car seat carrier.

6 Q Okay. And we seen a diagram photos of -- where was  
7 the child carrier?

8 A In the living room.

9 Q In the living room?

10 A Uh-huh.

11 Q If I'm looking at the house from the front door,  
12 would it be on the left side where the desk and the dining  
13 table are or on the right where the dresser and Tarus  
14 Jr.'s toys were located?

15 A It would be on the left.

16 Q On the left?

17 A Uh-huh.

18 Q So you put her in the child seat on the floor?

19 A Yes.

20 Q And then what happened?

21 A I put her in a car seat carrier. I see Tarus in the  
22 living room. Tarus he started arguing with me for no  
23 reason.

24 Q So after you place Janessa in the car seat, the  
25 defendant showed up in the living room and began arguing

1 with you?

2 A Yeah.

3 Q Is that what you said?

4 A Yes.

5 Q Do you recall why he was arguing or the subject of  
6 the argument?

7 A I told him that I wanted to take my daughter to my  
8 mother's home. He said, no. Tarus said, no. He said I  
9 couldn't take my daughter to my mom's house. I ask him  
10 why, he said because she sick and she needs to be home and  
11 needs to be on medication.

12 Q Was she taking medicine at that time?

13 A Yes.

14 Q All right. What else -- tell me about the rest of  
15 the argument?

16 A Basically, he just kept going on and on about my  
17 daughter she needs to be home. She doesn't need to go to  
18 my mother's house. And I told him -- he just kept saying  
19 the same thing over and over about she can't go because  
20 she sick. And I said, Tarus, I want to go for a job. I  
21 said, I just want to go find a job. And then I told him,  
22 you know -- I'm sorry so much -- I'm sorry.

23 MS. PARROTT: Your Honor.

24 THE COURT: Yes.

25 MS. PARROTT: Would she like to have recess for a

1 minute?

2 THE COURT: Miss Parker, you want to let's take a  
3 recess?

4 (WHEREUPON, the witness is crying and nodded head in  
5 the affirmative.)

6 THE COURT: All right. Jurors, please go to your  
7 jury room.

8 (WHEREUPON, the jury retire to the jury room.)

9 (WHEREUPON, a break was taken.)

10 THE COURT: All right. Does anyone need to go?  
11 Anyone need to go? Anyone? All right. Close the door.  
12 I'm not going to have in and out while she testifies.  
13 Bring the jury out.

14 (WHEREUPON, the jury return to the courtroom.)

15 THE COURT: You may proceed.

16 MR. HILL: Thank you, Your Honor.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. HILL:

19 Q Miss Parker, before the recess we were at a point  
20 where you were discussing an argument that begun between  
21 you and the defendant in the living room after you place  
22 Janessa in the car seat. And I believe you stated that  
23 that argument regarded your wanting to go to a job service  
24 and that the defendant did not want you to do that?

25 A Right.

1 Q Is that where we were with your testimony?

2 A Yes.

3 Q All right. When you went to the master bedroom to  
4 take Janessa out of her bassinet, did you notice anything  
5 that was different in that bedroom?

6 A Well, I was gone try to see if I can, you know, call  
7 my mom back and tell her that I wasn't going to make it to  
8 her house. So I'm in the master bedroom, I'm sitting down  
9 on the bed and usually, you know, the phone, you know, is  
10 on the stand next to the bed. So I notice that phone was  
11 not there on the stand, so something, you know, in my mind  
12 told me to look down on the floor. So I look down on the  
13 floor, I see that the phone line is cut.

14 Q And then you walked back out in the living room with  
15 Janessa or was that after you had gone in the living room  
16 and place Janessa in the car seat?

17 A I think, I'm not sure.

18 Q Okay. So picking back up with the argument that you  
19 are having in the living room, what happened next?

20 A Well, once I notice that the phone, you know, was on  
21 the floor. I was still sitting in the bed -- on the bed  
22 and I yelled and I ask Tarus did he cut the phone line.  
23 He said, no, I didn't cut the phone line maybe one of the  
24 children did it.

25 Q Okay. Continue.

1     A     So at that point, I left out of the master bedroom,  
2     I'm walking down the hallway and now I'm going in the  
3     living room again. And at that point, I just remember  
4     turning around the opposite direction and my back was  
5     towards the living room door.

6     Q     And what happened next?

7     A     Tarus was in front of me and he just kept saying you  
8     can't take your daughter over to your mom's house because  
9     she's sick. I said, my daughter is not sick. And I said  
10    something is obviously wrong with you because the way  
11    you're acting. I said something is obviously wrong with  
12    you. And he said you need to stay home and be a family,  
13    that's what he said.

14   Q     So what did you do after that?

15   A     I just remember my back was towards the door and I  
16   remember trying to open the door and he was trying to  
17   block me from opening the door and I said, Tarus, I got to  
18   leave, I got to go. I said, there's no need for more me  
19   to be here anymore, I got to go.

20   Q     And what happened?

21   A     I said, Tarus, I love you, but I got to go. I need  
22   to take my daughter over, so I can try to find me a job.  
23   And I said, Tarus, I need to go. And the next thing that  
24   happened was I remember the room was getting very very  
25   dark at that point. And I know I felt something around my



1 neck, the left side of my neck, and I just happen to look  
2 down at myself and I see that I'm bleeding. And at that  
3 point, I fell. I remember falling on the floor in the  
4 living room right near the door.

5 MR. HILL: Your Honor?

6 THE COURT: Yes.

7 MR. HILL: I need to fetch an exhibit that's behind  
8 the court reporter.

9 BY MR. HILL:

10 Q Carol, I need to show you an exhibit marked as  
11 State's Number 53.

12 A Okay.

13 Q Do you recognized this?

14 A Yes.

15 Q What is State's Number 53 that I just displayed to  
16 you?

17 A A machete.

18 Q Did you see it that day?

19 A No, I saw it, you know, that was like mainly a little  
20 after he cut me.

21 Q While you were there and you felt blood coming down  
22 your throat, what do you remember next?

23 A I remember, I'm still on the floor. I'm still  
24 bleeding. And next the thing, you know, I felt some blows  
25 on my back, on the left side in my back and he's

1 repeatedly cutting me.

2 Q Is he saying anything?

3 A Yes.

4 Q What?

5 A Are you going to tell on me? Are you going to tell  
6 on me? Need to be here and be a family, be here with the  
7 family. Those were his words.

8 Q Where was Janessa?

9 A Still in her car seat carrier.

10 Q How near was he to Janessa while this was happening?

11 A He wasn't like too far from each other.

12 Q Using my walking towards you, tell me when that  
13 approximates the distance?

14 A Okay.

15 Q This distance?

16 A Not really.

17 Q Closer, further?

18 A Just little bit closer.

19 Q Tell me when to stop?

20 A Right there.

21 Q Did you observe the photographs in this case?

22 A Yes.

23 Q How many times do you recall being hit or cut or  
24 stabbed?

25 A Not really sure.

1 Q Did you do anything to cause this?

2 A No.

3 Q Did you have wedding rings?

4 A Yes.

5 Q Did you take them off at some point?

6 A Yeah, I did.

7 Q And when was that?

8 A That was at the point where he was trying to take me  
9 to the hospital.

10 Q What did you do with them?

11 A I place them in a compartment in the passenger side.

12 Q In the door handle?

13 A Yes.

14 Q After he knocked you to the ground ---

15 MS. PARROTT: Your Honor, objection.

16 MR. HILL: I'll rephrase.

17 THE COURT: Yes, that's struck from the record.

18 BY MR. HILL:

19 Q After you fell to the ground, what did you do?

20 A Well, you know, at that point, you know, I'm still  
21 lying there on the floor. Tarus he stop what he was doing  
22 and he put the weapon excuse me -- he put the weapon -- I  
23 remember he put it down near the dining area. And I just  
24 remember -- he just walk pass me and my little girl she's  
25 crying in her car seat carrier.

1 Q Where is Tarus Jr.?

2 A He's in his room at that point. And that's when I --  
3 Tarus -- little Tarus comes in the living room and he said  
4 let me go back. At that point, Tarus is cutting me. His  
5 son, Tarus Jr. comes in the living room and he said,  
6 Daddy, what are you doing? Daddy, what are you doing?

7 Q Where does little Tarus go?

8 A I remember, Tarus, his father says, son, go to your  
9 room, go to your room.

10 Q Who else was in the house? Who was in the house  
11 while this was happening?

12 A It was just myself, and Tarus and his son and my  
13 daughter, seven-month-old child.

14 Q After Tarus went to his room, where did the defendant  
15 go or what did the defendant do or what -- do you know  
16 what he did or where he went?

17 A At that point, my daughter she was crying. I  
18 remember he went in the kitchen. And at that point while  
19 he was in the kitchen making my daughter some formula, I  
20 was still on the floor near the door. And I remember just  
21 trying to move over in another spot in the living room and  
22 I told Tarus that I was hot. I remember saying I'm hot,  
23 I'm hot. I'm trying to take these jeans off because my  
24 jeans were kind of tight. I needed some room.

25 Q Did someone remove your jeans?

1 A Yes.

2 Q Okay. Who might that have been?

3 A The defendant.

4 Q After he removed your jeans, where did he go or what  
5 did he do?

6 A I remember he said, Tarus Jr., let's go, let's go and  
7 I remember he picked up my daughter in her car seat  
8 carrier also and he open the living room door. I saw when  
9 he open the living room door and took the kids out. I can  
10 tell from the knob, you know, that was shaking I could  
11 tell that he locked the door from the outside.

12 Q Were you standing or were you?

13 A No, I was on the floor in other area, another spot.

14 Q What happened after they left?

15 A After they left, I just -- something just told me to  
16 try to get up at that point, I was so weak, so weak.

17 Q Carol, were you aware of how -- were you aware of the  
18 injuries that you suffered at that point?

19 A Not really. I was so focus on thinking about my  
20 children. I really wasn't thinking a lot about myself. I  
21 was thinking about the wellbeing of those children.

22 Q What did you see or hear while you were trying to get  
23 off the floor?

24 A It was God. I remember being on the floor and I  
25 remember he came to me at that point because I was going

1 to give up. I was going to give up at that point and I  
2 was so weak. And I remember hearing God's voice and He  
3 said, my child, He said, my child get up. My child you  
4 can do this. You can do it. And I remember getting up  
5 very very slowly. And I walk down the hallway and  
6 straight across and I went into Tarus Jr.'s room. And I  
7 open the blinds and I see where he put the children in the  
8 car at that point. And then I remember trying to walk  
9 back to the living room and that's when I look down at  
10 myself and I just begin to cry, nothing else that I could  
11 do and I cried. And I remember just sitting back in the  
12 same spot I was in in the living room and that's when I  
13 see Tarus comes in this house. He walk pass me and at  
14 that point, I see he's walking down -- he's going to the  
15 hallway and at that point, there I don't know what room  
16 did he, you know went into.

17 Q So you don't know where he went when he came back in?

18 A No.

19 Q Okay. What is the next thing you recall?

20 A Him walking back, coming back from whatever he was  
21 doing. He just walk pass me.

22 Q And where did he go if you recall?

23 A Out the door.

24 Q Okay. Was -- did the door remain open or was it  
25 closed?

1 A Close.

2 Q All right. Then what happened?

3 A And I remember laying on the floor and I was  
4 sniffing. I sniff something smell like smoke. I say it  
5 smell like smoke in here, how I'm going to get up, how I'm  
6 going to get back up and I was so weak. God came back to  
7 me and he said, my child you can do this. You can do this  
8 my child, anything that you put your mind to you can do  
9 it.

10 Q So did you get up?

11 A Yes.

12 Q And then what happened?

13 A I remember seeing my blanket, I can't remember what I  
14 had on, but I remember seeing my blanket and I wrap myself  
15 in the blanket.

16 Q Where did you go?

17 A I open the door, I open the door. I close the door  
18 from behind me and that's when I look down and I see I had  
19 to go down a flight of stairs and that's when I saw Tarus  
20 coming. I saw him coming the opposite direction while I  
21 was trying to come down, he was trying to go up the  
22 stairs. So I'm trying to go down the steps and I stop  
23 where I was and Tarus came up the steps and he turn around  
24 the opposite way I was trying to go and he grab my arm and  
25 try to help me the rest of the way down.

1 Q And did you eventually -- did you see anyone when you  
2 got to the bottom of the steps?

3 A Yes, I did.

4 Q Who did you see?

5 A I seen a white car, which I think Scott was driving.

6 Q Was that, Scott McAleese, your neighbor?

7 A Yes.

8 Q Did you see him or just his car?

9 A I seen his car at that point.

10 Q Okay. Did you ever see him?

11 A Yes.

12 Q Okay. Do you remember if you said anything to him?

13 A Yes. At that point, I remember me and Tarus were  
14 walking towards the parking lot at  
15 Apartments and I remember looking over my left shoulder  
16 and I see that Tarus is gone. He's not even beside me  
17 anymore. So at that point, he must be ran, you know,  
18 somewhere. And as I'm walking with my blue blanket on, I  
19 see Scott come up to me and Scott ask me what happened. I  
20 remember telling him in my words that me and my husband  
21 got in a fight. And I remember Scott just ran away. He  
22 must be ran in his home, I'm not sure, but I remember  
23 seeing him run away. And at that point, I'm near the  
24 parking lot now. And I see Tarus pull up in his car and I  
25 see that the two children are in the backseat. Tarus got



1 out of the car. He open the passenger side door of the  
2 car and put me inside the car. And then he got back on  
3 the driver seat and then he took off slowly, not usually,  
4 you know, driving fast like he usually would be, but he  
5 was driving slow.

6 Q Okay. What route would you normally take to go to  
7 Florence if you were going to the hospital?

8 A Well, at we usually just take a right  
9 and we take another right -- near Francis Marion school  
10 that will be the shortest route to go to the hospital.

11 Q On Palmetto Street?

12 A Right.

13 Q Did he take that route to go to the hospital?

14 A No.

15 Q What route did he take if you recall?

16 A Yes. U.S. 378.

17 Q What was unusual or odd, if anything, about that?

18 A I know it was a long ride.

19 Q Did you eventually arrive at a hospital?

20 A Yes.

21 Q Which one?

22 A McLeod Regional Medical Center.

23 Q What happened when you arrived there?

24 A Well, Tarus got out of the car and ran in the  
25 hospital. And I see that he came back out, you know, with

1 a security officer and the security officer had a  
2 wheelchair.

3 Q What happened when they arrived with a wheelchair?

4 A I remember the officer opening the passenger door  
5 side.

6 Q Was that the security guard?

7 A Yes.

8 Q All right.

9 A And then he put me in the chair and he close the  
10 passenger side door. And I see Tarus is going back on the  
11 driver side. And at that point, that's all I know.

12 Q Carol, is there anything that I haven't asked you  
13 about this incident that you need to tell me?

14 A No.

15 MR. HILL: Your Honor, that's all the State has on  
16 direct.

17 THE COURT: You may examine her.

18 MS. PARROTT: Thank you.

19 CROSS-EXAMINATION

20 MS. PARROTT:

21 Q Do you go by Miss Parker now?

22 A Yes, ma'am.

23 Q And if anytime you need to take a moment, please do,  
24 okay. That's fine. How long did you actually know  
25 Taurus?

1 A From '05 to '08 maybe, almost three I say.

2 Q Okay. And then you actually got married though in  
3 August of 2007; is that what you said?

4 A Yes, ma'am.

5 Q So about two years after you met?

6 A Two or three, yes, ma'am.

7 Q Had y'all lived together prior to getting married?

8 A Yes.

9 Q How long do you think that was?

10 A I don't recall.

11 Q And then you had the one child together that's  
12 Janessa, right?

13 A Yes.

14 Q And you were basically a step mom to TJ; is that  
15 right?

16 A Right.

17 Q And since, TJ was about four when this happened, you  
18 known him since maybe he was around two?

19 A Maybe three. Maybe, he was three.

20 Q Okay. It sounds like you and Tarus tried to be  
21 pretty good parents to both of them, would that be fair?

22 A Yes.

23 Q And tried to take care of them by taking them to the  
24 doctors?

25 A Yes.

1 Q And giving them their medication?

2 A Yes.

3 Q And both of you were unemployed; is that right?

4 A Right.

5 Q But you did want to have some money so that you could  
6 take care of your family; right?

7 A Yes.

8 Q And that would be both you and him; right?

9 A Yes.

10 Q It sounds like in what you're saying that money was a  
11 pretty big issue for the two of you; is that fair to say?

12 A Yes.

13 Q Because you had gone to the magistrate's court?

14 A Yes.

15 Q Just that morning?

16 A Uh-huh.

17 Q And I believe -- wasn't there also a problem with the  
18 car?

19 A I don't recall though.

20 Q You don't remember that maybe y'all were behind on  
21 the car payments?

22 A Yes, yes.

23 Q And was the insurance caught up the way it should be  
24 paid?

25 A No.

1 Q And was the tag that was on the car the right tag for  
2 that car?

3 A I don't recall, I am not sure.

4 Q But it's safe to say that maybe y'all were struggling  
5 over some issues that pretty much all revolved around  
6 money, would be that be accurate?

7 A Not really.

8 Q Okay. All right. But y'all were arguing fairly -- I  
9 think if you're arguing over money it's not just one time,  
10 is it?

11 A No.

12 Q Okay. Can you even tell me maybe about what time the  
13 argument started that morning?

14 A I'm not sure.

15 Q Okay. Did y'all have insurance, health insurance I'm  
16 sorry?

17 A Health insurance, I had Medicaid.

18 Q That would take care you and the baby?

19 A Yes.

20 Q Or everybody in the family?

21 A Everybody.

22 Q All right. And you tell me that you had only ever  
23 seen him take some glucose pills for the diabetes?

24 A Yes.

25 Q You never knew anything about any of his other

1     medical conditions?

2     A     No, the only thing he told me was about the Zyprexa  
3     thing that he was -- he told me about that medicine that  
4     he previously taken. But, you know, mostly just the  
5     Zyprexa name. And he told me it was some kind of lawsuit  
6     involved, you know, with that.

7     Q     And because you known him so long I assume you knew  
8     his mother as well?

9     A     Uh-huh.

10    Q     He knew your family?

11    A     Yes.

12    Q     And even in the time that y'all had been married and  
13    known each other, got to know each others families, no one  
14    ever had mentioned any kind of mental illnesses in his  
15    past?

16    A     No.

17    Q     Was that partially because maybe the families just  
18    didn't get along that well and so you didn't know each  
19    other that way well?

20    A     No, we didn't.

21    Q     You didn't get along?

22    A     No.

23    Q     All right. Did y'all argue about the children often?

24    A     Yes.

25    Q     Did argue about where you lived?

1 A No.

2 Q Had you had a previous argument about where you were  
3 going to live?

4 A Yes.

5 Q How long do you think the argument -- was it just a  
6 matter of moments that the argument lasted this -- on this  
7 morning before things took a pretty drastic?

8 A Yes.

9 Q Or is it a few minutes, is it something ---

10 A Maybe a couple minutes or so.

11 Q Was it something that started -- was it something  
12 that started as maybe a part of a fight earlier then gets  
13 continued later?

14 A I'm not sure.

15 Q Okay. But regardless, y'all both been having a  
16 pretty good argument about whether or not you could leave  
17 the apartment?

18 A Yes.

19 Q And take the baby with you?

20 A Yes.

21 Q And if the baby's even healthy?

22 A Yes.

23 Q This apartment that you lived in does this look like  
24 a accurate depiction of ---

25 MS. PARROTT: I'm sorry, Your Honor, may I approach?

1 THE COURT: Yes.

2 BY MS. PARROTT:

3 Q Does that look like an accurate depiction of where  
4 you were living?

5 A Yes.

6 Q And so at Patriot's Place?

7 A Yes.

8 Q And so that 930 square feet you think that's probably  
9 about right?

10 A Yes.

11 Q With two small children in the house and one of them  
12 being four, you probably tried to keep things up from his  
13 reach and -- was she crawling?

14 A Well, a little, not really, but a little.

15 Q Baby trying to roll around but not getting anywhere?

16 A Yeah.

17 Q But with a four year old, you probably still might be  
18 trying to keep things out of his reach; wouldn't that be  
19 safe to say?

20 A Yes.

21 Q Did you know about any kind of weapons that were in  
22 the house?

23 A No.

24 Q You had never seen that machete before?

25 A No.



1 Q Didn't know where it was kept?

2 A No.

3 Q But you're the one who cleaned the house?

4 A Yes.

5 Q When y'all got to arguing then, one of the things  
6 that you stated in response to Mr. Hill was that you were  
7 looking at him saying something's wrong with you,  
8 something's wrong with you. You had notice already that  
9 there was something that wasn't quite right with his  
10 demeanor that day?

11 A Yes, because he normally don't look at me like that.  
12 He looked at me in a strange way.

13 Q Okay. And it wasn't anything that you ever seen  
14 before?

15 A No.

16 Q Had you seen him take any kind of medication on that  
17 day?

18 A No.

19 Q You looked out and the children were -- after this  
20 event has occurred and even when the child -- did you put  
21 Janessa in the car seat carrier?

22 A Yes.

23 Q All right. But he took Janessa on down in that  
24 carrier; is that correct? And the child Janessa was in  
25 her carrier in the car seat in the car and TJ was in the

1 car in the backseat as well when you got in?

2 A Yes.

3 Q And both remain so?

4 A Yes.

5 Q While you were going to the hospital?

6 A Yes.

7 Q Did he ever threaten either of the children?

8 A No.

9 Q Did he ever raise his hand to any of the children on  
10 this day?

11 A No.

12 Q Did he get even close to hurting either of the  
13 children on this day that you saw?

14 A Can you repeat that?

15 Q Did he ever get close to even hurting the children on  
16 this day?

17 A No.

18 Q He did take you to the hospital, right?

19 A Yes.

20 Q And he got the McLeod ER guard to come out with a  
21 wheelchair to help you into the ER; correct?

22 A Yes.

23 MS. PARROTT: Nothing further, Your Honor.

24 THE COURT: Redirect?

25 MR. HILL: None, Your Honor.

1 THE COURT: You may step down.

2 (WHEREUPON, the witness leaves the witness stand.)

3 THE COURT: Next witness, please, Mr. Hill.

4 MR. HILL: Your Honor, I believe the State rest.

5 THE COURT: The State rest. Jurors, I must take up  
6 matters of law here now. Please, if you will go to your  
7 jury room.

8 (WHEREUPON, the jury retire to the jury room.)

9 THE COURT: Ms. Parrott, you're recognize.

10 MS. PARROTT: Your Honor, I would make a motion for a  
11 directed verdict in regards to this case and with the  
12 understanding that it's about any evidence going towards  
13 the charges on the indictment. I would specifically  
14 direct the Court's attention to Counts 3 and 4. And in  
15 fact, Count 3 has her listed as being the mother of the  
16 four-year-old child which refers to TJ as he's been called  
17 here in court. And in fact, that would be a mistake  
18 because she would be or would have been a stepmother for  
19 that child. But beyond all that as well, I don't believe  
20 there's been any testimony given that supports that there  
21 was any kind of abuse or negligent that was directed at  
22 either of the two children.

23 And in fact, it appears that all steps were taken to  
24 try and take care of the children no matter what the  
25 circumstances were in the apartment and in the transport

1 Do you swear to tell the truth, the whole truth, and  
2 nothing but the truth so help you God?

3 THE WITNESS: I so affirm.

4 THE CLERK: Please have a seat. State your full name  
5 for the record.

6 THE WITNESS: My name is Richard Lesane Frierson.

7 WHEREUPON,

8 Dr. Richard Frierson,  
9 after first having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. PARROTT:

12 Q Thank you, Dr. Frierson. Could you tell me where  
13 you're employed?

14 A I am a processor of clinical psychiatry at the  
15 University of South Carolina School of Medicine in  
16 Columbia.

17 Q Okay. And as part of that, what are your job duties?

18 A A great percentage of my time is spent with a  
19 contract with the department of mental health in Columbia  
20 where I conduct court ordered evaluations for competency  
21 to stand trial in what's called criminal responsibility  
22 for courts throughout the state of South Carolina.

23 Q Are you also a treating physician?

24 A Yes, I also provide treatment at a clinic at the  
25 University of South Carolina also at a clinic at the

1 department of corrections.

2 Q How many facilities do you have patients in or that  
3 you go visit for these evaluations, do you know?

4 A These evaluations?

5 Q All of your work?

6 A All of my work probably three or four facilities.

7 Q You based out of Columbia; correct?

8 A Yes, for the medical school.

9 Q How many times have you testified in court?

10 A Since, I began my career probably over 200 or 250  
11 times somewhere in that ballpark.

12 Q Tell us how you got your medical degree? What is  
13 your background on your education?

14 A After high school -- I'm from Sumter. After I  
15 graduated high school from Sumter High School, I went to  
16 the University of South Carolina where I received a  
17 bachelor of music degree at the music school there and  
18 that was in 1984. I then entered medical school at the  
19 University of South Carolina School of Medicine and  
20 graduated with my MD in 1988. I subsequently completed  
21 four years of residency training in general psychiatry at  
22 William S. Hall Psychiatric Institute in Columbia in 1992.  
23 And a one-year fellowship in forensic psychiatry in 1993.

24 Q Are you member of any organizations as part of your  
25 professional stats?

1 A Oh, yes. I'm a member of the American Psychiatric  
2 Association, the American Medical Association, the  
3 American Academy of Psychiatry in Law and the South  
4 Carolina Psychiatric Association.

5 Q Have you published any articles or any -- been part  
6 of any journals or anything like that as part of your...

7 A Yes.

8 Q How many do you know?

9 A I don't know. Publications, I would say somewhere  
10 around 25 to 30.

11 MS. PARROTT: At this time, Your Honor, I would move  
12 that Dr. Frierson be ---

13 MR. HILL: No objection.

14 THE COURT: He is qualified. You may proceed to  
15 posit query, that will elicit opinion testimony.

16 MS. PARROTT: Thank you, Your Honor.

17 BY MS. PARROTT:

18 Q Dr. Frierson, have you had the opportunity to meet  
19 with my client, Mr. Henry?

20 A Yes.

21 Q And what was the occasion upon which this was done?

22 A As part of my work at the department of mental  
23 health, we had received two separate court orders  
24 requesting evaluation. The court orders are from this  
25 court. One court order requested an evaluation of

1 Mr. Tarus Henry's competency to stand trial, that means  
2 can he work with an attorney, can he understand what's  
3 going on in the courtroom and assist in his defense. I  
4 was also asked to evaluate his mental status at the time  
5 of the alleged offense both for the issues of criminal  
6 responsibility, which has to do with whether he knew right  
7 from wrong and capacity to conform and did he have a  
8 mental disease or defect which impaired his ability to  
9 conform his conduct to the requirements of the law.

10 Q And what were the conclusions that you drew as part  
11 of this evaluation?

12 A The first conclusion was that Mr. Henry does have the  
13 ability to assist his attorney in cooperation of defense  
14 to understand what's going on in court. The roles of the  
15 jury, all the court officers, the evidence. So he in my  
16 opinion was competent or would be competent to stand  
17 trial.

18 Related to the issue of criminal responsibility, it  
19 was my opinion that Mr. Henry would have been capable of  
20 distinguishing right from wrong and therefore would have  
21 been criminally responsible pursuant to McNaughton  
22 standard. And the last issue of capacity to conform it  
23 was my opinion that Mr. Henry would have been capable of  
24 conforming although I did note in my report that because  
25 of a medical condition, there was some symptomatology that

1 might cause some impairment and capacity to conform, but  
2 no substantial impairment, so that he would totally lack  
3 the ability to conform.

4 Q Okay. And let's delve further into what you just  
5 stated. You were able to review what records in  
6 preparation for your evaluation?

7 A First of all, I reviewed the arrest warrants, so I  
8 knew exactly what happened, the indictment, a summary from  
9 the police about what actually transpired. Then I  
10 reviewed medical records from several places. Number one,  
11 there were two hospitalizations at Bryan Psychiatric  
12 Hospital in 2001 that I was able to review. There were  
13 medical records from the Tri County Mental Health Center  
14 that I was able to review. And finally, there were  
15 medical records from the Duke University Medical Center in  
16 Durham, North Carolina, where he had neurosurgery  
17 operation on his brain that I was able to review.

18 Q All right. And that operation on the brain was --  
19 what was the actual name of that? Do you recall?

20 A Yes, there's some unclarity in the record, but what  
21 we do know is that Mr. Henry as a child had irretractable  
22 seizures, that means seizures that do not respond to  
23 medication. And those seizures were a sufficient  
24 frequency in severity that he was a candidate for removal  
25 of whole or part of one lobe of his brain. So he had a



1 neurosurgical procedure where part of his right  
2 non-dominate hemisphere, not the part of the brain that  
3 controls speech, was removed, the temporal lobe. And one  
4 part of it reports the entire lobe and another part of the  
5 record it suggest that maybe part of that lobe was  
6 surgically removed, so this was a open your head up. He  
7 has a scar on the right side of his head, that's quite  
8 visible and part of his brain was taken out.

9 Q And it's called a temporal lobectomy; is that  
10 correct?

11 A Temporal lobectomy. Temporal meaning the name of the  
12 lobe. Lobectomy take out a lobe. Like appendectomy take  
13 out your appendix. Lobectomy take out lobe.

14 Q And what are the side effects or possible side  
15 effects for such a surgery?

16 A Well, it is very interesting because there's a lot  
17 written about this. And I do have some evidence and a lot  
18 of people with severe seizures -- seizures themselves that  
19 are uncontrolled can interfere with brains function even  
20 when you're not having a seizure. So some people can  
21 actually have improvement in intellectual functioning, you  
22 know, your intelligence, your memory those sort of things  
23 once the lobe is removed, if that's the sort of seizures.  
24 But one of the side effects or the side effect that I was  
25 able to read about in the literature is particularly on

1 the right side of the brain when that lobe is removed is  
2 it can impair a person's ability to recognize fear in  
3 other people. In other words, if someone appears afraid  
4 or fearful, their ability to recognize that emotion in  
5 other people can be impaired.

6 Q So in a situation where there is an assault that is  
7 an ongoing or continuing assault, it may be that the  
8 person that's committing the act may not fully understand  
9 what they're seeing?

10 A The emotion that they're seeing in the other person's  
11 face, specifically fear. It's interesting because  
12 happiness, the recognition of happiness in other people's  
13 faces, there's some evidence that that improves after  
14 right temporal lobectomy. The brain is an incredibly  
15 complex organ. And once again, this is relative small  
16 studies. We have a ton of people undergoing this  
17 procedure. There's not a tone of people that have part of  
18 their brain taken out, it's not that very capriciously --  
19 it's done very carefully.

20 Q And only in certain cases ---

21 A There's not a whole lot of people that have it done,  
22 even with seizures most people with seizures don't have  
23 their brain cut, part of their brain cut out. So having  
24 said that, I think that one could make an argument that  
25 there maybe -- you know, one of the things when you have a

1 fight with somebody or you're in an altercation, you see  
2 fear, that's one of the things that might be somewhat of a  
3 stopping mechanism, so you can control your behavior  
4 certainly not all. I mean, you know, it's my opinion that  
5 he may have some of this. However, I did not opine that  
6 it was to such -- that that in and of itself would totally  
7 impair his ability to resist the urge to commit an  
8 assault.

9 Q But you did find that he does have some mental  
10 illnesses that are in addition to these -- what would have  
11 been injury to the brain?

12 A Yes, I did. In 2001, he had a episode of depression.  
13 This followed a break up of a relationship with a -- I  
14 believe a fiancée. And let me refer to my notes, so that  
15 I don't misspeak to the jury. Looking at the records, he  
16 had been working very long hours at that time. This was  
17 in October of 2001. He'd been working six days a week, 18  
18 hours a day at a packing company in Bennettsville. And he  
19 caught his fiancée at that time being unfaithful. And he  
20 cut his wrist and drink some Clorox, had some symptoms of  
21 depression, was hospitalized from October 19th through  
22 October 30th of 2001. As part of his treatment in the  
23 hospital, he was placed on an antidepressant medication  
24 called Sertraline. We know that the trade name you  
25 probably seen advertise called Zoloft. And then in

1 December of 2001, this is approximately six weeks, seven  
2 weeks later, he was admitted to Bryan Psychiatric Hospital  
3 very differently in a what we would call having visions of  
4 God. He had been hallucinating. He had evidence of an  
5 increased sex drive, had had decrease need for sleep, been  
6 exercising all night, could not sleep and had become very  
7 much religiously preoccupied, very concern with religion  
8 quoting the Bible. All of those symptoms at the time it  
9 was felt that those might be the early symptoms of a major  
10 mental illness called schizophrenia. However, then also  
11 consistent with what we call mania or where your mood gets  
12 the opposite of depressed, we call it a manic episode. In  
13 periods of manic episodes and depressant episodes if you  
14 have both, you qualify for a diagnosis of bipolar  
15 disorder.

16 So it's my opinion that based on those records, he  
17 met the criteria for bipolar disorder. The interesting  
18 thing is that the manic episode happened when he was on a  
19 large dose of antidepressant. He has had no further  
20 episodes that I know of that required hospitalization  
21 since that time, which is somewhat unusual for the course  
22 of this illness. It usually happens -- you have more  
23 episodes than just two. And I note for some period of  
24 time, quite a long period of time, he has been off all  
25 medications. So there is the possibility that in someday

1 these mood symptoms are related to the fact that he had  
2 part of his brain removed. If I could tell you yes or no  
3 to that, I would be working somewhere more important than  
4 the University of South Carolina.

5 THE COURT: Well, that is important.

6 A It is. Yes, I take my work very seriously. But  
7 basically, we don't know and so I diagnose bipolar  
8 disorder not otherwise specified. And what that not  
9 otherwise specify means is I don't know that this is a  
10 functional mental illness like other people develop  
11 bipolar or whether it's to be somehow related to the brain  
12 surgery.

13 Q As part of the treatment though for the bipolar  
14 disorder, do you not put people on medication?

15 A Yes, we put people on medication, on mood stabilizing  
16 medication. There's lots to choose from, but basically we  
17 recommend the person continue that lifelong because  
18 without it, it's likely that they will develop future  
19 episodes.

20 Q So in other words if somebody -- if they stopped  
21 taking their medication, they're more likely to have  
22 another problem or another episode that was manic  
23 depressive?

24 A Yes, that's general for most mental illness, major  
25 mental illness.

1 Q Including schizophrenia?

2 A Yes.

3 Q And do you find as part of your work that it's not  
4 uncommon for schizophrenics or  
5 manic-depressives-bipolar-disorder people to stop their  
6 medicine whenever they're feeling good?

7 A Yes, that's unfortunate. It happens with people with  
8 mental illness. There's a lot of stigmas associated with  
9 mental illness in our society. People don't want to be  
10 seen that way and will stop medicines. In his case, I  
11 will say that I think that if you go through the medical  
12 records, which are the outpatient records, he was stable  
13 for a long time. And I think there's some suggestion in  
14 the record does he really need to take this or could that  
15 manic episode have been somehow triggered by the Zoloft  
16 that he been placed on for depression.

17 Q Okay. But you do have him on medication at this  
18 time; correct?

19 A He was on some medicine in the jail at the time that  
20 I saw him and I don't have him on anything because I don't  
21 prescribe medicines. I was just an evaluator. But at the  
22 time that I saw him, he was on some medication in the jail  
23 that helped him sleep.

24 Q Do you know how long the jail had already been giving  
25 him medication before he saw you?

1 A I do not recall that, but it was really not a mood  
2 stabilizer or anti-psychotic medication. It was mainly  
3 some medicine called Trazodone, which is -- it is an  
4 antidepressant, but it cause people to sleep.

5 Q He saw you on September the 4th; would that be  
6 correct?

7 A I'm missing my first page, but that's sound -- yes,  
8 September 4th of 2008.

9 Q Did you review his records for what his prior  
10 symptoms may have been strike that I am sorry, Your  
11 Honor -- you notice, I guess, the general way to say it is  
12 you notice that he had been diagnose previously with  
13 mental illnesses and multiple ones; correct?

14 A I knew that he had been diagnosed with  
15 schizo-phreniform disorder, which is the precursor of  
16 schizophrenia and depression.

17 Q And obviously, you took that into conversation  
18 whenever you came up with your bipolar?

19 A Yes, diagnosis in psychiatry is frequently made over  
20 time and we look at the course of an illness over several  
21 years, that's how we know this is working for bipolar  
22 rather than schizophrenia. He's functioned, he's held  
23 jobs. People with schizophrenia don't function that well  
24 normally after they had a psychotic episode or they lose  
25 contact with reality. He's function fairly well much more

1 consistent with someone with bipolar disorder.

2 Q Is it possible for someone to have a break where they  
3 either black out or don't fully recognize what they are  
4 doing for just a few minutes in time and then they come  
5 back?

6 A I mean, are you specifically referring to this case?

7 Q Yes, sir.

8 A I been at this a long time and let me just say that  
9 bipolar disorder is not people -- do not cause people to  
10 have a period of time briefly all of sudden where they  
11 don't remember something. Certainly alcohol or drugs can  
12 do that for a period of time. We have no history in this  
13 case that there was alcohol or drugs involved. But it's  
14 been my experience that people end up involved in  
15 situations where they lose control, where they do  
16 something that violent that's not the typical thing they  
17 normally do or do something where they had cause serious  
18 injury to somebody else, that after that their mind as a  
19 defense block outs part of it, so they don't remember or  
20 they remember bits and pieces. But it would be too  
21 painful for their mind to remember what they did, so they  
22 -- when they lost control sometimes, they don't fully  
23 remember.

24 Q Okay.

25 A And we would not necessarily consider that that



1 normal.

2 Q All right. So that's not necessarily a symptom of  
3 mental illness ---

4 A Correct.

5 Q --- it would be even something on top of a mental  
6 illness possibly?

7 A It's the phenom that is observed. People sometimes,  
8 for example, where people on the battle field. People  
9 that are at combat in Vietnam or whatever parts of what  
10 they have when they kill people and they were involved in  
11 warfare, that their mind blocks out and they can't  
12 remember part of it later. Doesn't happen to everybody,  
13 but some people reported that experience.

14 Q Would stress exacerbate any of these illnesses and by  
15 that, I mean, abnormal amounts of stress?

16 A Certainly stress is not good for anyone with an  
17 mental illness. It can exacerbate depressive symptoms.

18 MS. PARROTT: One moment, please.

19 (WHEREUPON, a pause in the proceedings.)

20 MS. PARROTT: Please answer any questions that the  
21 State may have.

22 THE COURT: Dr. Frierson, you have referenced the  
23 McNaughton rule in your testimony is that he has the  
24 capacity to distinguish right from wrong under McNaughton.

25 DR. FRIERSON: Yes, Your Honor.

1 THE COURT: And in regard to 17-24-20 let me follow  
2 up on your testimony, so as to have a very pristine record  
3 here. Your testimony is that he does not have lack of  
4 sufficient capacity to conform his conduct to the  
5 requirements of law?

6 DR. FRIERSON: That is correct. My opinion is that  
7 he may lack some, but not sufficient capacity.

8 THE COURT: Thank you.

9 Cross?

10 MR. HILL: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. HILL:

13 Q Good afternoon, Dr. Frierson.

14 A Good afternoon.

15 Q I'm Stephen Hill, I'm with the prosecutor's office.  
16 I like to follow up your examination with some questions  
17 of my own. Based upon your experience, did you form an  
18 opinion to a reasonable degree of psychiatric certainty --  
19 forensic psychiatric certainty as to the mental capacity  
20 of the defendant on the date this incident occurred?

21 A I formulated an opinion about his ability to  
22 distinguish right from wrong and his ability to conform  
23 his conduct.

24 Q Okay. Why are those two -- explain for us the  
25 difference between those two ideas and why they are

1 important?

2 A In South Carolina, there is -- I feel sort of  
3 uncomfortable doing this because I'm not an attorney, but  
4 I'm sure if I get it wrong someone's going to correct me.  
5 There's two statutes related to mental illness and  
6 criminal behavior. There may be more, but in this -- what  
7 we're dealing with are two. One of them is a statute  
8 that's called criminal responsibility and that states that  
9 a person is not criminally responsible if at the time of  
10 the alleged offense because of mental disease or defect,  
11 they lack the ability to distinguish legal or moral right  
12 from legal or moral wrong or to recognize the particular  
13 act charged that's legally or morally wrong. Furthermore,  
14 there's some other side piece that the defense has to  
15 prove it by a preponderance and certain illnesses are  
16 excluded like antisocial personality disorder, other  
17 illnesses, that's it in the shell, that's criminal  
18 responsibility. And if I were to opine that or not if the  
19 not me -- if the judge or a jury were to opine ---

20 THE COURT: You got that definition completely  
21 correct in regard to McNaughton.

22 A If the jury or the judge would opine that a person  
23 did know their right from wrong or couldn't or didn't  
24 recognize particular act charges wrong, they are eligible  
25 for a verdict of not guilty by reason of insanity. The

1 other issue is the capacity to conform that you ask me  
2 about. If we were opine that someone knew right from  
3 wrong, but because of mental disease or defect could not  
4 conform their conduct to the requirements of the law. If  
5 that were to be the finding of trier of fact, the jury or  
6 the judge, they'll be eligible for a verdict of guilty but  
7 mentally ill.

8 Q What is your opinion then regarding the defendant's  
9 capacity to understand right from wrong?

10 A It's my opinion that he would have been able to  
11 distinguish both legal and moral right from wrong at the  
12 time of the offense.

13 Q During your testimony, you commented on a history of  
14 possible difficulties. Based upon your understanding of  
15 his history in your review, is there anything in his  
16 background that would affect your opinion regarding his  
17 ability to conform his conduct or to understand the  
18 difference between right or wrong?

19 A Now, those are two separate things.

20 THE COURT: Yeah, keep them separate, Counsel. I do  
21 agree with that. Now, here we're dealing with McNaughten,  
22 stay with McNaughten or stay with GBMI one or the other.  
23 I'm not expecting to have any difficulty.

24 BY MR. HILL:

25 Q Regarding McNaughten, was there anything in his

1 history that would have prevented his ability to  
2 understand right from wrong?

3 A There is -- the way I would answer that is this,  
4 there is something in his history as bipolar disorder,  
5 which potentially it's a severe enough illness that in  
6 some people it could cause them to lack the ability to  
7 know right from wrong. However, we look at the facts of  
8 the case. The fact that from his report to me he hasn't  
9 report any symptom of mental illness at the time of the  
10 offense that impairs his ability to distinguish right from  
11 wrong. He gives a self-protected story allegedly to a  
12 witness and to the police initially that he didn't do it.

13 Q Dr. Frierson, at this point, did he take steps or  
14 acts after this incident that would negate an argument  
15 that he didn't understand right from wrong?

16 A Yes, he did.

17 Q What steps did he take that would negate an argument  
18 that he didn't understand right from wrong?

19 A Things like if -- the size of the fire, if he  
20 allegedly set a fire that it was just to destroy evidence.  
21 If he tells the police initially there was an intruder, it  
22 wasn't me. That would indicate that he would -- if he  
23 knew that that was not true and he lied to the police,  
24 that would indicate knowledge of wrongfulness. I'm  
25 protecting what I did, so they don't know. He said in an

1 interview to me when he drove his kids, for example, to  
2 his mother's house that he knew he was going to jail.  
3 That's why he did it. Clearly, that's ---

4 Q What did he say?

5 A That he knew he was going to jail. Those statements  
6 would indicate to me that regardless of whether or not  
7 Mr. Henry has a mental illness, those statements would  
8 indicate that he would have the ability to distinguish  
9 right from wrong.

10 Q So the acts that he took part in after the -- during  
11 or after the incident indicate that he understood right  
12 from wrong?

13 A Yes, and we do not have a history that before the  
14 incident that he was having symptoms, significant symptoms  
15 of depression or mania. He doesn't report a lawful  
16 contact with reality. He doesn't report a delusion about  
17 his life.

18 Q All right. Regarding delusions, why is that term  
19 important, what does it mean? Why should we be concern  
20 with it now?

21 A A delusion is a symptom of major mental illness. We  
22 see it in schizophrenia, bipolar disorder, the more severe  
23 mental illnesses. And delusions is a fixed-false belief  
24 when someone tells you something that they believe to be  
25 true, that it's not true and you can't convince them

1 otherwise. For example, this may seem sort of weird to  
2 you, but, for example, I come in contact all the time is  
3 schizophrenia is that, well, the CIA or someone has  
4 implanted a computer ship in my head and they're sending  
5 me messages. And they're reading my thoughts and they're  
6 broadcasting it out on the television.

7 Q That's a delusion?

8 A I don't think the CIA normally goes around and  
9 planting computer ships in peoples' minds to track their  
10 thinking, but people can be very convinced of this.

11 Q Was there evidence that Mr. Henry was operating under  
12 a delusion?

13 A I did not find evidence of delusion. And what I  
14 would specifically been looking for would be evidence of  
15 delusion about his wife, like she's doing something to me  
16 or she's the Antichrist or that's not my wife. That's  
17 someone looks just like my wife who's a look-a-like  
18 imposter. All these are types of delusional or I hate to  
19 use the word crazy because -- the thoughts seriously  
20 mental ill people can have and they believe they're true.  
21 Just like you believe, I was born on this day this year.  
22 They believe it, you cannot convince them otherwise. You  
23 can do a CAT scan on these people and say look there's  
24 nothing in your head. And they would still believe that  
25 it's there. It's cloaking device or something. I mean,

1 it's a fix-false belief by definition. And that's what we  
2 look for for legal insanity for something that impair  
3 knowledge of right from wrong.

4 Q So there was no fix-false belief a/k/a a delusion?

5 A Correct. I could find no fix-false belief for Mr.  
6 Henry about his wife. Plus, we look at the behavior  
7 around the time of the crime. Does their behavior -- is  
8 the behavior of someone that looks like they knew it was  
9 wrong or someone who doesn't look like they knew it they  
10 were wrong.

11 Q Did he take self-protected measures which are also an  
12 indication that he knew right from wrong?

13 A Yes.

14 Q And think you might have testified about that a  
15 couple minutes earlier in that he gave you a statement  
16 that he knew he was going to jail?

17 A Yes.

18 Q Is that a self-protective or an indication of ---

19 A It's not self-protected, but it's an indication that  
20 he might have known his actions could be viewed as wrong.

21 Q All right. Did he express remorse? And isn't that a  
22 indication of an understanding of wrongfulness?

23 A Yes. I'm sorry for what I did, that is an indication  
24 of knowledge of wrongfulness.

25 Q So in terms of the elements that you would look at to



1 determine if he understood right from wrong or took  
2 self-protective actions, we know that he gave  
3 self-protective statements and first didn't he state that  
4 someone else came into the apartment and committed the  
5 crime?

6 A Yes.

7 Q And then didn't he flee, didn't he leave the scene?

8 A Yes.

9 Q Is that also a self-protective act?

10 A Well, it would be if you didn't take the victim with  
11 you. I think having the victim along doesn't necessarily  
12 imply that in and of itself is self-protective. But he  
13 left the hospital, he dropped her there and then left.

14 Q So far, we got at least two self-protective acts  
15 claiming that someone else was involved and then fleeing  
16 the hospital after he dropped his wife off?

17 A Yes.

18 Q Are there any others?

19 A Well, if we would view cutting the phone lines, could  
20 be viewed as evidence of knowledge of wrongfulness prior  
21 to an act, and that he realized that someone would  
22 potentially want to call the police because you're about  
23 do something wrong.

24 Q How does the arson fit into this?

25 A And that's what I was getting ready to say also, that

1 if one sets a fire at a crime scene to damage evidence, to  
2 conceal evidence, I mean, I think that's common sense, but  
3 that might mean you did something wrong and you needed to  
4 destroy evidence so you could not be caught.

5 Q And I understand that you made a diagnosis that he  
6 may have bipolar disorder as oppose to the beginnings of  
7 schizophrenia. In terms of formulating your opinion, does  
8 it matter what diagnosis he suffers from?

9 A No.

10 Q And why not?

11 A Because it's really the symptoms that impair  
12 knowledge of wrongfulness not the actual diagnosis.

13 Q Were any symptoms present that would have affected  
14 his ability to do those things?

15 A Not that I could determine.

16 Q During your career and -- are you -- because you work  
17 for state, are you required to formulate opinions that are  
18 more helpful for the state or more helpful for just...

19 A I call it like I see it, okay. And let the chips  
20 fall where they may, so because I'm court ordered, I mean,  
21 I work essentially for the courts is the way I approach  
22 this.

23 Q So you don't work for the prosecution?

24 A No, nor the defense. Most times, my opinion is more  
25 helpful to the prosecution, that's only because it's a

1 hard standard to reach to try to say someone -- I mean,  
2 our definition of legal insanity in South Carolina is very  
3 very narrow.

4 Q But you're not obligated to make a -- to formulate an  
5 opinion for one side or the other, are you?

6 A No.

7 Q In fact, that would probably be unethical; is that  
8 correct?

9 A Correct. I think even if I were retained by the  
10 defense paid, paid -- I don't get paid by either side, I'm  
11 paid by the university. Even if I were paid by one side  
12 or the other, I think you have to still be objective and  
13 call it like you see it, that's the way I operate.

14 Q Is there anything in the history regarding his  
15 lobotomy that concerns you?

16 A Well, only I think what I've already testified to and  
17 that is that people with a nondominant hemisphere, that's  
18 the right side. And we call it nondominant is the right  
19 side of the brain is not at all involved in speech. It's  
20 the left side of the brain, that's involved in speech. We  
21 got cutting things out the left side hardly ever, but the  
22 right side is structured, stay tuned -- like if I cut my  
23 left temporal lobe, I'd have great difficulty  
24 understanding speech, what you told me, answering your  
25 questions, understand what you're trying to say. The

1 right side involves speech. It causes more subtle type of  
2 defects when you start damaging the right side of the  
3 brain. And in his case, there's reports and literature  
4 that people with right temporal lobectomies, that part of  
5 the brain that's been cut out may have problems  
6 recognizing this specific emotion of fear in other people.

7 Q Did you formulate an opinion though regarding the  
8 existence of that -- regarding this case, how that might  
9 affect this case?

10 A Well, that wouldn't affect wrongfulness, but that  
11 would affect -- it could potentially be a factor let me  
12 put it that way and capacity to conform.

13 Q Which is a second prong?

14 A The ability to resist doing the alleged events.

15 Q And what is your opinion regarding that?

16 A It's still my opinion that it's not sufficient to  
17 impair his ability substantially to conform, but I do  
18 think that when you have arguments with people, one of the  
19 ways that you might realize you're getting out of control  
20 is based on appearing afraid of you in the course of  
21 argument. That is a thing that might be -- it's like one  
22 break. Let's say you have a 100 breaks, but a few of them  
23 might be that recognition though of people being afraid of  
24 you, maybe others back down. Maybe, I'm going too far  
25 here.

1 Q But how does the fact that he took what we -- what  
2 you would term in self-protective measures affect that  
3 possible conclusion?

4 A Well, taking self-protective measures to me doesn't  
5 really deal with capacity to conform that's more of the  
6 knowledge of right from wrong. And once again, I don't  
7 want to confuse the jurors, those are two separate things.  
8 Just because you can't recognize fear in my opinion,  
9 doesn't mean that he could not have resisted committing  
10 assault and battery with intent to kill, arson and  
11 unlawful negligent of a child.

12 Q So the fact that he might have had that problem,  
13 we're not saying he did, doesn't in my vernacular, trump  
14 his ability to understand the rightfulness or wrongfulness  
15 of his act?

16 A Correct.

17 Q And by history wasn't the lobotomy performed in order  
18 to elevate problems with seizures and wasn't that  
19 extremely successful?

20 A Yes.

21 Q And that was the only reason that was performed?

22 A Correct. The lobotomy was performed because he had  
23 irretractable seizures that did not respond to medication  
24 that you see in people with epilepsy. And after that, I  
25 mean, he describes it on the interview as pretty much

1 miracle cure. He had no further seizures. He was able to  
2 return to work. He was working -- he was -- that was back  
3 in '99 or he was working at Carowinds, but he was able to  
4 go back to work 20 days later.

5 Q So forgive me for being repetitive, but as I conclude  
6 because I asked a lot of questions, I just need to make  
7 sure I understand.

8 MS. PARROTT: Object asked and answered then.

9 THE COURT: Yes, I sustain the objection to the form  
10 of that query. If you have question ---

11 MR. HILL: I will rephrase my question.

12 BY MR. HILL:

13 Q Doctor, is it your opinion to a reasonable degree of  
14 forensic psychiatric certainty that the defendant was  
15 capable of understanding right from wrong?

16 MS. PARROTT: Objection asked and answered.

17 THE COURT: I overrule that because there has been  
18 query after query and there needs to be a definite  
19 response in that regard. And he's already given a  
20 definite response I think, but I'm going to add certitude  
21 to the record.

22 A I think -- let me hear the question again. Can it be  
23 read back.

24 THE COURT: Yes.

25 BY MR. HILL:

1 Q What is your opinion to a reasonable degree of  
2 forensic psychiatric certainty regarding the defendant's  
3 capacity to conform his conduct to the law?

4 A It is my opinion that he had sufficient ability to  
5 conform his conduct.

6 Q And the second prong, what is your opinion to a  
7 reasonable degree of forensic psychiatric certainty  
8 regarding his ability to appreciate the rightfulness or  
9 wrongfulness of his act?

10 A It's my opinion that he would have been capable of  
11 distinguishing the rightfulness and wrongfulness of the  
12 act.

13 MR. HILL: Thank you.

14 THE COURT: Redirect.

15 REDIRECT EXAMINATION

16 BY MS. PARROTT:

17 Q Very simply, sir, but you also diagnosed him as  
18 having a mental illness again on top of having had a  
19 temporal lobectomy?

20 A Yes.

21 Q Which -- and the temporal lobectomy certainly could  
22 have affected his brain function?

23 A Yes.

24 MS. PARROTT: Nothing further, Your Honor.

25 THE COURT: Recross?

1     you God?

2             THE DEFENDANT: I do.

3             THE CLERK: Please be seated and state your full name  
4     for the record.

5             THE DEFENDANT: Tarus Tremaine Henry, Sr.

6     WHEREUPON,

7                     Tarus T. Henry, Sr.,

8     after first having been duly sworn, testified as follows:

9                     DIRECT EXAMINATION

10    BY MS. PARROTT:

11    Q     Okay. And, Mr. Henry, what name do you go by? You  
12    go by Tarus?

13    A     Say that again?

14    Q     You go by Tarus that's your name?

15    A     Yes.

16    Q     Okay. And how do you know Miss Parker?

17    A     She was my wife.

18    Q     How long have you known her?

19    A     Three years.

20    Q     How long were you married?

21    A     About a year.

22    Q     And do you have any children together?

23    A     Yes, a little daughter.

24    Q     What is her name?

25    A     Janessa.



1 Q Do you have any other children?

2 A By her?

3 Q Any other children at all?

4 A Yes, I do.

5 Q And what is that child's name?

6 A Tarus Tremaine Henry, Jr.

7 Q How old is he?

8 A Five.

9 Q All of you live together; is that correct at one?

10 A At the time, yes.

11 Q And where were you living?

12 A apartments

13 THE COURT: Mr. Henry, you got to give me a little  
14 more volume now. First and foremost, we got to take down  
15 every single word you say and it's important to the jury  
16 here. Please will you give me little more volume, please.

17 THE DEFENDANT: All right.

18 BY MS. PARROTT:

19 Q How old are you, sir?

20 A Twenty-seven.

21 Q And have you always lived in South Carolina?

22 A No.

23 Q Tell me a little bit about your background then?

24 Where have you lived?

25 A Since birth?

1 Q Yes.

2 A From the age of 2 'til 15, Baltimore, Maryland, from  
3 16 to 17 Mullins, from 17 to 23 Bennettsville and  
4 currently Florence.

5 Q Have you had any health problems as you have grown  
6 up?

7 A Yes.

8 Q What have those been?

9 A I had seizures, diabetes, mental illness.

10 Q What kind of mental illnesses do you recall having  
11 been diagnose with in the past?

12 A Psychosis and schizophrenia.

13 Q And now bipolar disorder recently?

14 A Yes.

15 Q What kind of medications have you taken?

16 A Zoloft, Geodone. For the mental illness?

17 Q Yes.

18 A Zoloft, Geodon, Trazodone, Seroquel.

19 Q Are you currently on medication?

20 A Yes, I am.

21 Q What medication are you on now?

22 A Seroquel 300 milligrams.

23 Q When did you start taking that?

24 A November '08.

25 Q While you been down at the detention center?

1 A While I was institutionalize in Columbia.

2 Q Tell me about that? How did that happen, do you  
3 know?

4 A Being evaluated?

5 Q How did you get to Columbia in November, do you know?

6 A I was transported by the sheriff department.

7 Q And why were you taken?

8 A Judicial admission.

9 Q Where did you go for treatment?

10 A Columbia Care Center in Columbia, South Carolina.

11 Q How long did you stay there?

12 A From the 25th of November to February the 9th.

13 Q February the 9th of 2009?

14 A That's correct.

15 Q And what kind of treatments did you receive while you  
16 were there?

17 A Anger management, medication and evaluation of my  
18 behavior.

19 Q Did they help regulate your medication?

20 A Yes. I also receive treatment for my blood pressure,  
21 I did not know I had blood pressure problems until I got  
22 there.

23 Q You mentioned previously that you've had some  
24 diabetic problems. Are those now gone?

25 A I'm still diabetic, but it's under control based on

1 diet and exercise.

2 Q So is that the extent of the medical problems that  
3 you had?

4 A And I had a brain surgery.

5 Q Tell me about your brain surgery?

6 A The surgery?

7 Q Tell me about the whole illness and what was done?

8 A What was done to take care of it?

9 Q Uh-huh -- yes, I'm sorry.

10 A I was put under anesthesia gas and they operated and  
11 it was successful.

12 Q All right. But what was it to treat? What was it to  
13 treat?

14 A To remove the right temporal lobe.

15 Q Why did they have to take the right temporal lobe out  
16 of your brain?

17 A It was a scar tissue that was causing the seizures.

18 Q So they did remove part of your brain to help get rid  
19 of seizures that you were suffering?

20 A Yes.

21 Q How old were you when that happened?

22 A 17.

23 Q And have you had any seizures since then?

24 A No.

25 Q Okay. Now, does that cover all of your medical

1 history?

2 A Yes.

3 Q I'm sorry.

4 A Yes.

5 Q Have you ever had any special education classes?

6 A Yes, I did.

7 Q How many or how many years?

8 A I can't recall, but most of my life because of the  
9 seizures, which cause me to stutter and caused me to be  
10 picked on by the kids because I was different. And I had  
11 to fight for respect, so therefore I stayed in trouble. I  
12 was in self-contained classes, special ed class.

13 Q And you're saying that was most of your classes?

14 A Yes, up until graduation.

15 Q But you did graduate from high school?

16 A Yes, with a county certificate and I later went back  
17 for my GED.

18 Q So they didn't actually give you a diploma whenever  
19 you graduated then, they give you some sort of  
20 certificate?

21 A Certificate, yes.

22 Q Were you ever diagnosed as having any kind of  
23 learning disorder?

24 A Yes.

25 Q What was it?

1 A Reading and learning and speaking.

2 Q I'm sorry I didn't understand you reading, learning  
3 and what?

4 A And speaking?

5 Q Speaking?

6 A I had a reading disability and a speech disability.  
7 Because of the epilepsy, I stuttered real bad and I  
8 couldn't retain information.

9 Q Okay. Who were you living with when all of this was  
10 being taken care of?

11 A As a child to now?

12 Q Uh-huh.

13 A My mother.

14 Q But you have been married; correct?

15 A Yes.

16 Q And in fact what you stated was you married  
17 Mrs. Henry or Miss Parker; is that correct?

18 A That's correct.

19 Q Were you happy having a child with her?

20 A Yes, at that time, yes.

21 Q And do you love your children?

22 A I do.

23 Q Would you ever want to hurt your children?

24 A No.

25 Q Would you ever abuse your children?

1 A No.

2 Q Would you ever neglect your children?

3 A No.

4 Q Would allow anyone to do so?

5 A No.

6 Q Did you take care of your children and by that I mean  
7 feed them, clothe them, bathe them and take them to  
8 doctors' appointments?

9 A Yes, I was not the only one to clothe them, but, yes,  
10 I did assist.

11 Q Okay. And all that -- you helped take care of your  
12 children?

13 A Yes.

14 Q You were an active father then in their lives?

15 A I was, yes.

16 Q You had car seats in your car; is that correct?

17 A That's correct.

18 Q Did you use them?

19 A Yes, it was number one priority before the vehicle  
20 starts.

21 Q Is what?

22 A Make sure the kids were properly restraint and myself  
23 and whoever else was in the car.

24 Q Let me -- let's go ahead go to June 23rd?

25 A Okay.

1 Q You remember living at Patriot's Place apartments on  
2 that day; is that correct?

3 A I do.

4 Q Tell me what you recall about that day then?

5 A On that day, me and my former wife had a discussion  
6 about how to get the rent paid. I made arrangements with  
7 Judge Larry Cooper, he gave me until the evening of the  
8 third day I got paid on to pay it. I was off from work,  
9 provide for my family, which is my character that's what I  
10 do. And it was our arrangement me and Miss Parker that I  
11 was going to take care of that which came up to about --  
12 everything that I had except for \$30, which would have  
13 been a tank of gas. But she wanted to maybe try and  
14 another place that would be cheaper, but in my mind, that  
15 was not logical to do so because that would be a bad  
16 representation to leave a debt that you owe to move  
17 somewhere else. So I wanted to man up and take care of  
18 that responsibility where I was at rather than run to  
19 another location. So by me refusing to yield to her and  
20 make my credit bad going to place to place to place, I  
21 decided to stay. And, I guess, she did not want to. She  
22 wanted to bailout. Rather than get rid of all the money,  
23 she wanted to have some money rather than give it all  
24 away, so that was where the first difference came from.

25 Q The first difficulty?



1 A Yeah, yes.

2 Q Okay. Do you know that was still on June 23rd?

3 A June 23rd.

4 Q Can you tell me what time of day that might have  
5 been?

6 A I didn't see any time, but it was earlier it had to  
7 be before ten o'clock.

8 Q Had you already been to magistrate's court when this  
9 discussion was taken place?

10 A I did. And I got a notary from -- a notary I  
11 presented to Chief Cooper.

12 Q What happened then with this discussion then about  
13 money and the apartment?

14 A It was society and it ended, but she wanted to go to  
15 job service on Evans Street next to King Cadillac. I took  
16 her there. It was little, no discussion about rather the  
17 child at that time to go to her mother house. Discussion  
18 from home, but she wanted to go put in for a job. I was  
19 all for it, so I took her there. But once we got there,  
20 she didn't want to depart from the car to go in. It was  
21 then that she stated that she wanted our daughter to go  
22 her mother house. And I objected to it because of her  
23 previous actions when she was ill previously the same  
24 month, which I think was the 13th of that month.

25 Q But all of this is taking place at job service on

1 Evans Street?

2 A That's in the parking lot.

3 Q And let me make sure I understood you. You're  
4 stating there wasn't an argument about whether or not she  
5 could go to her mom's, it was about the job?

6 A Say that again?

7 Q You were saying -- y'all didn't argue about her mom,  
8 it was about the job?

9 A No, we didn't argue about the job. I was all for her  
10 going for a job.

11 Q Okay, I'm sorry didn't mean to misstate. All right.  
12 What happens then?

13 A The argument was about our daughter going to her  
14 mother before she finish her Albuterol, which was for her  
15 inner ear infection which was backed up with milk and I  
16 think the doctor said wax.

17 Q Okay. What happened next?

18 A She objected and was offended that I wanted to spend  
19 time with the kids while she go in. She wanted our  
20 daughter to go to her mother house because, I guess,  
21 she -- I don't know why she didn't, you know, didn't -- I  
22 guess, didn't trust me with the children or she just felt  
23 that her mother needed sometime with her daughter. But I  
24 objected because of what previously happen, I had  
25 difference of opinion.

1 Q How was this resolved?

2 A She refuse to go to job service and requested slash  
3 demanded to go back home, so I left and went back home.

4 Q With everyone still in the car?

5 A Yes.

6 Q You get back to the house then, do you have more  
7 arguments?

8 A Not at that time not until we get inside.

9 Q Tell me about that?

10 A She gets inside, I'm asking her what's wrong, why  
11 didn't you go for the job. She states when it comes to  
12 TJ, you are very picky, very funny about him. And when it  
13 comes to Janessa, I'm the father -- I forgot how she  
14 stated it, it was over a year ago, but she said -- I think  
15 she said I'm the father, I'm the mother you had no say so  
16 when it come to Janessa. And that was it.

17 Q And how did you feel when you heard that?

18 A I felt bad. I felt disrespected because this suppose  
19 to be your wife and you suppose to be a family and you  
20 suppose to have equal rights to your children. And the  
21 fact that she was saying that I couldn't understand where  
22 she was coming from.

23 Q So again, how did this conversation resolve itself?

24 A It resulted in her throwing a tantrum, which was  
25 usually for her. She threw a tantrum and she storm around

1 the house and went down the hall. I didn't think anything  
2 of it.

3 Q So what did you do next then?

4 A I looked at my children and I told TJ go to his room.  
5 He said he had to go to the restroom, so he went to the  
6 restroom and he went to his room. And Janessa was sitting  
7 in the car seat.

8 Q Where is Janessa in the car seat?

9 A By the desk, the computer desk to the left.

10 Q Up in the front of the apartment?

11 A Yes.

12 Q So what were you doing at this time now?

13 A Going to see what was wrong with my wife, why didn't  
14 she want to go for the job? Why did she get so upset  
15 about daughter not going to her mother house? Why was it  
16 such an issue?

17 Q Did you follow her down the hall then?

18 A Yes.

19 Q Again what happens next?

20 A I get to the room, she's crying, she's yelling. Look  
21 like she need some space, so I leave back out the room and  
22 go back to make sure that Janessa was okay because I  
23 didn't want to leave her alone.

24 Q I'm sorry. What was she yelling at you whenever she  
25 was crying and everything?

1 A Money comes in, money goes out. It never hits my  
2 hand. I don't ever go nowhere. It's the same old -- can  
3 I say what she said?

4 Q Yeah.

5 A It's the same old shit every month. I never get  
6 nothing and I'm tired of it.

7 Q And what did you take that to mean?

8 A I felt like I was used. It wasn't about love, it was  
9 more about money is what came to my mind that day.

10 Q Y'all were having money problems, weren't you?

11 A Yes, but I was the only provider there.

12 Q I'm sorry what?

13 A I was the only provider. It would have been better  
14 if we both was doing the effort. I was doing all the  
15 work, work versus what I want, not going to do anything.

16 Q But you left her and walk back up the hall; is that  
17 correct?

18 A Yes.

19 Q And what did you do next?

20 A I was going to make a bottle of milk for the baby  
21 because the baby, I guess, she was hungry, but that's when  
22 I was attacked.

23 Q I'm sorry what did you just state?

24 A That's when I was attacked.

25 Q What do you mean by you were attacked?

1 A I was attacked by Miss Parker by the -- with the  
2 machete.

3 Q How did this occur?

4 A She never done this before, so I didn't take it  
5 seriously, took it as a joke. I reach for it, I was cut  
6 and it escalated.

7 Q Who's machete was it?

8 A It was my dead stepfather's. I kept it as a  
9 remembrance of him.

10 Q How long had you had it?

11 A Since 1996 when he died.

12 Q Where did you keep it?

13 A I kept it in the -- what's that -- that room that you  
14 put the filters in to the right up the hall.

15 Q Like a utility closet?

16 A Yeah, utility closet.

17 Q Who all knew you had it that was in the house?

18 A Who?

19 Q Yes.

20 A Say it again?

21 Q Who knew you had it in that house?

22 A She knew and I knew.

23 Q The four year old had never touched it, had he?

24 A No.

25 Q But you both knew where it was kept?

1 A Yes.

2 Q All right. How -- where were you standing when you  
3 say she excuse me -- attacked you?

4 A I was standing to the -- like if you come in the door  
5 right before you get to that first entrance to the left,  
6 you come into the hallway.

7 Q Hold on one second then. All right. You telling me  
8 if you come in the front door and you get to the hallway?

9 A Yeah.

10 Q Before you go to the left, it's right there before  
11 the kitchen, right in this doorway?

12 A Yeah, right there, right where your hand is.

13 Q All right. So kind of in the doorway to the hall?

14 A No not the doorway. Put your hand on it, go down  
15 some, right there.

16 Q All right. So then kind of beside the utility closet  
17 wall would that be; correct?

18 A Where the circle is.

19 Q Okay. And did you have your back to her?

20 A No, I was facing her. I was -- again, I was headed  
21 towards the kitchen, which would have been in that process  
22 and I was stopped by her.

23 Q All right. You stated that she came after you with  
24 it, but you were able to stop her?

25 A Catch it, yes.

1 Q How did you catch it?

2 A You want me to demonstrate it, I'll stand.

3 Q You can demonstrate from there at your seat I  
4 believe; correct?

5 A Yes.

6 Q Go ahead and demonstrate then?

7 A Like this.

8 Q So you held up your left -- if I'm correct, you held  
9 up your left hand?

10 A Yes.

11 Q And caught ---

12 A It was cut, yes.

13 Q Okay. Now, you just closed your hand as well, so  
14 that's what I'm trying to make sure I understand. You had  
15 it open at one point, but you also closed it onto the  
16 machete?

17 A Yes, I didn't think the impact was that great.  
18 Again, she never done this before, I took it as a front.  
19 I was simply trying to take it and toss it out of her  
20 hand, but that was not so.

21 Q Were y'all screaming at one another during this time?

22 A No.

23 Q It was just a surprise attack?

24 A Yes, she said I had enough and there's nothing to  
25 talk about.



1 Q What was the injury to you that you received?

2 A My hand -- my index finger were bleeding. At the  
3 time, I got cut, I guess my blood pressure was up and my  
4 blood was very warm. I was bleeding rapidly, very fast.  
5 So I began to grab a rag to wrap my hand up to keep from  
6 bleeding everywhere.

7 Q Did you receive one more or cuts to your hand?

8 A It was about six or seven cuts to my hand.

9 Q Did you receive medical treatment for it?

10 A I did.

11 Q And what was that treatment?

12 A I receive sutures for the two deep wounds and the  
13 rest of them, I receive octaband (sic) and some kind of  
14 creme.

15 Q Do you know exactly how deep or what the nature of  
16 the injury was?

17 A At that time, no.

18 Q Do you know now?

19 A Yes, from on my arm, yes.

20 Q Okay. So you have a rag then around your hand at the  
21 time right after she hits you?

22 A Yes.

23 Q What happens next?

24 A I reach for it in defense and that was the part that  
25 I told everyone I had black out.

1 Q You had a black out?

2 A Yes, I don't recall what I did with the machete once  
3 I got it.

4 Q You had the machete in your hand, but then have no  
5 recollection of what occurs next; is that correct?

6 A Yes.

7 Q What is the next memory that you have?

8 A My son was calling me, Daddy. And I look to my left,  
9 he was in the hall calling me. And I looked in my hand  
10 and I had the machete and it had blood on it. And I  
11 looked to see where the blood came from and Miss Parker  
12 was laying to my right on the floor.

13 Q And then what did you do?

14 A I said, oh, shit what did I do. I start panicking.  
15 I was afraid of what I was seeing. It terrified me, I was  
16 shaking. And to the best of my knowledge, I was trying to  
17 come to terms with what had just happened. And I ask her  
18 what happened and she said, Tarus, I need help. Tarus,  
19 I'm thirsty. So at this point, I'm helping her. I'm  
20 trying to come to terms what just took place. At the same  
21 time, I'm helping her.

22 Q Where are the children at this time?

23 A I told my son to go to the room, but he tells me he  
24 gots to pee. So he goes and he pee and then I take him to  
25 his room. Janessa is still in the car seat carrier

1 sitting in the location I told you earlier.

2 Q By the front door?

3 A Not by the front door by the -- to the left where the  
4 computer desk is from the table.

5 Q But in the living room at the front of the apartment?

6 A Yes, about maybe eight feet away from me.

7 Q I'm sorry about eight feet away from where this has  
8 happened?

9 A Yes.

10 Q What did you do next?

11 A I then was helping Miss Parker.

12 Q What do you mean by helping her?

13 A Whatever she said that's what I did. She said -- she  
14 told me she was cold, so I turned on the heat. I also  
15 turned on the oven because that -- she said she was cold,  
16 I was trying to warm her up. Based on what I saw, that's  
17 -- at my state of mind that's what I did. And I also got  
18 her some towels that she asked for.

19 Q You -- you only have two hands; correct?

20 A Correct.

21 Q So what had you done with the machete, so that you  
22 could perform all these other acts?

23 A When I seen it in my hand after my son call me,  
24 daddy, daddy, I tossed it, tossed it on the floor in front  
25 of me a little bit to the left.

1 Q Was that near your daughter?

2 A No, this was -- my daughter was here and this was  
3 here.

4 Q So there was no chance that that would have?

5 A Hit her, no.

6 Q So you given her water. You gotten her I'm sorry --  
7 you've turned up the heat and you also from what you're  
8 saying turned on the oven?

9 A Yeah, cause she told me she felt like she was going  
10 into shock.

11 Q All right. Had you called 911?

12 A At the time, I was too shock what I was seeing to  
13 even think reasonably to call 911. At that time, I was  
14 listening to what she was saying.

15 Q What else did you do for her?

16 A He said she was thirsty. I went and got pink -- the  
17 pink basin pan, which was shown on one of the exhibits  
18 filled with water, and also got a glass and brought to  
19 her.

20 Q Okay. But what else? We covered that you had gotten  
21 her some water. What else did you do?

22 A She ask me to wash the blood out of her hair, which I  
23 did in a basin pan. She said she could not see..

24 Q What did you do next?

25 A I then tried to figure out how I was going to get her

1 up and get her out of there without causing her more  
2 damage and that's what took me about maybe five minutes.  
3 And I couldn't come up with no way to help her.

4 Q Did you do anything with her clothing?

5 A She told me that she was hot and that she could not  
6 breath. I guess, her pants were tight. Maybe, she  
7 swollen, I don't know. She said she couldn't breath and  
8 she ask me to help her take them off.

9 Q But this was after you had already turned the heat  
10 up?

11 A Yes.

12 Q So did you help her take them off?

13 A I did.

14 Q Okay. Please continue what were you doing then to  
15 help her?

16 A She unbutton it and I pulled with caution because as  
17 I was pulling she was moaning and groaning, I guess she  
18 was hurting. So I was kind of afraid to assist her, but I  
19 did assist her in taking them off.

20 Q What did you do next?

21 A I got a red -- some kind of camping bag, you know,  
22 what I'm talking about?

23 Q I believe so, it's something that was in the  
24 pictures?

25 A Yes.

1 Q Okay.

2 A To try to put her on. I was going to try to maybe  
3 somehow get her downstairs as fast as I could.

4 Q Did you ever leave her alone?

5 A Yes, I went out with the children so that, you know,  
6 they wouldn't see what I'm seeing, it's a horrific scene.  
7 I took them and put them in the car, I pulled the car up.  
8 I had the AC on. And I came in and when I was coming up,  
9 she was coming down. I ran past her because of how she  
10 looked and I got the blanket which she stated before  
11 earlier that her dead grandfather gave to her and I cover  
12 her and assisted her to the car. At the time coming down,  
13 I ran into my neighbor Scott.

14 Q Did you have a conversation with him?

15 A He ask me what was going on. And again, this is a  
16 restatement to keep him out the business to get her to the  
17 hospital fast as possible. I told him I did not know,  
18 maybe somebody broke in because I didn't want no  
19 confrontation between me and him when I'm trying to help  
20 her.

21 Q Before you got her downstairs or at any time during  
22 this, did you change clothes?

23 A Yes, I did. At the time, and that's what I forgot to  
24 tell you. At the time that I assisted her in taking off  
25 her pants, which was covered in blood that's when it came

1 to me that I needed to do the same for myself. I need to  
2 change my clothes, so that not only -- it will slow down  
3 getting her help that my children would not see this and I  
4 didn't want to terrify them what was on me. So I wanted  
5 to protect them by not looking at this, so, yes, I did  
6 change my clothes, but, no, I did not try to hide it, I  
7 left it there where it was.

8 Q Once you get her to the car, did you go back up into  
9 the apartment?

10 A I can't remember.

11 Q Do you remember seeing fire from the apartment or  
12 smoke?

13 A Yes, I did.

14 Q Do you know anything about that?

15 A At that time, no.

16 Q What do you know now?

17 A During the interrogation, I falsely admitted to  
18 setting fire under extreme pressure from Detective Bert  
19 Turner and Calvin, whatever his last name is, Timmons.

20 Q Was there another investigator present in that room?

21 A Yes, Mrs. Streett.

22 Q Okay. And you're saying that you falsely admitted to  
23 the fire?

24 A Yes, because I was tired of going through all the  
25 threats, all the discussions. I was tired of them not

1 believing the truth, so they told me -- basically tell  
2 them what they want to hear not what happened. Each time  
3 I tried to explain what happened, they cut me off. They  
4 want let me tell my story. And I can't remember starting  
5 from what happened that day. I had to go back to where it  
6 begin from, that's how my mind operates. My mind is  
7 different. So by them cutting me off and saying it's good  
8 from today, I had difficulty remembering.

9 Q So is it your contention that you now have no idea  
10 how that fire was started?

11 A That's correct.

12 Q So you now have her in the car; is that correct?

13 A That's correct.

14 Q Where did you proceed to go to at that time?

15 A At that time, I took what appeared to me to be the  
16 fastest route to McLeod without going through too many  
17 lights and too many traffic to try to get her there fast  
18 as possible. I came out of the apartment complex, which I  
19 forgot -- I think that's Old Marion Highway, I'm not sure.  
20 When you come out of the development, the gas station to  
21 your right I did made a left and went down to Price Road,  
22 which is branch off to the left of that church and go to  
23 the end. I made another left and came out to the  
24 intersection, which make a right lead to 95. I proceeded  
25 across that light and came to what is called I think



1     Quinby, North Florence, came past -- is that Wilson High  
2     School or what's that?

3     Q     You went up Oakland Avenue?

4     A     Yeah, what was that school over there, what's where I  
5     went.

6     Q     Wilson High School.

7     A     Proceed to McLeod.

8     Q     What did you do then?

9     A     After I got to McLeod?

10    Q     Yes.

11    A     I got out in panic state. At this time, I had on my  
12    leather gloves to keep from bleeding and to try to keep  
13    from infection because I was in a lot of pain from those  
14    cuts.

15    Q     You already had put those on?

16    A     I put those on before I started the car, that was to  
17    keep from getting blood everywhere, to keep from getting  
18    infection. I was afraid of what might happen to my hand  
19    if I was to get infected. So to best of my ability at  
20    that time, putting that on was in beneficial to me. But  
21    once I got to McLeod, I went inside and the security  
22    officer I seen sitting behind the desk I told him my wife  
23    was hurt very badly and that she needed a wheelchair. And  
24    then I came back out and open the door. And when I tried  
25    to lift her, she scream and I was afraid to touch her, so

1 I let him get her because I was afraid to touch her  
2 because of what she was saying.

3 Q So he put her into the wheelchair or did you put her  
4 into the wheelchair?

5 A He did. I couldn't do it.

6 Q Who close the car door?

7 A I did.

8 Q Who wheeled her into the ER?

9 A He did. I gave him her pocketbook and he took her  
10 in.

11 Q Why did you do that?

12 A Because I had other priorities. She was priority  
13 number one. Priority number two was our children get them  
14 to a safe location. Not only a safe location but to  
15 someone that not only cares about the child that their  
16 daughter gave birth to, but cares about both children  
17 equally, which was my mother. And I at that time, I  
18 didn't understand that it was 11 o'clock and I went by my  
19 mother's residence and I did not find her there. Then it  
20 came to me to look at the time which was about 11:24. And  
21 I then proceeded to her job. My time may have been off,  
22 but that was on my car radio. And I then proceeded to Lee  
23 County Corrections to get the children to my mother before  
24 I go get treatment.

25 Q Did you tell the security guard anything at McLeod

1 whenever you were leaving her there?

2 A To the best of my knowledge, I told him that she was  
3 hurt.

4 Q Did you talk to anybody in the ER about her?

5 A No, I didn't go into the -- as far as I went was to  
6 the security desk and back out.

7 Q And again that was because the children were in the  
8 car?

9 A Yes, if the children was not in the car, I would have  
10 stayed there and been treated as well.

11 Q So you then proceeded to drive where?

12 A Came out McLeod made a right ---

13 Q I don't need it that specific. Where were you headed  
14 for at that time?

15 A To Lee County to my mother's job.

16 Q And where was your mother employed?

17 A Lee County Department of Corrections.

18 Q Did you make it there?

19 A Yes, I did.

20 Q Did you met with your mother?

21 A Yes, I did after about maybe 20 minutes of waiting.

22 Q And the children were still in the car or did you  
23 take them out?

24 A I had the children in with me.

25 Q What did you and your mother decide to do then?

1     A     She being a good mother -- I was not going to run, I  
2     was going to call after I get help. I just didn't want to  
3     be in jail before I get treatment because I know how it is  
4     any previous injuries that you get the jail don't care,  
5     you on your own. So I was trying to get myself help,  
6     which is the last priority. Children was number two, I'm  
7     number three. So while there, my mother stated it's not  
8     best to run, which it was not my intention to do so, but  
9     she stated it's not best to run. You need to get help and  
10    then you need to turn yourself in. And I already had my  
11    mind made up to do so, but my mother -- guess I'm a chip  
12    off the block, we think alike.

13    Q     So the first thing then on your mind is children are  
14    safe, now it's time to get some help for me?

15    A     Say that again, please?

16    Q     What you then were thinking was that the children  
17    were now safe, now it's time to get some help?

18    A     Yes.

19    Q     Where did you go?

20    A     I took my car to my older brother's house, his  
21    residence. Once I got there, nobody was there. I didn't  
22    want my car to be abandoned, to be vandalized, so I  
23    thought it would be safer at a relative's house while I go  
24    to the hospital. I wasn't able to drive my hand was  
25    starting to further up. So I went to my brother house and

1 drop the car off. His mother-in-law and father-in-law  
2 came out and approach me to find out who I was. I told  
3 them I was TT. Everybody on my father's side know me as  
4 TT rather than Tarus because I'm the baby of the family,  
5 that's their name for me, so I say TT and they immediately  
6 knew who I was. And they told me that Linda and my  
7 brother were both not home. They was at work. And she  
8 called my brother on the cell phone. At that time, I  
9 didn't think to call 911. I was worried about my health  
10 now and my brother told me that the closest hospital for  
11 me to go to to get treated before I lose too much blood,  
12 which would have been in Kershaw County, which to me is  
13 closer rather then going back to McLeod.

14 Q You were in Bishopville or outside of it?

15 A I was in Bishopville, yes.

16 Q Your brother actually lives in Bishopville or outside  
17 of it?

18 A Well, whatever Exit 108 is, I'm not familiar with the  
19 area.

20 Q All right. So upon your brother and mother's advice  
21 you went to Kershaw County?

22 A Yes.

23 Q And what did you do there?

24 A I didn't went, my mother took me.

25 Q What did y'all do there?

1     A     Once there, I proceeded to get help for -- well, I  
2     waited to be seen. Once I was seen, I was getting  
3     sutures. The nurses wanted to know what happened to me  
4     and where was I from. I was going to tell the nurses  
5     exactly what happened, but I was afraid of not getting  
6     treated. I told them I was afraid of being treated -- how  
7     you say with extreme prejudice after they know what  
8     happened. So I didn't want them to do anything to cause  
9     me harm while I'm getting sutured. I wanted to tell them  
10    after the fact. Out of fear that, you know, the victim  
11    being a female and she being a female working on me might  
12    try to do harm to me. So out of fear for my safety, I  
13    diluted them with untruth at first, but afterwards, I told  
14    them what really happened.

15   Q     So did you receive your treatment?

16   A     I did. I receive part of my treatment, which was the  
17    sutures. The other treatment that I needed was to go to  
18    -- I think told me a -- what you call a bone doctor?

19   Q     A what?

20   A     An orthopedic.

21   Q     An orthopedist?

22   A     Yeah, I need to go to a orthopedist.

23   Q     Was that -- I'm sorry go ahead.

24           THE COURT: Hold it one second, Counsel. You at  
25   orthopedist.

1 MS. PARROTT: Yes, sir.

2 THE COURT: Tell her, Mrs. Clerk.

3 THE CLERK: I got in touch and she will go get your  
4 child.

5 JUROR: Thank you.

6 THE COURT: All right, okay. Thank you.  
7 Proceed.

8 MS. PARROTT: Thank you, sir.

9 BY MS. PARROTT:

10 Q Why were you being told to see an orthopedist?

11 A Because my tendon was severed, it was separated and  
12 as you can see, I cannot straighten it like this.

13 Q And why -- is that what you contend is from your  
14 injury?

15 A Yes, it is. I was bleeding the whole time from  
16 Florence to there, so it's over an hour that I had been  
17 loosing blood while I'm trying to provide safety for my  
18 children.

19 Q Were your children there with you at the hospital or  
20 were they somewhere else?

21 A They was with me at the hospital and so was my  
22 mother.

23 Q And while you were back in the room getting medical  
24 attention, where were the children?

25 A With my mother in the lobby. But ---

1 Q Go ahead.

2 A But I wanted to spend as much time as I could with my  
3 children at that time.

4 Q Why is that?

5 A Again, after my son called me and I saw what happened  
6 to Miss Parker, I knew that I was in trouble based on what  
7 I seen. And I wanted to spend as much time as I can  
8 because I felt like I'll be gone for a long time based on  
9 what I seen. I was scared and I was very emotional.

10 Q When you were done getting your medical treatment,  
11 were you then in the presence of law enforcement?

12 A No, it wasn't until I sign the discharge papers that  
13 they was there and they detain me. They didn't give me a  
14 chance to call, a chance to surrender. They just came and  
15 detain me.

16 Q Okay. But at that time, law enforcement had come for  
17 you?

18 A Yes, I was detained, yes. I was handcuff, maybe 30  
19 seconds after I sign the discharge papers.

20 Q Do you know about what time of day it is?

21 A No, there was no clock in the room.

22 Q Did you then meet with an Investigator Timmons?

23 A Yes, I did at the Kershaw County police station.

24 Q So they had transported you from the hospital to the  
25 police station?



1 A Yes.

2 Q And at that time what happened?

3 A At that time what happened to me or what happened all  
4 together?

5 Q What happened all together?

6 A At that time, my children and my mother was with  
7 someone investigators. I did not see where they was. I  
8 wanted to hug my mother or see her before I leave, but  
9 that wish was not granted because she was being  
10 interviewed by people that I did not know at the time.  
11 And I was handcuff and taken to the police station.

12 Q And then what occurred for you?

13 A I was -- to the best of my memory, I was -- I think I  
14 was read my Miranda and I was ask for a statement. If I  
15 can recall, it's over a year.

16 Q Okay, and that's fine.

17 A And my medication also cause me to have memory  
18 problems.

19 Q What medication do you mean by that?

20 A The Seroquel.

21 Q That you're now taking?

22 A Yes.

23 Q Were on any medication at the time?

24 A No.

25 Q Have you been told previously that you need to be on

1 medication?

2 A By my former Dr. Kohn as long as I keep my stress  
3 down, but now I realize that I need to be on it for the  
4 rest of my life regardless of what Dr. Kohn said.

5 Q Who is it that's given you your Miranda warnings and  
6 asking you for a statement?

7 A Detective Calvin Timmons.

8 Q Where is this happening?

9 A Either Kershaw -- whatever station that I was taken  
10 to, I'm not sure where I was.

11 Q Camden police department?

12 A I never been there, I don't know.

13 Q That's fine. But it wasn't in Effingham?

14 A No.

15 Q And it was prior to your trip back to Effingham?

16 A That's correct.

17 Q Did you sit down with him at that time and give a  
18 statement?

19 A I think the whole time I don't remember sitting down.  
20 I remember standing. I'm not sure if they had a seat for  
21 me to sit in.

22 Q Did he record a statement from you at that time?

23 A I'm not sure. Again, I was in a state of mind, I  
24 have no recollection a hundred percent that day.

25 Q Okay. So do you know if you gave them a statement or

1 not?

2 A I know that I did give them a statement, but what we  
3 talked about I cannot a hundred percent tell you.

4 Q What happens next?

5 A On the way coming back, I guess he's trying to gain  
6 my trust or trying to manipulate me if what you call it,  
7 say a lot of spoon feeding, come on man tell me the truth.  
8 What I told him, I guess, it was too hard for him to  
9 believe that I was unaware of what happened between the  
10 time I was assaulted and my son talk to me. And the whole  
11 time, he was trying to convince me to tell him about that  
12 I wasn't in control of my actions, to man up and that what  
13 I'm saying is not the truth.

14 Q Where did the intruder story come from?

15 A I cannot answer that. I guess in my temporary sanity  
16 state, the person I was seeing possibly could have been  
17 myself. I'm not sure.

18 Q But you told Investigator Timmons about that did you  
19 not?

20 A I recall that much, yes.

21 Q Okay. Do you recall anything more specific about  
22 your conversations with him while you were going back to  
23 Effingham?

24 A He just keep talking about don't spoon feed me pieces  
25 of information. I need you to tell me the whole truth and

1     that's impossible for me to do when I didn't know what was  
2     going on. I couldn't do that.

3     Q     Was there anybody else who was in the car with you?

4     A     No, to tell him anything other than that would have  
5     been a lie.

6     Q     Okay. You arrive back at Effingham and what was the  
7     next step for you?

8     A     I was took to the interrogation room, not when I  
9     first got there. When I first got there, I was processed,  
10    fingerprinted only my right hand because my left hand was  
11    sutured and bandaged. I was then stripped, sprayed. I  
12    guess, procedure for lice or whatever when you first come  
13    in, put in a holding cell. After several hours, I was --  
14    well, not several hours after, but maybe half an hour or  
15    two hours I was questioned and taken to interrogation  
16    room.

17    Q     And who did that?

18    A     I'm not sure was it Timmons or Bert Turner, but a  
19    officer took me.

20    Q     Were you ever offered food or water or opportunity to  
21    go to the restroom?

22    A     I was not.

23    Q     Were you ever told that they would take a break if  
24    you ask for one?

25    A     I was not.

1 Q Did you ask for any of those things?

2 A At the time, I was going through and it didn't come  
3 to me fast. This was my first time going through this,  
4 all this was new to me.

5 Q Describe you're saying you were confused. Tell me  
6 more about -- were you confuse, were you upset tell me  
7 more about what you're thinking?

8 A You referring to after I got locked up or at the time  
9 of the incident at the house.

10 Q No, I'm talking about right now whenever you're  
11 locked up and they're fixing to interrogate you?

12 A I was confused on what my rights were. Somethings I  
13 hear, but I didn't comprehend.

14 Q Did you sign the sheets that they placed in front of  
15 you?

16 A I did.

17 Q What did you do?

18 A Again, somethings I hear, and I don't comprehend.  
19 They can be saying one thing. And during my time of my  
20 illness, I can be interpreting another thing and that's  
21 why I signed it.

22 Q Is this due to the learning disability you previously  
23 attested to?

24 A Possibility, I'm not a professional, but it could be  
25 a combination of both. But based on what I heard now, I

1 would not have sign that. I would have not have given a  
2 statement.

3 Q Do you know how long you were in there with the  
4 officers giving a statement?

5 A No.

6 Q You had a chance to review your statement, have you  
7 not?

8 A Yes, I did.

9 Q Is your statement a correct statement as to what  
10 occurred?

11 A No, it is not.

12 Q How is it wrong?

13 A I can't remember off my head cause I don't have it  
14 before me, but some information that I seen was not  
15 accurate.

16 Q You talk with them about an intruder too, did you  
17 not?

18 A Yes.

19 Q Tell me why you told all three of them?

20 A Again, I could have been seeing myself.

21 Q Were you comfortable making the statement?

22 A At that time, I'm not sure. I was under a lot of  
23 pressure by Mr. Bert Turner and Calvin.

24 Q Why do you say that?

25 A Because whenever I tried to give a statement to the

1 best of my knowledge and I have to go from beginning to  
2 the end and not at the end -- they cut me off and they  
3 throws me off track and causing me to have to rethink  
4 things and it frustrate me. And I'm --- I always been  
5 short patient, that's a problem also, I'm short patient.  
6 It don't take much to push me over and go on over and over  
7 again. I'm frustrated, I was hungry. I was stressed and  
8 I was tired. And they just kept piling what they wanted  
9 to hear, rather than what I got to say and that should be  
10 in the statement where they keep cutting me off, just tell  
11 us what happened today not what led up to it.

12 Q So what did you finally do?

13 A Gave them what they wanted to hear so I could get up  
14 out of there is what I can recall.

15 Q And is that why you did it?

16 A Yes.

17 Q Is that the only reason why?

18 A Yes, because I was tired. I was being tortured.

19 Q What did you do then?

20 A After what the investigation?

21 Q After this interview was over, what did you do?

22 A They took me and finish booking me. Before that, I  
23 believe I was crying. My voice change and they took me --  
24 process me took me to a cell?

25 Q Okay. Do you know what time of day it was whenever

1     this was through?

2     A     Probably about maybe five, six, seven somewhere long  
3     in there. Again, I didn't have any time piece.

4     Q     Did you lose track of time as how this day would  
5     occur?

6     A     When I was arrested, I don't have a watch. There was  
7     no time piece where I was at and I wasn't really worrying  
8     about the time. I was trying to answer the questions that  
9     was being asked. It wasn't about the time, it was about  
10    what happened.

11    Q     When did you realize the severity of Miss Parker's  
12    injuries?

13    A     Half of it when my son called me and the other half  
14    when DSS -- Miss Katrina Andrews, which was formerly  
15    employed by DSS of Florence, came and show me the cut up  
16    -- the black and white photos of Miss Parker.

17    Q     So you were shown some photos of her not too long  
18    after this occurred?

19    A     I'm not sure how long it was, but I was in C-pod  
20    whatever month that was. And when they showed me, yes, it  
21    was shocking.

22    Q     Had you ever hit her previously?

23    A     Yes, it was accidental.

24    Q     Okay. Tell me about that?

25    A     We was in the process of moving from 307



1 Circle, I want to say 3720. She know the address better  
2 than me 27 something Southborough Road. It's either  
3 moving there or moving from Southborough Road to it's  
4 over a year. But we were either moving from to  
5 Southborough Road or from Southborough Road to  
6 Circle. But regardless, we was moving and she working at  
7 Lowe's at the time as a cashier. Me and my friend from  
8 Bennettsville, Raquel (sic) McQueen, assisted me in  
9 moving. He was dressed up, so he didn't really do too  
10 much dirty work, but he did assisted in whatever he could  
11 without getting dirty, so I did most of the work. I was  
12 tired. And I was suppose to be there for her lunch break.  
13 And rather than me bringing the U-haul, which I was  
14 driving to come pick her up, I didn't want people to know  
15 our business that we were moving. I try to keep them out  
16 the business. So I went home to get the car to do it, to  
17 go pick her up. And at that time, her lunch break was  
18 down from 30 minutes down to maybe about five. When I  
19 pull up thinking that, you know, I'm doing something good,  
20 I'm moving and trying to take off lunch. She comes out  
21 I'm going to kill you, I'm going to kill you, I'm going to  
22 kill you. I'm going to fucking kill you. And I'm like  
23 what's wrong. I'm sitting here waiting on you and you  
24 don't come. And then you got the audacity to come the  
25 last five minutes. So why we arguing over her abusive

1 words towards me, I feel it's disrespectful while we  
2 arguing for her to pick up the phone and be dialing  
3 somebody. So I reach for the phone not knowing the force  
4 that I'm reaching for the phone or how fast I'm reaching  
5 or how close I was to her face, I accidentally knocked her  
6 phone. And out of reflex, I tried to catch it from  
7 falling and end up hitting her. I believe under her right  
8 eye which give her a bruise, that was an accident.

9 Q Did she have to go to the hospital?

10 A No, she did not.

11 Q Did you love your wife?

12 A Yes. You can tell that by the front of the car.

13 Q What do you mean by that?

14 A If a man didn't love his wife, why would he go around  
15 with their wedding photo for the whole world to see. A  
16 person that is hoeing or cheating would not do that.

17 Q You mentioned cheating, did you ever cheat on her?

18 A No.

19 Q You were faithful the whole time?

20 A That is correct.

21 Q So what is this in this part of the statement then  
22 about a fight about money and you're getting mad at her  
23 because you can't -- because she's not appreciative of you  
24 providing for her?

25 A You say that again, please?

1 Q What was the part -- did y'all get into fights about  
2 the fact that she didn't appreciate how you provided?

3 A I wouldn't say fight because that involves hands.  
4 You we got into disputes and arguments over money issues,  
5 yes.

6 Q Did you argue then over how you -- what kind of  
7 provider you were?

8 A Well, yes, we did, but this was -- she was working  
9 prior to getting pregnant, that's where the financial  
10 obligation all fell on me was -- if I may just go  
11 something personal about her history?

12 Q I'm not exactly sure what it is.

13 A It's dealing with child birth.

14 MR. HILL: Your Honor, I object to that.

15 THE COURT: No, let's move on, Counsel.

16 MS. PARROTT: That's fine.

17 A So during the pregnancy,, she had to have her  
18 (inaudible) our baby was coming at four months  
19 prematurely. By her working at Lowe's standing on the  
20 concrete floors would have increased her chances of having  
21 a miscarriage. So again being a good father I was, good  
22 man I was at the time caring for her and the child, I told  
23 her it would be best if she did not work. Her doctor also  
24 back that up, which was Cynthia Cole. And she stayed out  
25 because to keep Janessa from dying or coming prematurely

1     like she previously had with her previous children. So  
2     then therefore, I became the primary provider and I'm  
3     doing the best I could. But to answer your question, all  
4     the money that I have was from social security benefits  
5     from being disable from the surgery and my mental illness,  
6     that money basically took care of the bills, the car  
7     payment, the insurance, the rent, the utilities, the  
8     phone, some accessories the cable stuff like that.  
9     Clothes for the children whenever they was available, see  
10    what I'm saying. So there was no money to put in her hand  
11    to get her hair done, which she constantly complains  
12    about. If I had it, yeah, I would do it, but I didn't  
13    have it. And it wouldn't make sense to me to neglect  
14    paying your rent or utilities to get your hair done. It's  
15    not necessity, but most women love to have it done. I  
16    don't mind her looking good, but I just couldn't do it and  
17    that's what the argument was about. I don't get my hair  
18    done. I don't get my nails done. I don't go nowhere, I  
19    don't get no money. And, yes, that was a big issue  
20    constantly.

21   Q     Would you ever intentionally hurt your wife?

22   A     No, no.

23   Q     Or your children?

24   A     No.

25   Q     Your mental illness that you're talking about that

1     you had -- and the lobectomy; correct?

2     A     That's correct. I don't know the scientific terms.

3     Q     But you discussed those with Dr. Frierson; is that  
4     correct?

5     A     Not to that level, no.

6     Q     Not to that level is what you ---

7     A     Not to distinct of those scientific terms, no.

8     Q     Okay. But you talk to him about what your illnesses  
9     had been?

10    A     Yes.

11    Q     And at this time, do you have any further  
12    recollections as to what occurred then what you told me  
13    here today?

14    A     What occurred on the 23rd?

15    Q     Yes, sir.

16    A     No.

17    Q     You still maintain that you blacked out?

18    A     Yes.

19    Q     Is there anything that I haven't asked you that you  
20    wish for everyone to know?

21    A     You didn't ask me how was the relationship between me  
22    and the -- Miss Parker's family.

23    Q     Okay. Tell us that then?

24    A     Well, I don't know what's her mother's objections,  
25    but to me she really wanted us not to be together. And

1 she wanted her and her, I guess, Bailey -- Brandon to be  
2 together, which was not in the picture at the time, but  
3 was a constant -- a constant throw in the face, as you can  
4 say, whenever I'm around. She did not respect our  
5 marriage. She refers to my son as a -- just little boy  
6 not by his name Tarus Henry or as grandson. She refers to  
7 him as a object something not belonging to her family  
8 because her daughter did not give birth to, that was  
9 harmful, that was stressful to me. And they never done  
10 anything for my son that bothers me. But I put it in the  
11 back of my mind and try to move on for the best of the  
12 relationship, but over time most of it add up.

13 Q So that was another stressor on your marriage?

14 A Yes, the distinction how the family cares about the  
15 children because of one not being born by son, yes.

16 MS. PARROTT: Any questions the State may have for  
17 you.

18 THE COURT: No. Approach the bench, Counsel.

19 MS. PARROTT: Thank you, Your Honor.

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

23 THE COURT: All right, jurors, we're going to stop at  
24 this particular juncture. Cross-examination will occur  
25 tomorrow. It's ten minutes to six. Thank you for staying

CROSS-EXAMINATION

1  
2 BY MR. HILL:

3 Q Okay. Mr. Henry, you've had some difficulties  
4 growing up in your life; isn't that correct?

5 A That's correct?

6 Q You had a learning disability?

7 A Yes.

8 Q You had some trouble with school?

9 A Yes.

10 Q You had some trouble being teased; correct?

11 A Yes.

12 Q And you weren't able to graduate with a diploma?

13 A That's correct.

14 Q You have seizures?

15 A From the age of ---

16 Q You had seizures?

17 A Yes. All my life, most of my life.

18 Q You been able to receive a GED? You got your GED;  
19 correct?

20 A I'm working on it.

21 Q I thought your testimony yesterday was that you  
22 received your GED?

23 A I receive a partial, I got to take the math, which  
24 I'm doing now at the jail.

25 Q Okay. And you also attended Florence Darlington

1 Tech?

2 A I was ---

3 Q You attended Florence Darlington Tech?

4 A That's correct.

5 Q And you also have held jobs?

6 A Yes.

7 Q And I believe your last job was at Prime America;  
8 correct?

9 A That's correct.

10 Q And you are able to read and write and understand the  
11 English language?

12 A To the best of my ability.

13 Q All right. And you've over -- the machete in this  
14 case was actually kept next to the computer desk; wasn't  
15 it?

16 A Not sure, but I remember best of my ability.

17 Q Do you recall your statement that you gave to law  
18 enforcement?

19 A I do not.

20 Q You did make a statement to law enforcement, didn't  
21 you?

22 A That's correct.

23 Q In that statement, you told them that you reach for  
24 the machete it was next to the computer desk?

25 A I don't recall that.



1 Q If it's there, you don't dispute it, do you? You  
2 don't dispute that that's what you told the officer that's  
3 in the statement?

4 A That's correct.

5 Q So if it's in their statement, it's true?

6 A Possibility. At that time, I was in a different  
7 state of mind.

8 THE COURT: Keep your voice up, Mr. Henry, keep your  
9 voice up.

10 A At that time, I was in a different state of mind.

11 Q You had stop taking any medicines for mental  
12 conditions in late 2004 possibly early 2005; correct?

13 A That's correct.

14 Q You had ceased going to any other doctors for that;  
15 haven't you?

16 A Can you rephrase that?

17 Q You hadn't seen any doctors for any mental conditions  
18 after 2005?

19 A You ask my own will or doctor orders?

20 Q Did you go to any doctor for a mental condition  
21 between 2005 and June of 2008?

22 A No.

23 Q Did you take any medications for a mental condition  
24 between 2005 and June the 23rd 2008?

25 A Yes.

1 Q You were upset because your wife wanted to go see her  
2 mother?

3 A No.

4 Q You were upset because she wanted to take the child  
5 to go -- take the child out of the house?

6 A It was a circumstantial of -- it's more than that.

7 Q But that was one of the circumstances that bothered  
8 you?

9 A Yes.

10 Q You're also concerned about loosing your house?

11 A Correct.

12 Q You're also concerned about maybe loosing your car?

13 A Correct.

14 Q And you were upset with your wife; correct? You were  
15 mad at her; weren't you?

16 A Possibly.

17 Q You lied to Scott -- your neighbor Scott McAleese;  
18 didn't you?

19 A At that time, yes.

20 Q You lied to the nurse at Kershaw County Medical  
21 Center; didn't you?

22 A No. I wouldn't call it a lie.

23 Q Okay. Your testimony yesterday ---

24 A As I said earlier, I feared for my safety because of  
25 prejudice. I'm afraid they do me harm.

1 Q All right. So you didn't tell the truth because you  
2 wanted to get help?

3 A Yes.

4 Q Not telling the truth is a lie; correct?

5 A I would call it diluting out of fear not a lie.

6 Q You lied about a third person coming into the house;  
7 didn't you? There wasn't a third person was there?

8 A At the state of mind to me it was, but, no, it was  
9 not.

10 Q There was never a third person that came in that  
11 house?

12 A No.

13 MR. HILL: Thank you. Answer any questions the  
14 defense might have.

15 THE COURT: Redirect.

16 REDIRECT EXAMINATION

17 BY MRS. PARROTT:

18 Q You stated just simply back just a moment ago that  
19 you didn't go to the doctors between 2005 and 2008, but  
20 you said something along the lines of by your own will or  
21 doctor's order. What do you mean by that?

22 A Repeat that again, please.

23 Q You just stated that you didn't go to the doctor  
24 between 2005 and 2008 because -- and you was asking the  
25 Solicitor about whether or not it was because of your own

1 will or the doctor's order, what was it?

2 A I misinterpret what he said, I didn't understand he  
3 said the time line 2005, 2008.

4 Q Okay. So ---

5 A Yes, I did go to the doctor and, yes, I was treated  
6 between those times.

7 Q All right. For what?

8 A I was treated for schizophrenia and possibly bipolar.

9 MS. PARROTT: Nothing further.

10 THE COURT: Recross?

11 MR. HILL: No, Your Honor.

12 THE COURT: Thank you. You may step down. You may  
13 step down.

14 (WHEREUPON, the witness leaves the witness stand.)

15 THE COURT: Next witness, please?

16 MS. PARROTT: Your Honor, if I may just confer with  
17 him very quickly?

18 THE COURT: Yes.

19 (WHEREUPON, a pause in the proceedings.)

20 MS. PARROTT: Defense rest, Your Honor.

21 THE COURT: Reply by the State?

22 MR. HILL: None, Your Honor.

23 THE COURT: Testimony is closed. Jurors, I need to  
24 take up a matter of law here now, I'm required to do that.  
25 Please go to your jury room.

1 MS. PARROTT: Your Honor, I would ask that you do  
2 charge the assault and battery of a high and aggravated  
3 nature and also under the arson second statute, I would  
4 ask that you charge the intent to burn instead also. This  
5 is under 16-11-190 I believe, Your Honor, yes. And it  
6 also -- it refers back to the offense of arson under  
7 16-11-110, but I believe that there's at least testimony  
8 that has been provided that would lend itself to the  
9 possibility of assault and battery of a high and  
10 aggravated nature, that the black out in the mind of  
11 Mr. Henry would go not necessarily towards the -- would  
12 negate any intent to kill, but go for more that it was  
13 loss of control, lost of ability to appreciate what the  
14 situation was and therefore, it would be high and  
15 aggravated nature instead. I also would argue that as far  
16 as the attempt to burn statute because it does go back to  
17 the offense of arson and specifically it states, it is  
18 unlawful for a person to willfully and maliciously attempt  
19 to set fire to, burn, or aid counsel or procure the  
20 burning of any of the buildings or property mention in  
21 16-11-110 to 16-11-140 or commit an act in furtherance of  
22 burning these buildings. And, of course, 16-11-110 is the  
23 arson statute.

24 THE COURT: I decline to use the separate and  
25 distinct statute in reference to arson in the second

1 degree. And specifically, I take responsibility, I am not  
2 going to charge the jury on the assault and battery of a  
3 high and aggravated nature. As I view this testimony, it  
4 is specific as to the charge or the jury can simply  
5 disbelieve the testimony, so I will submit it on that  
6 basis.

7 MS. PARROTT: Please note my objection, Your Honor.

8 THE COURT: No exception is required under our  
9 criminal procedure code at this time. The Court will  
10 charge the jury in reference to the basic charge. The  
11 presumption of innocence will be charged. The definition  
12 reasonable doubt I will use State vs. Manning. State vs.  
13 Manning will be quoted in haec verba. Please, when you  
14 make your summation in this case use the correct language  
15 from State vs. Manning. I then will charge the basic law  
16 about the role of the jury in terms of the fact finder  
17 including the responsibility to determine credibility or  
18 believability. I will then charge circumstantial  
19 evidence. State vs. Grippon G-R-I-P-P-O-N 327 S.C. 79  
20 489, S.C. Second 462 is the leading case in this state on  
21 circumstantial evidence. I then will charge expert  
22 witness law. And then will go to the statement or  
23 confession, that will be a very very detail specific  
24 charge in regard to the law concerning a statement or  
25 confession. That identifies the basic charge information.

1           THE DEFENDANT: Yes, all this is new to me. I pray  
2           that this is my last time. Yesterday, I didn't know it  
3           was all or nothing during my testimony or I would have  
4           apologized to the victim and the victim's family. I just  
5           wanted to apologize for my actions, but I was not in my  
6           right state of mind. Had I been, it would not have  
7           happened. I just want to apologize, that's it.

8           THE COURT: Does the victim want to address me,  
9           Mr. Hill?

10          MR. HILL: No, Your Honor. Thank you.

11          THE COURT: Does any member of her family desire to  
12          address me?

13          MR. HILL: No, Your Honor.

14          THE COURT: All right.

15          MR. HILL: Your Honor, may I approach?

16          THE COURT: Yes.

17          MR. HILL: The others are being printed.

18          THE COURT: Mr. Henry, how long have you been in  
19          jail, please?

20          THE DEFENDANT: 400 days.

21          THE COURT: I'm sorry.

22          THE DEFENDANT: A little over 400 days.

23          THE COURT: Let's get it exactly because he's  
24          entitled to that credit under the law.

25          MS. PARROTT: Your Honor, I apologize cause I had not



South Carolina  
Department of  
Mental Health

473  
Columbia Behavioral Health System  
Forensic Center  
7901 Farrow Road  
Columbia, South Carolina 29203  
Information: (803) 935-5600  
Fax: (803) 935-5544

September 22, 2008

Stephen L. Hill  
Assistant Solicitor  
180 N. Irby Street, Box Q  
Florence, SC 29501

RECEIVED  
SEP 24 2008

PUBLIC DEFENDER'S OFFICE  
BY: *[Signature]*

Re: The State of South Carolina vs. Henry, Tarus T.  
DMH Case #: 972-7013  
Florence County, Court of General Sessions

Dear Assistant Solicitor Hill:

In accordance with the court order issued by the Honorable Michael Nettles, a competency to stand trial evaluation was conducted by the South Carolina Department of Mental Health, pursuant to S.C. Code Ann. § 44-23-410 (1976).

Please see the attached report for the results of this evaluation.

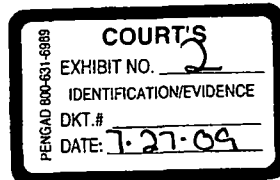
This 5 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

9/22/2008  
Date

*[Signature]*  
Kenneth M. Kepler, L.P.C.  
Program Coordinator  
Forensic Evaluation Services  
Department of Mental Health

cc: Karen Parrott, Attorney at Law, 180 N. Irby Street, Box N,  
Florence, SC 29501

KMK/tl





## EVALUATION SERVICE OF FORENSIC DIVISION

DATES OF EVALUATION: September 4, 2008

PRESIDING: Richard L. Frierson, M.D., Professor of Clinical Psychiatry  
University of South Carolina School of Medicine

SECOND EXAMINER: Marthe Williams, LISW-CP

DIAGNOSES:    AXIS I:       Bipolar Disorder, Not Otherwise Specified.  
                  AXIS II:       No Diagnosis.  
                  AXIS III:      Status Post Right Temporal Lobectomy.  
                                  History of Epilepsy.

COMPETENCY TO STAND TRIAL: Yes.

DISPOSITION: Mr. Henry has been returned to Florence County to await disposition of his charges.

PERTINENT STATEMENTS: Tarus T. Henry is a 26-year-old African American male who was seen at the Forensic Evaluation Service pursuant to a court order from the Florence County Court of General Sessions. This court order requests an evaluation of his competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981) and S.C. Code Ann. §44-23-410 (1976). He is currently charged with Assault and Battery with Intent to Kill, Arson Second Degree, and Unlawful Neglect of a Child (two counts).

Prior to participating in the evaluation, Mr. Henry was warned regarding the limitations of confidentiality. Specifically, he was informed that the examiners were employed by the Department of Mental Health and would be writing a report that would be sent to his attorney, the solicitor, and the judge. He was also informed that we could be called to testify at a hearing about his competency. He agreed to participate in the evaluation with an understanding of this material.

## SOURCES OF INFORMATION:

1. Court order requesting the evaluation.
2. Arrest warrant #K-217534 for Assault with Intent to Kill.
3. Arrest warrant #K-245812 for Arson Second Degree.
4. Arrest warrant #K-245813 for Unlawful Neglect of a Child.

159K  
HENRY, TARUS T.  
972-7013  
OUTPATIENT EVALUATION

5. Arrest warrant #K-245814 for Unlawful Neglect of a Child.
6. Case report summary.
7. Medical records from Tri-County Mental Health Center.
8. Medical records from Bryan Psychiatric Hospital dated October 9, 2001 - October 30, 2001.
9. Medical records from Bryan Psychiatric Hospital dated December 12, 2001 - December 28, 2001.
10. Medical records from Duke University Medical Center dated 1999 - 2001.
11. A 2 hour and 15 minute clinical forensic interview on today's date.

CLINICAL HISTORY: Mr. Henry has a complicated medical and psychiatric history which can be characterized by diagnostic ambiguity. Mr. Henry was noted to have epilepsy which began early in his childhood. Although his family reports that at age 7 months, a stereo speaker fell on his head, it is unclear from medical records from Duke Medical Center whether this was the etiology of his seizure disorder. MRI from Duke indicates abnormalities in deep brain structures which would be unlikely attributable to a traumatic injury. In any event, Mr. Henry had frequent seizures throughout his childhood and into his adolescent years. They became much worse during adolescence and eventually he underwent resection of his right temporal lobe in an effort to stop them. According to the patient, this surgical procedure was highly successful and he has been seizure free since the surgery. From the medical record, it is unclear how much of his temporal lobe was actually removed. According to records from Duke, in some places in the record a right temporal lobectomy is mentioned and in other places they mentioned a right anterior temporal lobectomy (a partial lobectomy). The neurosurgery was completed in March of 1999.

Subsequent to his brain surgery, Mr. Henry had two psychiatric hospitalizations in 2001. The first psychiatric hospitalization was from October 19, 2001 - October 30, 2001. He was diagnosed with Mood Disorder, Not Otherwise Specified and Impulse Control Disorder. At that time, he had made a suicide attempt and had become depressed. He was working 18 hours six days a week and caught his fiancé being unfaithful. He was hospitalized and diagnosed with a Mood Disorder, Not Otherwise Specified and placed on the antidepressant medication sertraline (Zoloft®). Subsequent to being placed on Zoloft, he had a psychotic episode requiring rehospitalization at Bryan Psychiatric Hospital from December 12, 2001 - December 28, 2001. At that time, he had thrown a knife at his mother. He had been hallucinating, had an increased sex drive, had a decreased need for sleep, exercised all night, and became religiously preoccupied. These symptoms were diagnosed at the time as Schizophreniform Disorder, a precursor to Schizophrenia. However, his clinical course since that hospitalization is inconsistent with the diagnosis of Schizophrenia. The symptoms that he displayed in December of 2001 are consistent with a manic episode. Mania is the period of abnormal mood characterized by a decreased need for sleep, increase in psychomotor activity, religious preoccupation, poor impulse control, and rapid speech and thoughts. Manic episodes and periods of

*HK*

HENRY, TARUS T.  
972-7013

OUTPATIENT EVALUATION

depression are characteristic of Bipolar Disorder. His clinical course has also been more consistent with Bipolar Disorder, as he can appear normal when not in a depressive or manic episode. The reason I am assigning a diagnosis of Bipolar Disorder, Not Otherwise Specified is because it is unclear whether his two hospitalizations, one for depression and one for mania, represented a functional bipolar illness or whether they are in some way a result of his temporal lobectomy. Depression has been reported after temporal lobectomy and it is possible that the large dose of Zoloft that he was prescribed when he was depressed induced a manic episode.

Mr. Henry denies the use of alcohol or illicit substances.

**MEDICAL HISTORY:** His medical history is remarkable for a history of Type II diabetes. He also had an episode of atrial fibrillation for which he underwent cardioversion. He had the seizure disorder as a child and the later temporal lobectomy.

**SOCIAL HISTORY:** His mother is a correctional employee and is in good health. His father reportedly has Type I diabetes. There is a maternal uncle with a history of bipolar disorder and/or schizophrenia, indicating a potential genetic predisposition to mental illness in his family.

The defendant was born in Bishopville, South Carolina. He reports that he had a good childhood but was molested by a 17-year-old brother when he was 7 years old. This occurred on one occasion. He reports that this has caused him to have periods of anger and to have low self-esteem. He did not endorse symptoms consistent with Posttraumatic Stress Disorder. He did "okay" in school but was picked on because of stuttering and because he would urinate on himself when he had a seizure. He graduated high school with a diploma. He had several suspensions for fighting but did not demonstrate symptoms consistent with a childhood conduct disorder. After graduating from high school, he has held a series of jobs. He has worked at a poultry plant, at a grocery store, at a Lowe's, at two mechanic shops, and as an insurance agent. He also has a history of numerous relationships. He was able to list nine girlfriends. He has been married previously and is currently in his second marriage. He has two children, one from his first marriage and one from his current marriage. He denies significant legal history except for a driving under suspension charge and one prior criminal domestic violence charge.

**MENTAL STATUS EXAM:** On today's date, he was neatly groomed and cooperative with the interview. He made good eye contact. He was able to register three objects without difficulty. He recalled one of them spontaneously and was able to recall the other two with prompts. He was able to recall significant past personal information and we found no evidence of clinically significant long or short-term memory impairment, although some short-term memory impairment has been reported after temporal lobectomy. He demonstrated a capacity for abstract reasoning. He was able to

*AKC*

HENRY, TARUS T.  
972-7013

OUTPATIENT EVALUATION

perform a test of concentration. He was able to correctly perform a calculation. He was able to recall past presidents to Carter. He described his mood as "okay." He denied current suicidal or homicidal ideas. He reports that he is currently eating and sleeping well. He denied hallucinations or delusions and there was no evidence of current disturbed thought processes or thought content. His thinking was logical and goal directed without loosening of associations or flight of ideas, but he appeared excessively detailed in his responses.

**CONCLUSION REGARDING COMPETENCY TO STAND TRIAL:** Mr. Henry was aware of the charges against him. He appreciates the seriousness of these charges including the potential sentence he could receive if convicted. He was able to state his attorney's name and describes her role as "to evaluate my situation to see if there was anything that she can do for me." He states that he can tell his attorney everything he knows about the allegations against him and he would not keep secrets from his attorney. He understood the role of the judge in deciding a sentence. He understands the role and function of a jury but he did not know the number of jurors on a jury or the unanimous requirement for a jury verdict. He states that the job of the prosecutor is to "try to find the defendant guilty." He was able to define the pleas available to him. He understands the basic concepts that are involved in plea bargaining and he would be competent to accept or reject a plea offer in his case. He understands the requirements of probation. He was able to solve a hypothetical situation involving the courtroom and he appreciates the importance of appropriate courtroom behavior. He was able to discuss potential evidence that could be used in the case against him. It is our opinion that he has a sufficient factual understanding of the legal system and the present ability to rationally consult with his attorney regarding a defense. Therefore, it is our opinion that he is currently competent to stand trial.

**RECOMMENDATIONS:** Mr. Henry currently is not showing symptoms of mental illness. However, given his history of both depression and manic episodes, if these symptoms were to return he should seek psychiatric treatment.



Richard L. Frierson, M.D.  
Professor of Clinical Psychiatry  
University of South Carolina School of Medicine

RLF/khr

D: 09/17/08

RT/EM: 09/19/08

F/EM: 09/19/08 (RLF)

HENRY, TARUS T.  
972-7013  
OUTPATIENT EVALUATION

WITNESSES  
LT. BRETT CAMP FCSO

Cooper

PROS: SLH

D/O: 06-23-2008

ARREST WARRANT NO.  
K217534 (1); K245812 (2); K245813 (3);  
K245814 (4).

ACTION OF GRAND JURY

TRUE BILL

*[Signature]*  
Foreman of Grand Jury

VERDICT

478  
Foreman of Petit Jury Date:

DOCKET NO. 2008 - GS - 21 - 01877

The State of South Carolina,

County of FLORENCE

SLH

COURT OF GENERAL SESSIONS

DECEMBER TERM 2008

THE STATE

vs.

TARAS TRAMAINE HENRY, SR.

Indictment for

ASSAULT AND BATTERY  
WITH INTENT TO KILL  
ARSON  
UNLAWFUL CONDUCT TOWARDS  
A CHILD

CERTIFIED: A TRUE COPY  
*Connie Red-Shearin*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

FILED  
2008 NOV 20 PM 1:37  
CONNIE REE-SHEARIN  
CLERK OF COURT  
FLORENCE COUNTY, S.C.

## INDICTMENT FOR

|                         |   |                                          |
|-------------------------|---|------------------------------------------|
| STATE OF SOUTH CAROLINA | ) | ASSAULT AND BATTERY WITH INTEN T TO KILL |
|                         | ) | ARSON UNLAWFUL CONDUCT TOWARDS A CHI LD  |
| COUNTY OF FLORENCE      | ) |                                          |

At a Court of General Sessions, convened on NOVEMBER 20, 2008, the Grand Jurors of FLORENCE  
County present upon their oath:

**COUNT ONE - ASSAULT AND BATTERY WITH INTENT TO KILL**

That TARAS TRAMAIN E HENRY, SR. did in FLORENCE County on or about June 23, 2008, violate Sections 16-03-0620, 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did with malice aforethought, commit an assault and battery upon Carol Denise Parker, aka Carol Henry by cutting and stabbing her with a knife and/or machete with the intent to kill the said Carol Denise Parker, aka Carol Henry.

**COUNT TWO - ARSON (SECOND DEGREE)**

That TARAS TRAMAIN E HENRY, SR. did in FLORENCE County on or about June 23, 2008, violate Sections 16-11-0110(B) and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did wilfully and maliciously cause an explosion, set fire to, burn or cause to be burned, or aided, counseled, or procured the burning of the dwelling and residence of Taurus Tramaine Henry, Carol Denise Parker aka Carol Henry, and two minor children.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR ASSAULT AND BATTERY WITH INTENT TO KILL ARSON UNLAWFUL CONDUCT TOWARDS A CHILD WITH THE AFORESAID NAME(S) OF TARAS TRAMAIN HENRY, SR. SHOWN THEREON:

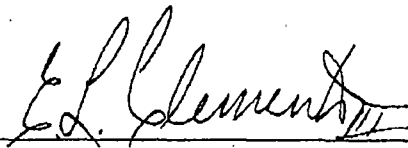
**COUNT THREE - UNLAWFUL CONDUCT TOWARDS A CHILD**

That TARAS TRAMAIN HENRY, SR. did in FLORENCE County on or about June 23, 2008, violate Section 20-07-0050 of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully and maliciously do, or cause to be done, any bodily harm to Carol Denise Parker, aka Carol Henry, the mother of a four year old child so that said child was placed at unreasonable risk of harm affecting the child's life, physical or mental health or safety; or did or caused to be done any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered; or wilfully abandoned the child, while the said TARAS TRAMAIN HENRY, SR. had charge or custody, or is the parent or guardian, or was responsible for the welfare of said child.

**COUNT FOUR - UNLAWFUL CONDUCT TOWARDS A CHILD**

That TARAS TRAMAIN HENRY, SR. did in FLORENCE County on or about June 23, 2008, violate Section 20-07-0050 of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully and maliciously do, or cause to be done, any bodily harm to Carol Denise Parker, aka Carol Henry, the mother of a seven month old child so that said child was placed at unreasonable risk of harm affecting the child's life, physical or mental health or safety; or did or caused to be done any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered; or wilfully abandoned the child, while the said TARAS TRAMAIN HENRY, SR. had charge or custody, or is the parent or guardian, or was responsible for the welfare of said child.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
SOLICITOR

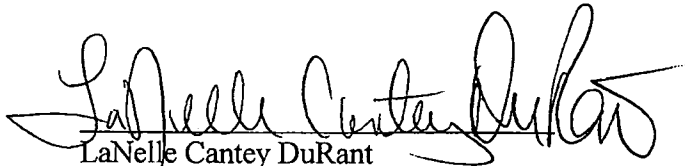
CERTIFIED: A TRUE COPY

  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

## 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."

November 29th, 2010



LaNelle Cantey DuRant  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT



STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Florence County

Ralph King Anderson, Jr., Special Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

TARUS TREMAINE HENRY, SR.,

APPELLANT

---

FINAL BRIEF OF APPELLANT

---

LANELLE CANTEY DURANT  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

## TABLE OF CONTENTS

|                                    |    |
|------------------------------------|----|
| TABLE OF CONTENTS.....             | 1  |
| TABLE OF AUTHORITIES.....          | 2  |
| STATEMENT OF ISSUES ON APPEAL..... | 3  |
| STATEMENT OF THE CASE .....        | 4  |
| ARGUMENT I.....                    | 5  |
| ARGUMENT II .....                  | 14 |
| CONCLUSION.....                    | 16 |
| CERTIFICATE OF COUNSEL .....       | 17 |

## TABLE OF AUTHORITIES

### **Cases**

|                                                                            |    |
|----------------------------------------------------------------------------|----|
| <u>Arizona v. Fulminante</u> , 499 U.S. 279 (1991).....                    | 12 |
| <u>Bram v. United States</u> , 168 U.S. 532 (1897).....                    | 12 |
| <u>Ex parte Matthews</u> , So.2d (Ala. 1992) .....                         | 12 |
| <u>Jackson v. Denno</u> , 378 U.S. 368 (1964) .....                        | 9  |
| <u>State v. Fennell</u> , 340 S.C. 266, 531 S.E.2d 512 (2000).....         | 15 |
| <u>State v. Gourdine</u> , 322 S.C. 396, 472 S.E.2d 241(1996).....         | 14 |
| <u>State v. Miller</u> , 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2008)..... | 12 |
| <u>State v. Pilgrim</u> , 326 S.C. 24, 482 S.E.2d 562 (1997).....          | 15 |
| <u>State v. Tyler</u> , 348 S.C. 526, 560 S.E.2d 888 (2002) .....          | 15 |
| <u>Suber v. State</u> , 371 S.C. 554, 640 S.E.2d 884 ( 2007).....          | 14 |
| <u>Womack v. State</u> , 205 So.2d 579 (1967) .....                        | 12 |

### STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in admitting the statement of appellant to the sheriff's investigators when the statement was not voluntary due to appellant's state of mind, and the coercion by the investigators when they told appellant that they could help him out because the judge took their word very seriously?
2. Did the trial court err in refusing to charge the jury on the lesser included charges of assault and battery of a high and aggravated nature and intent to burn when there was evidence that the victim attacked appellant first?

### STATEMENT OF THE CASE

On November 20, 2008, the Florence County Grand Jury indicted Tarus Tramaine Henry, Sr. on the charges of assault and battery with intent to kill (ABWIK), arson second degree, two counts of unlawful conduct towards a child. On July 27 – 31, 2009, Henry proceeded to trial before the Honorable Ralph King Anderson, Jr., and a jury. The jury returned verdicts of guilty on all four charges as indicted. Henry's attorney filed a notice of appeal. This appeal follows.

## ARGUMENT

### I.

The trial court erred in admitting the statement of appellant to the sheriff's investigators when the statement was not voluntary due to appellant's state of mind, and coercion by the investigators when they told appellant that they could help him out because the judge took their word very seriously.

Tarus Henry told the court that he and Carol Parker had known each other about three years and had been married about one year. They had an infant daughter, and Tarus had a five year old son who lived with them. R. 417, ll. 7 – 25; R. 418, ll. 1 – 12. Tarus had been diagnosed in the past with psychosis and schizophrenia for which he had taken medications. He was currently on the medication, Seroquel, for bipolar disorder. R. 419, ll. 1 – 25; R. 420, ll. 1.

Tarus testified that after he was arrested for this incident and sent to the detention center, he was judicially admitted to Columbia Care Center on November 25 2008 where he remained until February 9, 2009. He was placed on the medication Seroquel in November 2008 and received treatment while he was hospitalized as well as an evaluation. R. 420, ll. 1 – 25.

The incident for which he was arrested occurred on June 23, 2008. Tarus and Carol were having trouble paying the rent and had been to talk to the magistrate to make an arrangement to pay it. They were having disagreements about money and about Carol's mother keeping their daughter. R. 424, ll. 24 – 25; R. 425, ll. 1 – 25; R. 426, ll. 1 – 24.; R. 427, ll. 1 – 25; R. 428, ll. 1 – 25.

When they returned home to their apartment, Carol began having a tantrum and yelling and crying. R. 428, ll. 23 – 25; R. 429, ll. 1 – 25; R. 430, ll. 1 – 15. He left the bedroom to make a bottle for the baby when he was attacked by Carol with a machete. When he reached for the machete, he was cut on his hands and the fight escalated. He received sutures for two of the multiple cuts. R. 430, ll. 15 – 25; R. 431, ll. 1 – 25; R. 432, ll. 1 – 25; R. 433, ll. 1 – 25; R. 434, ll. 1 – 22.

Carol continued to come after him with the machete as she said to him that she had had enough and there was nothing to talk about. R. 433, ll. 23 – 25. He then had a black out and did not remember anything that happened or what he did with the machete until he heard his son calling him by saying daddy. He then realized he was holding the machete which had blood on it. He saw Carol lying on the floor, and he panicked because he was “trying to come to terms with what had just happened.” He then started helping Carol, and finally got her and the children in the car. R. 435, ll. 1 – 25.; R. 436, ll. 1 – 25; R. 437, ll. 1 – 25; R. 438, ll. 1 – 25; R. 439, ll. 1 – 25; R. 440, ll. 1 – 10.

Gary Pace testified that he was employed with the Windy Hill Fire Department, and that he responded to a fire call on June 23, 2008 to the apartment of Tarus Henry. His job was to oversee the fire operations. The firemen arrived on the scene at 11:52 and had the fire under control at 12:07. R. 54, ll. 1 – 25; R. 55, ll. 1 – 25.

Steve McCormack testified that he was employed as a fireman with the Windy Hill Fire Department. He also responded to the fire call at Tarus’s apartment. He said the fire started in the bedroom. R. 61, ll. 1 – 25; R. 66, ll. 1 – 25; R. 67, ll. 1 – 20.

Tarus did not remember if he went back into the apartment but he did see smoke from the apartment. However, he did not know anything about the fire, although he said he

did tell the detectives falsely during interrogation that he set the fire because he felt under “extreme pressure” from two of the three detectives - Detectives Bert Turner and Calvin Timmons. R. 440, ll. 8 – 25; R. 441, ll. 1 – 11.

Tarus took Carol to McLeod Hospital, and he then went to his mother in Bishopville for her to take care of the children. His brother told him the nearest hospital was in Kershaw County so and his mother and children went to Kershaw County hospital for him to receive treatment for his injuries. He had already made up his mind to turn himself in to law enforcement, although he did not tell the medical staff the truth at first because he feared they would not treat him. R. 442, ll. 1 – 25; R. 443, ll. 1 – 25; R. 444, ll. 1 – 25; R. 445, ll. 1 – 25; R. 446, ll. 1 – 25; R. 447, ll. 1 – 25.

Law enforcement came and arrested him at the hospital, but he was taken to the local police station where Investigator Timmons picked him up and took him to Florence. R. 449, ll. 1 – 25.

Amy Corbett testified that she was the nurse who treated Tarus at Kershaw Hospital on June 23, 2008. Her testimony was that Henry had his mother and two small children with him. He had wounds on the palms of both hands with about five lacerations. He required sutures on two of the cuts. She contacted law enforcement. R. 98, ll. 1 – 21; R. 99, ll. 22 – 25; R. 100, ll. 1 – 25; R. 101, ll. 1 – 25; R. 102, ll. 1 – 25; R. 103, ll. 1 – 13.

Carol Parker’s testimony was that she was taking her baby to her mother’s and she wanted to look for a job. They did argue because Tarus did not want the baby leaving. R. 359, ll. 1 – 25; R. 360, ll. 1 – 25; R. 361, ll. 1 – 25; R. 363, ll. 1 – 25; R. 366, ll. 1 – 25. Her story was that she told him she needed to go and he attacked her with the machete. R. 369, ll. 1 – 25; R. 370, ll. 1 – 25.



Carol told him just before he hit her that something was obviously wrong with him because of the way he was acting. R. 369, ll. 6 – 14. She testified on cross examination that she had never seen him look that way before as he looked at her in a strange way. R. 386, ll. 5 – 18. .

Dr. Mark Reynolds, the emergency room physician who treated Carol Parker, testified that she had twenty-eight wounds which were life-threatening. He said she was close to death when she was admitted. R. 337, ll. 10 – 25; R. 343, ll. 22 – 25; R. 344, ll. 1 – 25; R. 345, ll. 1 – 25; R. 346, ll. 1 – 25; R. 347, ll. 1 – 2. He did say that she may have some permanent damage but that she would recover ninety-five percent of her original capacity. R. 356, ll. 1 – 14.

Dr. Richard Frierson, a forensic psychiatrist, testified for the defense that he completed two court ordered mental evaluations on Tarus Henry: one to determine his competency to stand trial and the second was to determine his level of criminal responsibility at the time of the alleged offense. R. 389, ll. 4 – 25; R. 391, ll. 1 – 25; R. 392, ll. 1 – 9. Dr. Frierson reported that Tarus was competent to stand trial and that he knew right from wrong. However, he did some impairment in his capacity to conform his behavior but it was not substantial. R. 392, ll. 10 – 25; R. 393, ll. 1 – 3.

Dr. Frierson's testimony was that Tarus previously had part of his brain removed which was part of his right non-dominant hemisphere. This was due to the fact that as a child he suffered irretractable seizures which meant the seizures did not respond to medication. The seizures were so severe that he was a candidate for the removal of part of his brain. One side effect of the removal of part of his brain was the inability to recognize fear in other people. Dr. Frierson's opinion was that seeing fear in other people when in an

altercation might serve as a "stopping mechanism" to help the person control his behavior. R. 389, ll. 1 – 25; R. 391, ll. 1 – 25; R. 392, ll. 1 – 25; R. 393, ll. 1 – 25; R. 394, ll. 1 – 25; R. 395, ll. 1 – 25; R. 396, ll. 1 – 8.

Dr. Frierson testified that Tarus had other mental illnesses which included depression where he had attempted suicide; was hospitalized for hallucinations related to schizophrenia; and now met the criteria for bipolar disorder. He had been hospitalized at Bryan Psychiatric Hospital twice and at Duke University where he had the neurosurgery; he also attended Tricounty Mental Health Center. R. 393, ll. 4 – 17; R. 396, ll. 9 – 25; R. 397, ll. 1 – 25; R. 398, ll. 1 – 25. He said that people with these mental illnesses frequently stopped their medications but that the person will likely have future episodes. R. 398, ll. 6 – 25; R. 399, 1 – 25. Frequently people who commit a violent act that was something they would not typically do, then their mind may block it out as a defense mechanism. R. 401, ll. 1 – 24.

A Jackson v. Denno,<sup>1</sup> hearing was held pretrial as Tarus gave a statement to law enforcement following his arrest. The solicitor explained that one of the three investigators who were present during the statement was in Afghanistan: Investigator Calvin Timmons. The other two investigators were Officer Kathleen Street and Officer Bert Turner. The judge proceeded with the hearing. R. 4, ll. 9 – 25; R. 5, ll. 1 – 25.

Officer Street testified that Tarus signed the waiver of rights form and she had copies of the statement he gave.<sup>2</sup> R. 6, ll. 18 – 25; R. 7, ll. 1 – 25. According to her testimony, Tarus's statement was not recorded on video but was recorded with audio only.

---

<sup>1</sup> Jackson v. Denno, 378 U.S. 368 (1964).

<sup>2</sup> The written statement was not admitted into evidence, but a CD of the audio recorded statement was admitted into evidence as State's Exhibit 74.

R. 11, ll. 1 – 8; R. 12, ll. 17 – 25. She admitted that Tarus told them that he had had surgery on his brain a few years earlier for a seizure disorder. However, they continued to take his statement. R. 9, ll. 1 – 11. Officer Calvin Timmons was the one who went to Kershaw and transported Tarus to Florence. Officer Street did not know what was said in the car. R. 13, ll. 1 – 25; 14, ll. 1 – 9. She admitted on cross examination that sometimes informal interrogation occurred before the recording, but she did not know if Officer Timmons did this. R. 20, ll. 1 – 25; R. 21, ll. 1 – 3.

On cross examination, defense counsel referred to the transcribed statement which Officer Street had in front of her. R. 22, ll. 1 – 15. Officer Street stated that Officer Timmons, Officer Turner and she were all present during the entire statement. R. 22, ll. 1 – 4. Counsel referred to page six of the statement where Officer Turner asked Tarus if he were prescribed any medication, and Tarus said not that he knew of. Then further on the page, Tarus said he was on Zyprexa for schizophrenia and psychosis, but it had been discontinued. Officer Street confirmed that was in the statement. R. 23, ll. 1 – 25; R. 24, ll. 1 – 25.

Counsel said that on page ten, Tarus told them he was still bleeding, but Officer Street admitted they did not talk with anyone at Kershaw Hospital to inquire what medications he may be taking or the extent of his injuries. R. 25, ll. 1 – 21.

Counsel then referred Officer Street to page twelve where Officer Timmons said to Tarus: "And don't just like I told you, Tarus, in the car, man, don't spoon feed us any information." R. 25, ll. 22 – 25; R. 26, ll. 1 – 7. Then counsel referred to page thirty-seven of the statement where Officer Timmons said to Tarus:

We can help you out, man. I mean, the judge takes our word very serious.

R. 27, ll. 16 – 25; R. 28, ll. 1 – 4.

Officer Street said:

That's what's transcribed here.

R. 28, ll. 4 – 5.

During the trial, defense counsel referred Officer Bert Turner to page 40 of the transcribed statement where he and Officer Timmons asked Tarus about his state of mind.

Officer Timmons said to Tarus:

Tarus, you need some help, man, too., okay. I mean, I mean, I'm not a psychiatrist or a doctor or anything, you know, but I, I from just sitting across the table, I can see you need some help, okay.

R. 292, ll. 1 – 25; R. 293, ll. 1 – 10.

Officer Turner replied that he was there when that was said. R. 293, ll. 10 – 11.

Officer Turner also admitted that Tarus told them he had tried to cut his wrists in the past.

Officer Turner admitted that these things could be symptoms of mental illness. He denied they put any pressure on Tarus. R. 294, ll. 1 – 25; R. 295, ll. 1 – 14.

Defense counsel argued at the end of the pretrial hearing that the statement was not voluntarily given and should be suppressed as the officers had information that Tarus had been on medication for psychosis or schizophrenia. He told the officers he was diabetic and no food or water was offered to him. Part of the tape had been erased by the transcriptionist, Donna McDaniel, and therefore was incomplete. She argued that considering the totality of

the circumstances, the statement was not voluntary. R. 35, ll. 1 – 25; R. 36, ll. 1 – 25; R. 37, ll. 1 – 21; R. 40, ll. 8 – 13.

The judge denied counsel's motion and ruled that the statement was voluntary. It was admitted. R. 37, ll. 22 – 25; R. 38, ll. 1 – 25; R. 39, ll. 1 – 25; R. 40, ll. 1 – 25.

In Bram v. United States, 168 U.S. 532 (1897), the Court held that a confession "obtained by any direct or implied promises, however slight," was not voluntary. Although the Supreme Court later wrote in Arizona v. Fulminante, 499 U.S. 279 (1991), that Bram did not set the standard for determining the voluntariness of a confession, the Court wrote that the promise had to be considered in light of the totality of the circumstances. The Court held that the confession of a prison inmate to his cell mate, who was an undercover FBI agent, was not voluntary but coerced. Id.

In Ex parte Matthews, So.2d (Ala. 1992), the court held that the confession was coerced where police told the defendant it would make a big difference with prosecutors and judge whether defendant cooperated or not. The Court in Womack v. State, 205 So.2d 579 (1967), held that it was coercive to tell the defendant it would "go lighter on him" if he confessed.

A statement induced by a promise of leniency is involuntary only if so connected with the inducement as to be a consequence of the promise. State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2008). The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the given statement. Id.

Tarus's statement was not voluntarily made. His will was easily overborne as he was upset about what happened as indicated by his blackout, and the fact that he took his wife to the hospital after it happened. He told the officers of his history of mental problems and the

fact that he was not on medication. This should have been a red flag to the officers. Also, the fact that he told them he had brain surgery should have caused concern for the officers and the trial judge.

## ARGUMENT

### II.

The trial court erred in refusing to charge the jury on the lesser included charges of assault and battery of a high and aggravated nature and intent to burn when there was evidence that the victim attacked appellant first.

Defense counsel requested the judge to charge the jury on the lesser included charge of assault and battery of a high and aggravated nature (ABHAN) for the ABWIK, and the lesser included crime of intent to burn for the arson second. Counsel argued there was evidence of ABHAN, and that the black out described by Tarus would negate any intent to kill, and indicated a loss of control. R. 470, ll. 1 – 23.

The judge refused, and counsel asked the court to please note her objection. R. 470, ll. 24 -25; R. 471, ll. 1 – 7.

The trial court is required to charge a jury on a lesser-included offense if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed. Suber v. State, 371 S.C. 554, 640 S.E.2d 884 ( 2007); citing State v. Gourdine, 322 S.C. 396, 398, 472 S.E.2d 241, 242 (1996).

There was evidence of ABHAN as Tarus testified that Carol attacked him first with the machete in which case he would only have been trying to stop an action. Malice would not be an issue. The nurse who treated Tarus confirmed the wounds he suffered on the palms of both hands would reasonably be consistent with his grabbing a machete. The DNA expert testified that there was blood from both Tarus and Carol on the machete. R. 230, ll. 4 – 12.

In State v. Tyler, 348 S.C. 526, 560 S.E.2d 888 (2002); citing State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000), the Supreme Court wrote that a defendant may be convicted of ABHAN regardless of whether malice was present.

In State v. Pilgrim, 326 S.C. 24, 482 S.E.2d 562 (1997), the Supreme Court reversed a conviction of ABWIK because the jury may have thought there had to be a finding of heat of passion in order to convict of ABHAN where the trial judge compared ABHAN with voluntary manslaughter.

The judge should have charged the jury on the lesser included offense of intent to burn as there was evidence presented of the lesser. Tarus testified that he did not know anything about the fire. He also testified that he blacked out and did not remember hitting Carol or any thing else until his son called to him.

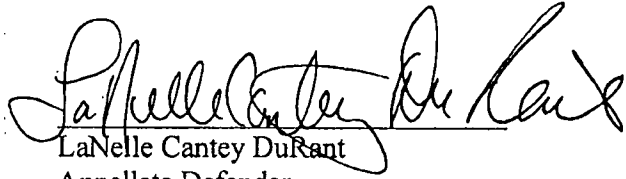
The trial judge should have given the lesser included charges of ABHAN and intent to burn.



CONCLUSION

Based on the above, the convictions and sentences should be reversed and the case remanded for anew trial.

Respectfully submitted,

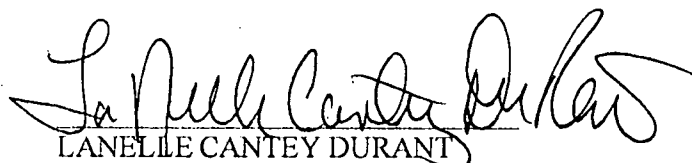
  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of December, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that this 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."



LANELLE CANTEY DURANT  
Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Post Office Box 11589  
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Florence County

Ralph King Anderson, Jr., Special Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

TARUS TREMAINE HENRY, SR.,

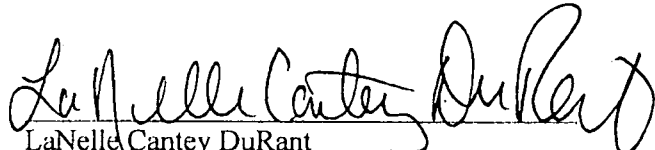
APPELLANT

---

CERTIFICATE OF SERVICE

---

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 14th day of December, 2010.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 14th day of December, 2010.

\_\_\_\_\_(L.S.)  
Notary Public for South Carolina  
My Commission Expires: December 4, 2017

## TABLE OF CONTENTS

|                                                                                                                                                                                                                                                                               |    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| TABLE OF AUTHORITIES .....                                                                                                                                                                                                                                                    | ii |
| STATEMENT OF ISSUES ON APPEAL .....                                                                                                                                                                                                                                           | 1  |
| STATEMENT OF THE CASE .....                                                                                                                                                                                                                                                   | 2  |
| STATEMENT OF THE FACTS .....                                                                                                                                                                                                                                                  | 2  |
| ARGUMENT. ....                                                                                                                                                                                                                                                                | 9  |
| I.    The trial court did not err in admitting the audio recording of<br>Appellant's statement to law enforcement since ample<br>evidence supports the trial court's determination that the<br>statement was voluntary .....                                                  | 9  |
| II.   The trial court did not err in declining to charge assault and<br>battery of a high and aggravated nature as a lesser charge of<br>assault and battery with intent to kill where no evidence<br>supported that appellant was guilty of only the lesser offense<br>..... | 14 |
| III.  The trial court did not err in declining to charge intent to burn<br>as a lesser included offense of arson in the second degree. ....                                                                                                                                   | 17 |
| CONCLUSION .....                                                                                                                                                                                                                                                              | 18 |

## TABLE OF AUTHORITIES

### **Cases:**

|                                                                                    |            |
|------------------------------------------------------------------------------------|------------|
| <u>Commonwealth v. Mehan</u> , 387 N.E.2d 527 (Mass. 1979) .....                   | 13         |
| <u>Commonwealth v. Tolan</u> , 904 N.E.2d 397 (Mass. 2009) .....                   | 13         |
| <u>Jackson v. Denno</u> , 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964) ..... | 9          |
| <u>Pelzer v. State</u> , 381 S.C. 217, 672 S.E.2d 790 (S.C. App. 2009) .....       | 17         |
| <u>State v. Avery</u> , 374 S.C. 524, 649 S.E.2d 102 (Ct. App. 2007) .....         | 10         |
| <u>State v. Carmack</u> , 388 S.C. 190, 694 S.E.2d 224 (Ct. App. 2010) .....       | 10         |
| <u>State v. Coleman</u> , 342 S.C. 172, 536 S.E.2d 387 (Ct. App. 2000) .....       | 14, 15, 17 |
| <u>State v. Doby</u> , 273 S.C. 704, 258 S.E.2d 896 (1979) .....                   | 12         |
| <u>State v. Foust</u> , 325 S.C. 12, 479 S.E.2d 50 (1996) .....                    | 14, 15     |
| <u>State v. Hilton</u> , 284 S.C. 245, 325 S.E.2d 575 (Ct. App. 1985) .....        | 15         |
| <u>State v. Miller</u> , 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2007) .....        | 9          |
| <u>State v. Mitchell</u> , 286 S.C. 572, 336 S.E.2d 150 (1985) .....               | 16         |
| <u>State v. Rochester</u> , 301 S.C. 196, 394 S.E.2d 244 (1990) .....              | 12-13      |
| <u>State v. Scott</u> , 269 S.C. 438, 237 S.E.2d 886 (1977) .....                  | 15         |
| <u>State v. Washington</u> , 296 S.C. 54, 370 S.E.2d 611 (1988) .....              | 9          |
| <u>United States v. Foley</u> , 595 F.Supp.2d 171 (D. Mass. 2009) .....            | 12         |
| <u>United States v. Pelton</u> , 835 F.2d 1067 (4 <sup>th</sup> Cir. 1987) .....   | 12         |

### **Statutes:**

|                                  |    |
|----------------------------------|----|
| S.C. Code Ann. § 16-11-190 ..... | 17 |
|----------------------------------|----|

## STATEMENT OF ISSUES ON APPEAL

### I.

The trial court did not err in admitting the audio recording of Appellant's statement to law enforcement since ample evidence supports the trial court's determination that the statement was voluntary.

### II.

The trial court did not err in declining to charge assault and battery of a high and aggravated nature as a lesser charge of assault and battery with intent to kill where no evidence supported that appellant was guilty of only the lesser offense.

### III.

The trial court did not err in declining to charge intent to burn as a lesser included offense of arson in the second degree.

## **STATEMENT OF THE CASE**

Respondent agrees that Appellant's statement of the case is substantially correct.

## **STATEMENT OF FACTS**

Scott McAleese lived in the same apartment complex with Appellant Henry and Victim. McAleese woke up about 11 a.m. and was outside the apartment when he observed Henry walk to his car, pull up to the dumpster, and throw something in the dumpster. Henry then parked the car and went towards his apartment. McAleese then saw Henry and Victim on the path from the apartment. Henry was helping Victim down the path. Victim was covered in blood. McAleese asked what happened. Victim said they got in a fight, Henry said that someone tried to break in the apartment. McAleese headed back to his apartment, and then saw smoke. ROA. pp. 44-48.

Gary Pace of the Windy Hill Fire Department was in command at the scene of the fire. The Fire Department arrived at 11:52 a.m. and had the fire under control by 12:07. ROA. pp. 54-55. Firefighter Steve McCormick opened the door to Henry's apartment and saw massive amounts of blood on the floor. ROA. pp. 63. Deputy Darren Yarborough also went into the apartment and saw the blood on the living room floor. ROA. pp. 79-80.

Officer Adam Moore collected evidence at the crime scene and took photographs. He testified that there were three pools of blood on the floor, under towels. There also was considerable blood splatter, some on a small dresser and a toy John Deere tractor. ROA. p. 132, pp. 242-245. The machete was in a pile with clothes. ROA. p. 138.

Matthew Huggins, a security guard at McLeod Hospital testified that Henry helped Victim out of the car and told Huggins that his girlfriend was stabbed. Victim was covered

with a blanket. Huggins saw stab wounds. Huggins asked what happened and Henry would not say. Henry left in the car. ROA. p. 89.

Henry went all the way to the Kershaw County Medical Center. He did not give a clear explanation why to Nurse Amy Corbett. Henry had lacerations on his hands and needed two sutures. He told Nurse Corbett that he got in a fight with his wife and one of wife's friends attacked him with a machete. Nurse Corbett was suspicious of the incident and called law enforcement. ROA. pp. 100-104.

A can of charcoal lighter fluid was recovered from Henry's car. Henry left the car in his brother's yard. His brother had it towed. There was blood in the car. ROA. p. 123; pp. 254-257.

Investigator Bert Turner, an arson investigator, arrived at the apartment shortly after the fire was under control. The apartment was still very warm when Turner arrived. He determined the fire originated in the master bedroom. Turner determined that the cause of the fire was the mattress and bedding materials were set fire. He found no evidence to suggest that the fire was set accidentally. ROA. pp. 174-177. In Turner's opinion, the cause of fire was arson. ROA. p. 182. The DNA from the swabs of the blood pools and blood on the file cabinet matched Victim. Henry's blood was found on various items recovered from the apartment and on cuttings from his clothes. ROA. pp. 215-222.

Henry was arrested in Kershaw County and brought back to Florence. He was read Miranda rights and gave a statement. Henry had already received medical attention for his hand. Investigator Turner testified that Henry did not appear to be under the influence of anything. Turner testified that he would have allowed Henry to use the restroom, get him



food or water, or medical treatment, if Henry had asked. Henry was booked at 7:26 p.m. and was interviewed from 8:05 p.m. until 9:02 p.m. He never asked the Officers to stop the interview. ROA. pp. 258-265. Turner testified as follows:

Q: During the interview process, there have been questions concerning the safety and welfare of the person being interviewed. What, if anything, did you do to affirmatively on your own initiative do to make sure that the person being interviewed, Mr. Henry, was all right? I know that is a large big term, but that he was okay?

A: Sure. Well, naturally just from observation, you know, looking at Mr. Henry he was much as just as he appeared in court yesterday and today. You know, no outward appearance of any problems whatsoever. And then naturally, we also ask, you know, if they're currently under the influence of any alcohol and or drugs.

ROA. p. 290, lines 2-13.

Turner testified that he put no pressure on Henry, "whatsoever". ROA. p. 295, lines 14-15. Turner testified as follows:

That's what I maintain. I mean, there was no pressure, you know, whatsoever. Actually it was a conversation much like we're having now. There were no moments of any yelling or anything such as that, if that's what you're referring to as pressure.

ROA. p. 295, lines 16-20. Turner also testified that "... if the defendant had shown any symptoms of any medical condition, physical or mental, the interview would have ceased and we would have attended to him." ROA. p. 299, lines 22-25.

Calvin Timmons drove Henry from Kershaw County to Florence. He was not with the Sheriff's Department anymore, but was in Afghanistan. Investigator Kathleen Street was the third investigator involved in the interview. She testified that Timmons said he read

Henry the Miranda rights in the car, but he did not go into detail about if anything was discussed or what was discussed. ROA. p. 322, lines 17-24.

Henry signed the Miranda form (State's Exhibit 1) before the interview was taped. Then Henry was read his Miranda rights on tape again, making the third time he was read his Miranda rights before he gave his statement. She testified her usual practice was to tell someone she is interviewing that they can go to the restroom if they need to and that she will offer them a drink at the beginning of the interview. She testified that Henry was not threatened, coerced, or abused. ROA. pp. 325-329.

Dr. Reynolds treated Victim. Dr. Reynolds testified Victim was close to death. She had twenty-eight wounds or injuries. The worst injury was a lash to the base of the skull – Victim had a stroke in the base ganglia of her brain, which was most likely due to the vertebral artery being transected from that lash. Victim lost a lot of blood and had little blood pressure. She needed to be hospitalized for eighteen days. She had surgery the day she was brought in. She had every laceration fixed. She had extensive tendon injuries. She required chest tubes on both sides and required large wall IV's for aggressive resuscitation. She was on the ventilator for a day. She also required orthopedic surgery on fractures in her right hand. Dr. Reynolds testified that her injuries were life threatening. Victim continues to suffer from paraseizures. ROA. pp. 344-353, p. 358.

Victim testified that she was no longer married to Henry. She testified that she was having an argument with Henry about the well-being of the children and about Victim wanting to find a job. She wanted her mother to watch the children and Henry objected. Victim discovered the phone line was cut and asked him if he cut it. Henry blocked the door

to keep Victim from leaving. Then the room seemed to get dark and she felt something around her neck and looked down and saw she was bleeding. She fell to the floor. She felt blows on her back. As Henry administers the blows, he said, "Are you going to tell on me? Are you going to tell on me? Need to be here and be a family, be here with the family." ROA. pp. 359-371.

Henry's son, Taurus Jr. said, "Daddy, what are you doing." Henry told Taurus, Jr. to go to his room. Victim's seven-month old daughter was crying. Henry took the kids and left. Victim got up slowly, walked down the hall, looked out Taurus, Jr.'s window, came back to the living room, cried, and sat down. Henry came back into the apartment, walked past her down the hallway, then passed her again on the way out. Victim was laying on the floor when she smelled smoke. She got up again, found her blanket to wrap herself in, and opened the apartment door. She was at the top of the stairs, when Henry came back and helped her down the stairs. ROA. pp. 373-376.

The **defense** called Dr. Richard Frierson who testified that Henry was competent to stand trial, knew right from wrong at the time of the offense, and was capable of conforming his conduct. ROA. pp. 392-393, pp. 407-411, p. 416. Dr. Frierson noted that Henry did not report any symptoms of mental illness at the time of the offense. ROA. p. 406.

He also testified as follows:

Q: What steps did he take that would negate an argument that he didn't understand right from wrong?

A: Things like if – the size of the fire, if he allegedly set a fire that it was just to destroy evidence. If he tells the police initially there was an intruder, it wasn't me. That would indicate that he would – if he knew that that was not true and

he lied to the police, that would indicate knowledge of wrongfulness. I'm protecting what I did, so they don't know. He said in an interview to me when he drove his kids, for example, to his mother's house that he knew he was going to jail. That's why he did it.

ROA. p. 406, line 17 - p. 407, line 3.

The State asked Dr. Frierson whether in "terms of formulating your opinion, does it matter what diagnosis he suffers from?" Dr. Frierson responded that it does not because "it's really the symptoms that impair knowledge of wrongfulness, not the actual diagnosis." Dr. Frierson testified that there were no symptoms present that he could determine that would impair Henry's knowledge of wrongfulness. ROA. p. 411.

Henry testified that he was having an oral argument with Victim. Victim attacked him with the machete. He caught the machete with his hand. Henry testified that he was bleeding rapidly so he began to grab a rag to keep from bleeding everywhere. ROA. pp. 429-434.

Then, with a rag around his hand, Henry reached for the machete. Henry testified that he blacked out as soon as he got a hold of the machete. The next thing he recollected was his son calling out to him, Henry noticed blood on his machete, and he realized Victim was laying on the floor. So he panicked. He brought a glass of water to Victim because she said she was thirsty. Henry changed his clothes, Henry testified, because "I didn't want to terrify them".<sup>1</sup> Henry brought the children to the car. Then, Henry testified, he fetched a blanket for Victim, and helped her from the apartment to the car. Henry testified that he told

---

<sup>1</sup> Henry further explained on changing his clothes: "So I wanted to protect them by not looking at this, so, Yes, I did change my clothes, but, no, I did not try to hide it, I left it there where it was." ROA. p. 440, lines 4-7.

neighbor McAleese, in explanation of Victim's condition, "I did not know, maybe somebody broke in", because Henry did not want a confrontation with McAleese and wanted to "keep him out the business". ROA. pp. 434-440.

Henry admitted setting the fire to law enforcement. See State's Exhibit No. 74. At trial, he admitted seeing smoke or fire from the apartment. However, Henry testified at trial that he did not know anything about how the fire started. Henry testified at trial as follows: "During the interrogation, I falsely admitted to setting fire under extreme pressure from Detective Bert Turner and Calvin, whatever his last name is, Timmons." ROA. p. 440, lines 17-19.

When asked by his counsel why Henry told the officers about an intruder, Henry replied: "Again, I could have been seeing myself." ROA. p. 455, line 20. Henry claimed he was being tortured. ROA. p. 456, line 18.

On cross-examination, Henry said it was possibly true that he got the machete from his desk as he told law enforcement in his statement. Thus, Henry was already contradicting his direct testimony – that he retrieved the machete from his wife – moments into his cross-examination. Henry admitted lying to McAleese, and in a round about way, admitted lying to Nurse Corbett. ROA. pp. 464-468.

## ARGUMENT

### I.

**The trial court did not err in admitting the audio recording of Appellant's statement to law enforcement because ample evidence supports the trial court's determination that the statement was voluntary.**

Henry claims his statement to law enforcement was involuntary because he was once diagnosed with schizophrenia and had brain surgery. Henry also claims that law enforcement coerced his statement. Ample evidence demonstrates he was not suffering any symptoms of mental illness. Further, the audio recording of the interview with law enforcement and the evidence presented to the trial court indicates that law enforcement did not engage in coercive activity and that Henry's will was not overborne.

The process for determining whether a statement is voluntary, and thus admissible, is bifurcated; it involves determinations by both the judge and the jury. First, the trial judge must conduct an evidentiary hearing, outside the presence of the jury, where the State must show the statement was voluntarily made by a preponderance of the evidence. Jackson v. Denno, 378 U.S. 368, 376, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964). If the statement is found to have been given voluntarily, it is then submitted to the jury, where its voluntariness must be established beyond a reasonable doubt. State v. Washington, 296 S.C. 54, 56, 370 S.E.2d 611, 612 (1988).

"Where there is conflicting evidence as to whether a defendant's statement is voluntary, it is, in the first instance the province of the trial court to determine this factual issue by the preponderance of the evidence." State v. Miller, 375 S.C. 370, 383, 652 S.E.2d

“In order to determine whether a statement is voluntary, the trial court must inquire whether under the totality of the circumstances the suspect’s will was overborne.” State v. Carmack, 388 S.C. 190, 199, 694 S.E.2d 224, 228 (Ct. App. 2010).

The trial judge’s determination of whether a statement was knowingly, intelligently, and voluntarily made requires an examination of the totality of the circumstances surrounding the waiver. State v. Avery, 374 S.C. 524, 649 S.E.2d 102 (Ct. App. 2007). On appeal, the conclusion of the trial judge on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion. Id.

In the instant case, ample evidence supports the trial court’s finding that Henry’s statements during his interview were voluntary. The interview took place fairly early in the evening, between eight and nine p.m. and lasted under an hour. Henry was read his Miranda rights three times before he was interviewed. Henry did not request food, drink, or use of a restroom. Henry indicated in his interview that he lost enough weight so he did not need medicine for diabetes anymore. (State’s Exhibit 74). Henry told law enforcement that he had a full high school education and a year of college. (State’s Exhibit 74). He had already been treated for his injury, which was mild, and did not request further medical attention. The officers saw no outward appearance of any problems. Henry did not claim to be intoxicated and he did not appear to be intoxicated. Investigator Turner indicated that he would have stopped the interview if he saw any indication of any physical or mental problems. Investigator Street testified that Henry was not threatened, coerced, or abused. Investigator Turner testified that the conversation was not coercive and there was no yelling, likening the

conversation to his own examination in court. Dr. Frierson, called by the defense, testified that Henry did not report any symptoms of mental illness at the time he committed the offense, which was earlier in the day.

Henry attempts to argue that his diagnosis and medication from years earlier proves the statement was involuntary. The record refutes that assertion, as Henry's own witness, Dr. Frierson, testified it's the symptoms, not the diagnosis, that would impair Henry's knowledge of wrongfulness. ROA. p. 411. Further, Henry refers to his self-serving testimony about his "blackout" as evidence that his statement was involuntary. However, Henry never told law enforcement during the interview about his "blackout" and he did not testify during the Jackson v. Denno hearing, waiting until he testified in front of the jury to disclose his alleged blackout. Likewise, there was no evidence presented that Henry's brain surgery several years earlier actually resulted in any diminished capacity the day of the interview.

Listening to State's Exhibit 74, the audio-record of the statement, Henry's demeanor does not suggest any symptoms of mental impairment. His narrative and his answers to law enforcement's questions are clear and articulate. Law enforcement rightly determined that they were being lied to when Henry claimed an unidentified friend of the victim attacked Henry with the machete. They found problems with his story because it did not make sense – meaning it did not sound truthful. They advised him that he should tell the truth and that it is not helpful to him if a judge or jury thinks he is lying – which is undeniably true. They told him that he was not a punk, but that he appeared to them to be a well-educated person who loves his kids. They told him they could not make any promises. They told him the



truth will help him and it would make him feel better to tell them. Street asked a question in a hushed voice, and Henry responded with clarity of thought as he opened up about the incident and his frustrations with his wife – he seemed to find solacement in this. They told him nobody was hurt from the fire and it was contained to the apartment. Henry conceded he set the fire with charcoal lighter fluid because he did not want her to have any of the things he bought her. The interview concludes with Henry stating that law enforcement did not promise him anything, that he was not threatened or coerced in anyway to make the statement, that everything he told law enforcement was the truth, and that he was aware that the statement was being tape recorded. He told law enforcement he was just hoping for a fair trial. State's Exhibit 74.

Henry's claims that he was induced to give his statement by promises of leniency are without merit. Law enforcement made no promises. At most, they only indicated that they would communicate Henry's cooperation to the prosecution or court. Merely, "a promise to bring cooperation to the attention of the prosecutor or the court, without more, is not coercive as a matter of law." United States v. Pelton, 835 F.2d 1067, 1073 (4<sup>th</sup> Cir. 1987); United States v. Foley, 595 F.Supp.2d 171 (D. Mass. 2009).

Henry's past mental health issues do not entitle him to automatic suppression of the statement, as he seems to suggest, as it is only one factor to consider in the totality of circumstances. State v. Doby, 273 S.C. 704, 709, 258 S.E.2d 896, 899 (1979). As mentioned before, ample evidence was presented that Henry was not suffering from any mental impairment during the interview, and therefore, the trial court's determination is supported by sufficient evidence to allow the jury to consider the issue.

Also, law enforcement informing a defendant that it is in his best interest to tell the truth will not render a statement involuntary. State v. Rochester, 301 S.C. 196, 201, 394 S.E.2d 244, 247 (1990). “An officer may suggest broadly that it would be ‘better’ for a suspect to tell the truth, may indicate that the person’s cooperation would be brought to the attention of the public officials or others involved, or may state in general terms that cooperation has been considered favorably by the courts in the past.” Commonwealth v. Tolan, 904 N.E.2d 397, 406 (Mass. 2009) (finding statements that “You can do yourself a lot of good if you tell us what happened”, “We’ll help you because that’s why we’re here, to find the truth”, “Now it’s time to help yourself out”, and “You need to help yourself by telling the truth” were not impermissible by offering leniency or that a confession would assist in the defense) *quoting* Commonwealth v. Mehan, 387 N.E.2d 527 (1979) *cert dismissed*, 445 U.S. 39, 100 S.Ct. 1092 (1980).

The interview itself clearly indicates that his will was not overborne. Law enforcement admonishment to tell the truth when Henry lied to them is not coercion, and Henry unburdening his conscience is not evidence that his will was overborne. Nothing in that audio recording indicates intoxication or lack of mental cognition. Abundant evidence supports the voluntariness of his statement. Accordingly, the trial court did not err in admitting the statement.

## II.

**The trial court did not err in declining to charge assault and battery of a high and aggravated nature as a lesser charge of assault and battery with intent to kill where no evidence supported that appellant was guilty of only the lesser offense.**

Henry claims it was error to not charge assault and battery of a high and aggravated nature (ABHAN) as a lesser included offense of ABWIK. However, evidence does not support a lesser charge. At trial, Henry claimed he was entitled to the charge because of his testimony that he blacked out. ROA. p. 470. Henry is not entitled to a charge on ABHAN merely because he cannot recall what happened.

A lesser included offense should be charged only where evidence warrants the instruction. State v. Coleman, 342 S.C. 172, 536 S.E.2d 387 (Ct. App. 2000). "It is not error to refuse to charge the lesser included offense unless there is evidence tending to show the defendant was guilty *only* of the lesser offense." Id., 342 S.C. at 175, 536 S.E.2d at 389 (emphasis in the original).

A charge on assault and battery of a high and aggravated nature is appropriate when the evidence demonstrates the defendant lacked the requisite intent to kill. Id., 342 S.C. at 176, 536 S.E.2d at 389. However, only a general intent to kill is necessary to support a charge for assault and battery with intent to kill. Id.; State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996).

Assault and battery with intent to kill (ABIK) is an unlawful act of a violent nature to the person of another with malice aforethought, either express or implied. Foust, 325 S.C. at 14, 479 S.E.2d at 51 (1996). ABIK also requires the intent to kill. Id., 325 S.C. at 15, 479

S.E.2d at 51. Intent is demonstrated by acts and conduct from which a jury may naturally and reasonably infer intent. Id. Intent may be proved with evidence of the character of the means or instrument used. Id., at 16, n. 4, 479 S.E.2d at 52, n. 4.

Assault and battery of a high and aggravated nature (ABHAN), on the other hand, requires an unlawful act of violent injury accompanied by circumstances of aggravation. State v. Coleman, supra. An ABHAN charge is appropriate when the evidence demonstrates the defendant lacked the requisite intent to kill. State v. Hilton, 284 S.C. 245, 249, 325 S.E.2d 575, 577 (Ct. App. 1985) *overruled on other grounds by Foust*. However, as noted above, State v. Foust, holds that only a general intent to kill is necessary to support an ABIK charge.

In Coleman, the evidence demonstrated that Coleman pointed the gun level with the victim's gun before pulling the trigger and then fired. The resulting wound was near fatal. Coleman's explanation was that he panicked. The evidence supported only the charge on ABIK. Coleman, supra.

In Foust, the Supreme Court noted that specific intent is not required to commit murder, and, therefore, the logical inference is that a specific intent is unnecessary to commit ABIK. Foust noted that where the offense would be murder if the victim died as a result of the assault and battery, then ABIK, not ABHAN, is the appropriate offense. Foust, (quoting State v. Scott, 269 S.C. 438, 237 S.E.2d 886 (1977)).

In the instant case, the evidence of Victim's severe, near-fatal injuries, was uncontroverted. Victim testified she was blind-sided. Henry testified at trial that he blacked out and could not recall what happened after he disarmed her. In his statement, Henry said

Victim swung the machete at him, he caught it and took the machete from her. Then Henry said "don't go", "and **then** that was when it escalated". State's Exhibit #74, (emphasis added). Henry set fire to the apartment while Victim was still inside. The evidence presented did not require a charge on ABHAN, and therefore, the trial court did not err.

Further, any error was harmless beyond a reasonable doubt, as evidence of guilt for ABWIK was overwhelming. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial).

### III.

**The trial court did not err in declining to charge intent to burn as a lesser included offense of arson in the second degree.**

Henry argues that because he testified that he did not know anything about the fire, he should get a charge on intent to burn as a lesser included offense of arson in the second degree. Henry commingled this issue with the issue of whether ABHAN should have been charged. This argument is without merit.

First, Respondent is unaware of an offense known as intent to burn. Respondent believes that Henry is referring to the statute proscribing attempts to burn, S.C. Code Ann. § 16-11-190. This Court previously has determined that attempts to burn is a lesser included offense of arson in the second degree. Pelzer v. State, 381 S.C. 217, 672 S.E.2d 790 (S.C. App. 2009).

Henry does not point to any evidence that Henry merely attempted to burn his apartment building, so he is not entitled to a charge on the statute. The trial court should only charge a lesser included offense where there is evidence presented that the defendant committed only the lesser offense to the exclusion of the greater offense. State v. Coleman, 342 S.C. 172, 536 S.E.2d 387 (Ct. App. 2000). At trial, Henry denied committing the crime at all. So his testimony does not support that he committed a lesser included offense.

## CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

DAVID SPENCER  
Assistant Attorney General

E. L. CLEMENTS, III  
Solicitor, Twelfth Judicial Circuit

BY: 

DAVID SPENCER

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 8, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Florence County  
Ralph King Anderson, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

TARUS TREMAINE HENRY, SR.,

Appellant.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

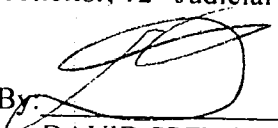
HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

DAVID SPENCER  
Assistant Attorney General

E.L. CLEMENTS, III  
Solicitor, 12<sup>th</sup> Judicial Circuit

By:   
DAVID SPENCER

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 8, 2010



STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal From Florence County  
Ralph King Anderson, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

TARUS TREMAINE HENRY, Sr.,

Appellant.

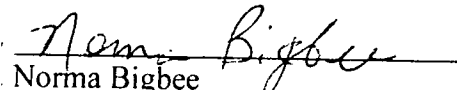
**PROOF OF SERVICE**

I, Norma Bigbee, 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:

LaNelle Cantey DuRant, Esquire  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

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

This 8th day of December, 2010

  
Norma Bigbee  
Legal Assistant

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727