

VOLUME I of II

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**Appeal from Lexington County
D. Craig Brown, Circuit Court Judge**

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S.C. SUPREME COURT

OBLIN BANEGAS-MALDONADO,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000198

APPENDIX

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT (dated November 1-4, 2010).....	1
INDICTMENTS	517
VERDICT FORM	521
SENTENCING SHEETS	522
APPLICATION FOR POST-CONVICTION RELIEF	524
RETURN	532
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	537
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated December 8, 2015).....	540
ORDER OF DISMISSAL	574

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

- VS -

OBLIN BANEGAS-MALDONADO,

Defendant.

TRANSCRIPT OF RECORD

09-GS-32-820 & 821

November 1-4, 2010
Lexington, South Carolina

B E F O R E:

HONORABLE CLIFTON NEWMAN, Judge; and a jury.

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Circuit Court Reporter

INDEX

1		
2	Jury Impaneled	86
3	Jury Sworn	90
4	Opening Statement by Mr. Graham	96
5	Opening Statement by Ms. Fullwood	99
6	State Rests	343
7	Directed Verdict by Ms. Fullwood	343
8	Questioning of the Defendant	352
9	Defense Rests	427
10	Directed Verdict by Ms. Fullwood	428
11	Closing Argument by Ms. Fullwood	437
12	Closing Argument by Mr. Graham	452
13	Jury Charge	466
14	Verdict	501
15	Jury Polling	502
16	New Trial Motion by Ms. Fullwood	506
17	Sentence of the Court	515
18	Certificate	517

19

20

21

22

23

24

25

INDEX OF WITNESSES

	<u>WITNESSES:</u>	<u>PAGE</u>
1	JERRY R. WATSON	
2	In Camera Examination By Mr. Graham	21
3	In Camera Examination By Ms. Fullwood	25
4	In Camera Examination By Mr. Graham	28
5	CYNTHIA LOUISE HOATS	
6	In Camera Examination By Mr. Graham	30
7	In Camera Examination By Ms. Fullwood	33
8	CAROL LYNN FREE	
9	In Camera Examination By Mr. Graham	35
10	In Camera Examination By Ms. Fullwood	37
11	JERRY R. WATSON	
12	In Camera Examination By Mr. Graham	39
13	In Camera Examination By Ms. Fullwood	44
14	STEPHEN JOHN SPIVEY	
15	Direct By Mr. Mobley	101
16	CRAIG MICHAEL JOHNSON	
17	Direct By Mr. Mobley	121
18	MICHAEL SAMUEL MERCKLE	
19	Direct By Mr. Mobley	128
20	Cross By Ms. Fullwood	148
21	ANA PECHECO FLORES	
22	Direct By Mr. Graham	150
23	Cross By Ms. Fullwood	176
24		
25		

1	IVAN VASQUEZ	
2	Direct By Mr. Graham	.194
3	Cross By Ms. Fullwood	.221
4	Redirect By Mr. Graham	.232
5	Recross By Ms. Fullwood	.244
6	DAVID DAY	
7	Direct By Mr. Graham	.245
8	Cross By Ms. Fullwood	.290
9	TROY CRUMP	
10	Direct By Mr. Graham	.296
11	SHANA SORRELLS	
12	Direct By Mr. Mobley	.299
13	KATIE URKA	
14	Direct By Mr. Graham	.308
15	Cross By Ms. Fullwood	.327
16	JANICE EDWARDS ROSS	
17	Direct By Mr. Graham	.329
18	Cross By Ms. Fullwood	.339
19	Redirect By Mr. Graham	.342
20	OLBIN BANE GAS-MALDONADO	
21	Direct By Ms. Fullwood	.363
22	Cross By Mr. Graham	.383
23	Redirect By Ms. Fullwood	.425
24		
25		

1	STATE'S EXHIBITS			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	1	Aerial photo		108
4	2	Aerial photo		113
5	3	Knife		142
6	4	Knife		142
7	5	Diagram		154
8	6	Photograph		156
9	7	Photograph		172
10	8	Photograph		172
11	9	Photograph		172
12	10	Photograph		172
13	11	Photograph		172
14	12	Photograph		172
15	13	Photograph		172
16	14	Photograph		218
17	15	Photograph		250
18	16	Photograph		253
19	17	Photograph		253
20	18	Diagram		254
21	19	Photograph		258
22	20	Machete		259
23	21	Photograph		265
24	22	Photograph		265
25	23	Photograph		265

1	STATE'S EXHIBITS			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	24	Photograph		265
4	25	Photograph		265
5	26	Photograph		265
6	27	Photograph		265
7	28	Photograph		269
8	29	Photograph		269
9	30	Photograph		277
10	31	Photograph		283
11	32	Photograph		283
12	33	Photograph		283
13	34	Photograph		283
14	35	Photograph		283
15	36	Photograph		283
16	37	Photograph		283
17	38	Photograph		283
18	39	Photograph		283
19	40	Photograph		286
20	41	Photograph		288
21	42	Photograph		289
22	43	Photograph		289
23	44	Photograph		289
24	45	Chain of custody		303
25	46	D.N.A. report		312

1	STATE'S EXHIBITS			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	47	D.N.A. report		312
4	48	Photograph		333
5	49	Photograph		333
6	50	Photograph		333
7	51	Photograph		333
8	52	Photograph		333
9	53	Photograph		333
10	54	Photograph		333
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
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25				

1	DEFENDANT'S EXHIBITS			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	1	Photograph	150	291
4	2	Photograph	150	291
5	3	Photograph	193	
6	4	Stick		293
7	5	Metal pipe		295
8	6	Photograph		295

9

10

11

12

13

COURT'S EXHIBITS

14	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
15	1	Jury note	501	

16

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1 (The following proceedings are reported on
2 November 1, 2010.)

3 THE COURT: This is the case of the State
4 versus Banegas-Maldonado. Counsel, counselor? State,
5 defense?

6 MR. GRAHAM: Your Honor, I know that we have
7 translators that are required on this case. I believe
8 they are translating right now. I don't know whether
9 you want to qualify them, and let the record reflect
10 that they are here.

11 THE COURT: I will be happy to do that. Who
12 is the translator?

13 Ms. Frick, do you have a translator's oath?

14 CLERK: They gave me one that they would
15 translate English to Spanish and Spanish to English.

16 THE COURT: You can administer that to them.

17 CLERK: I need both of you to state your names
18 on the record, please, spelling your last.

19 INTERPRETER HUNT: Britt Hunt, B-R-I-T-T,
20 H-U-N-T.

21 CLERK: And your name, please?

22 INTERPRETER GARCIA: Alejandro Garcia,
23 A-L-E-J-A-N-D-R-O, G-A-R-C-I-A.

24 BRITT HUNT and ALEJANDRO
25 GARCIA are both first duly sworn as interpreters.

1 THE COURT: Thank you very much.

2 MR. GRAHAM: Your Honor, the only thing I
3 would add for the record is maybe you inquire into their
4 certifications. It's my understanding that they are
5 both certified with the State of South Carolina and also
6 how many times they have translated in general sessions
7 courts, in civil courts in South Carolina, and I believe
8 in Georgia.

9 THE COURT: If you would come back again,
10 Mr. Hunt and Mr. Garcia.

11 Mr. Hunt, would you state into the record your
12 level of qualifications and any certifications that you
13 might have and also state as to whether or not that
14 complies with your understanding of our Court rules.

15 INTERPRETER HUNT: Yes, Your Honor. I'm
16 certified by the State of Georgia and South Carolina and
17 have been working in the courtroom as an interpreter,
18 Spanish/English for about eight years.

19 I have worked on many cases, including trials.
20 I have a B.A. in Spanish from Clemson and a Master's
21 degree in Latin America studies from Florida
22 International University in Miami.

23 THE COURT: I think I have probably previously
24 qualified you as an interpreter in trials I have had
25 before.

1 INTERPRETER HUNT: Yes, Your Honor, you have.

2 THE COURT: Thank you.

3 INTERPRETER GARCIA: Your Honor, I am a
4 certified interpreter with the Commission of
5 Interpreters in Georgia and the Commission of
6 Spanish/English. My native language is Spanish, and I
7 have been working as a legal interpreter for about seven
8 years, and I have a Master's degree in Latin America
9 studies, and that's it.

10 THE COURT: Have you been previously qualified
11 and certified to interpret in cases in the courts of
12 South Carolina.

13 INTERPRETER GARCIA: Yes, Your Honor.

14 THE COURT: On how many different occasions
15 would you think?

16 INTERPRETER GARCIA: I don't really have a
17 recollection of the number.

18 THE COURT: Five, 10, 15, 20?

19 INTERPRETER GARCIA: I would say about ten
20 times, mostly hearings. This is the first time that I
21 will do a whole trial with Mr. Hunt.

22 THE COURT: All right. Anything further then
23 on that issue, Mr. Graham?

24 MR. GRAHAM: The only thing I would add for
25 the record, Your Honor, is that originally I applied to

1 Judge Keesley for an order appointing Mr. Garcia and
2 Mr. Hunt to be interpreters for my witnesses. Their
3 names were both agreed on and consented to by
4 Ms. Fullwood and the defense for them to be translators
5 for us.

6 It's also my understanding that Ms. Fullwood
7 at some point wants to address, Your Honor, about them
8 actually being translators for her client. Because the
9 order that Judge Keesley has only has them for possible
10 witnesses of mine, not her client, and I know they need
11 to be paid at the end of the day. I just want that
12 clarified for the record.

13 THE COURT: Ms. Fullwood.

14 MS. FULLWOOD: Your Honor, I have brought to
15 court this morning an order authorizing funds to have
16 them translate the trial for Mr. Maldonado. I
17 originally thought that Judge Keesley's first order
18 covered that, and then that got clarified.

19 But since Mr. Maldonado, being from Honduras
20 and not speaking very much English at all, he would need
21 to have everything said in the courtroom translated into
22 Spanish for him. I have worked with this company
23 before. I think they are well qualified and would ask
24 for authorization to use funds for that purpose also.

25 THE COURT: Which company is that again?

1 MS. FULLWOOD: Communicar, these gentlemen.

2 THE COURT: Is there any objection to that by
3 the State?

4 MR. GRAHAM: No, Your Honor.

5 THE COURT: I find pursuant to 17-1-50 of the
6 Code of Laws of Criminal Procedure that Mr. Hunt and
7 Mr. Garcia are competent and certified to act as
8 interpreters in this case. Further, that the need for
9 qualified interpreters is necessary to the fulfillment
10 of justice in this case.

11 It's also necessary that they not only
12 interpret for the benefit of the Court but also to
13 interpret everything as well to Mr. Maldonado, and I
14 will sign whatever order you need me to sign concerning
15 that.

16 MS. FULLWOOD: Thank you, Your Honor. Would
17 you like it right now?

18 THE COURT: Yes, ma'am.

19 (Hands to Court.)

20 THE COURT: What is the first or additional
21 matter?

22 MS. FULLWOOD: If it please the Court.

23 THE COURT: Yes.

24 MS. FULLWOOD: Your Honor, I would move for a
25 continuance of the trial at this time. I do so on two

1 grounds. The first ground is that this morning my
2 client was put into the wrong holding cell at the jail.

3 Instead of being transported to this building,
4 he was taken to federal court in Columbia. When they
5 realized their mistake, they called and got him brought
6 over to the courthouse here.

7 He was taken to the employment entrance
8 downstairs. Rather than being taken up in the elevator
9 that transports people up to the holding cell area, he
10 was taken in, I guess, the public elevator up to the
11 first floor.

12 He was dressed in his orange jail jumpsuit and
13 was wearing ankle and belly chains and handcuffs. He
14 was taken from the elevator to right before the doors of
15 the courtroom.

16 Then he was led back to the elevators. I saw
17 this because I was standing by the glass doors in front
18 of Judge McMahon's chambers. There were jurors coming
19 to sign into the courtroom throughout the morning.

20 As you know, court was a little late in
21 starting today because a lot of jurors had parking
22 problems because of the large number called for this
23 week. So jurors were coming into the courtroom up until
24 Your Honor took the bench.

25 I am not able to tell you how many jurors came

1 in at any particular time because I have talked to the
2 clerk, and while they scan them in, they don't say what
3 time. All I can tell you is I know the little class
4 that was here, the middle schoolers, were out in the
5 lobby and there were other persons there.

6 It would deny my client his right to a fair
7 trial and a due process of law to have him tried by a
8 jury that might very well contain members who saw him
9 dressed in his prison garb.

10 Those people would know that he is a pretrial
11 detainee. That is prejudicial to him, and it denies him
12 constitutional rights to trial by a fair jury and a due
13 process of law.

14 My second ground for a continuance is that
15 late last week, we were given a D.V.D. of a recording
16 made in August of 2008. That recording is of a
17 detective interrogating Mr. Maldonado. The
18 interrogation takes place in Spanish.

19 I was originally told that this D.V.D.
20 contained nothing but static. When I went to listen to
21 it, I found that it did contain talking. It was just in
22 the Spanish language.

23 In addition, when the actual interrogation
24 begins to take place, the microphone is a lot closer to
25 the interrogator than it is to my client. So while you

1 can hear the interrogator, you can only make out some
2 words of what my client said.

3 I have not had this tape of my client's
4 statement -- which I requested, as I always do in any
5 case, everything discoverable under Rule 5. I filed my
6 Rule 5 discovery motion in September of 2008. I got it
7 late last week in November 2010.

8 I have not had an adequate opportunity to take
9 that D.V.D. to a sound engineer to attempt to enhance
10 the portion that contains my client's voice so we can
11 hear exactly what he said.

12 I have not had sufficient time to get what
13 portions are understandable transcribed into English so
14 that I know what was said. Not having that, I have not
15 been able to review what occurred during that
16 interrogation with my client.

17 A local lawyer came to my office yesterday and
18 listened to my tape, that tape with me. This lawyer, I
19 would say, is a lawyer who understands Spanish well
20 enough to represent clients from Latin America but by no
21 means is fluent as to be able to interpret for courtroom
22 purposes.

23 But that lawyer listened to the tape and
24 pointed out to me what he believed to be several
25 problems with the Miranda warnings given and the manner

1 in which the interrogation was conducted.

2 I have not had sufficient time without a
3 transcript to look into what may very well turn out to
4 be compelling reasons to suppress my client's statement
5 to the police.

6 I have not -- I could not at this point go
7 over with my client what he said during that
8 interrogation because I certainly haven't had an
9 opportunity this late in the game to take that D.V.D. to
10 get it enhanced to get a transcript.

11 If I don't know exactly what my client said
12 during that interrogation, I have no way at all to
13 impeach anything the interrogator might claim that he
14 said without a transcript.

15 I need a continuance or Mr. Maldonado, rather,
16 needs a continuance so that his rights under the Fifth
17 Amendment can be protected, so that his right to
18 confrontation can be protected, so that his right to
19 cross examination can be preserved, and so that rights
20 guaranteed by the Sixth and Fourteenth Amendments to
21 effective assistance of counsel can be honored.

22 I believe it was last year that our Supreme
23 Court came out with its opinion in *Ard v. State*. It's a
24 P.C.R. appeal and it discusses the importance of trial
25 counsel conducting an independent factual investigation

1 and hiring the necessary experts to be fully able to
2 rebut the State's allegations against their client.

3 This is a very similar type situation.
4 Discovery is received very late in the day, almost right
5 before trial, and I simply have not been able, because
6 of the delay of over two years in getting the recording
7 itself to the defense, to take the steps that need to be
8 taken to preserve Mr. Maldonado's rights.

9 So for that reason, for both of those reasons,
10 we would ask that Your Honor continue this case. We are
11 not asking for a lengthy continuance. I would think
12 within the next three to four weeks, we should be able
13 to get a sound engineer to do the necessary enhancements
14 and to get a qualified transcriptionist to hopefully --
15 well, we have to find a Spanish/English transcriptionist
16 to make a transcript for us, and we would be ready to
17 go. Thank you, Your Honor.

18 THE COURT: What says the State?

19 MR. GRAHAM: Your Honor, in order, as to
20 Mr. Maldonado being brought in front of the jury panel,
21 my investigation has discovered that he was brought up,
22 and I believe he was in cuffs and he was in an orange
23 jumpsuit.

24 He was brought up the employee elevator, which
25 is the one here on the fourth floor closest to the

1 Solicitor's Office. Jurors do not ride up and down
2 that, and it's my understanding no jurors were present
3 coming up or going down the elevator.

4 When Mr. Maldonado and Deputy Watson came out
5 of the elevator, they did walk across the lobby, so from
6 one side of the courthouse to the other on the fourth
7 floor across the lobby area, came to the door, and then
8 Deputy Watson realized that the jurors were present.

9 He turned around and took Mr. Maldonado back
10 to the fourth floor employee elevator and went down. He
11 states that there were no -- there was nobody present,
12 no jurors present.

13 I spoke with Cindy Hoath, H-O-A-T-H, and Carol
14 Free, both with the Clerk's Office. They were the two
15 ladies who were checking the jurors in. In speaking
16 with them, it's my understanding that they were checking
17 in -- or there was one lady near them who was a juror.

18 I believe she was identified to me as the lady
19 in pink. I believe her juror number is 185. They
20 stated that they saw no other jurors present in the area
21 and in the lobby at that time and that it was
22 approximately a minute before any other jurors stepped
23 forward.

24 I think we could disqualify that juror from
25 the panel, and I believe that the issue could also be

1 solved by Your Honor asking a question of whether the
2 jury panel recognizes Mr. Maldonado or had seen him
3 prior to the moment in court when he is introduced to
4 them. I believe that would sufficiently cover any
5 exposure Mr. Maldonado had in his jumpsuit in front of
6 the jury panel.

7 THE COURT: Let's focus on that issue a little
8 more. Any response, counsel?

9 MS. FULLWOOD: Simply that I saw with my own
10 eyes him being taken down in the public elevator.

11 THE COURT: The public elevator and the
12 employee elevator, they are different elevators?

13 MS. FULLWOOD: Yes, sir. The public elevators
14 are right out here and it opens up into the hallway
15 where the stairwells are, and I saw him get into one of
16 those.

17 THE COURT: The person referenced, Officer
18 Watson, is he here?

19 MR. GRAHAM: Yes, Your Honor. All three of
20 those individuals are here.

21 THE COURT: Do you want to examine any
22 witnesses on the issue?

23 MR. GRAHAM: I believe it would be
24 appropriate, Your Honor.

25 THE COURT: Officer Watson.

JERRY WATSON -- IN CAMERA -- MR. GRAHAM

21

1 JERRY R. WATSON, being
2 first duly sworn, testifies as follows:

3 CLERK: Once you are seated, state your full
4 name, spelling your last.

5 THE WITNESS: Jerry R. Watson. The R. is for
6 Ronnie, W-A-T-S-O-N.

7 IN CAMERA EXAMINATION

8 BY MR. GRAHAM:

9 Q Deputy Watson, where are you employed?

10 A The Lexington County Sheriff's Department.

11 Q And how long have you worked for the Sheriff?

12 A Right at four years now.

13 Q What job responsibility do you have currently for
14 the Sheriff's Department?

15 A Court security and transport.

16 Q And were you involved in transporting the Defendant
17 today?

18 A I was, sir.

19 Q When did you first come in contact with
20 Mr. Maldonado?

21 A Approximately 9:15 maybe, 9, 9:15.

22 Q Where did that happen at?

23 A It took place at the employee entrance downstairs
24 under the parking garage.

25 Q The employee entrance downstairs under the parking

1 garage, is that a public access entrance?

2 A No, sir. No, sir, the public is not down there.

3 Q Were there any people when you brought -- when you

4 first got Mr. Maldonado and he was in the

5 courthouse, who did you receive him from? Who

6 brought him to you?

7 A One of the other deputies, one of the other

8 transport deputies.

9 Q And you exchanged and took possession of

10 Mr. Maldonado down in the employee --

11 A Yes, sir.

12 Q -- in the lobby area outside of the employee

13 elevator?

14 A Yes, sir, just outside the elevator there.

15 Q Were there any jurors present or anyone else?

16 A No, sir, there were two others police officers.

17 Q From the lobby outside the elevator in the

18 basement, where did you go with Mr. Maldonado?

19 A Into the elevator. I was instructed to get him

20 here as quickly as possibly because we were already

21 running behind due to the mixup of transport.

22 Q On the way up the elevator, you were coming to the

23 fourth floor; is that right?

24 A Yes, sir.

25 Q On the way up the elevator, did anyone get on with

1 you?

2 A No, sir -- well, yes, sir, they did. In fact, my
3 master deputy was on the elevator with me.

4 Q Was there any jurors or anyone you didn't recognize
5 on the ride up the elevator?

6 A No, sir.

7 Q When you came out of the elevator on the fourth
8 floor, where did you go?

9 A I came straight across to the table where the
10 clerks were at signing people in. Then I looked
11 inside the door, and that's when I saw all the
12 folks inside, and I turned and left with him.

13 Q Did you or Mr. Maldonado come into the courtroom?

14 A No, sir.

15 Q Are you aware of any jurors who saw -- potential
16 jurors -- who would have seen Mr. Maldonado at that
17 time?

18 A Possibly one. It was a white female, kind of a
19 purple-colored sweater, light-colored hair.

20 Q Where was she standing and where were you and
21 Mr. Maldonado at?

22 A She was actually at the table where the clerk was
23 at.

24 Q And at that time how was Mr. Maldonado dressed?

25 A In his jumpsuit and restraints.

1 Q And after you looked into the courtroom, where did
2 you go with him?

3 A Straight back towards the elevators. And anybody
4 that works here knows, that elevator takes forever.
5 So I took him on the fastest elevator down to the
6 third floor so that I could bring him up a secured
7 way in the back.

8 Q On the way from the door to the elevator -- and you
9 are talking about one of the public elevators, the
10 two that are in the main lobby for public use?

11 A Yes, sir.

12 Q Did you come in contact with any potential jurors
13 or anyone else?

14 A No, sir, the elevator was empty. It was already
15 open and empty.

16 Q And you rode from the fourth floor to what floor?

17 A Third.

18 Q What is going on in the third floor today?

19 A I didn't see anybody down there.

20 Q From when you got off on the third floor with
21 Mr. Maldonado, where did you go?

22 A Straight to the rear to what we call the inmate
23 elevator, of course, behind all the courtrooms and
24 then came up.

25 Q So once you got off the third floor and went to the

1 secured areas of the courthouse, there was no more
2 public that would have seen Mr. Maldonado?

3 A No, sir.

4 Q Please answer any questions that Ms. Fullwood has
5 on this issue.

6 **IN CAMERA EXAMINATION**

7 BY MS. FULLWOOD:

8 Q Officer, what is your department's protocol for
9 bringing inmates into the building for courtroom
10 proceedings?

11 A When I transport them, we bring them up the back
12 elevator.

13 Q That would be the inmate elevator?

14 A Yes, sir.

15 Q So that's your protocol?

16 A When I transport them, yes.

17 Q Inmates do not normally use the public elevators to
18 be transported to the courtroom, do they?

19 A It depends. It happens quite frequently.

20 Q For security purposes, is it your protocol to use
21 the inmate elevator?

22 A If I'm transporting, yes.

23 Q Isn't the protocol for everyone that works in your
24 division to use the inmate elevators?

25 A If we as a unit are transporting, yes.

1 Q Which deputy brought Mr. Maldonado to you down at
2 the employee entrance?

3 A Ladonna David.

4 Q And where did he bring him from?

5 A She brought him from the federal courthouse is my
6 assumption.

7 Q Did she just walk him into the building?

8 A When she drove up downstairs at the employee
9 entrance, she exited her van, went to the rear, let
10 him out, brought him in the door to me so that we
11 could exchange restraints. They use different
12 restraints than we do. From that point is when I
13 left with him to get on the elevator.

14 Q All right. What is the protocol for bringing
15 someone to the jail -- to the courthouse -- when
16 that person has a trial scheduled for that day?

17 A Bringing them to the jail you say?

18 Q To the courthouse, from the jail to the courthouse.

19 A Normally --

20 Q When they are going to trial that day.

21 A Normally, since I do transport 99 percent of the
22 time, I am doing the transport, I will go pick up
23 the individuals, call roll there, make sure I have
24 the proper individuals, return to the sallyport
25 here at the courthouse, and bring them up to

1 whatever floor they need to go to.

2 Q And what safeguards do you have in place so they
3 aren't exposed to jurors wearing their jumpsuit and
4 restraints?

5 A That would be the normal routine that I just
6 explained to you.

7 Q Using the inmate elevator?

8 A Yes.

9 Q And taking them through the secured areas?

10 A Yes.

11 Q And you have access to the inmate elevator at the
12 employee entrance, do you not, from downstairs
13 under the building?

14 A Can you repeat that one more time?

15 Q You can get to the inmate elevators from the
16 employee entrance, can't you?

17 A Sure. As long as you walk back through the parking
18 garage and wait on the other roll-up door to open.
19 You are standing outside the whole time, and then
20 you can go in that secured area.

21 Q But rather than use the inmate elevator, you took
22 him up in the employee elevator and then back down
23 on the public elevator? Is that how it happened?

24 A Yes, ma'am.

25 Q All right.

1 MS. FULLWOOD: No further questions, Your
2 Honor.

3 THE COURT: Anything else?

4 IN CAMERA EXAMINATION

5 BY MR. GRAHAM:

6 Q Just clarifying where some of the elevators are,
7 deputy. The public access elevators are on what
8 level of this courthouse?

9 A The plaza level, second floor, third floor, and
10 fourth floor.

11 Q The employee elevator is -- the entrance to the
12 employee elevator is located where?

13 A Beneath the plaza level, ground floor.

14 Q So beneath the parking garage and the plaza level?

15 A Yes, sir.

16 Q What floors does that elevator stop on?

17 A It's stops at the plaza level, second floor, third
18 floor, fourth floor.

19 Q There is also an inmate elevator that we talked
20 about. Where is that in location to those other
21 two elevators?

22 A It's the same as the employee elevator.

23 Q How close physically is it to the employee
24 elevator?

25 A Oh, it's not close. I mean, the way a crow flies

JERRY WATSON -- IN CAMERA -- MR. GRAHAM

29

1 it's close. If you left the employee entrance, you
2 would have to physically go back outside the
3 building, walk through the parking garage, and wait
4 on a door to open to enter and go through another
5 hallway to get to that one.

6 Q When you took custody of Mr. Maldonado over in the
7 lobby area of the employee entrance, what thought
8 process did you have why you went up that elevator
9 as opposed to taking him --

10 A To get the individual to court so that he could get
11 dressed and ready so his attorneys would have time
12 to talk to him before the trial started.

13 Q When you chose to go back down the public elevator,
14 why did you choose that elevator?

15 A Speedy, because the employee elevator takes
16 forever.

17 Q And that was to get him off the floor and out of
18 the view of everyone?

19 A Yes, sir.

20 Q Thank you, Deputy.

21 THE COURT: Anything further?

22 MS. FULLWOOD: No, Your Honor.

23 THE COURT: Thank you, sir.

24 MR. GRAHAM: Cindy Hoats.

25 CYNTHIA LOUISE HOATS, being

1 first duly sworn, testifies as follows:

2 CLERK: Once you are seated, state your full
3 name, spelling your last on the record.

4 THE WITNESS: Cynthia Louise Hoats, H-O-A-T-S.

5 **IN CAMERA EXAMINATION**

6 BY MR. GRAHAM:

7 Q Ms. Hoats, where are you employed?

8 A With the Lexington Clerk of Court's Office,
9 specifically general sessions.

10 Q And how long have you been employed with the Clerk?

11 A January of 2008.

12 Q What, if any, job duties do you have regarding jury
13 service?

14 A I have been in training to pull jurors, and I help
15 any coworkers that I have who are entering the
16 jurors and pulling reports so that we may have them
17 come into the courtroom.

18 Q Would you explain to the Court what contact you had
19 with any of the potential jurors this morning?

20 A Once they come in, I take their name and/or number,
21 confirm their address, check their mileage, give
22 them a card that is for information purposes only.
23 My coworker scans them in, which is on our C.M.S.
24 juror program. That would generate a report
25 stating that they are here. Once there is a

1 bailiff or officer, they are let into the
2 courtroom.

3 Q Approximately what time did you begin interacting
4 with the public today?

5 A 8:30.

6 Q And were you present -- physically where is -- you
7 have a table that you do this at outside the
8 courtroom?

9 A Correct.

10 Q Could you describe to the Court where that is in
11 relation to the courtroom and lobby?

12 A The table is approximately a foot away from the
13 first courtroom entrance door.

14 Q And who was with you? Was there anyone else from
15 the Clerk's Office that was assisting you?

16 A From the what?

17 Q From your office, the Clerk's Office.

18 A My coworker, Carol Free.

19 Q And do you know Deputy Ronnie Watson?

20 A Yes, I do.

21 Q Were you present when Deputy Watson escorted
22 Mr. Maldonado from the elevator to the courtroom
23 and back to the elevator?

24 A Yes, I was.

25 Q Were you or Ms. Free in the process of checking in

1 -- was there a line of jurors at that time?

2 A There was not a line. There was a lull at that
3 time. We had one juror present.

4 Q And were you able to identify who that juror was?

5 A I would have to be given the number. I have
6 forgotten it, but I can identify her and I know
7 what she was wearing.

8 Q What was she wearing?

9 A She was wearing a pink sweater. She had blond
10 hair, white female, and she had a matching pink bag
11 with her outfit.

12 Q Was there any other potential jurors, either jurors
13 that you had already checked in or jurors that were
14 going to be checked in, present at that time?

15 A No, sir.

16 Q And approximately how long was it before you came
17 in contact with anymore potential jurors or people
18 checking in?

19 A Deputy Watson had already left the floor before
20 anyone else came up.

21 Q Were you able to see the elevators from where the
22 table was?

23 A I have just a side, a peripheral vision. I was not
24 concentrating because I was checking in that juror
25 at that time.

CYNTHIA HOATS -- IN CAMERA -- MS. FULLWOOD

33

1 Q Thank you, Ms. Hoats. Please answer any questions
2 Ms. Fullwood has.

3 IN CAMERA EXAMINATION

4 BY MS. FULLWOOD:

5 Q Was Mr. Maldonado with Deputy Watson the entire
6 time?

7 A Yes.

8 Q And this table is right outside the courtroom?

9 A Yes, sir.

10 Q So the record is clear, you talked about the first
11 doors and second doors to the courtroom. The first
12 doors are solid wood doors, correct?

13 A It would be my right looking at the two doors. It
14 would be my right-hand door, and our table is right
15 next to it.

16 Q Correct. And just so we can get a description of
17 how this courtroom is set up in the record, okay,
18 the outer doors to the courtroom, the one your
19 table was by, they are solid wood; right?

20 A Correct.

21 Q There are no windows?

22 A Correct.

23 Q In order to be able to look into the courtroom, you
24 would have to go through those doors to the second
25 pairs of doors; right?

1 A Correct, unless they have been opened.

2 Q And those doors, half of them -- the upper half is
3 glass panes, and they the lower half is solid wood?

4 A Correct.

5 Q So anyone sitting in the courtroom could look back
6 through those glass panes and see someone standing
7 in the vestibule between the first doors to the
8 courtroom --

9 A They could, except I believe that both doors were
10 open.

11 Q Well, if both doors were open, then someone could
12 be in the courtroom and look back and see who was
13 standing in the hallway or the little corridor area
14 close to where your table is?

15 A It is a possibility.

16 MS. FULLWOOD: No further questions.

17 MR. GRAHAM: Nothing else for Ms. Hoats.

18 THE COURT: All right. Further witnesses on
19 this issue?

20 MR. GRAHAM: One more, Your Honor.

21 THE COURT: All right.

22 MR. GRAHAM: Carol Free.

23 CAROL LYNN FREE, being
24 first duly sworn, testifies as follows:

25 CLERK: Please take the stand. State your

1 full name and spell your last name.

2 THE WITNESS: Carol Lynn Free, F-R-E-E.

3 IN CAMERA EXAMINATION

4 BY MR. GRAHAM:

5 Q Ms. Free, where are you employed?

6 A The Clerk of Court's Office.

7 Q How long have you worked for the Clerk?

8 A About six weeks.

9 Q What, if any, contact -- what are your job duties?

10 A I send out the jury summons and I scan them in,
11 anything to do with getting the jury in.

12 Q Did you assist Ms. Hoats with the jury process this
13 morning?

14 A Yes, I did.

15 Q Would you explain in general what that is?

16 A We have our table set up right outside the
17 courtroom. I scan them in with a bar code when
18 Cindy calls out their number.

19 Q And when I talk about Deputy Watson, do you know
20 who I'm talking about?

21 A Yes.

22 Q Were you present assisting Ms. Hoats when Deputy
23 Watson walked the Defendant in front of you?

24 A Yes.

25 Q Were there any jurors present or potential jurors

1 present at that time who would have seen that?

2 A Just one.

3 Q And were you able -- have you been able to identify
4 by number who that juror is yet?

5 A Yes.

6 Q What was the number of that juror?

7 A I don't remember her number. I know what she looks
8 like.

9 Q If you saw her, you would recognize her?

10 A Yes.

11 Q Would you describe to the Court what she looked
12 like?

13 A She was a white female, blond. She had on a pink
14 sweater and she had a pink matching bag.

15 Q Were there any other jurors present at that time?

16 A No.

17 Q Were you also still there when Deputy Watson walked
18 Mr. Maldonado back over to the elevators?

19 A Yes.

20 Q Were there any other jurors, other than the juror
21 you mentioned, present at that time?

22 A No.

23 Q Did you pay attention and know -- did you see
24 Mr. Maldonado and Deputy Watson get onto the
25 elevator?

CAROL FREE -- IN CAMERA -- MS. FULLWOOD

37

1 A Not get on it. I saw them go that way, but I did
2 not see them get on the elevator.

3 Q Approximately -- after the two of them walked over
4 there and out of your view, approximately how long
5 was it before any other potential jurors either
6 came from the courtroom out or new jurors coming
7 up?

8 A He was gone. There were no other jurors when he
9 was out there.

10 Q Please answer any questions that Ms. Fullwood has.
11 Thank you.

12 THE COURT: Ms. Fullwood.

13 MS. FULLWOOD: Thank you, Your Honor.

14 IN CAMERA EXAMINATION

15 BY MS. FULLWOOD:

16 Q When you say there were no other jurors after he
17 left, you don't mean that all the jurors had
18 arrived at the courthouse by that time?

19 A No.

20 Q Because a number of them were scanned in after
21 Mr. Maldonado was in court, correct?

22 A Yes.

23 Q The table that you were sitting up at is against
24 the wall, right, that runs parallel to the back
25 wall of this courtroom; right?

- 1 A Yes.
- 2 Q You sit at it and your chairs are faced towards the
3 back wall, the windows, of the courthouse; right?
- 4 A Yes.
- 5 Q And from where you are sitting, you cannot see into
6 the vestibule between the first and second set of
7 doors to the courtroom; correct?
- 8 A Correct.
- 9 Q So you weren't in a position to see whether or not
10 they were any prospective jurors in that vestibule
11 at the time Mr. Maldonado was brought to the
12 courtroom, correct?
- 13 A Correct.
- 14 Q Also the way your table is set up, if you are
15 sitting the way you would be sitting facing the
16 wall, on your right-hand side there is a corner
17 that goes around into what forms the lobby area of
18 the fourth floor; correct?
- 19 A Correct.
- 20 Q And from where you were sitting, you could not see
21 the entire lobby area of the fourth floor; could
22 you?
- 23 A Not the entire area, no.
- 24 Q So you don't know if any prospective jurors were in
25 the lobby area that you couldn't see, correct?

JERRY WATSON -- IN CAMERA -- MR. GRAHAM

39

1 A Correct.

2 MS. FULLWOOD: No further questions, Your
3 Honor.

4 THE COURT: Anything further?

5 MR. GRAHAM: Nothing for her. For
6 clarification I would like to call Deputy Watson back on
7 one issue.

8 THE COURT: All right.

9 CLERK: Is he still under oath, Your Honor?

10 THE COURT: Still under oath.

11 JERRY R. WATSON, having been
12 previously duly sworn, resumes the witness stand and
13 testifies as follows:

14 IN CAMERA EXAMINATION

15 BY MR. GRAHAM:

16 Q Deputy Watson, describe the doors to this
17 courthouse and into this courtroom. How many doors
18 are there and how are they set up?

19 A Well, there's eight at the front and two here and
20 then two behind me. They all open outward. This
21 one opens in, I'm sorry.

22 Q Referring specifically to the public entrance into
23 the courtroom, how many doors are there?

24 A There is a total of eight, two on each side on the
25 outside and then two on each side on the inside

1 there.

2 Q The ones on the outside, are those solid doors or
3 do those doors have glass in them?

4 A They are solid.

5 Q And then approximately how many feet from those
6 four solid doors is it in the vestibule area before
7 you hit the next set of doors?

8 A Five feet maybe, six feet.

9 Q The second set of doors, are those doors solid or
10 are they glass?

11 A They are half and a half, solid at the bottom and
12 glass at the top.

13 Q When you came over with Mr. Maldonado, referring
14 specifically to the outside doors first, what, if
15 any, of those doors were opened or closed?

16 A On this side of the entrance which would be my
17 right, both of those doors were swung open,
18 outwardly.

19 Q Then how about the other two?

20 A I think one of those may have been open if I
21 remember correctly.

22 Q The inside doors, the next set, the ones that are
23 part wood and part glass, were those doors open or
24 closed?

25 A That is what I was referring to. I think maybe one

1 of those glass doors were propped open.

2 Q So on the outside, the two doors on the left, two
3 solid doors on the left, were closed and the two
4 solid doors on the right were propped open?

5 A Yes.

6 Q The inside doors, the two doors part wood and part
7 glass on the left were closed?

8 A Yes, sir.

9 Q And you believe that one of the two doors on the
10 right, being a door of part wood and part glass,
11 was open?

12 A Yes, sir.

13 Q What was the farthest part when you came around
14 that corner that you came into the courtroom? What
15 did you see?

16 A I didn't come into the courtroom. I never broke
17 the plane of the doors. As I stepped by the table
18 where the clerks were sitting, as soon as I stepped
19 by the table, that's when I noticed people in here,
20 and I immediately turned and left with the inmate.

21 Q What set of doors are you referring to?

22 A The outside solid doors.

23 Q Where was Mr. Maldonado at that time? Was he
24 behind you or in front of you, beside you, where?

25 A Basically at an angle to me from behind.

1 Q Did he ever -- was he ever in a position where he
2 could have seen into the courtroom?

3 A No.

4 Q Was he ever in a position that anyone in the
5 courtroom could have seen him?

6 A Not unless they could see through the door.

7 Q You mean through a solid door?

8 A Yes, sir.

9 Q Thank you, Deputy.

10 THE COURT: Officer Watson, how long have you
11 worked in law enforcement?

12 THE WITNESS: I've been with Lexington County
13 right at four years. Before that I was with the City of
14 Columbia. That's where I started my career back in '89.

15 THE COURT: Twenty years?

16 THE WITNESS: No, sir, I got out for a while.
17 I had to make some more money.

18 THE COURT: Your job is transport, you say?

19 THE WITNESS: Ninety-eight percent of the
20 time, yes, sir, that's what I do for Lexington County.

21 THE COURT: Tell me what particular concerns
22 you address on the issue of having prisoners appear
23 before the jury in prison garb.

24 THE WITNESS: I'm not sure I quite understand
25 what you are asking me, sir.

1 THE COURT: Is that a concern of yours?

2 THE WITNESS: To a certain extent, yes, sir.
3 That's the reason I turned and left with him.

4 THE COURT: That's what I want you to explain
5 to me, why that is an important issue to you and how do
6 you address it?

7 THE WITNESS: I mean, I don't choose sides.
8 Obviously I wasn't there when whatever took place took
9 place for the inmate to be in the position he is in. So
10 I don't choose sides, and it's important to me that he
11 have just as much chance and fair enough chance as
12 anybody else would have in any situation.

13 THE COURT: As part of your training -- and
14 this sort of goes back to the previous question when you
15 were on the stand before -- based on your training and
16 protocols of Lexington County, do you endeavor to
17 prevent inmates from being exposed to potential jurors
18 when they are dressed in prison garb?

19 THE WITNESS: As much as possible, yes, sir.

20 THE COURT: How do you all seek to minimize
21 that contact with the general public if they are dressed
22 in jail clothes?

23 THE WITNESS: The general public or jury
24 panel?

25 THE COURT: Jury panel.

1 THE WITNESS: That's why we would normally
2 bring them up the back elevator. Because once we go
3 into the sallyport, the door closes behind you. It's
4 one of the big steel roll-up doors, the same as at the
5 judge's parking garage.

6 THE COURT: Thank you, sir. Questions,
7 Ms. Fullwood?

8 IN CAMERA EXAMINATION

9 BY MS. FULLWOOD:

10 Q Officer Watson, regardless of any feelings you
11 might have about how people should be treated,
12 isn't it true that part of your training is that
13 you've got to keep people from being seen by the
14 jury in prison garb because it could jeopardize the
15 trial or could result in a reversal on a trial on
16 appeal and that just shouldn't be done? Don't they
17 train you that that's part of what you need to try
18 to keep from happening?

19 A I don't know how to answer that question. I mean,
20 that's pretty standard, yes. I won't go into
21 saying that I was given a book or a verbal test on
22 that as part of training because that's not written
23 that I have seen. But what is written is that we
24 move efficiently and as quickly with an inmate as
25 possible and get them where they are supposed to be

1 as securely as possible.

2 Q Haven't your supervisors ever told you, don't let
3 the jury see the defendant wearing his jail uniform
4 or in the chambers?

5 A No.

6 Q So nobody at the Sheriff's Department has ever told
7 you in any way, shape or form that that is
8 impermissible?

9 A Now that you have rephrased the question, yes.

10 Q Can you tell us about that. How did you come to
11 know that was a thing to try to avoid? How do you
12 know you are not supposed to do that?

13 A Just by simply talking with other deputies and, of
14 course, dealing with my supervisor, in particular
15 Sergeant Pathel.

16 Q You knew Mr. Maldonado was scheduled to go to trial
17 today, correct?

18 A Uh-huh. (Indicating affirmative response.) I did.

19 Q Why did you break protocol and not bring him up the
20 inmate elevator through the secured areas where the
21 public could not see him?

22 A I don't think I broke protocol, ma'am. When I
23 transport an individual, I bring them up that
24 elevator. When I transport an individual, an
25 inmate, that's where I take them.

1 Q Through the inmate elevator?

2 A Exactly.

3 Q Why didn't you use the inmate elevator?

4 A I did not transport the inmate, ma'am. I was
5 getting the inmate here the quickest way I could
6 and the most secure way I could so that you could
7 talk to your client and he could get dressed for
8 trial because he was already late.

9 Q Well, is the way you take somebody into the
10 courthouse, somebody who is about to stand trial,
11 dependent on whether you actually drove them here
12 or not? Isn't the end result the same whether you
13 got him at the jail or got him at the courthouse
14 door?

15 A You will have to rephrase that.

16 Q Why do you take them a different way just because
17 you didn't drive him over here?

18 A Well, I could have walked him back out in the
19 public and waited outside for a door to open that
20 takes forever, you know, the roll-up doors. They
21 are not real fast. Well, maybe you don't know but
22 they are not real fast doors by the way.

23 Maybe I could have stood outside with him, but
24 I chose not to. I chose to get him on the
25 elevator, get him up here so that he could get

1 prepared for trial.

2 Q When you say outside, you are not talking about the
3 public area of the courthouse, are you? You are
4 talking about --

5 A People drive through the parking garage every day.

6 Q I thought you said nobody in the public was down
7 there?

8 A They were not at that time.

9 Q And the place where the doors roll up isn't a
10 public area, is it?

11 A Not once you enter it, no.

12 Q Now, when you transport prisoners, isn't it your
13 job to keep an eye on them at all times?

14 A Sure.

15 Q And isn't it your job to be able to have a good
16 view of them and see what they are doing with their
17 hands and doing with their feet so they don't do
18 anything wrong, like try to escape or anything like
19 that?

20 A Yes, definitely.

21 Q All right. So --

22 THE COURT: We are not going to take this into
23 a class on jailhouse security, are we?

24 MS. FULLWOOD: Last question, Judge.

25 THE COURT: All right.

1 MS. FULLWOOD: Last question.

2 BY MS. FULLWOOD:

3 Q So if that's the case, why were you allowing
4 Mr. Maldonado to walk behind you when you were
5 coming up to the courtroom doors?

6 A I never said he was behind me. I said he was off
7 to my side here because I had my hand on his arm
8 the whole time.

9 Q I thought you said he was at an angle from behind?

10 A This (indicating) is an angle and this is where I
11 had him, okay?

12 Q All right.

13 A I had a hold to him.

14 MS. FULLWOOD: That's all.

15 THE COURT: Anything further of this witness?

16 MR. GRAHAM: No, Your Honor.

17 THE COURT: You may step down.

18 THE WITNESS: Thank you, sir.

19 THE COURT: Any witnesses by the defense?

20 MS. FULLWOOD: No, Your Honor.

21 THE COURT: I deny the motion for a
22 continuance based on the grounds argued by counsel.

23 There has been no showing that his fair trial right --
24 that a fair and impartial jury cannot be seated.

25 Jurors can be questioned as to whether or not

1 any of them recognize and have previously seen this
2 Defendant. I believe it's speculation to claim that the
3 approach taken by the deputies exposed or paraded, in
4 effect, the Defendant before the jury panel.

5 The one juror who was present will be excused
6 from the trial. The other jurors will be questioned to
7 ensure that none of them have seen Mr. Maldonado before
8 now.

9 The next issue, Mr. Graham?

10 MR. GRAHAM: Thank you, Your Honor. The
11 second issue is related to the recorded statement made
12 by the Defendant. After Mr. Maldonado was arrested, he
13 was interviewed by Detective Luis Rivera.

14 In his report Mr. Rivera reflects that he
15 Mirandized him. Mr. Maldonado stated he stopped by his
16 house to pick up a knife and that he was assaulted and
17 defended himself.

18 That's the substance of the supplemental
19 report written by the officer. That was turned over in
20 discovery a long time ago, Your Honor. In that report
21 it also reflects that there was a recorded statement.

22 I ultimately was able to obtain a copy of that
23 recording last week. It was done on a small, personal
24 digital recorder their Detective Rivera had with him.
25 He informed me that the quality was extremely low, and

1 you couldn't hear much.

2 We had difficulty -- he had difficulty
3 downloading that off of that recorder onto a media where
4 I could transfer it to the defense. Ultimately I did
5 give that to Ms. Fullwood or a member of her staff. I
6 believe they picked it up on Wednesday last week.

7 Ms. Fullwood made me aware this morning that
8 she had listened to it or had somebody listen to it, and
9 it needed to be enhanced, that her client -- you could
10 hear, for most of it, I believe she represented that you
11 could hear the detective fairly well on a large part of
12 it, but you could not understand her client very well.

13 I offered the services of the Sheriff's
14 Department to enhance that for her. She told me that
15 she would rather have her own independent people gain
16 access to that and attempt to enhance and translate it
17 for her.

18 The State has no intention of introducing the
19 recorded statement during this trial because of the
20 quality of it and because of the fact that it is in
21 Spanish and would have to be translated for the jury.
22 We have no intention of using that. I'm not sure what
23 other points Ms. Fullwood had that I need to address on
24 that, Your Honor.

25 THE COURT: Ms. Fullwood.

1 MS. FULLWOOD: Your Honor --

2 THE COURT: Just a moment. Are you ready for
3 the jury?

4 CLERK: Yes, sir.

5 THE COURT: We can take a break here and do
6 that.

7 CLERK: Yes, sir. I will bring them in, get
8 them seated and call the roll. It shouldn't take me but
9 maybe five minutes max.

10 THE COURT: We will take a break in this
11 proceeding while we get the first jury selected for
12 Judge James, and then we will continue with this case.

13 (Whereupon there is a recess.)

14 THE COURT: Ms. Fullwood.

15 MR. GRAHAM: Actually, Your Honor, if I may, I
16 did have a couple of points I wanted to add.

17 THE COURT: Yes, sir.

18 MR. GRAHAM: I stated earlier that we weren't
19 planning on introducing the tape. We are also not
20 planning on introducing the oral statement. So any
21 statement the Defendant made, we are not planning on
22 introducing in our case in chief.

23 If necessary, Your Honor, I will promise to
24 the Court that I will never refer to it, even if the
25 Defendant takes the stand and I cross examine him, that

1 statement or any statement that ever existed.

2 I think at that point the only item
3 Ms. Fullwood would be left with would be if there was
4 something on the recording that potentially she should
5 have followed up on, further investigation as far as the
6 innocence of her client.

7 To that matter I would state that she has had
8 full access to her client for two years. He was
9 present and anything he had to say as far as his
10 innocence, he would and could have shared with her, and
11 she would and could have followed up on it. So I
12 believe under the circumstances, there would be no
13 reason to grant a continuance.

14 THE COURT: Ms. Fullwood.

15 MS. FULLWOOD: Your Honor, as I understand
16 what Mr. Graham said, he does not intend to put any oral
17 statement into evidence, and he would not, if
18 Mr. Maldonado chose to testify, intend to impeach him in
19 any manner, whether with the tape or through a witness
20 with anything that may have been said during that
21 interrogation.

22 If that's -- if I understand what he's saying
23 correctly, then, yes, then we would be down to whether
24 there is anything mitigating on the tape that I would
25 need to look into.

1 As to that issue, I will simply say this.
2 Mr. Maldonado is 24 years old. He is from Honduras. He
3 is not at all assimilated into American culture. He
4 does not speak English. He is not familiar with
5 American customs and ways.

6 He is distrustful of Americans in general and
7 people associated with the criminal justice system in
8 particular. I think probably to a certain extent, that
9 extends to his own lawyer.

10 He only has a second grade education. He is
11 illiterate in his own language. He can neither read nor
12 write it. So there are language and cultural barriers
13 that might have prevented him from informing me of
14 something in mitigation or from him even realizing that
15 something was mitigating.

16 So I will maintain my request for a
17 continuance in order to get a transcript of that
18 interrogation. Beg the Court's indulgence.

19 (Pause.)

20 MS. FULLWOOD: That's all, Your Honor. Thank
21 you.

22 THE COURT: Mr. Graham.

23 MR. GRAHAM: Nothing else on that matter, Your
24 Honor.

25 THE COURT: I deny the motion for a

1 continuance on that basis. The State has indicated they
2 have no intention to use the oral or written statements
3 made by the Defendant.

4 The State has also offered the assistance of
5 law enforcement who can assist in enhancing the quality
6 of the tape should defense counsel elect to take
7 advantage of that.

8 In addition the Court has certified and
9 appointed this morning two interpreters to assist in
10 interpreting English to Spanish and Spanish to English.
11 I think due process is being served in a mighty way in
12 this case.

13 The effort to continue the case, I think, can
14 only be for the purpose of delay and not to enhance the
15 quality of representation, and I deny the motion.

16 MR. GRAHAM: Your Honor, I have one issue from
17 the State if Ms. Fullwood does not have anymore.

18 THE COURT: All right.

19 MR. GRAHAM: Ms. Fullwood and I have discussed
20 about the status of both her client and two of the
21 witnesses in this case. I believe all three of them are
22 illegal aliens in the United States.

23 I believe that that question is inappropriate
24 to be asked, and that information should not be
25 solicited in front of the jury as to the status of

1 either the Defendant or the victims in this case. I
2 believe that it opens them up to bias and prejudice,
3 both against the Defendant and potentially against the
4 witnesses.

5 If the Court deems that that is relevant
6 information and would allow inquiry into that, then I
7 would ask that the jury panel be asked whether they have
8 any bias or prejudice against people who are illegally
9 in the United States and whether that would affect
10 their -- either the weight they would give to their
11 testimony or to any type of jury verdict they would
12 return.

13 THE COURT: Ms. Fullwood.

14 MS. FULLWOOD: Your Honor, my research shows
15 that a person's immigration status is at best marginally
16 relevant to their credibility. The cases basically hold
17 that unless there is some case specific reason that
18 their immigration status is linked to, it's not a proper
19 impeachment question. I agree with Mr. Graham about
20 that and would agree with him that none of us should be
21 asking any of these witnesses anything about their
22 immigration status.

23 My requests for voir dire do contain a
24 question about, not immigration status, but whether any
25 of the prospective jurors hold beliefs or opinions about

1 Latin American immigrants that would prevent them from
2 giving either side a fair trial.

3 I will continue to request that this Court ask
4 that question. The way the question is worded, it has
5 nothing to do with immigration status. It just goes to
6 ethnicity, and I think that it's a proper question.

7 THE COURT: All right. Mr. Graham.

8 MR. GRAHAM: I haven't seen the exact wording
9 of it. I don't know that it wouldn't be proper to at
10 least inquire into the jury about any prejudice or bias
11 they have for people who don't speak English because we
12 will be using translators.

13 THE COURT: Let me hear the question,
14 Ms. Fullwood.

15 MS. FULLWOOD: Yes, sir. Would Your Honor
16 like for me to just go ahead and hand up my requested
17 voir dire at this point?

18 THE COURT: Yes, and share them with counsel.

19 MS. FULLWOOD: Yes, sir.

20 THE COURT: If I can have both the State and
21 defense's voir dire.

22 MR. GRAHAM: Your Honor, the State only has
23 one that we are discussing at this particular moment.

24 MS. FULLWOOD: Your Honor, it's question
25 number nine.

1 (Hands to Court.)

2 THE COURT: Any problem with that question,
3 Mr. Graham?

4 MR. GRAHAM: No, Your Honor. I don't think
5 so. I would add the question about an interpreter.

6 THE COURT: How would you want that question
7 to be?

8 MR. GRAHAM: I guess it would mirror her
9 language. Does any member of the jury panel hold
10 opinions or beliefs about non-English speaking
11 individuals that would prevent them from giving the
12 State or the Defendant a fair trial.

13 THE COURT: Okay.

14 MR. GRAHAM: Your Honor, I believe we
15 discussed earlier about adding a question about whether
16 anybody did see the Defendant, Mr. Maldonado, prior to
17 you introducing him today.

18 THE COURT: All right. I also understand that
19 we have the -- who is the head I.T. person in Lexington
20 here who has appeared? What is your name?

21 MS. KITCHENS: Rose Kitchens.

22 THE COURT: Ms. Rose Kitchens. Who indicates
23 that all jurors who appeared after the lady in pink, who
24 has been identified as juror number 185, who by the way
25 has been taken to Judge James' courtroom as part of the

1 random selection process, but is it true that all jurors
2 who appeared after that juror can be identified as well?

3 MS. KITCHENS: Yes, sir.

4 THE COURT: How many jurors appeared after
5 that juror?

6 MS. KITCHENS: Four.

7 THE COURT: Do you have their juror numbers?

8 MS. KITCHENS: Yes, sir. There's 65, 102, but
9 she has been excused for trial, 114, and 134. That's
10 it.

11 THE COURT: Therefore, as I understand the
12 officer's testimony, all the jurors were in the
13 courtroom except for the juror number 185 who was
14 identified as the lady in pink and that all other jurors
15 were already in the courtroom.

16 That also subsequent to that, juror number 65,
17 114, 134 checked in or clocked in after that particular
18 juror. Any particular voir dire or anything special
19 counsel would request in relation to those particular
20 jurors?

21 MR. GRAHAM: Your Honor, I would move that
22 they be struck from the jury panel unless Ms. Fullwood
23 wants them there. I will leave that up to her. My
24 motion would be to strike them, as maybe they did see.
25 Everybody else was inside. The testimony was nobody

1 was, but I think that could take care of the problem
2 unless Ms. Fullwood objects. I will do whatever she
3 wants.

4 THE COURT: Ms. Fullwood.

5 MS. FULLWOOD: Well, I do not object from
6 striking them from the jury panel. I think that's a
7 clean solution, not waiving my prior motion, but in
8 light of how things are.

9 THE COURT: You want to retract the words
10 clean solution?

11 MS. FULLWOOD: Yes.

12 THE COURT: We will strike those words.

13 MS. FULLWOOD: It's a clean solution given the
14 circumstances.

15 THE COURT: All right. We will not include
16 jurors number 65, 114, and 134. We will not include
17 them in the strike list for this case. In addition to
18 that, I will still ask the question whether anyone
19 recognizes Mr. Maldonado prior to this moment at any
20 time. Anything else then? The panel is coming in at
21 12:25. They have ten more minutes before they come back
22 in. Ms. Fullwood.

23 MS. FULLWOOD: I would, Your Honor.

24 THE COURT: Yes, please.

25 MS. FULLWOOD: I don't know if this is the

1 time Your Honor wants to hear this. I do have some
2 motions in limine.

3 THE COURT: What are they? Well, let me get a
4 little context as far as this case is concerned. If I
5 can hear from the solicitor as to what this case is
6 about. Then I will hear your motions in limine.

7 MR. GRAHAM: You mean factually?

8 THE COURT: Yes, sir.

9 MR. GRAHAM: August 24, 2008, Your Honor, at
10 in Lexington County,
11 which is a fairly big --

12 THE COURT: Which park is that?

13 MR. GRAHAM:

14 THE COURT: All right.

15 MR. GRAHAM: The victim, his common-law wife,
16 another male, his girlfriend, and another male lived in

17 They are all, I believe -- I know the victim,
18 the common-law wife, and the other male who were there
19 are all from Honduras. The Defendant is also from
20 Honduras.

21 I believe that they -- at least two, the
22 victim and the common-law wife, both knew the Defendant
23 from Honduras. I don't know how close the relationship
24 was, but they knew who he was.

25 The victim came to the United States --

1 actually, the Defendant came to the United States, was
2 deported, went back. At some point the victim came to
3 the United States. It's my understanding the Defendant
4 and the common-law wife came to the United States in the
5 same group of people to Lexington County. The victim --

6 THE COURT: How did they get here?

7 MR. GRAHAM: I never asked that question, Your
8 Honor. They are all illegal. I didn't ask for the
9 process of how they made it into the United States.

10 The Defendant was living at or staying
11 at , which is basically just down the street at
12 that mobile home park. It appears to be that the
13 Defendant and another individual named Edin or Eddie
14 Pachecko, who was the fifth male who was probably
15 staying at that house, the house, had been off at a
16 different location, had gotten into some kind of an
17 altercation.

18 The testimony is that Eddie came back, running
19 into the house, pounding on the door. It was
20 locked. He was let in. His sister is the wife of the
21 victim. My understanding is she let him in.

22 The person who was the other male -- not the
23 victim in the house -- he's the one who invited him to
24 stay there. His name is Ivan Vasquez. His testimony is
25 that he was going to kick Eddie Pecheco out and he had.

1 Regardless, the testimony is he pounded on the
2 door, 12:30, 1:00 o'clock in the morning. He came in.
3 He was visibly upset. He discusses that he had been in
4 an altercation with the Defendant and attacked by him.

5 Approximately ten minutes later the door is
6 left partially open, and the Defendant shows up in the
7 doorway, pushes the door open. A verbal discussion
8 begins and he comes charging in the house with a knife
9 in his hand.

10 He goes after trying to get Eddie Pecheco. He
11 and Ana Pecheco Flores, who is the common-law wife of
12 the Defendant (sic), she takes her brother and gets him
13 in a back bedroom.

14 Ultimately he, being Eddie, and she jump out
15 the back bedroom window. The victim was asleep in
16 another bedroom in the house. He woke up. He knows the
17 Defendant. They have -- I wouldn't classify, from what
18 I understand, characterize it as they are friends. They
19 do know each other and they do see each other at times.

20 He had been over to the house, he being the
21 Defendant, had been over to the house prior. Basically
22 the victim was wanting him to calm down, go away, go
23 home, and an altercation began in the house between the
24 two of them. The Defendant grabbing -- at that point he
25 had had two knives -- and attacking the victim on the

1 bed in his bedroom.

2 The other male, Ivan Vasquez, goes and gets a
3 phone, calling 9-1-1. He goes outside. The Defendant
4 follows him outside. The Defendant then begins an
5 altercation with that individual, Ivan. Ivan goes on
6 top of the van to get away from him. Eventually the
7 testimony is that the Defendant threatened him, tried to
8 attack him with a knife.

9 At that time the victim comes out of the
10 house. He has a machete behind his back. He is on the
11 porch and the Defendant is at the bottom of the stairs
12 with the van right there by him.

13 He again, being the victim, tells him to calm
14 down, to go home. He then, being the Defendant,
15 threatens him and begins coming up the stairs at him
16 with the knife in his hand.

17 At that point the testimony is that the victim
18 took the flat of the blade of the machete and struck the
19 Defendant across the shoulder blades, that the Defendant
20 fell down onto the ground or went down to the ground.

21 The Defendant made a statement along the lines
22 of, You hit me. You better kill me. At that point the
23 victim had the machete and came down and raised the
24 machete up to strike him at the bottom of the stairs.

25 At that point the Defendant took a knife in

1 his right hand and stabbed him one time in the stomach.
2 Then the Defendant gathered up another knife that he had
3 laid down on the ground, which he had used to try to get
4 Ivan Vasquez to the ground and have a knife fight with
5 him. Then he fled on foot.

6 The victim's, I believe, his aorta and his
7 stomach was punctured. His intestines came out and he
8 bled to death and I believe died on the way to the
9 hospital. The death was the result of that knife wound.

10 The Defendant was found in the area covered in
11 blood. He had sustained, among other injuries, a wound
12 to his wrist area. I believe that's roughly the facts
13 of the case, Your Honor.

14 THE COURT: All right. Ms. Fullwood, your
15 motions in limine?

16 MS. FULLWOOD: Yes, sir. Your Honor, when we
17 talked to the fact witnesses, they have tended to, not
18 even in response really to what I have been asking them,
19 throw in tidbits about what they think of Mr. Maldonado.

20 They have said things like, He's a bad person.
21 He uses drugs. He is mean when he gets drunk. He
22 killed some dogs. He has been deported before. He is
23 an illegal.

24 All that is inadmissible under Rule 403. I
25 just move in limine to exclude it. I know I have to

1 raise the objection at the time in addition, but I am
2 hoping that the State will caution its witnesses in the
3 strongest possible way not to make these type editorial
4 remarks about Mr. Maldonado's character.

5 THE COURT: All right.

6 MR. GRAHAM: Your Honor, the State would be
7 glad to do that. We will do that and I believe we have
8 done that.

9 THE COURT: All right. I find that these
10 things tend to come up more so on cross examination than
11 on direct.

12 MS. FULLWOOD: I certainly hope not.

13 THE COURT: The exact things that people ask
14 me to limit generally come out during their own cross
15 examination, but we will see how it happens in this
16 case.

17 MS. FULLWOOD: I would also, Your Honor, move
18 to sequester the witnesses in this case. They have
19 given us statements or they said things to us when we
20 have talked to them. They are a little bit different
21 than what they said to the police.

22 THE COURT: You mean that witnesses who were
23 present at the scene?

24 MS. FULLWOOD: Yes, sir, the fact witnesses.
25 I don't have a problem with law enforcement being

1 present.

2 THE COURT: What says the State?

3 MR. GRAHAM: Your Honor, I don't have -- I
4 would ask if you rule that they be sequestered, that any
5 witnesses of the defense be sequestered as well. I
6 would have to get the Victims' Bill of Rights. The
7 common-law wife, I don't know her status under the
8 Victims' Bill of Rights. I would think that she would
9 be allowed in here.

10 THE COURT: She can stay in, the common-law
11 wife.

12 MR. GRAHAM: Then the only other potential
13 fact witness we have is Ivan Vasquez, and I don't
14 believe he has a relation that would allow him to stay
15 in and would just ask if you decide to sequester him,
16 that it would be reciprocal on the defense.

17 THE COURT: It will be reciprocal on both
18 sides. The common-law wife can stay in.

19 MS. FULLWOOD: That is as to fact witnesses.

20 THE COURT: Fact witnesses.

21 MS. FULLWOOD: That's all I have, Your Honor.

22 THE COURT: All right. We will take a few
23 minutes break before the panel comes back in.

24 (Whereupon there is a recess.)

25 THE COURT: We need the jurors back, I guess.

1 It turned out that the final three of the four, all but
2 one was sent to Judge James' courtroom.

3 (The jury panel enters the courtroom.)

4 THE COURT: Solicitor.

5 MR. GRAHAM: Thank you, Your Honor. The State
6 calls for trial Indictment 2009-GS-32-820, the State of
7 South Carolina versus Olbin Noel Banegas-Maldonado,
8 indicted for murder. Indictment 2009-GS-32-821, the
9 State of South Carolina versus Olbin Noel
10 Banegas-Maldonado, indicted for burglary in the first
11 degree.

12 (Hands to Court.)

13 THE COURT: Ladies and gentlemen the State has
14 called for trial the case of the State versus Olbin Noel
15 Banegas-Maldonado. This case comes into court as a
16 result of an indictment returned -- two indictments --
17 returned by the grand jury of Lexington County charging
18 Mr. Maldonado with the murder of one Humberto Caballero
19 Padillo and burglary first degree of the dwelling
20 located on , here in
21 Lexington County.

22 Mr. Maldonado has pled not guilty to the
23 charges contained in these indictments. He is presumed
24 to be not guilty of these charges. He cannot be found
25 guilty unless the State presents evidence which

1 convinces a jury of his guilt beyond a reasonable doubt.
2 That is the purpose of a trial, to determine whether the
3 State can meet that burden of proof.

4 Is any member of the jury panel related by
5 blood or marriage or if you are a close personal friend
6 of anyone employed in the Eleventh Circuit Solicitor's
7 office or the Attorney General's Office? If so, please
8 stand.

9 (There is no response.)

10 THE COURT: No one is standing. If any member
11 of the jury panel is related by blood or marriage or
12 close personal friends with anyone working in the
13 Eleventh Circuit Public Defender's Office, please stand.

14 (There is no response.)

15 THE COURT: We will have counsel for the State
16 to introduce yourself, as well as anyone you would like
17 to introduce.

18 MR. GRAHAM: Thank you, Your Honor.. Shawn
19 Graham with the Solicitor's Office.

20 MR. MOBLEY: Derrick Mobley with the
21 Solicitor's Office.

22 MR. GRAHAM: Assisting us from the Solicitor's
23 Office is our investigator, Kevin Wilson.

24 THE COURT: From the defense?

25 MS. FULLWOOD: I'm Beth Fullwood. I'm a

1 lawyer here in Lexington. Ms. Sally Henry and I are
2 representing Mr. Maldonado. Andy Smith, who is another
3 brand new attorney is going to be assisting us, along
4 with Mary Occhipinti, our paralegal who works with us,
5 all from the same office.

6 THE COURT: Ladies and gentlemen, also I want
7 to inquire whether you are a friend, relative or
8 associate of any of the lawyers present here in this
9 case who have just introduced themselves? If so, please
10 stand. If you know any of them, please stand.

11 (There is no response.)

12 THE COURT: No one is standing. The Defendant
13 in this case is Mr. Maldonado. Mr. Maldonado, if you
14 will stand and face the jury panel.

15 (The Defendant stands.)

16 THE COURT: If any member of the jury panel
17 recognizes Mr. Maldonado or if you have ever seen him
18 before this moment in time, please stand.

19 (There is no response.)

20 THE COURT: Thank you. You may be seated. No
21 one is standing.

22 Ladies and gentlemen, it is absolutely
23 essential that you give complete and accurate responses
24 to all questions that you are asked during this process.
25 Whether you want to come forward and give those answers

1 or simply stand where you are and give these responses,
2 it is critical that you give complete, honest, and
3 accurate responses to all questions.

4 Has any member of the jury panel ever had
5 contact with the Solicitor's Office of this county as a
6 result of being a victim of a crime? If so, please
7 stand.

8 (Juror stands.)

9 THE COURT: Yes, sir, tell us who you are,
10 please.

11 PROSPECTIVE JUROR: Dennis Herlong, Number
12 127.

13 THE COURT: And the circumstances?

14 PROSPECTIVE JUROR: I was attacked by a man
15 who is incarcerated now --

16 THE COURT: A little louder, please.

17 PROSPECTIVE JUROR: I was attacked by a man
18 that is incarcerated now in the South Carolina
19 Department of Corrections, assault and battery, and my
20 home was burglarized by this man.

21 THE COURT: Would that fact affect your
22 ability or prevent you from giving the Defendant in this
23 case a fair trial?

24 PROSPECTIVE JUROR: Not at all. I feel like
25 if the man that done it to me pulls his time and does

1 what Judge Westbrook ordered him to do, I wish him no
2 harm.

3 THE COURT: Thank you, sir.

4 (Juror stands).

5 THE COURT: Yes, ma'am.

6 PROSPECTIVE JUROR: I was a victim of domestic
7 violence.

8 THE COURT: What is your name, please?

9 PROSPECTIVE JUROR: Kimberly Morris.

10 THE COURT: Ms. Morris, would that prevent you
11 from giving this Defendant a fair trial?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Thank you.

14 CLERK: She is number 187, Your Honor.

15 THE COURT: One-eighty-seven. Is any member
16 of the jury panel related to, by blood or marriage or
17 close personal friends with, anyone employed in law
18 enforcement, with any law enforcement agency? If so,
19 please stand.

20 (Jurors stand.)

21 THE COURT: Yes, ma'am, tell us your juror
22 number first.

23 PROSPECTIVE JUROR: Sixty-three. My
24 son-in-law is a State trooper.

25 THE COURT: Would that prevent you from giving

1 this Defendant a fair trial?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: Thank you. Yes, ma'am.

4 PROSPECTIVE JUROR: Juror 140. My cousin
5 worked at S.L.E.D.

6 THE COURT: Would that prevent you from giving
7 this Defendant a fair trial?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: Thank you. Yes, ma'am.

10 PROSPECTIVE JUROR: Number 48.

11 THE COURT: A little louder, please.

12 PROSPECTIVE JUROR: Number 48. My cousin is a
13 State trooper in Calhoun County.

14 THE COURT: Would that prevent you from giving
15 this Defendant a fair trial?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Thank you. Yes, sir.

18 PROSPECTIVE JUROR: Number 24. My
19 brother-in-law works --

20 THE COURT: A little louder, please.

21 PROSPECTIVE JUROR: My brother-in-law worked
22 for various departments of law enforcement.

23 THE COURT: Would that prevent you from giving
24 this Defendant a fair trial?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: Thank you. Yes, sir.

2 PROSPECTIVE JUROR: Number 298. My
3 father-in-law was a magistrate.

4 THE COURT: Thank you, sir. If you have ever
5 been employed in law enforcement, please stand.

6 (There is no response.)

7 THE COURT: No one is standing. If you are a
8 member of or contributor to any organization whose
9 purpose is crime prevention or advocacy of victims'
10 rights, such as M.A.D.D., S.A.D.D., C.A.V.E. or
11 C.A.D.R.E., if so, please stand.

12 (There is no response.)

13 THE COURT: No one is standing. If you have
14 lost a member of your family or close friend as a result
15 of a homicide, please stand.

16 (Jurors stand.)

17 PROSPECTIVE JUROR: A few weeks ago I had a
18 very close friend of my wife and I had been murdered --

19 COURT REPORTER: I'm sorry, Judge. I cannot
20 hear.

21 THE COURT: The court reporter must take down
22 what everyone says. So it's essential that you speak
23 loud enough for her to hear you. Thank you.

24 PROSPECTIVE JUROR: Several weeks ago a very
25 close friend of my wife and I was murdered in his home

1 in his sleep.

2 THE COURT: Your juror number, please?

3 PROSPECTIVE JUROR: Thirty-five.

4 THE COURT: Would that prevent you from giving
5 this Defendant a fair trial?

6 PROSPECTIVE JUROR: Possibly.

7 THE COURT: Juror Number 35. We will not
8 consider you for selection as a juror in this case, but
9 stay with us. Yes, ma'am.

10 PROSPECTIVE JUROR: Number 231. My father was
11 killed in 1991 in Orangeburg County.

12 THE COURT: Tell us your jury number, please,
13 again.

14 PROSPECTIVE JUROR: Two-thirty-one.

15 THE COURT: Would that prevent you from giving
16 this Defendant a fair trial?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: Thank you. Has any member of the
19 jury panel or a family member or close friend ever been
20 the victim of a violent crime? If so, please stand.
21 Violent crimes are rape, robbery, burglary, murder,
22 serious assaults.

23 If you or any member of your family or close
24 friend has ever been the victim of a violent crime and
25 you have not already stood in response to the previous

1 question, please stand and tell us at this time.

2 (Juror stands).

3 THE COURT: Yes, sir.

4 PROSPECTIVE JUROR: Juror 95. I was robbed at
5 gunpoint.

6 THE COURT: And would that prevent you from
7 giving this Defendant a fair trial?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Thank you. Does any member of the
10 jury panel hold opinions or beliefs about Latin American
11 immigrants to the United States that would prevent you
12 from giving the State or the Defendant a fair trial?

13 If you hold any opinions or beliefs about
14 Latin American immigrants to the United States that
15 would prevent you from giving the State or the Defendant
16 a fair trial, please stand.

17 (There is no response.)

18 THE COURT: No one is standing. If you hold
19 any opinion or belief about non-English speaking
20 individuals that would prevent you from giving the
21 Defendant or the State a fair trial, please stand.

22 In this trial we have two other individuals
23 who have not previously stood who are court appointed
24 interpreters because this case involves non-English
25 speaking individuals to a great degree.

1 If you hold any opinion or belief about
2 non-English speaking individuals that would prevent you
3 from giving the State or the Defendant a fair trial,
4 please stand.

5 (There is no response.)

6 THE COURT: No one is standing. Ladies and
7 gentlemen, the indictment in this case alleges that the
8 Defendant with malice aforethought killed Mr. Padillo by
9 stabbing him and that he died as a result thereof and
10 that the Defendant burglarized or broke into a dwelling
11 own or occupied by Mr. Padillo and/or Mr. Vasquez or
12 Mr. Pecheco while armed with a knife or firearm in the
13 nighttime and that that constituted burglary, both of
14 which he has pled not guilty to.

15 But if there is anything about the nature of
16 this offense or these allegations or this case that
17 would -- or these charges -- that would prevent you from
18 giving the State or the Defendant a fair trial, please
19 stand.

20 (There is no response.)

21 THE COURT: If there is anything you have
22 learned today, based on your having appeared for this
23 jury duty or any other reason that you might know of,
24 that would prevent you from sitting as a fair and
25 impartial juror or any other reason that you might know

1 why you should not be selected as a juror, please let me
2 know at this time by standing.

3 (There is no response.)

4 THE COURT: No one is standing. Any
5 additional voir dire questions proposed by the State or
6 the defense?

7 MR. GRAHAM: None from the State, Your Honor.

8 MS. FULLWOOD: None, Your Honor.

9 THE COURT: Ladies and gentlemen, if you will
10 give the clerk your attention, we will proceed with jury
11 selection.

12 MR. GRAHAM: Your Honor, if I can approach
13 briefly.

14 (Hands to Court.)

15 THE COURT: Before we do that, there are a
16 number of prospective witnesses whose names I need to
17 call to determine whether you know any of these folks.
18 The following people may testify in this case, and if
19 you are here, if you would stand as well:

20 Deputy Shaun Spivey from Lexington County
21 Sheriff's Department. Detective Luis Rivera from
22 Lexington County Sheriff's Department. Deputy Flores
23 from the Lexington County Sheriff's Department. Deputy
24 Brian Hinz, H-I-N-Z, Sheriff's Department. Master
25 Deputy Merckle from the Sheriff's Department. Master

1 Deputy Auckerman, Sheriff's Department. Lieutenant
2 Billy Aiken, Sheriff's Department. C.S.I. David Day.
3 C.S.I. is for what?

4 MR. GRAHAM: Crime scene investigator, Your
5 Honor.

6 THE COURT: Crime scene investigator David Day
7 from the Sheriff's Department. Glenn Ross, crime scene
8 investigator, from the Sheriff's Department. Candy
9 Kyzer from the Sheriff's Department. Beth Harmon from
10 the Sheriff's Department. Nikki Rodgers, 9-1-1
11 communications.

12 Jason Hentz, H-E-N-T-Z, with E.M.S. Dan
13 Boyce, E.M.S. Craig Johnson, E.M.S. Deputy Coroner,
14 James Corley. Dr. Janice Ross, from Newberry Pathology.
15 David Krusling from Lexington County Medical Center.

16 There are a number of S.L.E.D. officers,
17 including: Nikki Perry, Amy Stevens, Shana Sorrells.
18 Forensic scientist or toxicologist, Kenneth Bogan.
19 Josetta Singleton. Katie Cox Urka, U-R-K-A, all with
20 S.L.E.D.

21 Ivan Vasquez. Ana Mejia, M-E-J-I-A. Ana
22 Pecheco. Brandon Williams from S.L.E.D. C.S.I. Troy
23 Crump. Gail Arquette. Rosa Lugo. Selena Kinard,
24 S.L.E.D. Sheree Brown, S.L.E.D. Patricia Crooks,
25 S.L.E.D.

1 If you know any of those possible witnesses or
2 if you are a friend or associate with any of them,
3 please stand.

4 (Juror stands.)

5 THE COURT: Yes, ma'am.

6 PROSPECTIVE JUROR: I'm not really a friend,
7 but our kids went to school together.

8 THE COURT: Your kids and Rivera?

9 PROSPECTIVE JUROR: But we can be friends. I
10 just know him from school.

11 THE COURT: Your juror number, please.

12 PROSPECTIVE JUROR: Sixty-six.

13 THE COURT: Would that prevent you from being
14 fair?

15 PROSPECTIVE JUROR: No, sir.

16 THE COURT: Thank you for bringing that to our
17 attention. Anyone else?

18 (There is no response.)

19 THE COURT: Madame Clerk.

20 CLERK: As I call your name, if you will come
21 forward. Number 66, Stacie Davenport.

22 (The juror, a white female, comes forward.)

23 CLERK: What say you for the State?

24 MR. GRAHAM: please present Ms. Davenport.

25 CLERK: What say you for the defense?

1 MS. FULLWOOD: Please excuse Ms. Davenport for
2 this trial.

3 CLERK: Return to your seat, please, ma'am.
4 Number 267, Larry Summers.

5 (The juror, a white male, comes forward.)

6 CLERK: What say you for the State?

7 MR. GRAHAM: Please present Mr. Summers.

8 CLERK: What say you for the defense?

9 MS. FULLWOOD: Please swear Mr. Summers.

10 CLERK: Have a seat in the jury box, sir
11 Number 95, David Garner.

12 (The juror, a white male, comes forward.)

13 CLERK: What say you for the State?

14 MR. GRAHAM: Please present Mr. Garner.

15 CLERK: What say you for the defense?

16 MS. FULLWOOD: Please excuse Mr. Garner.

17 CLERK: Return to your seat, please, sir.
18 Number 170, Jennifer Lyles.

19 (The juror, a white female, comes forward.)

20 CLERK: What say you for the State?

21 MR. GRAHAM: Please present Ms. Lyles.

22 CLERK: What say you for the defense?

23 MS. FULLWOOD: Please swear Ms. Lyles.

24 CLERK: Have a seat in the jury box ma'am.
25 Number 36, Julie Bremer.

1 (The juror, a white female, comes forward.)

2 CLERK: What say you for the State?

3 MR. GRAHAM: Please present Ms. Bremer.

4 CLERK: What say you for the defense?

5 MS. FULLWOOD: Please swear Ms. Bremer.

6 CLERK: Have a seat in the jury box, ma'am.

7 Number 80, Charity Epting.

8 (The juror, a white female, comes forward.)

9 CLERK: What say you for the State?

10 MR. GRAHAM: Please present Ms. Epting.

11 CLERK: What say you for the defense?

12 MS. FULLWOOD: Please swear Ms. Epting.

13 CLERK: Have a seat in the jury box, ma'am.

14 Number 274, Walter Thompson.

15 (The juror, a white male, comes forward)

16 CLERK: What say you for the State?

17 MR. GRAHAM: Please present Mr. Thompson.

18 CLERK: What say you for the defense?

19 MS. FULLWOOD: Please excuse Mr. Thompson.

20 CLERK: Return to your seat, please, sir.

21 Two-thirty-one, Angela Robinson.

22 (The juror, a black female, comes forward.)

23 CLERK: What say you for the State?

24 MR. GRAHAM: Please present Ms. Robinson.

25 CLERK: What say you for the defense?

1 MS. FULLWOOD: Please excuse Ms. Robinson.

2 CLERK: Return to your seat, please, ma'am.

3 Eighty-four, Michael Fields.

4 (The juror, a white male, comes forward)

5 CLERK: What say you for the State?

6 MR. GRAHAM: Please present Mr. Fields.

7 CLERK: What say you for the defense?

8 MS. FULLWOOD: Please swear Mr. Fields.

9 CLERK: Have a seat in the jury box, sir.

10 Number 272, Cindy Thompson.

11 (The juror, a white female, comes forward.)

12 CLERK: What say you for the State?

13 MR. GRAHAM: Please present Ms. Thompson.

14 CLERK: What say you for the defense?

15 MS. FULLWOOD: Please swear Ms. Thompson.

16 CLERK: Have a seat in the jury box, ma'am.

17 Number 17, Donald Beatty.

18 (The juror, a white male, comes forward)

19 CLERK: What say you for the State?

20 MR. GRAHAM: Please present Mr. Beatty.

21 CLERK: What say you for the defense?

22 MS. FULLWOOD: Please swear Mr. Beatty.

23 CLERK: Have a seat in the jury box, sir.

24 Number 48, Monica Chavis.

25 (The juror, a white female, comes forward.)

1 CLERK: What say you for the State?
2 MR. GRAHAM: Please present Ms. Chavis.
3 CLERK: What say you for the defense?
4 MS. FULLWOOD: Please excuse Ms. Chavis.
5 CLERK: Return to your seat, please, ma'am.
6 Number 127, Dennis Herlong.
7 (The juror, a white male, comes forward)
8 CLERK: What say you for the State?
9 MR. GRAHAM: Please present Mr. Herlong.
10 CLERK: What say you for the defense?
11 MS. FULLWOOD: Please excuse Mr. Herlong.
12 CLERK: Return to your seat, please, sir.
13 Thirty-one, Susan Boyer.
14 (The juror, a white female, comes forward.)
15 CLERK: What say you for the State?
16 MR. GRAHAM: Please present Ms. Boyer.
17 CLERK: What say you for the defense?
18 MS. FULLWOOD: Please swear Ms. Boyer.
19 CLERK: Have a seat in the jury box, ma'am.
20 Number, 11 Leroy Barber.
21 (The juror, a white male, comes forward)
22 CLERK: What say you for the State?
23 MR. GRAHAM: Please present Mr. Barber.
24 CLERK: What say you for the defense?
25 MS. FULLWOOD: Please excuse Mr. Barber.

1 CLERK: Return to your seat, please, sir.

2 One-seventy-seven, Beverly McElroy.

3 (The juror, a white female, comes forward.)

4 CLERK: What say you for the State?

5 MR. GRAHAM: Please present Ms. McElroy.

6 CLERK: What say you for the defense?

7 MS. FULLWOOD: Please swear Ms. McElroy.

8 CLERK: Have a seat in the jury box, ma'am.

9 Number 261, Diana Squirewell.

10 (The juror, a black female, comes forward.)

11 CLERK: What say you for the State?

12 MR. GRAHAM: Please present Ms. Squirewell.

13 CLERK: What say you for the defense?

14 MS. FULLWOOD: Please swear Ms. Squirewell.

15 CLERK: Have a seat in the jury box, ma'am.

16 Number 87, Nancy Fogle.

17 (The juror, a white female, comes forward.)

18 CLERK: What say you for the State?

19 MR. GRAHAM: Please present Ms. Fogle.

20 CLERK: What say you for the defense?

21 MS. FULLWOOD: Please swear Ms. Fogle.

22 CLERK: Have a seat in the jury box, ma'am.

23 Number 196, Diane Norris.

24 (The juror, a white female, comes forward.)

25 CLERK: What say you for the State?

1 MR. GRAHAM: Please present Ms. Norris.
2 CLERK: What say you for the defense?
3 MS. FULLWOOD: Please swear Ms. Norris.
4 CLERK: Have a seat in the jury box, ma'am.
5 Alternates, Your Honor?
6 THE COURT: Two alternates.
7 CLERK: Number 187, Kimberly Morris.
8 (The juror, a white female, comes forward.)
9 CLERK: What say you for the State?
10 MR. GRAHAM: Please present Ms. Morris.
11 CLERK: What say you for the defense?
12 MS. FULLWOOD: Please excuse Ms. Morris.
13 CLERK: Return to your seat, please, ma'am,
14 Number 208, Mary Peterson.
15 (The juror, a white female, comes forward.)
16 CLERK: What say you for the State?
17 MR. GRAHAM: Please present Ms. Peterson.
18 CLERK: What say you for the defense?
19 MS. FULLWOOD: Please swear Ms. Peterson.
20 CLERK: Have a seat in the jury box, ma'am.
21 That's alternate number one, Your Honor. Number 25,
22 Wayne Black.
23 (The juror, a white male, comes forward)
24 CLERK: What say you for the State?
25 MR. GRAHAM: Please present Mr. Black.

1 CLERK: What say you for the defense?

2 MS. FULLWOOD: Please swear Mr. Black.

3 CLERK: Have a seat in the jury box, sir.

4 That's alternate number two, Your Honor.

5 (The jury is impaneled at 1:02 p.m.)

6 THE COURT: Any there any matters of law
7 regarding the jury selection?

8 MR. GRAHAM: Not from the State, Your Honor.

9 MS. FULLWOOD: None, Your Honor.

10 THE COURT: Ladies and gentlemen, you have
11 been selected to be the jury in the trial of this case.

12 Ladies and gentlemen, those who were not
13 selected are through for this day. Please call the
14 number after 6:00 p.m. tonight for further instructions
15 as to when you might need to come back.

16 (The jury panel is excused.)

17 THE COURT: Ladies and gentlemen, those of you
18 who have been selected, we are going to break for lunch.
19 If you all would follow the bailiff to see where the
20 jury room is located and for him to give you a few words
21 as to how to come in and come directly into the jury
22 room.

23 You will never come through the courtroom.
24 You will always come into the directly into the jury
25 room. Though you have been selected, you have yet to be

1 sworn. You have not heard anything about this case,
2 other than the brief comment I made earlier.

3 From this point forward, you cannot discuss
4 this case in any form or fashion. I will give you a
5 more complete orientation into the trial of this case
6 once we get back from lunch. We are going to come back
7 at 2:30. At 2:30 is when you will need to be in the
8 jury room. If you will follow the bailiffs, and we will
9 see you at that time.

10 (The jury is excused for lunch at 1:04 p.m.)

11 THE COURT: Anything else before we break for
12 lunch?

13 MR. GRAHAM: Yes, Your Honor, two very brief
14 things. I did realize, as you were reading the
15 indictments, Ivan Vasquez is actually a victim of the
16 burglary. So under the Victims' Bill of Rights, he
17 would be allowed in the courtroom as well and not
18 subject to the sequestration.

19 THE COURT: Well, it sounds pretty mixed up as
20 to whose house it really was.

21 MR. GRAHAM: The testimony, my understanding
22 is, that Mr. Vasquez will say it was his house, and he
23 invited the other individuals to stay there with him.

24 THE COURT: Ms. Fullwood.

25 MS. FULLWOOD: Well, Your Honor, I think it

1 was a pretty lose living arrangement. I think it was
2 basically Mr. Pecheco's house. If Mr. Vasquez is not
3 sequestered, that means nobody is sequestered. It's
4 sort of meaningless, your Court order.

5 THE COURT: Sometimes it is, and it falls that
6 witnesses are victims and there is no real
7 sequestration. Of course, there is no sequestration as
8 a matter of right yet in the rules in State court. If
9 he is a victim -- and he is -- he was called out, and/or
10 victims, so we will let him stay in as a victim under
11 the Victims' Bill of Rights.

12 MR. GRAHAM: Then the only other matter, just
13 for housekeeping, Your Honor, is in previous
14 conversation with Ms. Fullwood, it's my understanding
15 that she will stipulate to the chain of custody on the
16 evidence.

17 I will present the person who collected or
18 obtained the evidence, and then we will be able to go,
19 under that stipulation it's my understanding, to the
20 analyst or the pathologist who would testify regarding
21 that information.

22 THE COURT: Ms. Fullwood?

23 MS. FULLWOOD: That is correct.

24 THE COURT: The stipulation is so noted for
25 the record.

1 MR. GRAHAM: That's all from the State, Your
2 Honor.

3 THE COURT: Anything, Ms. Fullwood?

4 MS. FULLWOOD: Yes, sir. I would like to hand
5 up to the Court a request to charge that I have asked
6 the Court to incorporate into its opening charge to the
7 jury, in its preliminary charge, and then, of course,
8 again at the end of the case if I may.

9 THE COURT: All right.

10 (Hands to Court.)

11 THE COURT: Any objection to that?

12 MR. GRAHAM: No objection from the State.

13 THE COURT: We will tell them all this.

14 MS. FULLWOOD: Thank you, Your Honor.

15 THE COURT: Okay, 2:30.

16 (Whereupon there is a luncheon recess.)

17 THE COURT: Are you ready for the jury?

18 MR. GRAHAM: The State is ready, Your Honor.

19 MS. FULLWOOD: Ready, Your Honor.

20 THE COURT: Bring them on.

21 (The jury returns to the courtroom at
22 2:36 p.m.)

23 THE COURT: Welcome back, ladies and
24 gentlemen. If you all would stand at this time to be
25 sworn.

1 (The jury is duly sworn).

2 THE COURT: Ladies and gentlemen of the jury,
3 the case we are about to try is the case of the State of
4 South Carolina versus Olbin Noel Banegas-Maldonado on
5 the charge of murder and burglary in the first degree.

6 Before we begin the trial, I want to tell you
7 that the trial will probably be different from what you
8 might expect. Many people do not have the chance to
9 actually attend court sessions, and for many of you it
10 may be a first time coming into this courtroom.

11 You may think, as many people do, from
12 watching television or movies or from reading books,
13 that trials are always full of high drama, intense
14 action, and riveting circumstances.

15 Now, while all of these things may be true at
16 times and may occur at times during the course of this
17 trial, this trial, unlike the movies, the books, the
18 television programs, is not for entertainment purposes.
19 It is a fundamental part of our democracy. It is a
20 search for the truth in an effort to ensure that justice
21 is done between the parties before the Court.

22 Searching for the truth and making sure that
23 justice is done is often slow, deliberate, and
24 repetitive, the opposite of what you may have seen or
25 may be accustomed to seeing on television and reading in

1 books or in the movies.

2 The courtroom is a place of honor dedicated to
3 the protection and preservation of the rights of
4 citizens through a system that many have called to be
5 the greatest justice system ever created.

6 The attorneys appearing before you, the
7 solicitors and defense counsel, are advocates for the
8 parties they represent. But, first and foremost, they
9 are officers of the Court, sworn to uphold the integrity
10 and fairness of our judicial system and also to help you
11 in your search for the truth.

12 In that connection you should expect them to
13 be professional, competent, and ethical in their
14 representation of their particular interests. Remember
15 that you have just taken an oath to well and truly try
16 this case and reach a fair and just verdict according to
17 the law and according to the evidence, so help you God.

18 In that connection you are also expected to be
19 professional, reasonable, and ethical. I certainly want
20 to thank you for responding to your juror summons and
21 accepting the important role that you play in providing
22 jury service and contributing to our justice system.

23 Now, as I indicated to you, we are here based
24 on an indictment returned by the Grand Jury of Lexington
25 County charging the Defendant with various crimes. The

1 indictment is simply the charge by which the case is
2 brought into court. It is not in any sense evidence of
3 any of the allegations it contains.

4 The Defendant has pled not guilty to these two
5 indictments, to these two charges. The State,
6 therefore, has the burden of proving each of the
7 elements of the indictment beyond a reasonable doubt.
8 It will be your duty, ladies and gentlemen, to decide
9 whether the State has met that burden.

10 Your purpose as jurors then will be to find
11 and to determine the facts of this case. Out of all the
12 folks who were summoned here this morning, out of the
13 300 people who were summoned, of all the other folks who
14 live here in Lexington County, out of all the other
15 citizens of this State, only the 12 of you who will
16 deliberate in the end can find and determine the facts
17 of this case.

18 You are the sole judge of the facts of this
19 case. If at any time I make any comment regarding the
20 facts, you must disregard it because this is a matter
21 solely for you the jury to determine. You are to
22 determine the facts from the testimony that you will
23 hear from this witness stand and the other evidence that
24 will be introduced during the course of the trial.

25 It will be up to you to determine the

1 inferences which you feel may properly be drawn from
2 that evidence. It is especially important that you
3 perform your duty to determine the facts diligently and
4 conscientiously because ordinarily there is no way to
5 correct an erroneous determination of the facts by a
6 jury.

7 Now, on the other hand and with equal
8 emphasis, the same law that makes you the judge of the
9 facts of this case makes me the judge of the law. The
10 law as given to you by me is the only law that you may
11 consider. You must accept as correct the law as I give
12 it to you at this time during the trial and in greater
13 detail at the end of the trial.

14 I cannot tell you what the facts are, and you
15 cannot disagree with me about what the law is or what
16 the law should be. Your job as jurors is to take the
17 law as I give it to you and apply it to the facts as you
18 find them from the testimony of the witnesses and the
19 other evidence and then reach a verdict. After
20 determining the facts and applying the law, you will
21 render a verdict, a true and just verdict, under the
22 oath that you took as jurors.

23 Until I advise you that it's time to
24 deliberate, you must not discuss the case with anyone,
25 including your fellow jurors, friends, family members or

1 anyone involved in this case or anyone not involved in
2 this case. That includes face discussions or
3 discussions by e-mail, text, blogs, Facebook or any
4 other method of communication.

5 You may not use a computer, cell phone or
6 other electronic device at any time while in the
7 courtroom or during deliberations. As I indicated to
8 you during breaks or when you leave the courtroom, you
9 may not seek to obtain any additional evidence
10 concerning the case by electronic communications, and
11 you must not discuss the case with anyone, including
12 your Facebook friends or e-mail friends or family or
13 friends.

14 You must also pay particular attention to not
15 involving yourself with discussions in the presence of
16 people who may be connected with this case, witnesses
17 and the like. Not that there will be any television or
18 news report about this case, I don't know, but you are
19 not to listen or to watch or to read any reports about
20 the case, including any matters on the radio, internet
21 or television.

22 You must disregard anything that is mentioned
23 to you about this case, other than what you hear in the
24 courtroom while sitting in the jury box. It's important
25 that you keep an open mind and not decide any issue

1 until you have heard the entire case, including the
2 arguments made by counsel and the instructions of law.

3 In just a moment, the solicitor will make what
4 is called an opening statement in which he will explain
5 to you the issues that the State considers to be
6 important and what he thinks the issues are in the case.
7 The defense attorney will also have the opportunity to
8 make an opening statement, but the defense attorney is
9 not required to make an opening statement.

10 After hearing the opening statements, we will
11 hear the testimony from the witnesses and the evidence
12 in the case. I hope to keep this case moving along.
13 Hopefully, it will not become too tedious based on the
14 fact that we may have some folks who may testify in
15 languages other than English.

16 The evidence that you are to consider is only
17 that which will be provided to you by non-English
18 speaking witnesses. The evidence you are to consider --
19 that evidence that is provided through the official
20 court interpreters.

21 I have two interpreters to take oaths in this
22 case to fairly and accurately interpret the testimony in
23 this case, and the only evidence that you are to
24 consider will be evidence provided through those
25 official interpreters.

1 Although some of you may understand the
2 non-English used, based on your understanding of Spanish
3 or the like, it is important for all jurors to consider
4 the same evidence. Therefore, you must base your
5 decision on the evidence presented in the English
6 interpretation if it is evidence being presented through
7 an interpreter. You must not rely in any way upon your
8 own interpretation of the witnesses' words.

9 We will take breaks as necessary. If at any
10 point in time you become uncomfortable, just let me
11 know. We will take a break whenever you need a break.
12 We will take frequent breaks anyway.

13 Later in the process I will appoint one of you
14 to serve as the foreperson of the jury. That person
15 will serve as the spokesperson for the jury. He or she
16 will have the responsibility of presiding over the jury
17 deliberation and also of completing the verdict form
18 representing the unanimous verdict of the jury.

19 We will now begin the trial with opening
20 statements. Mr. Graham.

21 **OPENING STATEMENT**

22 MR. GRAHAM: Thank you, Your Honor. Olbin
23 Banegas had murder on his mind, malice in his heart, and
24 a knife in his hand. August 24, 2008,
25 in Lexington County, , the

1 victim, Humberto Caballero lived there with his
2 common-law wife, Ana Pecheco; a friend, Ivan Vasquez;
3 his girlfriend, Ana; and Ana Pecheco's brother Eddie,
4 Edin Pecheco.

5 Also in lived the Defendant,
6 Mr. Banegas. At approximately 1:00 o'clock in the
7 morning, Eddie Pecheco came knocking on the door. The
8 door was locked. The people in the house woke up, and
9 they let him in. He was scared and he was panicked.

10 Ten minutes later the Defendant came to the
11 door. He pushed the door open with his hand behind his
12 back and in moments came running in with a knife out
13 chasing Edin Pecheco.

14 You will hear how he came in that house
15 uninvited, without permission, armed with a weapon at
16 night, and attempted to kill numerous people in the
17 house, how he attacked and ran in the house and chased
18 Edin Pecheco and his sister Ana out the back window, how
19 he got into a struggle with the victim Humberto
20 Caballero, how he pulled out knives, threatened to kill
21 Eddie, threatened to kill Humberto.

22 He had two knives. He brought one and picked
23 one up in the house. You will hear how Ivan Vasquez
24 went outside and called the police and how Mr. Banegas
25 went outside and confronted him and wanted to fight him

1 and wanted to kill him, and how he pulled the knife and
2 he chased Ivan to the roof of a van.

3 You will hear how Humberto came out of the
4 house with a machete in his hand, confronted
5 Mr. Banegas, told him to calm down, told him to go home.
6 You will hear how Mr. Banegas came up the stairs off
7 that trailer porch with a knife in his hand and how at
8 that moment, Humberto came down.

9 He didn't strike him at that time. He didn't
10 try to cut him, didn't try to kill him. He slapped him
11 on the back with the flat of the blade, telling him to
12 calm down. You will hear how Mr. Banegas fell down to
13 the ground and how he said, You've hit me. You better
14 kill me. You've hurt me. You better kill me.

15 You will hear how Humberto came down the
16 stairs with the machete in his hand, and he brought it
17 up and he brought it down. When he did, Mr. Banegas
18 took a knife, the knife that he had brought with him,
19 and stabbed and killed Mr. Caballero at his own house.
20 Don't mess with Olbin Banegas because he has got a
21 knife.

22 The State will prove to you beyond a
23 reasonable doubt that he is guilty of murder, that he is
24 guilty of burglary in the first degree, and that on
25 August 24, 2008, he had murder on his mind, malice in

1 his heart, and a knife in his hand. Thank you.

2 THE COURT: Ms. Fullwood.

3 MS. FULLWOOD: May it please the Court, Your
4 Honor.

5 THE COURT: Yes, ma'am.

6 **OPENING STATEMENT**

7 MS. FULLWOOD: Ladies and gentlemen of the
8 jury, this isn't a case of murder and this isn't a case
9 of burglary. What this case is about is about a young
10 man, 22 years old. It's about a group of young people
11 that, for lack of a better word, hang out together.
12 They are friends. They eat their meals together.

13 Sometimes they are roommates with each other;
14 sometimes not. They are back and forth at each other's
15 house on a frequent basis. It's about young adults, the
16 way young adults live.

17 Some of you might have kids in the late teens,
18 early 20s age. They live away from home and maybe they
19 have a group of friends that they constantly hang out
20 with or are around on a frequent basis. Some of you are
21 pretty young. Maybe you remember living that lifestyle
22 yourself.

23 But this is about a group of very young
24 people, and this is about a very young man, who on the
25 night of August 24, 2008, got into a situation that was

1 way over his head.

2 A friend of his was very rude to him at a
3 party. So he wants to go over to his house to talk
4 about it and to find out what the problem is. Things
5 escalate, things get heated, and he finds himself doing
6 something he never intended to do when he went over
7 there, that he never expected to do, that he didn't want
8 to do, and that he sorely regrets.

9 As Mr. Graham told you, Humberto Caballero was
10 coming at him with a machete to kill him. He stabbed
11 him one time and tragically he died. Judge Newman just
12 told you, your job here is to find the truth. You were
13 picked because both sides thought that of all the people
14 in that jury panel, you were the ones best suited to do
15 that job in this case.

16 It's your responsibility under your oath as
17 jurors to decide, has the prosecution proved these
18 charges to your satisfaction beyond a reasonable doubt.
19 What that means is that you have got to give Olbin the
20 benefit of every reasonable doubt in this case.

21 It's your responsibility to examine the
22 evidence critically, to take it apart, as Judge Newman
23 said, examine it in a deliberate, rational fashion. You
24 are not required to take anything anybody says in this
25 courtroom at face value.

STEPHEN SPIVEY -- DIRECT -- MR. MOBLEY

101

1 In fact, it's your responsibility to look at
2 everybody critically and say, Do they have a motive to
3 withhold some information, to exaggerate information, to
4 put themselves so they look in a better light? It's
5 your responsibility to hear everything and look at it
6 altogether to get a complete picture of the situation
7 that night before you make your decision.

8 Because I think when you hear about the entire
9 situation and what was really going on, you will find
10 that Olbin is not guilty of murder, and he is not guilty
11 of burglary. Thank you very much.

12 THE COURT: First witness.

13 MR. MOBLEY: Thank you, Your Honor. The State
14 calls Deputy Shaun Spivey to the stand.

15 STEPHEN JOHN SPIVEY, being
16 first duly sworn, testifies as follows:

17 CLERK: Have a seat, sir. Once you are
18 seated, please state your full name, spelling your last
19 on the record.

20 THE WITNESS: My name is Stephen John Spivey.
21 I go by Shaun Spivey as a nickname.

22 DIRECT EXAMINATION

23 BY MR. MOBLEY:

24 Q Deputy Spivey, where are you currently employed?

25 A Lexington County Sheriff's Department.

1 Q How long have you been employed there?

2 A February will be three years.

3 Q Three years. What is your current position at the
4 Sheriff's Department?

5 A I'm on the road as a patrol officer.

6 Q And have you been a road deputy your entire stay
7 with the Sheriff's Department?

8 A I have. Well, I did about a ten-month stint for
9 investigation and property crimes.

10 Q How long a stint?

11 A About a ten-month period.

12 Q About a ten-month period. Now, in your position as
13 a road deputy, what are some of your duties and
14 obligations that you have to fulfill as a road
15 deputy?

16 A We actually patrol areas, we answer calls for
17 service, protect the innocent. We basically answer
18 calls for service and make certain everybody is
19 okay out there on the road.

20 Q Did you have to go through the police academy, the
21 Criminal Justice Academy, to become a deputy?

22 A I did.

23 Q Prior to becoming a deputy, did you have any prior
24 law enforcement experience?

25 A No, I did not.

1 Q So this is the summation of your law enforcement
2 experience itself?

3 A Yes, sir.

4 Q I will take you back to the date of August 24,
5 2008. Were you a deputy at that time?

6 A I was.

7 Q And what was your position?

8 A I was on the road as well.

9 Q Is there a particular area that you have to patrol,
10 quote, unquote?

11 A The area I patrol is actually considered our south
12 region area, which we do not have a particular
13 destination. We kind of patrol anywhere from
14 Gaston, Swansea, part of West Columbia, Pelion,
15 just kind of in that area.

16 Q When you say the south area, you are referring to
17 the southern portion of Lexington County?

18 A Yes, sir.

19 Q What time did you get to work that day and begin
20 your patrol duties?

21 A We come in, as far as on shifts, about 5:45 that
22 afternoon.

23 Q 5:45?

24 A Yes, sir.

25 Q And your shift ends at what time?

1 A Six in the morning, the following morning.

2 Q Now, during your shift that night of August 24,
3 2008, were you called out to a dispatch in the
4 ?

5 A I was.

6 Q Now, is that an area that you generally patrol?

7 A We have a lot of calls for service out there in the
8 area.

9 Q Are you familiar with that area?

10 A I am.

11 Q Is that an area that you normally patrol? Is it
12 included within the south area?

13 A It is.

14 Q It is, okay. So you are familiar with that area?

15 A Very much so.

16 Q When you were dispatched there, tell me where you
17 were, where you were coming from, and where you had
18 to go.

19 A I was actually patrolling down, riding down
20 Highway 321 in the West Columbia area, and all of a
21 sudden, we got a call for service, to secure the
22 scene from E.M.S., due to a stabbing at

23

24 Q Approximately what time was that?

25 A Dispatch time per report came out at nine after

1 one.

2 Q Nine after one?

3 A In the a.m.

4 Q So at night, early morning?

5 A Yes, sir.

6 Q So from the time you received that dispatch call

7 until the time you arrived at

8 approximately how long was that before you got

9 there?

10 A I arrived approximately nine minutes later.

11 Q Nine minutes later.

12 A Yes, sir.

13 Q Did you have full lights and sirens going at the

14 time to get to that location?

15 A We did.

16 Q You didn't know what you had at that time, you just

17 had a general idea of what the call was in

18 reference to; correct?

19 A Correct.

20 Q Now, did you know the location you had to go to in

21 ?

22 A It was in the area of

23 Q Is the rather

24 large?

25 A It is.

1 Q Is it one of the larger ones in the southern
2 portion of the county?

3 A It is.

4 Q Were you previously familiar with that general
5 vicinity of where would be located,
6 basically knowing how to get in there?

7 A Yes. We actually have a map as well whenever we
8 need to refer back to it, to find out where lots
9 are.

10 Q So were you able to get to that location rather
11 easily?

12 A Yes.

13 Q Once you arrived on the scene, tell the jury what
14 you actually see.

15 A When I arrived on scene, the first thing I did when
16 I pulled up -- obviously E.M.S. pulled in right
17 directly behind me. We basically arrived at the
18 same time. I saw a young man lying on the ground
19 in front of , and several people were around
20 him.

21 Q Now, when we were speaking about -- before we go
22 into the details of that -- we were speaking about
23 the location of

24 MR. MOBLEY: If I may approach the witness,
25 Your Honor?

STEPHEN SPIVEY -- DIRECT -- MR. MOBLEY

107

1 THE COURT: Yes, sir.

2 (Attorneys confer.)

3 MS. FULLWOOD: No objection, Your Honor.

4 BY MR. MOBLEY:

5 Q I am going to show you a photo. Do you recognize
6 what that photo is?

7 A This is a sketch of
8 , aerial view.

9 Q Is that a sketch or an aerial view?

10 A It's an aerial view.

11 Q Does it appear to be accurate and everything
12 appears to be the same as it would be in the true
13 park itself?

14 A It does.

15 Q Nothing has changed or anything of that nature?

16 A No, sir.

17 Q It's a fair and accurate depiction of that area?

18 A Yes, sir.

19 MR. MOBLEY: Your Honor, the State would have
20 this marked as State's Number 1 and entered into
21 evidence.

22 MS. FULLWOOD: No objection.

23 THE COURT: Admitted without objection.

24 (State's Exhibit Number 1 is received into
25 evidence.)

1 MR. MOBLEY: Permission to publish to the jury
2 as well, Your Honor. Beg the Court's indulgence, Your
3 Honor.

4 THE COURT: Yes, sir.

5 (Pause.)

6 BY MR. MOBLEY:

7 Q Deputy Spivey, what we are looking at here is
8 State's Exhibit Number 1. Is this what you are
9 referring to as the
10 ?

11 A It is.

12 Q What do we see here?

13 A That is I-20, Interstate 20.

14 Q I-20?

15 A I believe it is, hang on. Sorry, I-26.

16 Q That's I-26. What is this road here (indicating)
17 that goes to the other side?

18 A That's Charleston Highway off of the 119 exit.

19 Q Does either of those highways provide access to the
20 ?

21 A Charleston Highway provides access to it.

22 Q You can get off of I-26 to get on Charleston
23 highway?

24 A Correct.

25 Q Is this particular area here, the entire mobile

1 home park, is that within Lexington County?

2 A It is.

3 Q So this entire incident occurred in Lexington
4 County?

5 A It did.

6 Q Now, you arrive on scene and you state E.M.S.
7 immediately arrives around about the same time?

8 A Correct.

9 Q Tell us what happens next.

10 A Whenever I arrived, again, we pulled up at the same
11 time. I got out. There were several people around
12 the victim laying on the ground. E.M.S. began
13 immediately started working on the victim, and I
14 assisted them at the time in any help that they
15 needed.

16 Q With the help that they needed?

17 A Correct.

18 Q So who all do you observe around at that time when
19 you are there in front of the victim?

20 A There was several witnesses around, several
21 congregators around that were a part of or either
22 lived at, I think, at the time.

23 Q At . And that's the location you were at the
24 time?

25 A Correct.

1 Q Were you able to speak to any of those individuals
2 that were there?

3 A Yes, I did. After helping E.M.S., contacting my
4 supervisor and told him what we had, we at that
5 time started making certain the witnesses that were
6 there continued to stay there and also while I
7 taped off the crime scene.

8 Q State what you had. What exactly did you have when
9 you arrived on scene? What did you see as to the
10 victim's injuries?

11 A While the victim was lying on the ground, E.M.S.
12 was working --

13 MS. FULLWOOD: Your Honor, may we approach?

14 THE COURT: Yes,

15 (Whereupon there is a bench conference off the
16 record in the presence of the jury but out of the
17 hearing of the jury.)

18 THE COURT: You may proceed.

19 MR. MOBLEY: Thank you, Your Honor.

20 BY MR. MOBLEY:

21 Q Deputy Spivey, you state that you were able to
22 witness the victim laying on the ground; correct?

23 A Correct.

24 Q And by observing the victim, you were able to
25 gather that he had been stabbed?

STEPHEN SPIVEY -- DIRECT -- MR. MOBLEY

111

1 A Correct.

2 Q Now, after helping to secure the scene and you
3 were able to speak with some of the witnesses on
4 the scene, were they able to speak any English to
5 you?

6 A There was only one that actually could speak
7 English somewhat. The rest of them could not.

8 Q The one that you were able to -- that spoke
9 somewhat English, were you able to gather some
10 information?

11 A I was.

12 Q Was it about what happened? I don't want you to go
13 into the content of that conversation; however,
14 were you able to gather some information as to
15 investigating the incident?

16 A I did, correct.

17 Q Based on that particular investigation, what did
18 you do next?

19 A I contacted my immediate supervisor, let him know
20 what we had, what the situation was. He responded,
21 along with other units, and I kept the witnesses
22 together and also taped off the scene.

23 Q You taped off the scene. Where did you tape off
24 the scene at?

25 A Around the immediate front of the actual house,

1 going around where the victim also laid.

2 Q Are you referring to ?

3 A I was.

4 MR. MOBLEY: Approach, Your Honor, the
5 witness?

6 THE COURT: Yes, sir.

7 BY MR. MOBLEY:

8 Q Deputy Spivey, I will hand you another photograph.

9 Do you recognize what that photograph is?

10 A It's also an aerial of

11

12 Q Is that a blown-up version?

13 A It is.

14 Q Does it fair and accurately depict the scene as it
15 was and as it is now?

16 A Yes, it is.

17 Q And as it was at the time?

18 A Correct.

19 MR. MOBLEY: Your Honor, the State would move
20 to have this document entered into evidence as State's
21 Exhibit Number 2.

22 MS. FULLWOOD: No objection, Your Honor.

23 THE COURT: Admitted without objection.

24 MR. MOBLEY: And publish at the appropriate
25 time, Your Honor.

STEPHEN SPIVEY -- DIRECT -- MR. MOBLEY

113

1 THE COURT: Okay.

2 (State's Exhibit Number 2 is received into
3 evidence.)

4 BY MR. MOBLEY:

5 Q Deputy Spivey, looking at State's Exhibit Number 2,
6 are you able to locate on that
7 photograph?

8 A I can.

9 Q And I am going to hand you a red pen.

10 A Okay.

11 Q If you don't mind marking on this particular color
12 photograph, which one is ?

13 A One-fourteen.

14 Q One-fourteen, excuse me, yes.

15 A (Witness complies.)

16 Q Okay. We are looking at the photograph here, and
17 you have marked a trailer and a lot itself. You
18 are familiar that that is , ?

19 A I am.

20 Q Is that the area that you roped off to secure the
21 scene?

22 A It is.

23 Q After securing the scene itself, what did you do
24 next?

25 A After other units arrived, which was one of the

1 supervisors, we actually were able to gather
2 information of where the suspect lived at.

3 Q Now, you say the suspect. Where did you get
4 information from in regards to the possible
5 suspect?

6 A Witnesses on scene.

7 Q On scene. They provided you with a description?

8 A Correct, clothing description and the direction of
9 travel that the suspect fled.

10 Q Based upon your investigation, what was the
11 description of what the suspect was wearing at the
12 time?

13 MS. FULLWOOD: I will object to that on the
14 grounds of hearsay.

15 THE COURT: Any response?

16 MR. MOBLEY: Your Honor, it's not for the
17 truth of the matter asserted. It's for police action,
18 Your Honor. It's in the normal course of investigation,
19 and I think he can testify to that. It's to explain
20 police action.

21 THE COURT: Anything further?

22 MS. FULLWOOD: I think it goes beyond the
23 scope of explaining police action to try to prove what
24 the person was actually wearing. So I think it's
25 outside of that and it is hearsay.

STEPHEN SPIVEY -- DIRECT -- MR. MOBLEY

115

1 THE COURT: I think he can tell us who he was
2 looking for and what the person was wearing. Go ahead.

3 A It was also an Hispanic male. At the time we were
4 told that he was wearing a white shirt, a collar
5 shirt, had on a hat, a black and red hat, and had
6 blue jeans with white sneakers on.

7 Q Once you received that information, were you able
8 to notify other law enforcement who you were
9 possibly looking for?

10 A We were.

11 Q Once you notified other law enforcement of this
12 possible suspect, what were your actions after
13 that?

14 A Well, we actually, once we found an actual possible
15 location where the suspect lived at, myself, along
16 with other officers, went to see if he was there.

17 Q What location did you go to?

18 A It was .

19 Q Is that in the as
20 well?

21 A It is.

22 Q I will show you State's Exhibit Number 2 again. On
23 that particular document, are you able to see which
24 one is ?

25 A I can.

1 Q Can you circle that for me with a red pen.

2 A (Witness complies.)

3 MR. MOBLEY: Permission to publish to the
4 jury, Your Honor.

5 THE COURT: Yes, sir.

6 BY MR. MOBLEY:

7 Q This is the first trailer that you circled,
8 correct?

9 A Correct.

10 Q That was ?

11 A Correct.

12 Q Is this that you just circled?

13 A Correct.

14 Q So it's only a few hundred yards down the street
15 from one another?

16 A Yes, sir.

17 Q So you as well as who proceed to ?

18 A My immediate supervisor, which was Master Deputy
19 Auckerman at the time, Master Deputy Merckle at the
20 time, and Detective Rivera.

21 Q Once you get to that particular lot number, what
22 happens?

23 A We actually located a back door that was open.
24 Therefore, we went inside to see if the suspect was
25 inside.

STEPHEN SPIVEY -- DIRECT -- MR. MOBLEY

117

1 Q The suspect, you had found out from prior
2 conversations with the witness, you knew of the
3 description, what he was wearing, and things of
4 that nature. Had you found out a possible name?

5 A Yes, we found out the name was --

6 MS. FULLWOOD: Objection again, hearsay.

7 THE COURT: I overrule the objection. You may
8 proceed.

9 A We found out the name was Olbin Banegas.

10 Q Once you went to , were you all able to
11 locate him there?

12 A No, we did not.

13 Q Did you go inside, knock on the door?

14 A We did. Well, the back door was unsecured. It was
15 open. Therefore, we went inside.

16 Q When you went inside, what did you find?

17 A We found two males that were sleeping inside.

18 Q Were you able to awaken them, either of them?

19 A Yes. I actually stood by while others kind of
20 talked to them. Detective Rivera actually speaks
21 fluent Spanish. These were two Hispanic males
22 inside and he actually did the talking.

23 Q Were you all able to determine whether the two
24 males that were inside of to be Mr. Olbin
25 Banegas?

1 A Neither one of them were Olbin at the time.

2 Q Once you find out that information, what do you do
3 next?

4 A I went back to the actual scene and maintained
5 security for the scene, and then canine, along with
6 Master Deputy Auckerman and Master Deputy Merckle
7 began a track for the suspect.

8 Q Began a track. Did you go along with -- when you
9 say a track, what do you mean by that?

10 A They assist with canine as they begin trafficking
11 the suspect since he fled on foot.

12 Q You had information that he fled on foot?

13 A Correct.

14 Q Did you assist with that tracking itself?

15 A I did not.

16 Q What did you do?

17 A I stayed at the scene to maintain security and also
18 to continue trying to talk to witnesses as well.

19 Q Were you able to gather anymore information?

20 A No.

21 Q By the time you returned to that scene, was the
22 victim still there on the scene?

23 A He was not.

24 Q He was not. At any time did you see the victim
25 being transported or leave with someone before you

STEPHEN SPIVEY -- DIRECT -- MR. MOBLEY

119

1 left the scene originally?

2 A What I remember is after talking to the supervisor
3 and also taping off the scene, I remember the
4 victim was also put in the ambulance, and I
5 remember watching at the time and seeing that
6 eventually they had to bring out a thumper
7 device -- is what I actually learned at the time
8 talking to other people on scene.

9 MS. FULLWOOD: Your Honor, I will object if he
10 learned this from talking to other people. That's
11 hearsay and I move to exclude that.

12 THE COURT: I sustain that portion of the
13 testimony.

14 BY MR. MOBLEY:

15 Q Were you able to observe personally the victim
16 being placed in the ambulance at the time?

17 A I did.

18 Q Did you personally observe him being worked on by
19 E.M.S.?

20 A I did. I personally saw a device that was used on
21 the victim at the time.

22 MR. MOBLEY: Beg the Court's indulgence, Your
23 Honor.

24 (Pause.)

25 BY MR. MOBLEY:

1 Q By the time you were completing all your
2 investigations, securing the scene, speaking with
3 the witnesses, things of that nature, approximately
4 what time was it before you left that particular
5 area on this incident?

6 A We departed at 6:00 o'clock that morning.

7 Q At 6:00 o'clock that morning?

8 A Yes, sir.

9 Q Thank you.

10 MR. MOBLEY: Nothing further for this witness,
11 Your Honor.

12 THE COURT: Any questions?

13 MS. FULLWOOD: No, Your Honor.

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

16 (Witness leaves the witness stand.)

17 THE COURT: Solicitor, you may call next
18 witness.

19 MR. MOBLEY: Thank you, Your Honor. The State
20 calls Craig Johnson to the stand.

21 CRAIG MICHAEL JOHNSON, being
22 first duly sworn, testifies as follows:

23 CLERK: Once you are seated, speak up loud and
24 clear, stating your full name, spelling your last.

25 THE WITNESS: Craig Michael Johnson,

1 J-O-H-N-S-O-N.

2 DIRECT EXAMINATION

3 BY MR. MOBLEY:

4 Q Mr. Johnson, where are you currently employed?

5 A Lexington County E.M.S.

6 Q And how long have you been employed there?

7 A I started there in 2001.

8 Q In 2001?

9 A Yes, sir.

10 Q Now, as an E.M.S. worker, what are some of your
11 primary responsibilities and duties?

12 A Anything from people wanting just -- or needing to
13 be talked to, to cardiac arrest, gunshots.

14 Q So any injuries you may have to respond to?

15 A Yes.

16 Q That's not at the hospital?

17 A Correct.

18 Q And one of your duties is to transport individuals
19 from one location to medical help?

20 A Yes, sir.

21 Q Do you recall the night of or early morning of
22 August 24, 2008?

23 A Yes, sir.

24 Q Were you on duty at that time?

25 A I was.

1 Q Did you ever receive a call for help or to have to
2 go respond to a location in that
3 early morning hours?

4 A I did.

5 Q Approximately what time were you called out?

6 A Shortly after 1:00 o'clock. I don't have the exact
7 time, but it was shortly after one. Deputy Spivey,
8 we were directly behind him. So it would be about
9 the same time as his was.

10 Q Why were you responding out there?

11 A I believe it was a stabbing or an unconscious. I
12 don't remember the initial call out there.

13 Q Now, how long approximately from the time you
14 received the call until you actually arrived at
15 that location?

16 A On my paper I am showing the call came in 1:09.
17 These call times I have, they are not going to be
18 correct. They were kept by the computer system
19 that the county had just gotten at the time. I
20 don't have the correct list that he has.

21 Q But approximately five to ten minutes?

22 A Yes, sir.

23 Q Once you arrived on scene, what do you do?

24 A We got out of the unit. We saw the victim lying on
25 the ground. He was near the roadway. Deputy

1 Spivey was also there at the same time, and he was
2 on his side. We...

3 Q Now -- I'm sorry. Go ahead.

4 A At that time we had rolled him over. Deputy Spivey
5 had his flashlight and that was at the time that we
6 seen he had the visceration.

7 Q You were able to see that he had a possible stab
8 wound?

9 A Yes, sir.

10 Q Without being too descriptive, what I'm trying to
11 avoid --

12 A Yes, sir.

13 Q -- you said he had a possible stab wound?

14 A Yes, sir.

15 Q What did you do then?

16 A At that time we checked the patient's vital signs.
17 He was unconscious, he was breathing, and he did
18 have a pulse at that time. We began to bandage up
19 the wound that he had and put him in full spinal
20 precautions.

21 Q Was he responsive at the time?

22 A No, sir.

23 Q Was his pulse faint?

24 A Very.

25 Q Was there a lot of bleeding?

1 A I don't recall a whole lot of bleeding, no, sir.

2 Q So you are on the scene. Do you all determine you
3 have to take him to a medical facility?

4 A Oh, yes.

5 Q Why is that?

6 A Unresponsive, faint pulse, agonal respirations.

7 Q So what did you do next?

8 A At that time we got -- I went ahead, due to his
9 respirations so irregular and shallow, I went ahead
10 and intubated him once we got him placed on the
11 spine board and secured. Then we -- at that time
12 we went ahead and picked him up and put him inside
13 the ambulance.

14 Q By the time you placed him on the ambulance, was he
15 still with a faint pulse?

16 A Once we got into the ambulance is when we checked
17 for a pulse again, and that's when he didn't have a
18 pulse.

19 Q So he didn't have a pulse when he was in the
20 ambulance?

21 A No, sir, not once we got inside the unit.

22 Q Did you have to use any type of methods to
23 resuscitate him?

24 A We tried, yes, sir. Once we got him in there, what
25 Deputy Spivey was talking about, what is called a

1 thumper. It basically -- we hook it up to the
2 patient and it performs the C.P.R. and ventilations
3 at that time for us so we can perform other duties.

4 Q So that's a machine to help resuscitate, you don't
5 have to do it manually?

6 A Yes, sir, it's more efficient.

7 Q Were you all able to get him back to being
8 responsive before leaving the location?

9 A No, sir.

10 Q Where did you take him?

11 A To Lexington Medical Center.

12 Q By the time you had gotten to Lexington Medical
13 Center -- you don't have the authority to pronounce
14 someone --

15 A Yes, we do.

16 Q You do?

17 A Yeah, we pronounce all the time.

18 Q Now, was the victim alive at the time?

19 A When we first arrived, he had a pulse and
20 respirations, like I say, once we got in the truck.
21 So you kind of weigh the odds, and it was -- you
22 just do the best you can do.

23 Q Did you subsequently find out he passed?

24 A Yes, sir. I was at the hospital when they
25 pronounced him.

1 Q So you were there when they pronounced him at the
2 time?

3 A Yes, sir.

4 MR. MOBLEY: Nothing further for this witness,
5 Your Honor.

6 MS. FULLWOOD: No questions, Your Honor.

7 THE COURT: Thank you. You may step down.
8 (Witness leaves the witness stand.)

9 THE COURT: Ladies and gentlemen, we will take
10 a break for a few minutes. If you will go to the jury
11 room. Please do not discuss the case.

12 (The jury retires to the jury room.)

13 THE COURT: Yes, sir.

14 MR. MOBLEY: Thank you, Your Honor. May
15 Mr. Craig Johnson be excused for today, the remainder of
16 the trial?

17 THE COURT: All witnesses are automatically
18 excused once they get through testifying.

19 MR. MOBLEY: Thank you, Your Honor.

20 THE COURT: Unless there is an objection noted
21 before they leave. We will take a few minutes, five
22 minutes.

23 (Whereupon there is a recess.)

24 THE COURT: Anything before the jury comes in?

25 MR. GRAHAM: Briefly, Your Honor. I don't

1 know when your next break is going to be. The witness
2 after next will be non-English speaking and will need a
3 translator.

4 From talking with Mr. Hunt from Communicar,
5 one of the translators in the case, he informs me
6 Mr. Garcia will be translating for the Defendant, and
7 Mr. Hunt will go up to the witness stand and be
8 translating for the witness. So both of them will be
9 used.

10 It's my understanding the rules or the
11 statutes that govern translators, right now what they
12 are doing is trading off. Approximately every 25 or 30
13 minutes, one of them will go from translating to not.

14 My understanding is when they are translating
15 without a backup, so to speak, that the rules allow him
16 to take a break approximately every 25 to 30 minutes.
17 In talking to Mr. Hunt, what he informed me to do is
18 that if he or Mr. Garcia need a break, they will just
19 inform the Court at the appropriate time.

20 THE COURT: Okay, not a problem. Let's bring
21 them on.

22 (The jury returns to the courtroom.)

23 THE COURT: Your next witness.

24 MR. MOBLEY: Thank you, Your Honor. The State
25 calls master Deputy Michael mercy.

1 MICHAEL SAMUEL MERCKLE, being
2 first duly sworn, testifies as follows:

3 CLERK: State your full name on the record and
4 spell your last, please.

5 THE WITNESS: My name is Michael Samuel
6 Merckle, M-E-R-C-K-L-E.

7 DIRECT EXAMINATION

8 BY MR. MOBLEY:

9 Q Deputy Merckle, where are you currently employed?

10 A The Lexington County Sheriff's Office.

11 Q And how long have you been employed there?

12 A Approximately six years.

13 Q Six years?

14 A Yes, sir.

15 Q What is your current position within the Sheriff's
16 Department?

17 A I'm a detective, major crimes, gang unit.

18 Q At this point. And how long have you been a
19 detective?

20 A For approximately ten months.

21 Q Ten months?

22 A Yes, sir.

23 Q Back on August 24, 2008, what was your position
24 then?

25 A I was a supervisor on the road in the west region

1 as a master deputy.

2 Q As a supervisor, what are some of your primary
3 responsibilities?

4 A First and foremost, just to supervise the other
5 units within the shift when our sergeant was not
6 there, basically the second in charge with the
7 corporal. When our sergeant was there, the same
8 duties as everybody else, answering calls for
9 service and things of that nature.

10 Q Would you ever respond to a scene or an incident?

11 A Yes, sir, absolutely.

12 Q Now, the early morning hours of August 24, 2008,
13 did you have a call come in that you had to respond
14 to in the ?

15 A There was a call that was dispatched, the south
16 region. At that time we were on the same radio
17 frequency. So I heard the call for service come
18 out, yes, sir.

19 Q Did you respond to that area?

20 A I did.

21 Q What was your purpose of responding there?

22 A To assist the other units. The information we had
23 received from dispatch was that somebody had
24 possibly been injured, and we responded there code
25 three, which is lights and sirens to help assist

1 Deputy Spivey.

2 Q How long did it take you approximately to get
3 there?

4 A I would say about 12 minutes or so.

5 Q About 12 minutes?

6 A Yes, sir.

7 Q You are familiar with that
8 area?

9 A Yes, sir, I am.

10 Q Were you able to find the lot number? What lot
11 number were you responding to?

12 A We were responding to . I actually
13 worked south region for the first four years of my
14 career here at Lexington County. I am very
15 familiar with that area.

16 Q Very familiar with that area?

17 A Yes, sir.

18 Q When you respond to , tell us what you see.

19 A It was a crowd of people. Deputy Spivey was
20 standing there with several people standing around
21 him, and the crime scene was roped off with our
22 yellow crime scene tape.

23 Q What do you do next?

24 A I exited my patrol vehicle. Myself and Master
25 Deputy Auckerman were essentially the two

1 supervisors on scene, and we gathered information,
2 trying to figure out what was going on, what had
3 happened, who had been injured and where our
4 possible suspect was.

5 Q During your investigation were you able to get some
6 information as to what happened?

7 A Yes. Yes, we were. During the investigation we
8 found out that there had been a victim who had been
9 stabbed who was not there on scene.

10 Q So he wasn't on the scene at that time?

11 A No, sir, the ambulance had already left prior to my
12 arriving.

13 Q Was there any additional information that you
14 received in regards to who was the perpetrator?

15 A Yes, sir, we received a name. Actually on the way
16 there, we had received a description of the
17 suspect.

18 Q Was a quote, unquote B.O.L.O. placed out in regards
19 to this individual?

20 A Yes, sir.

21 Q And did you all have to set up a perimeter or
22 anything?

23 A We did.

24 Q What was the purpose of that?

25 A Well, we set up a road perimeter utilizing whatever

1 units we have available. Highway Patrol is our
2 first contact because they are normally near the
3 interstate.

4 It's kind of a rolling perimeter. They just
5 ride up and down the roads looking for possible
6 suspects and getting updated information from us,
7 as well as units within the neighborhood itself for
8 when we bring our tracking dogs in.

9 Q You state that you had -- did y'all have to bring
10 in tracking dogs?

11 A Yes, sir, we did.

12 Q Did you assist the canine unit begin a tracking
13 process?

14 A I did.

15 Q Did y'all have a general idea where he had run to
16 or where he had went?

17 A We had a general area as to which location he ran
18 towards. It was just deeper into the mobile home
19 park itself, but we had a last known location,
20 which is where we typically start with our dogs.

21 Q What was the last known location?

22 A It was running actually towards his residence,
23 which was , which was what we had gathered
24 through our investigation.

25 Q Now, I am going to place up here State's Exhibit

1 Number 2. During the course of your investigation
2 you had found out that was where his
3 resided?

4 A Yes, sir.

5 Q Did you all go to that particular location?

6 A I did.

7 Q Once you got there, what happened?

8 A Myself, Deputy Spivey, along with Detective Rivera,
9 and Master Deputy Joe Auckerman, we went there. We
10 secured the residence, found an unlocked door which
11 was partially open.

12 At that point we made entry, announcing our
13 presence as law enforcement. We subsequently woke
14 up two individual who were in the house, two
15 Hispanic males, which Detective Rivera or
16 Investigator Rivera actually interviewed and
17 determined that he was not -- neither of them were
18 the person we were looking for.

19 Q Who was the person you all were looking for?

20 A Mr. Olbin -- it's hard for me to pronounce his last
21 name. I'm sorry.

22 Q Banegas?

23 A Banegas, yes, sir.

24 Q Was he one of the two individuals that were in the
25 trailer?

- 1 A No, sir, he was not.
- 2 Q He was not. So what did you all do next?
- 3 A About that time we exited the residence. We went
- 4 outside. Our canine unit had arrived on scene and
- 5 gave him the general area of where his last known
- 6 location was and proceeded to follow the dog in
- 7 essence.
- 8 Q Now, where was, from your understanding, where was
- 9 his last known location that anyone can point to,
- 10 other than at the trailer? I'm not speaking of
- 11 that.
- 12 A It would have been running towards -- down the road
- 13 towards his residence, toward from .
- 14 Q Now, you have a pointer?
- 15 A Yes.
- 16 Q From your understanding by pointing to the map
- 17 here, where did you understand he had run from and
- 18 where he was running towards?
- 19 A He was -- the incident occurred right about in this
- 20 area (indicating), and he was running this way
- 21 towards this residence (indicating). We weren't
- 22 sure whether he had actually crossed in the roadway
- 23 or gone around the trailers, but it was somewhere
- 24 in this general area, in between the two trailers.
- 25 Q What did you do then?

1 A Well, we just basically assisted our canine handler
2 followed his tracking dog through the trailer park
3 looking for the suspect.

4 Q Were y'all able to locate him at any time or pick
5 up a scent?

6 A Yes, sir, we were.

7 Q Where did you pick it up and what did you do?

8 A Would you like me to show you with the pointer?

9 Q Yes, please.

10 A Once we began to track, the canine actually took us
11 down this portion (indicating) of the trailer park,
12 to around this intersection here (indicating). At
13 the point we got to this intersection, he kind of
14 made a double-back where he kind of turned, the dog
15 kind of turned around.

16 Then as he was coming back around here
17 (indicating) is when we noticed an individual
18 matching the description running across a wooded
19 area down in this area (indicating).

20 Q Let's stop here for a moment.

21 A Yes, sir.

22 Q You state that the dog began to double-back within
23 that intersection there, correct?

24 A Correct.

25 Q So the dog never alerts to the individual that is

1 running further down the street?

2 MS. FULLWOOD: Objection, leading.

3 THE COURT: Don't lead the witness.

4 MR. MOBLEY: I apologize, Your Honor.

5 BY MR. MOBLEY:

6 Q Does the dog ever notice the individual running
7 down the street?

8 A No, sir.

9 Q Who noticed the person running down the street?

10 A Actually, Master Deputy Auckerman saw him first.
11 It was within a millisecond, we all saw him, looked
12 up and saw him.

13 Q Did you personally see him?

14 A Yes, sir, I did.

15 Q Once y'all see this individual running down the
16 street, what do you do?

17 A Well, actually he wasn't actually in the street.
18 He was in a small wooded area just behind the
19 residences, right about in this area here
20 (indicating).

21 Q Yes.

22 A We ran towards him, the whole time giving him
23 verbal commands to stop, we were the police. And
24 once we got within, I would say, 20 feet of him, we
25 all stopped because that's when we saw that he did

MICHAEL MERCKLE -- DIRECT -- MR. MOBLEY

137

1 have a knife in his hand.

2 Q Now, I am assuming that it's dark outside.

3 A Yes, sir.

4 Q Was there any light that you were able to utilize
5 to pick up the fact he had a weapon in his hand?

6 A There's a streetlight right close to there, right
7 about in there (indicating), in that general area,
8 but we also had flashlights.

9 Q So you were able to personally observe that he had
10 a knife in his hand?

11 A Yes, sir. I also had a light attached to my
12 weapon, to my service revolver, which I was able to
13 light him with that as well.

14 Q There was a B.O.L.O. that was sent out earlier
15 because you don't know who the individual is at
16 this time, correct?

17 A Correct. We were just given a name and a physical
18 clothing description.

19 Q Based off the B.O.L.O. that was placed out earlier,
20 did this person appear to match that B.O.L.O.?

21 A Yes, sir, he did.

22 Q So then you all do what, you see the knife and you
23 are running behind him?

24 A Yes, we run him down in essence. We are at what we
25 would call a standoff. He stood there facing us.

1 We were facing him. We were giving him commands to
2 drop the knife and lay down on the ground.

3 We did notice that he had blood all over him
4 and a large laceration on his arm as well. As his
5 attention was turned on me -- we all did have our
6 guns out and the dog was behind us. Master Deputy
7 Auckerman circled around out of his -- out of
8 Mr. Banegas' line of sight and began to approach
9 him to take him to the ground.

10 He did drop the knife after probably three,
11 four minutes of us telling him to drop the knife.
12 And as Deputy Auckerman rushed in to grab him,
13 that's when I noticed he had another knife in his
14 back pocket with the blade sticking out.

15 Q So the blade was sticking -- you not only see one
16 knife, correct?

17 A Correct.

18 Q You see two?

19 A See two, one in his hand --

20 MS. FULLWOOD: Objection, testimonial, Your
21 Honor. The question itself is testimonial.

22 MR. MOBLEY: I apologize, Your Honor.

23 BY MR. MOBLEY:

24 Q At this time how many knives do you see?

25 A Two knives.

MICHAEL MERCKLE -- DIRECT -- MR. MOBLEY

139

1 Q Two knives?

2 A Yes, sir.

3 Q Can you tell me the location of both.

4 A One knife was in his hand and one knife was in his
5 back pocket.

6 Q So at this time what do you do?

7 A Like I said, as Deputy Auckerman was going in to
8 take the individual to the ground so we could
9 control him and put handcuffs on him, I saw the
10 knife.

11 I didn't see that he saw the knife as well.
12 For his safety as well as mine, I deployed our O.C.
13 spray, which is our chemical pepper spray, and
14 sprayed the Defendant in the face with it.

15 Q And after spraying him with the O.C. spray, what
16 happens?

17 A A brief struggle ensued just to get his hands
18 behind his back. I went down to the ground with
19 Mr. Banegas and Master Deputy Auckerman. We
20 secured handcuffs on him behind his back.

21 Q Were you able to secure the actual knives?

22 A Yes. We removed the knife out of his back pocket,
23 and both knives stayed on the ground until we had
24 our evidence team come over, our C.S.I. guys come
25 over, and actually collect it as evidence.

1 Q Do you mind giving us a brief description of the
2 knives. Were they small, large, medium?

3 A They were rather large kitchen knives with black
4 handles. One, I do remember, had serrated-type
5 edges on the blade itself.

6 Q And eventually were those knives collected and
7 placed into evidence --

8 A Yes, they were.

9 Q -- for investigative purposes?

10 A Yes, sir, they were.

11 Q Did you have the opportunity go back and look at
12 those knives and collect them?

13 A Yes, sir.

14 Q For your use?

15 A Yes, I did today. I went to evidence and checked
16 them out.

17 MR. MOBLEY: If I may approach the witness,
18 Your Honor?

19 THE COURT: You may.

20 BY MR. MOBLEY:

21 Q You have two boxes here that are labeled evidence.
22 Where did you receive these boxes from?

23 A At our evidence locker room at headquarters.

24 Q And I will open up both. Did you receive both
25 boxes from the evidence locker room?

1 A Yes, sir, I did.

2 Q Was it in a secure location?

3 A Yes, locked location and only accessible to the
4 evidence custodians.

5 Q The evidence custodians, did they allow you in to
6 get the evidence?

7 A No, they did not.

8 Q How did you get in to get it?

9 A I just walked in, turned in my paperwork, and they
10 gave it to me and I signed it out.

11 Q Okay. So you signed it out?

12 A Correct.

13 Q Looking inside the box, what do we have here?

14 A Two large black handle, what would appear to me, to
15 be kitchen knives.

16 Q Now, reflecting back to the night of this incident,
17 do these knives appear to be the same knives that
18 were found at the location?

19 A Yes, sir, they do.

20 Q Do they appear to be altered or tampered or
21 switched in any type way?

22 A No, sir.

23 Q I see some numbers written on these knives. Do you
24 know if these were there during the night of the
25 incident?

1 A No, sir, they weren't. That was done by our
2 evidence collectors.

3 Q By the evidence collectors?

4 A Correct.

5 MR. MOBLEY: Your Honor, the State would move
6 to have both these items, which are knives, marked as
7 State's Exhibit Number 3 and 4 and entered into
8 evidence.

9 (Attorneys confer.)

10 MS. FULLWOOD: No objection, Your Honor.

11 THE COURT: They are admitted into evidence.

12 (State's Exhibits Number 3-4 are received into
13 evidence.)

14 BY MR. MOBLEY:

15 Q Now, Deputy, do you have any gloves?

16 A I do not.

17 MR. MOBLEY: Beg the Court's indulgence so I
18 can get some gloves for the deputy, for the witness.

19 (Pause.)

20 BY MR. MOBLEY:

21 Q What I am handing you now is State's Exhibit
22 Number 3. What I will ask you to do is tell the
23 jury where you found that knife and who it was on
24 at the time basically.

25 A Okay.

MICHAEL MERCKLE -- DIRECT -- MR. MOBLEY

143

1 Q Turn it around if you would.

2 A This particular knife was found on the Defendant's
3 person in his back pocket. The reason I know this
4 is because I remember the serrated edges on the
5 blade. It's different from the other knife, which
6 he had in his hand.

7 Q If you want to step down so you can show the jury
8 what you are speaking of.

9 A (Witness leaves the witness stand.)

10 MR. MOBLEY: With the Court's permission, of
11 course.

12 THE COURT: Sure.

13 MR. MOBLEY: Thank you, Your Honor. I
14 apologize.

15 BY MR. MOBLEY:

16 Q Just walk down. You are saying what is different
17 about this knife than the other knife?

18 A The difference with this knife is that the blade
19 itself is serrated. It's got little indentations
20 all over the blade where the other one is smooth.
21 It's an average serrated kitchen knife.

22 Q You can go back to the stand.

23 A (Witness resumes the witness stand.)

24 Q Where was that particular knife found?

25 A It was found in the Defendant's back pocket.

1 Q Now, if you will hand me back State's Exhibit
2 Number 3.

3 A (Witness complies.)

4 Q I am going now to hand you State's Exhibit
5 Number 4. What I will ask you to do is step down
6 again and describe what we have here. And where
7 was that knife found?

8 A (Witness leaves the witness stand.) This knife,
9 again, it's a black handled, average kitchen knife.
10 The difference between this one and the other, it
11 does not have a serrated edge along the blade.
12 That obviously makes it completely different than
13 the other one. That particular knife was actually
14 in his hand.

15 Q That was in his hand?

16 A Correct.

17 Q Thank you. You can retake the stand.

18 A (Witness resumes the witness stand.)

19 Q When you were on the scene with the Defendant at
20 the time, did either of these knives have blood or
21 anything on it?

22 A Yes, sir, both of them did.

23 Q Both did?

24 A Yes, sir.

25 Q After securing the knives and securing the

MICHAEL MERCKLE -- DIRECT -- MR. MOBLEY

145

1 Defendant, what did you do?

2 A Well, we had to decontaminate. We immediately
3 called E.M.S. out for medical treatment for him
4 because he was bleeding from his arm. We also had
5 a lot of blood on us because we, during the heat of
6 the moment, we didn't have a chance to put gloves
7 on and handle him and to decontaminate him with the
8 O.C. spray, which unfortunately kind of got all
9 over us as well. So we all had to kind of
10 decontaminate and then send him to the hospital so
11 he could have medical treatment for his injuries.

12 Q What type of injuries are you referring to?

13 A Just the cut on his wrist.

14 Q So there was some blood?

15 A Yes, sir.

16 Q After taking him for medical treatment, what do you
17 do next?

18 A I was pretty much done with that part of the case.
19 I just came to assist. I went back and as a
20 supervisor, just read reports, and we finished up
21 about 6:00 a.m. like Deputy Spivey had said.

22 MR. MOBLEY: Beg the Court's indulgence, Your
23 Honor.

24 (Pause.)

25 BY MR. MOBLEY:

1 Q Now, by the time you all secured the Defendant and
2 took him for medical treatment, approximately what
3 time in the early morning was that?

4 A By the time we actually had secured him?

5 Q Yes. If you don't know, that okay.

6 A I don't completely remember exactly what time it
7 was.

8 Q Was he eventually placed under arrest?

9 A Yes, he was.

10 Q He was eventually placed under arrest for what?

11 A For murder and burglary first.

12 Q Now, did you leave the scene before crime scene got
13 there?

14 A No, sir, I did not.

15 Q So you stayed on scene?

16 A I stayed on scene. Actually when we apprehended
17 Mr. Banegas, we called crime scene to that location
18 to assist us so that they could collect the
19 evidence for us, meaning the knives, and take
20 pictures of his injuries as well.

21 Then he was escorted to the hospital in an
22 ambulance by our lieutenant, who was our watch
23 commander, Lieutenant Aiken, where he met with the
24 deputy at the hospital. So he stayed in custody
25 with us the entire time.

MICHAEL MERCKLE -- DIRECT -- MR. MOBLEY

147

1 Q Did you stay during the duration of C.S.I. securing
2 the evidence that was on the scene at the time or
3 did you leave before?

4 A The knives I was there for, yes. The rest of the
5 evidence at the house, at the residence where the
6 incident occurred, no, sir, I was not there for
7 that.

8 Q You were not?

9 A No, sir.

10 Q Was there anything else that you did in response to
11 this particular incident itself?

12 A No, sir, not that I could think of.

13 Q How long was it between the time you placed him
14 under arrest until when David Day took the knives?

15 A It was within minutes. I would say probably five
16 to ten minutes.

17 Q Between five and ten minutes?

18 A We were there -- I mean, he stayed on the ground.
19 We stayed there with him. Our lieutenant showed
20 up, E.M.S. showed up, David Day showed up, one of
21 our C.S.I. guys, Deputy Day. That's when he
22 collected the knives, took pictures and
23 photographs. I was standing there with him while
24 he did it.

25 Q During that particular time period, did anyone else

1 have the opportunity to mess with those knives, do
2 anything destructive with those knives at all?

3 A No, sir, I was with them the entire time.

4 Q You observed them the entire time?

5 A Yes, sir.

6 Q No one messed with them?

7 A No, sir.

8 Q Thank you.

9 MR. MOBLEY: Nothing further for this witness,
10 Your Honor.

11 THE COURT: Cross examination.

12 MS. FULLWOOD: Thank you, Your Honor.

13 **CROSS EXAMINATION**

14 BY MS. FULLWOOD:

15 Q Good afternoon, Deputy Merckle.

16 A Good afternoon.

17 Q Who asked you to get the knives from the evidence
18 room and bring them to court?

19 A The solicitor did.

20 Q Did they also ask you to bring with you a machete
21 with a 24-inch blade?

22 A No, ma'am.

23 Q Did you see that machete that night?

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

25 Q What you did see that night was the large cut on

1 Mr. Banegas' hand?

2 A On his wrist, yes, ma'am.

3 Q On his wrist?

4 A Yes, ma'am.

5 Q And he did actually go to the hospital for
6 treatment of that wound?

7 A Yes, ma'am.

8 Q I want to show you these and ask you if you can
9 identify them for me.

10 A Yes, ma'am.

11 Q What is that a picture of?

12 A This was a picture of Mr. Banegas handcuffed behind
13 his back in a pair of handcuffs with blood all over
14 him and an obvious cut to his arm.

15 Q And the picture behind that, please, sir?

16 A This is another picture of -- I can only assume it
17 is Mr. Banegas because it's a close-up. I can't
18 see his face.

19 Q But the shirt appears to be the same?

20 A The shirt and pair of pants do appear to be the
21 same. It's a cut that resembles the same as his, a
22 close-up of an arm with a cut on it absolutely.

23 Q That would be a wound on the wrist?

24 A Yes, ma'am, that's what it looks like to me.

25 Q Is that the left wrist or the right wrist?

1 A It looks like the left wrist.

2 MS. FULLWOOD: Your Honor, I would ask that
3 these be marked for identification at this time.

4 (Defendant's Exhibits Number 1-2 are marked
5 for identification.)

6 MS. FULLWOOD: No further questions, Your
7 Honor.

8 THE COURT: Anything further?

9 MR. MOBLEY: Nothing further, Your Honor.

10 THE COURT: Thank you, sir.

11 THE WITNESS: Thank you.

12 (Witness leaves the witness stand.)

13 THE COURT: Next witness.

14 MR. GRAHAM: The State calls Ana Pecheco.

15 ANA PECHECO FLORES, being
16 first duly sworn through the interpreter, testifies as
17 follows:

18 CLERK: Please have a seat. Once you are
19 seated, state your full name on the record, spelling
20 your last.

21 THE WITNESS: My name is Ann Pecheco Flores.

22 DIRECT EXAMINATION

23 BY MR. GRAHAM:

24 (THROUGH THE INTERPRETER)

25 Q Ana, where were you born?

- 1 A In Honduras.
- 2 Q Who is Humberto?
- 3 A My husband.
- 4 Q What was his full name?
- 5 A Jose Humberto Caballero.
- 6 Q How long have you and Humberto been together?
- 7 A Between three and a half to four years.
- 8 Q Did you and Humberto have any children?
- 9 A Yes.
- 10 Q How many?
- 11 A One.
- 12 Q A boy or a girl?
- 13 A A little girl.
- 14 Q When did you come to the United States?
- 15 A 2007.
- 16 Q When you came to the United States, was Humberto
- 17 already here?
- 18 A Yes.
- 19 Q Do you know the Defendant Olbin Banegas?
- 20 A Yes.
- 21 Q Do you see him in the courtroom today?
- 22 A Yes.
- 23 Q Would you indicate where he is. Would you point to
- 24 him.
- 25 A Yes.

1 Q Would you describe where he is at and what he is
2 wearing.

3 A Yes, that's him (indicating).

4 Q Ana, are you talking about the Hispanic male that
5 is sitting over between the female attorney and the
6 male attorney?

7 A No.

8 Q Ana, are you talking about --

9 A Oh, can I ask a question?

10 THE COURT: For clarification?

11 THE WITNESS: Yes.

12 BY MR. GRAHAM:

13 Q Yes, the individual with the Hispanic male --

14 MS. FULLWOOD: Objection, leading.

15 THE COURT: State another question.

16 BY MR. GRAHAM:

17 Q Would you describe what Olbin Banegas is wearing?

18 A Yes.

19 Q What is he wearing?

20 A A white shirt with stripes.

21 Q How long have you known Mr. Banegas?

22 A I don't remember.

23 Q How would you describe your relationship to him?

24 A With Olbin?

25 Q Yes.

1 A We got along well.

2 Q How would you describe his relationship with
3 Humberto?

4 A Very good.

5 Q Do you remember living at in
6 ?

7 A Yes.

8 Q On August 24, 2008, who was living at that trailer?

9 A Ivan and his girlfriend, Edin, my brother,
10 Humberto, and I.

11 Q How long had you and Humberto been living there?

12 A I think it wasn't quite two months.

13 Q Has Mr. Banegas been to that trailer before the
14 morning that your husband was killed?

15 A No.

16 Q Prior to being awoken on the morning of August
17 24th, what were you doing?

18 A I was at a friend's house, a girlfriend's house.

19 Q After being at your girlfriend's house, did you go
20 home and go to bed?

21 A Yes.

22 Q And who else -- when you went to sleep, who else
23 was in the house and where were they?

24 A Ivan and his girlfriend in their room and the two
25 of us.

1 Q The two of us being who, Ana?

2 A Humberto and I.

3 Q Was Eddie in the trailer when you went to sleep?

4 A No.

5 Q I am going to show you a diagram and ask if you
6 recognize it.

7 A Yes.

8 Q Does it fairly and accurately depict the layout of
9 the trailer that you and Humberto lived in?

10 A Yes.

11 MR. GRAHAM: Your Honor, the State would offer
12 this diagram into evidence at this time.

13 MS. FULLWOOD: No objection.

14 THE COURT: It's admitted without objection.

15 (State's Exhibit Number 5 is received into
16 evidence.)

17 BY MR. GRAHAM:

18 Q Ana, looking at the overhead on State's Exhibit
19 Number 5, do you see the red dot on the screen?

20 A Yes.

21 Q The red dot is on what is depicted as a bedroom in
22 that diagram. Do you see the dot?

23 A Yes.

24 Q Whose bedroom was that?

25 A Ivan and his girlfriend's.

- 1 Q Do you see where I moved the dot to now?
- 2 A Yes.
- 3 Q Whose bedroom is that?
- 4 A Humberto and ours.
- 5 Q Do you see the door where the dot is at now?
- 6 A Yes.
- 7 Q Is that at the front of the house toward the street
- 8 or the back of the house?
- 9 A On the street side.
- 10 Q And do you see where the dot is now?
- 11 A Yes.
- 12 Q Do you recognize that as being the porch with the
- 13 stairs leading off of it to the yard?
- 14 A Yes.
- 15 Q Where the dot is now, where you stated was your
- 16 room and Humberto's, is that where the two of you
- 17 were sleeping the night of the 23rd and the early
- 18 morning hours of the 24th?
- 19 A Yes.
- 20 Q The back bedroom where the dot is now, is that
- 21 where Ivan and his girlfriend were?
- 22 A Yes.
- 23 Q Ana, let me show you a photograph and ask if you
- 24 recognize that photograph.
- 25 A Yes.

1 Q Does that fairly and accurately depict the trailer
2 that you and Humberto lived in at in
3 ?

4 A Yes.

5 MR. GRAHAM: Your Honor, the State would
6 introduce the photo into evidence at this time.

7 MS. FULLWOOD: No objection.

8 THE COURT: Admitted without objection.

9 (State's Exhibit Number 6 is received into
10 evidence.)

11 BY MR. GRAHAM:

12 Q Ana, looking at State's Exhibit Number 6 on the
13 overhead screen, do you again see the red dot that
14 is on the screen?

15 A Yes.

16 Q When I point up here, do you see the red dot now?

17 A Yes.

18 Q Is that the front of the trailer toward the street?

19 A I don't understand.

20 Q Do you see where the dot is now, Ana?

21 A Yes.

22 Q Can you tell from the photograph whether that
23 window is open or closed?

24 A It seems open.

25 Q The early morning hours of August 24, 2008, when

ANA FLORES -- DIRECT -- MR. GRAHAM

157

1 you and Humberto were asleep in your room, what
2 cause you to awaken?

3 A Edin knocked on the door.

4 Q How would you describe the way that he knocked?

5 A I heard the knocking on the door and Ivan got up.

6 Q Would you describe it as knocking or pounding --

7 MS. FULLWOOD: Objection, Your Honor, leading.

8 THE COURT: Restate the question, please.

9 BY MR. GRAHAM:

10 MR. GRAHAM: Was she able to hear the knocking
11 in her bedroom when she was asleep?

12 INTERPRETER HUNT: Yes.

13 MR. GRAHAM: And did she wake up and go into
14 the living room?

15 INTERPRETER HUNT: Yes.

16 MR. GRAHAM: How many times would she say her
17 brother knocked on the door?

18 INTERPRETER HUNT: About two times.

19 BY MR. GRAHAM:

20 Q Who opened the door?

21 A Ivan.

22 Q And who came into the house?

23 A Edin.

24 Q Eddie being your brother?

25 A Yes.

1 Q And how was Eddie acting?

2 A He was calm.

3 MR. GRAHAM: Was she able to see any injuries
4 on her brother?

5 INTERPRETER HUNT: No.

6 BY MR. GRAHAM:

7 Q Did your brother come into the house?

8 A Yes.

9 Q Did you talk with your brother?

10 A Yes.

11 Q And at that time your brother came in, who all was
12 awake and in the living room?

13 A Ivan.

14 Q And was the door, the front door to the trailer,
15 after your brother came in, was it left open or was
16 it closed?

17 A A little open.

18 Q At that point later did somebody else come to that
19 door from the outside?

20 A Yes.

21 Q And how long was that when somebody else came after
22 your brother came into the house?

23 A I don't know, not much time.

24 Q Who was the person who came after your brother
25 through the front door of your house?

- 1 A Olbin.
- 2 Q How did Olbin come into the house?
- 3 A He was angry.
- 4 Q Was he invited in or was he given permission to
- 5 come in?
- 6 A No.
- 7 Q Did you or Eddie or Ivan open the door for him?
- 8 A No.
- 9 Q What, if anything, did Olbin have to do to come
- 10 into the house?
- 11 A Yes, knock on the door.
- 12 Q Was the door open enough for him to come in without
- 13 it being opened further?
- 14 A It needed to be opened more.
- 15 Q And who opened it more?
- 16 A Olbin.
- 17 Q And after he knocked on the door, did anyone tell
- 18 him to come in?
- 19 A No.
- 20 Q When he came in, what, if anything, did he say?
- 21 A I don't know.
- 22 Q What, if anything, did he have in his hands?
- 23 A Like...I don't remember.
- 24 Q You stated earlier he came in and he was angry?
- 25 A Yes.

1 Q From what he said, what was he angry about?

2 A Because he had fought with my brother.

3 Q What, if anything, did he tell you he wanted to do
4 to your brother?

5 A I don't know.

6 Q What happened next after Mr. Banegas came into the
7 trailer?

8 A He wanted to attack my brother.

9 Q What, if anything, did he do to attack your
10 brother?

11 A When he wanted to attack my brother, he already had
12 knives, and he said, I want to kill him.

13 Q And after he had the knives and said he wanted to
14 kill your brother, what happened next inside the
15 trailer?

16 A With my brother, we ran to Ivan's room.

17 Q Ana, looking back at State's Exhibit Number 5 that
18 is on the overhead, again, do you see the red dot?

19 A I can't see it now.

20 Q Do you see where my finger is?

21 A Yes.

22 Q Is that the room you and your brother ran to?

23 A Yes.

24 Q As you were running to that room, what was
25 Mr. Banegas doing?

1 A Wanting to come in but Humberto was not letting him
2 come in.

3 Q On your way back to Ivan's bedroom, what, if
4 anything, did you see Mr. Banegas pick up in the
5 kitchen?

6 A Like a knife.

7 Q Prior to him picking up the knife in the kitchen,
8 did he already have another knife?

9 A I don't know.

10 Q Ana, you said that Humberto would not let him back
11 into that room. Where was Humberto?

12 A In the hallway in front of our bedroom.

13 Q When you say the hallway in front of the bedroom,
14 is that where my finger is?

15 A Yes.

16 Q What, if anything, was Humberto doing to prevent
17 Mr. Banegas getting to you and your brother?

18 A Holding up his arms.

19 Q Holding up whose arms?

20 A Olbin's.

21 Q What, if anything, was your husband saying at that
22 time?

23 A To not cause any problems.

24 Q What, if anything, was Mr. Banegas saying at that
25 time?

1 A He wanted to attack Eddie.

2 Q Where was Ivan at this time?

3 A I don't remember.

4 Q As your husband was holding up Mr. Banegas' arms,
5 what did you and Eddie do?

6 A We opened a window to go out.

7 Q Whose bedroom was that window in?

8 A Ivan's.

9 Q Were you and your brother able to get out of the
10 trailer through that window?

11 A Yes.

12 Q And what did you do next?

13 A I went to the corner of the trailer.

14 Q In the front or the back?

15 A On the front.

16 Q And after you went to the front corner of the
17 trailer, what did you do?

18 A I was just there hoping that Eddie wouldn't go to
19 where Olbin was.

20 Q Where was Eddie at that time?

21 A With me.

22 Q At some point, Ana, did you go back into the
23 trailer?

24 A Yes.

25 Q Did Eddie go with you?

- 1 A No.
- 2 Q When you went into the trailer, did you have
- 3 anything in your hands?
- 4 A Yes.
- 5 Q What did you have in your hands?
- 6 A Like a metal tube.
- 7 Q Why did you have that in your hands?
- 8 A I wanted Ivan to threaten Olbin so that Olbin would
- 9 let go of Humberto.
- 10 Q Did that happen?
- 11 A No.
- 12 Q When you went into the trailer with a pipe or a
- 13 metal tube in your hand, did you again see your
- 14 husband Humberto and the Defendant, Mr. Banegas?
- 15 A Yes.
- 16 Q Where were they?
- 17 A At the door of my room, almost inside.
- 18 Q When you went back to the room and saw them, did
- 19 Mr. Banegas see you?
- 20 A Yes.
- 21 Q What, if anything, did Mr. Banegas say to you?
- 22 A To go ahead and do it if he was brave enough.
- 23 Q I'm sorry?
- 24 A To do it if you are brave enough.
- 25 Q When he said that to you, what did you do?

1 A I went back out.

2 Q Before you went back out, what did you see, if
3 anything, in yours and Humberto's bedroom that
4 happened between Humberto and Mr. Banegas?

5 A Yes.

6 Q What did you see?

7 A Olbin wanted to -- Humberto grabbed the knife so
8 that he wouldn't hit him with the knife.

9 Q How many knives did Mr. Banegas have at that
10 moment?

11 A I could see like two knives.

12 Q How was he holding those two knives?

13 A He had them in his hands and then Humberto would
14 grab one hand with the knife and then the other one
15 and then back again.

16 Q From what you saw, what, if anything, was
17 Mr. Banegas trying to do with those knives?

18 A I don't know, trying to attack Humberto because
19 Humberto wouldn't let him go to the back to get
20 Eddie.

21 MR. GRAHAM: At some point did she see either
22 Humberto or Mr. Banegas on the bed in their room?

23 INTERPRETER HUNT: Humberto was in the bed.

24 BY MR. GRAHAM:

25 Q How was Humberto positioned in the bed?

ANA FLORES -- DIRECT -- MR. GRAHAM

165

1 A Like standing, making sure that he wouldn't get in
2 the bed.

3 Q Humberto was standing in the bed?

4 A Yes.

5 Q And where was Mr. Banegas while your husband was
6 standing on the bed?

7 A He was closing in on him.

8 Q What, if anything, was he doing with the knives at
9 that time?

10 A I couldn't see anymore.

11 Q What, if anything, was Mr. Banegas saying at that
12 moment?

13 A I couldn't hear because I was outside.

14 Q Ana, after you went outside, who came out of the
15 trailer next?

16 A Ivan.

17 Q And what was Ivan doing?

18 A He wanted to run and he got on top of the van.

19 Q Backing up for a second, when you left the trailer
20 after seeing Humberto and Mr. Banegas struggling in
21 your room, did your husband have anything in his
22 hands?

23 A No.

24 Q What was going on when Ivan got on top of the van?

25 A Who?

1 Q When Ivan was on top of the van, what else was
2 going on?

3 A Olbin.

4 Q What was Olbin doing?

5 A I could only see that he was there but I couldn't
6 see.

7 Q Was the van parked at the front or the back of the
8 trailer?

9 A In front.

10 Q Would that be near the front porch?

11 A Yes.

12 Q Where were you at when you saw Ivan on top of the
13 van?

14 A At the corner of the trailer.

15 Q Was that the front corner or the back corner?

16 A In front but always looking in the same direction
17 as the van.

18 Q How close were you to where Ivan and Olbin were?

19 A I don't know. Like, I don't know very well.

20 Q Looking at the diagram of the trailer, Ana, were
21 you on this side (indicating) of the trailer? Here
22 (indicating) is the front porch with the steps.
23 Were you on this side (indicating) of the trailer
24 or this side (indicating)?

25 A Over here, like near the steps.

- 1 Q Up here (indicating)?
- 2 A Are those the steps?
- 3 Q This (indicating) is the front door. This
- 4 (indicating) is the front porch. These
- 5 (indicating) are the steps coming down.
- 6 A Yes.
- 7 Q That's where you were or that's where -- who was
- 8 there at the front steps?
- 9 A No, they were there.
- 10 Q They being who?
- 11 A Olbin and Ivan.
- 12 Q While they were at the front steps, where were you?
- 13 A On the other part.
- 14 Q Were you on the same side of the trailer as the
- 15 steps and where they were or were you on the side
- 16 over here (indicating) where you couldn't see?
- 17 A On the same side as they, where the steps were, but
- 18 they were on the corner where the steps are and I
- 19 was on the other corner.
- 20 Q You were on the other corner of the back of the
- 21 trailer?
- 22 A Yes. We ran from that corner to the other corner
- 23 because we were scared that Olbin would come.
- 24 Q You ran from the front corner to the back corner?
- 25 A From that corner, yes, to the other corner. That's

1 where we were.

2 MS. FULLWOOD: Your Honor, I would ask if he
3 wants to ask the witness directions, to let the witness
4 herself point it out, rather than him pointing it out
5 and asking her if that is correct. That is rather
6 suggestive.

7 THE COURT: Counsel.

8 MR. GRAHAM: Your Honor, can I ask the witness
9 to step down from the stand?

10 THE COURT: Yes.

11 BY MR. GRAHAM:

12 Q Ana, would you please step down from the stand.

13 A (Witness leaves the witness stand.)

14 Q Ana, come over here and look at the piece of paper
15 that has got State's Exhibit Number 5. Where did
16 you see Ivan and Olbin?

17 A Around here (indicating).

18 Q When you saw them, where were you standing?

19 A Around here (indicating).

20 Q Thank you, Ana. Please take a seat.

21 A (Witness resumes the witness stand.)

22 Q Where was Ivan at that time?

23 A On top of the van.

24 Q Do you know what he was doing?

25 A I just saw that he was on top of the van.

1 Q What, if anything, did you see Mr. Banegas do?

2 A I saw that he was yelling but I don't know anything
3 else.

4 Q At some point did your husband come outside?

5 A Yes.

6 Q Where was your husband at the first time you saw
7 him come out?

8 A I saw that he came out of my room outside.

9 Q Which door did he come out of from the house?

10 A From the porch door.

11 MR. GRAHAM: What, if anything, did she see
12 happen between her husband and Mr. Banegas outside at
13 the bottom of the stairs?

14 INTERPRETER HUNT: I just could see that --
15 how he hit him, but I didn't think he was going to stab
16 him.

17 BY MR. GRAHAM:

18 Q When you talk about he hitting him, who are you
19 talking about?

20 A I just saw Olbin do like this (indicating) to his
21 stomach.

22 Q After Olbin did like that to your husband's
23 stomach, what happened next?

24 A I didn't think that -- when I ran over to see
25 Humberto, I didn't realize that he had been

1 stabbed, and then I saw that he was stabbed in the
2 stomach, and the knife was on the ground.

3 Q What happened next, Ana?

4 A I saw that Olbin picked up his knives and left, and
5 I stayed with Humberto.

6 Q Prior to Mr. Banegas leaving, what, if anything,
7 did you say to him?

8 A That he had killed him.

9 Q When you told Mr. Banegas that he had killed your
10 husband, what, if anything, did he say back to you?

11 A To not play around with him.

12 Q Did Mr. Banegas leave then?

13 A Yes.

14 Q Was your husband taken to the hospital?

15 A Yes.

16 Q Did you soon learn that he had passed away?

17 A Yes.

18 Q Ana, at some point after the police left, were you
19 able to go back into your house?

20 A Yes.

21 Q Let me show you some photographs and ask if you
22 recognize them.

23 A Yes.

24 Q Please look through all of them.

25 A (Pause.)

ANA FLORES -- DIRECT -- MR. GRAHAM

171

1 Q Ana, do you recognize those photographs?

2 A Yes.

3 Q Do their fairly and accurately depict the way -- do
4 they fairly and accurately depict the way you found
5 your house after you came back in after your
6 husband was killed?

7 A No. No, it wasn't like that. What I want to say
8 was before, things weren't like that. But after he
9 killed him, I saw the bed was like this.

10 Q And the other photos, besides the bed, is that also
11 the way you found your house when you came back in
12 after your husband was killed?

13 A Like these, yes.

14 MR. GRAHAM: Your Honor, the State would offer
15 these photographs into evidence at this time.

16 THE COURT: What says the defense?

17 MS. FULLWOOD: If I could take a look.

18 THE COURT: Ladies and gentlemen, stand for a
19 moment.

20 (Pause.)

21 THE COURT: Counsel approach.

22 (Whereupon there is a bench conference off the
23 record in the presence of the jury but out of the
24 hearing of the jury.)

25 THE COURT: What says the defense?

1 MS. FULLWOOD: I have no objection except as
2 to one, which I have an objection as to the relevancy
3 and that it hasn't been tied in. Once he has them
4 marked, I will put on the record which one I object to.
5 I don't know what number to say right now.

6 THE COURT: Hand her the one she objects to.
7 What is the State's next in order?

8 COURT REPORTER: Number 7, Your Honor.

9 THE COURT: That's number 7. Seven is in over
10 objection. All the others are in without objection.

11 (State's Exhibits Number 7-13 are received
12 into's evidence.)

13 BY MR. GRAHAM:

14 Q Looking at State's Exhibit Number 7, do you
15 recognize that door in that picture?

16 A That's the door to my room.

17 Q Are we looking into your room or from in your room
18 out?

19 A Like, looking out.

20 Q Do you see the drywall to the left of the doorknob
21 on the inside of the room?

22 A Yes.

23 Q Was that like that prior to Mr. Banegas coming into
24 your house?

25 A No.

1 Q Looking at State's Exhibit Number 13, do you
2 recognize that, Ana?

3 A Yes.

4 Q What bedroom is that in?

5 A My bedroom.

6 Q Does State's Exhibit Number 12 -- is that the same
7 window?

8 A Yes.

9 Q Ana, looking at State's Exhibit Number 12, are you
10 able to see whether -- 12 and 13 -- are you able to
11 see whether the windows were broken or not?

12 A Yes.

13 Q Are they broken or are they not broken?

14 A Yes, they are broken.

15 Q Was that window broken prior to Mr. Banegas coming
16 into your house?

17 A No.

18 Q Ana, looking at State's Exhibit Number 8, do you
19 recognize that?

20 A I almost don't.

21 Q Does it appear to have any damage on the drywall in
22 that photograph?

23 A Yes, like this (indicating) for example.

24 Q Do you know whether that damage was there prior to
25 Mr. Banegas coming into your house?

1 A No.

2 Q No, it was not present?

3 A No, the damage, no.

4 Q Ana, looking at the projector again, State's
5 Exhibit Number 11, do you recognize the bed in that
6 photograph?

7 A Yes.

8 Q Whose bed was that?

9 A The two of ours.

10 Q Being you and Humberto?

11 A Yes.

12 Q State's Exhibit Number 9, do you see that on the
13 overhead projector?

14 A Yes.

15 Q Looking at the photo, Ana, is there anything about
16 that bed that is different?

17 A My bed wasn't like this. This was Olbin.

18 Q Can you describe what you are talking about?

19 A There are cut marks from the knife.

20 Q Were those there before Olbin came into your house?

21 A No.

22 Q Ana, looking at State's Number 10, do you recognize
23 that?

24 A Yes.

25 Q Is that a closeup of the cut marks that you were

1 describing?

2 A Yes.

3 Q Thank you, Ana. Please answer any questions the
4 defense attorney has for you.

5 MS. FULLWOOD: Your Honor, may we approach?

6 THE COURT: Yes.

7 (Whereupon there is a bench conference off the
8 record in the presence of the jury but out of the
9 hearing of the jury.)

10 THE COURT: Ladies and gentlemen, I will have
11 you go to the jury room for a break. We will see where
12 we are going and how long we will be going in a few
13 minutes. Please go to the jury room. Please do not
14 discuss the case.

15 (The jury retires to the jury room.)

16 THE COURT: We will take a break.

17 MS. FULLWOOD: Your Honor, would you caution
18 the witness to not discuss her testimony with anyone
19 during the break.

20 THE COURT: Please do not discuss your
21 testimony during the break with anyone.

22 INTERPRETER HUNT: Okay.

23 (Whereupon there is a recess.)

24 THE COURT: Bring the jury back.

25 (The jury returns to the courtroom.)

1 THE COURT: Cross examination.

2 MS. FULLWOOD: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MS. FULLWOOD:

5 Q Ms. Pacheco, we have talked before; haven't we?

6 A Yes.

7 Q And do you remember when Mr. Smith, who is sitting
8 over there at the end of the table, and I came out
9 and talked to you where you work, the week before
10 last?

11 A Yes.

12 Q And then last week Mr. Smith, Ms. Occhipinti and I
13 came back to where you work and talked to you a
14 little bit. Do you remember that?

15 A Yes.

16 Q Ms. Pacheco, are you also known by the name Suyapa,
17 S-U-Y-A-P-A?

18 A Suyapa.

19 Q Suyapa. Is that a nickname or something?

20 A It's a second name.

21 Q A second name. The same way that Ana is your first
22 name?

23 A Yes.

24 Q So do some people call you Suyapa?

25 A Yes.

1 Q Are those some of the people that are closer to you
2 than others?

3 A Yes.

4 Q Now, aren't you and Olbin from the same area in
5 Honduras?

6 A Yes.

7 Q Weren't you acquainted with him when you were a
8 child in Honduras?

9 A No.

10 Q Did you know who he was?

11 A No.

12 Q How old are you?

13 A Twenty-seven.

14 Q So you are older than Olbin?

15 A I believe so.

16 Q And Eddie is your brother?

17 A Yes.

18 Q And how old is your brother?

19 A I don't know, about 20 or 21.

20 Q So is he maybe closer to Olbin's age than you are?

21 A I don't know.

22 Q Now, didn't you and Humberto at some point live in
23 a trailer with Olbin and some other guys?

24 A Beforehand, yes.

25 Q Not at the time in question, but beforehand you had

1 lived in the same trailer with Olbin and some other
2 people?

3 A Yes. Not in the trailer where everything happened
4 that night, but beforehand, yes, Humberto and I
5 lived with him and I believe one of his siblings.

6 Q All right. Do you remember how long ago that was?

7 A About, I would say, about two months or something
8 like that we lived there. Olbin moved out first to
9 go to the trailer park.

10 Q Okay. Now, Ana, when you and your brother Eddie
11 and Olbin and Ivan and Ana Mejia moved into this
12 trailer where all this happened, Olbin had come to
13 visit you at that trailer before; hadn't he?

14 A I think maybe one or two times.

15 Q Okay. And hadn't there been many times when Olbin
16 had been at your house and you had cooked dinner
17 for him, and your brother and Humberto and your
18 other friends and family? Y'all would eat together
19 and talk with each other?

20 A Yes.

21 Q All right. In fact, wasn't Olbin sick once and you
22 took him some medicine to try to help him get
23 better?

24 A No.

25 Q Well, when Mr. Smith came out and talked to you at

ANA FLORES -- CROSS -- MS. FULLWOOD

179

1 your job the week before last on October 21st,
2 didn't you tell us that once you bought Olbin some
3 medicine and took it to him?

4 THE COURT: Counsel approach.

5 MS. FULLWOOD: Yes, sir.

6 (Whereupon there is a bench conference off the
7 record in the presence of the jury but out of the
8 hearing of the jury.)

9 THE COURT: The question will be rephrased.

10 BY MS. FULLWOOD:

11 Q I'm going to ask you the question another way,
12 okay?

13 A Okay.

14 Q The week before last didn't you tell Mr. Smith,
15 while I was there, too, that on one occasion you
16 had taken medicine to Olbin?

17 A Not medicine, food.

18 Q Okay, okay. I'm sorry. I must have misunderstood.
19 You said you took him some food when he was sick?

20 A No. The day before things happened, I sent food
21 for him, to him.

22 Q Okay. Now, where is your brother Eddie now?

23 A In Tennessee.

24 Q When was the last time you talked to him?

25 A About a week.

1 Q About a week ago?

2 A Yes. About this case, about three days.

3 Q Three days ago?

4 A Yes.

5 Q Okay. And Ivan's girlfriend's name is Ana Mejia;
6 is that correct?

7 A Yes.

8 Q Do people also sometimes call her Carmen?

9 A Yes, I know her more by Carmen.

10 Q When all this happened at the trailer that night,
11 wasn't she 14 or 15 years old?

12 A I don't know.

13 Q How old did you understand her to be?

14 A How old did I think Carmen was?

15 Q Yes.

16 MR. GRAHAM: Objection, Your Honor,
17 speculation.

18 THE COURT: She can answer if she knows.

19 A I guess about 15.

20 Q Do you know where Carmen is now?

21 A No.

22 Q Ms. Pacheco, I want to show you one of the
23 pictures Mr. Graham showed you earlier; okay?

24 A Okay.

25 Q I'm going to show you the picture that has been

- 1 labeled State's Exhibit 8.
- 2 A Okay.
- 3 Q What is that a picture of?
- 4 A I cannot identify exactly where that is. I just
- 5 know there is damage to the wall.
- 6 Q That's the trailer you lived in, correct?
- 7 A Yes.
- 8 Q Is that a door that goes to the inside or the
- 9 outside of the house? I don't think I asked that
- 10 question very good, Ms. Pacheco. Is that one of
- 11 the inside doors inside of the house or is that one
- 12 of the doors that leads to the outside?
- 13 A I don't know.
- 14 Q What is that on the floor to the left of the door?
- 15 A This (indicating)?
- 16 Q Correct.
- 17 A A machete.
- 18 Q Who did that machete belong to?
- 19 A It was ours.
- 20 Q When you say ours, who is -- is that you and
- 21 Humberto?
- 22 A I just remember it was in the house. I don't know
- 23 it was Humberto's or not.
- 24 Q Where was that machete usually kept?
- 25 A I don't remember.

1 Q Who put the machete where it is in that picture?

2 A I don't know.

3 Q So this picture is of the inside of your house?

4 A Yes.

5 Q And this is the machete?

6 A Yes.

7 MS. FULLWOOD: Your Honor, could we have the
8 lights back on?

9 THE COURT: Yes.

10 MS. FULLWOOD: Thank you.

11 BY MS. FULLWOOD:

12 Q Ms. Pacheco, do you remember testifying that Olbin
13 got a knife from your kitchen?

14 A Yes.

15 Q And didn't you folks also keep a knife in your
16 bathroom?

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

18 Q Well, not necessarily you but anybody. Did anybody
19 keep a knife in the bathroom?

20 A I heard there was a knife in the bathroom.

21 Q Didn't you tell Mr. Smith that there was a knife on
22 the bathroom counter and that Carmen tried to hide
23 it and Olbin took it from her?

24 A That's what Carmen told me. She said she was going
25 to take the knife to her room, and Olbin took it

1 away from her.

2 Q So you saw Carmen with the knife trying to take it
3 to her room?

4 A I don't remember.

5 Q Do you know where Carmen was during this whole
6 incident?

7 A In the doorway of her room.

8 Q Ms. Pacheco, didn't you tell Mr. Smith the week
9 before last that Olbin -- not Olbin -- that
10 Humberto grabbed a machete from under y'all's bed
11 that night?

12 A I saw through the window that he got a machete. I
13 don't know if he got it from under the bed or in
14 the room or what, but he had a machete.

15 Q Okay. And when you say him, you mean Humberto?

16 A Yes.

17 Q Let me put this diagram up. Where is the window
18 that you saw this through? Is it marked on that
19 diagram?

20 A From my room.

21 Q Were you inside or outside the trailer when you saw
22 Humberto get the machete?

23 A Outside.

24 Q And your bedroom had a window?

25 A Yes, there was a window.

1 Q And did you see him with the machete through that
2 window?

3 A I saw him in the doorway of my bedroom with the
4 machete, but I didn't see anything else after that.

5 Q You saw Humberto -- who was in the doorway of your
6 room, Humberto or you?

7 A Humberto.

8 Q And you were outside?

9 A Yes.

10 Q Now, the week before last, do you remember telling
11 Mr. Smith that you saw Humberto standing at the top
12 of these stairs and saw him hit Olbin on the
13 shoulder with the flat side of the machete?

14 A No, I didn't see that.

15 Q Do you remember telling Mr. Smith that you saw it?

16 A No, I didn't see him when he was hit. I saw that
17 he was going out by the stairs.

18 Q How did you see that?

19 A I just saw he was about to go down the stairs.
20 Then after that I didn't see anything.

21 Q You saw that Humberto was about to go down the
22 stairs?

23 A Yes.

24 Q So you saw Humberto at the top of the stairs?

25 A Yes.

1 Q So where were you standing when you saw that?

2 A At the corner of the trailer.

3 Q Right here (indicating)? I will tell you, why
4 don't you come down and point to us so we know
5 exactly what you mean.

6 A (Witness leaves the witness stand.) He was going
7 to go down the stairs.

8 Q Who is he?

9 A Humberto.

10 Q Show us where you saw Humberto about to go down the
11 stairs.

12 A This is the window (indicating) that I went out of.
13 I walked away a little bit in order to see if he
14 was coming out of the trailer or not. Then I saw
15 and I ran away.

16 Q So did you go out of the window of your bedroom or
17 Ivan's bedroom?

18 A Ivan's.

19 Q Okay. Is that the first time you went outside or
20 the second time you went outside?

21 A The second time.

22 Q And show us. Is this (indicating) the window you
23 went out of?

24 A Here (indicating).

25 Q And show us exactly -- once you got outside, show

1 us exactly where you walked in the yard.

2 A The steps of the trailer are like this and I was
3 here, and I could see him coming down and I ran
4 over there.

5 Q You've got to point for us on the map, please,
6 ma'am, where here and there is; okay? Show us.
7 You went from where to where to see him coming
8 down?

9 A Like this (indicating). Then later I came back and
10 they were always on the porch.

11 Q So where were you standing when you saw Humberto on
12 the porch getting ready to come down? Point to it.
13 Point on the chart where you were standing when you
14 saw that.

15 A I came over here and I went back here (indicating),
16 and I saw him there on the corner. Then I went
17 back with my brother.

18 Q Where was your brother? Point where your brother
19 was the whole time.

20 A My brother was just in one place.

21 Q And can you point to which side of the trailer you
22 were on when you saw Humberto coming down the
23 stairs?

24 A I didn't actually see Humberto going down the
25 stairs. I saw him standing at the stairs. Then I.

1 went over here and then back here. Then I went to
2 where my brother was because I was watching my
3 brother.

4 Q You can go ahead and take the witness stand again.

5 A (Witness resumes the witness stand.)

6 MS. FULLWOOD: Beg the Court's indulgence.

7 BY MS. FULLWOOD:

8 Q Didn't you tell Mr. Smith the week before last that
9 you saw the encounter between Humberto and Olbin on
10 the ground?

11 A Yes.

12 Q Okay. And is it true? Did you see that?

13 A But inside the room. I don't want you to ask me
14 anymore questions.

15 MS. FULLWOOD: I have a matter of law, Your
16 Honor.

17 THE COURT: Ladies and gentlemen, I think we
18 will break for the day. We will start back at ten
19 tomorrow morning. Thank you very much. Have a good
20 evening. Please do not discuss the case. We will see
21 you tomorrow morning at 10:00 o'clock.

22 (The jury is excused for the day at 6:14 p.m.)

23 THE COURT: Yes, ma'am.

24 MS. FULLWOOD: It's my understanding, you just
25 gave the jury an overnight recess; is that correct?

1 THE COURT: Yes.

2 MS. FULLWOOD: I'm sorry. I was talking to
3 Ms. Henry and might not have been quite as alert to
4 everything. The overnight recess will probably solve
5 this problem.

6 I was going to ask that the Court caution the
7 witness and remind her of her responsibility under her
8 oath. I think probably she has been on the stand a long
9 time. I'm sure once she has rested that we won't have a
10 problem with the witness not wanting to answer
11 questions. I was going to ask Your Honor to give her
12 instructions.

13 THE COURT: All right. Mr. Graham.

14 MR. GRAHAM: Your Honor can address her
15 however you want if you think she needs an instruction
16 on her oath. She made a statement and Ms. Fullwood
17 didn't say anything more to her. She just asked to
18 speak to you.

19 THE COURT: Ms. Pacheco, you stated to the
20 lawyer that you did not want her to ask you anymore
21 questions; is that right?

22 INTERPRETER HUNT: Yes.

23 THE COURT: Will you be ready to answer more
24 questions tomorrow morning if we give you a break to
25 rest overnight?

1 INTERPRETER HUNT: Possibly, yes.

2 THE COURT: Please understand that you must
3 answer all the questions that you are asked. You must
4 answer them until she is finished asking questions.

5 INTERPRETER HUNT: I can't continue.

6 THE COURT: You must return tomorrow morning.
7 We need you to return tomorrow morning at 10:00 o'clock
8 to continue.

9 INTERPRETER HUNT: The thing is I feel a
10 little nervous.

11 THE COURT: I understand you need some rest.
12 We will let you maybe rest overnight, but tomorrow you
13 must return.

14 INTERPRETER HUNT: Yes.

15 THE COURT: If you do not return tomorrow, you
16 will be in contempt of Court and can get into trouble.

17 INTERPRETER HUNT: Okay.

18 THE COURT: So we hope you rest up. Even
19 though you are nervous, you still must continue to
20 answer more questions tomorrow. Do you understand?

21 INTERPRETER HUNT: Yes.

22 THE COURT: Thank you. You may step down, but
23 you cannot discuss your testimony overnight with anyone.

24 INTERPRETER HUNT: Okay.

25 THE COURT: What time -- well, you cannot

1 discuss it. She is no longer your witness in effect.
2 But do you have a victim's impact person who is in
3 communications with her that you would want to be able
4 to continue to be in touch with her?

5 MR. GRAHAM: Yes, Your Honor. Nancy Vargas
6 with the Sheriff's Department has been working with her
7 and actually brought her to court today.

8 THE COURT: Counsel, any objection to
9 Ms. Vargas continuing to serve in that capacity?

10 MS. FULLWOOD: Not at all. As long as
11 Ms. Vargas understands this prohibition extends to her.
12 She can't talk to Ms. Pacheco about her testimony,
13 anymore than Ms. Pacheco can talk with her.

14 THE COURT: You understand that Ms. Vargas,
15 don't you?

16 DEPUTY: Yes, sir, Your Honor.

17 THE COURT: Thank you. You may leave. See
18 you tomorrow morning.

19 THE WITNESS: Okay.

20 (Witness leaves the witness stand.)

21 THE COURT: Anything further then on this day?

22 MR. GRAHAM: What time are we starting back,
23 Your Honor?

24 THE COURT: The jury is coming in at ten
25 tomorrow morning. I think if we are here at quarter to

1 ten, we will be doing good, 9:45.

2 MS. FULLWOOD: Your Honor?

3 THE COURT: Yes.

4 MS. FULLWOOD: May we have Mr. Banegas here in
5 the holding cell no later than nine so we can consult
6 with him tomorrow morning?

7 THE COURT: Who is in charge of having him
8 here at nine?

9 DEPUTY: He will be here, sir.

10 THE COURT: All right. He will be here.

11 (Whereupon the proceedings are concluded for
12 November 1, 2010.)

13 (The following proceedings are reported on
14 November 2, 2010.)

15 THE COURT: Can we have our witness back on
16 the stand and our interpreter back on duty.

17 CLERK: She is still under oath, correct, Your
18 Honor?

19 THE COURT: Yes.

20 ANA PECHECO FLORES, having
21 been previously duly sworn, resumes the witness stand
22 and testifies as follows:

23 THE COURT: Good morning.

24 INTERPRETER HUNT: Good morning.

25 THE COURT: Are you okay this morning?

1 INTERPRETER HUNT: Yes.

2 THE COURT: Let's bring the jury.

3 (The jury returns to the courtroom at
4 10:07 a.m.)

5 THE COURT: Good morning. You may continue.

6 MS. FULLWOOD: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MS. FULLWOOD:

9 Q Ms. Flores, yesterday we were -- I was asking you
10 about a conversation you had with Mr. Smith and me.
11 That conversation took place where you work,
12 correct?

13 A Yes.

14 Q I want to show you some pictures and ask you if you
15 can identify these items. Can you identify what is
16 in that picture?

17 A A machete.

18 Q Was that the machete that was in your house?

19 A I don't remember.

20 Q And do you know what this is a picture of?

21 A The machete.

22 Q Is that the machete at your house?

23 A Yes.

24 Q And that's a picture of that machete inside of your
25 house, correct?

1 A Yes.

2 MS. FULLWOOD: Your Honor, I would ask that
3 this be marked as Defendant's Exhibit 3.

4 (Defendant's Exhibit Number 3 is marked for
5 identification.)

6 BY MS. FULLWOOD:

7 Q Ms. Flores, your child wasn't present in that
8 trailer that night in August; was she?

9 A No.

10 Q Ms. Flores, who moved the machete from outside back
11 into your house?

12 A I don't know.

13 Q Who put the yellow pipe under your kitchen cabinet?

14 A I don't know.

15 Q Who was using a stick that night?

16 A I don't remember.

17 Q Did you have the stick in your hands that night?

18 A No.

19 Q Did Ivan have the stick?

20 A I don't know. I don't remember.

21 Q Did Humberto have the stick?

22 A I don't know.

23 MS. FULLWOOD: Beg the Court's indulgence.

24 (Pause.)

25 MS. FULLWOOD: No further questions.

1 THE COURT: Redirect?

2 MR. GRAHAM: Nothing from the State, Your
3 Honor.

4 THE COURT: Thank you. You may step down.
5 (Witness leaves the witness stand.)

6 THE COURT: Next witness.

7 MR. GRAHAM: The State would call Ivan
8 Vasquez.

9 IVAN VASQUEZ, being
10 first duly sworn, testifies as follows:

11 CLERK: Have a seat, please, sir. Once you
12 are seated, I need you to speak up loud and clear,
13 stating your full name and spelling your last.

14 THE WITNESS: My name is Ivan Vasquez,
15 V-A-S-Q-U-E-Z.

16 DIRECT EXAMINATION

17 BY MR. GRAHAM:

18 Q Ivan, do you speak English?

19 A I try.

20 Q If during the questioning, you feel like we need to
21 switch to Spanish because you don't understand
22 something or you can't explain yourself, will you
23 let me know?

24 A I'll let me know.

25 Q Pull the microphone toward you a little bit so the

1 jury can hear you. Where were you born?

2 A Honduras.

3 Q When did you come to the United States?

4 A 2002.

5 Q What do you do for a living?

6 A Right now I'm working.

7 Q Can you pull the microphone closer to you. I am
8 having trouble hearing you, so I know the jury is.

9 When you do work, what do you do?

10 A Landscaping.

11 Q On August 24, 2008, where were you living?

12 A

13 Q ?

14 A Yes, sir.

15 Q Whose trailer was that?

16 A It was my uncle's trailer.

17 Q On August 24, 2008, who was living with you in that
18 trailer?

19 A Ana Mejia, Ana Pecheco, Me, Eddie Pecheco, and
20 Humberto.

21 Q And Humberto Caballero?

22 A Yes.

23 Q And what was your relationship with all these
24 people?

25 A Like friends. Because Humberto, that's my mom's

- 1 cousin, second cousin.
- 2 Q Your mom's second cousin?
- 3 A Yes.
- 4 Q Did you ever work with Humberto?
- 5 A Sometimes.
- 6 Q Or he worked with you?
- 7 A (Witness nods.) (Indicating affirmative response.)
- 8 Q How long have you known Humberto?
- 9 A Two years.
- 10 Q And how about Ana, his wife?
- 11 A About a year.
- 12 Q How long had they been living with you?
- 13 A Like two months.
- 14 Q Two months prior to Humberto being killed?
- 15 A Yes.
- 16 Q Do you know Olbin Banegas?
- 17 A I know from here. I don't know from Honduras.
- 18 Q What was your relationship with him?
- 19 A I see like it we don't be friends but like say hi.
- 20 That's it.
- 21 Q Had he ever been over to your trailer before?
- 22 A Yeah, he been like two times.
- 23 Q Looking at the overhead projector, do you see the
- 24 diagram on there that I am referring to, State's
- 25 Exhibit Number 5? Do you see that?

- 1 A Yes.
- 2 Q Does that fairly and accurately reflect the layout
- 3 of the trailer that you lived in on ?
- 4 A (Witness nods.) (Indicating affirmative response.)
- 5 Q Can you see the red dot on the screen?
- 6 A Yes.
- 7 Q The room back here that looks like a bedroom, whose
- 8 room was that?
- 9 A That's mine.
- 10 Q What is that room right there (indicating)?
- 11 A That's a bedroom -- bathroom.
- 12 Q The next room over there right there (indicating)?
- 13 A That's a bedroom.
- 14 Q Whose bedroom was that?
- 15 A Ana Pecheco and Humberto. I forgot his last name..
- 16 Q The rest of the house is labeled?
- 17 A That's the living room.
- 18 Q The living room is right there (indicating)?
- 19 A Yes.
- 20 Q What is that part of the house up there
- 21 (indicating)?
- 22 A That's the kitchen.
- 23 Q And that part up there (indicating)?
- 24 A That's the porch, front porch.
- 25 Q And then that opening right there (indicating),

1 that is your front door?

2 A Yes.

3 Q What are those right there (indicating)?

4 A How do you call it? I forget.

5 Q Is the porch raised off the ground?

6 A Yes.

7 Q What are those called?

8 A Steps.

9 Q Steps?

10 A Yes, steps.

11 Q The street -- where would cars park? Do they park
12 here (indicating) by your bedroom or are they
13 parked out by the front of the porch?

14 A The front of the porch, the right hand.

15 Q Over here (indicating) on the right hand of the
16 trailer?

17 A Yeah.

18 Q The road, was that at the back of the trailer by
19 your bedroom or the front of the trailer by the
20 porch?

21 A Front porch and there is one in the back.

22 Q Were there other trailers behind you?

23 A Yeah.

24 Q The night before Humberto was killed, August 24,
25 2008, do you remember being in your trailer and

1 going to bed, going to sleep?

2 A Going to sleep.

3 Q Who was in the trailer when you went to sleep that
4 night?

5 A Ana Mejia, Ana Pecheco, Humberto, and me.

6 Q Eddie, where was Eddie?

7 A He was to some neighborhood.

8 Q Do you remember what, if anything, woke you up in
9 the very early morning hours after midnight on
10 August 24, 2008? What woke you up?

11 A I heard noise. Somebody was at the door. I wake
12 up and I opened the door and Eddie came in.

13 Q How was Eddie acting?

14 A He was acting scared. He told me he got in a
15 little fight --

16 MS. FULLWOOD: Objection, Your Honor, hearsay.

17 THE COURT: Any response?

18 MR. GRAHAM: I think I can develop the
19 testimony a little more, Your Honor.

20 THE COURT: The objection is sustained as to
21 what he said. It's not sustained as to how he appeared.
22 You may continue.

23 BY MR. GRAHAM:

24 Q Without saying exactly what he said at this time,
25 how was he acting? You said he was acting scared.

1 What was he doing?

2 A He was like hitting the table. He was mad. He was
3 like screaming and crying and scared. He was
4 scared.

5 Q So he came in, he was yelling, he was screaming, he
6 was crying, he was mad?

7 A Yeah.

8 Q What did he do? You said something about the
9 table? What happened with the table?

10 A He was hitting the table.

11 Q What was he saying at that time?

12 MS. FULLWOOD: Objection, Your Honor, hearsay.
13 That doesn't fall within the exception as far as the
14 foundation laid.

15 MR. GRAHAM: Excited utterance, Your Honor,
16 and present sense impression.

17 MS. FULLWOOD: I would like to be heard on
18 that. I don't think it falls within the parameters of
19 the rule.

20 THE COURT: Ladies and gentlemen, I will have
21 you step to the jury room for just a few minutes. Do
22 not discuss the case.

23 (The jury retires to the jury room.)

24 THE COURT: You want to be heard, yes, ma'am.

25 MS. FULLWOOD: Yes, sir. Your Honor, this

1 doesn't fall within the parameters of 803(1) because
2 that is limited to explaining an event while they were
3 perceiving the event and immediately thereafter.

4 The case law limits that to simply telling the
5 facts of the event, not to any editorializing about the
6 event or talking about how somebody felt about the
7 event.

8 As far as an excited utterance goes under
9 803(2), that relates to a startling event or condition.
10 I don't think that exception extends to a situation
11 where, as this witness has just testified, the person is
12 simply angry at somebody.

13 THE COURT: He said he was in a fight.

14 MS. FULLWOOD: And having a temper tantrum by
15 pounding on the table.

16 THE COURT: Counsel.

17 MR. GRAHAM: Your Honor, I think it's more
18 than that. He testified that he came in, that he was
19 yelling, that he was mad, that he was scared and that he
20 was angry.

21 I mean, I can develop it even further and ask
22 him whether he saw any physical marks on Eddie, and he
23 is going to say he did, that he had a mark on his neck.
24 It's something that freshly happened, and he was still
25 under the strain of that event obviously from the way he

1 was reacting. He is now going to describe what
2 happened. I think it's clear under 803(2).

3 THE COURT: Anything further?

4 MS. FULLWOOD: Simply that I don't think that
5 an argument or a disagreement is a startling event.

6 THE COURT: I overrule the objection. I find
7 it is admissible as an excited utterance. Bring the
8 jury back.

9 (The jury returns to the courtroom.)

10 THE COURT: Your objection is overruled. You
11 may continue.

12 MR. GRAHAM: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. GRAHAM:

15 Q When Eddie came into the trailer when you opened
16 the door, what, if any, marks did you see on his
17 body?

18 A I see a mark right around close to his face. How
19 do you say that? In his neck.

20 Q He had a mark on his neck. What did the mark look
21 like?

22 A Like somebody trying to get him.

23 MS. FULLWOOD: Objection to opinion evidence
24 as to how he got the mark.

25 THE COURT: He asked him what he looked like.

1 The objection is overruled.

2 BY MR. GRAHAM:

3 Q He came in upset with a mark on him. What did he
4 say to you when he came in your trailer?

5 A He said he want to go back and fight him.

6 Q He wanted to do what?

7 A He want to go back to the party and go fight the
8 guy.

9 Q Did he say who the guy was?

10 A He said Olbin Banegas.

11 Q Did he say what had happened between them?

12 A Yeah.

13 Q What he say?

14 A He said he was drinking and this guy tried to
15 wrestle with him.

16 Q Who tried to wrestle him?

17 A Olbin Banegas with Eddie.

18 Q That Olbin had tried to wrestle Eddie?

19 A Yes.

20 Q Do you see Olbin Banegas in court?

21 A Yeah.

22 Q Would you identify him, please.

23 A Over there, the blue shirt.

24 Q The Hispanic male with the headphones on with the
25 blue shirt sitting at the defense table?

- 1 A Yes, sir.
- 2 Q Did Eddie say anything else at that time?
- 3 A No.
- 4 Q When Eddie came in was the door -- the front door
- 5 coming off the porch in your trailer, was that door
- 6 left open or was it closed?
- 7 A When Eddie came in?
- 8 Q After Eddie came in.
- 9 A It was not like closed, a little open but not too
- 10 much.
- 11 Q How far would you say it was open?
- 12 A It was almost closed. It was like this
- 13 (indicating).
- 14 Q It was cracked?
- 15 A Yes.
- 16 Q How long of a time was it between the time Eddie
- 17 came knocking at the door and somebody else came to
- 18 the door?
- 19 A About ten minutes.
- 20 Q After about ten minutes of time, how did you become
- 21 aware that somebody else was at the door?
- 22 A You know, when we was in the kitchen, Olbin opened
- 23 the door, and he stand up in the door.
- 24 Q How did he open the door?
- 25 A He opened it and he standing in the front door.

- 1 Q When the door swung open, did it swing open a
2 little bit or all the way?
- 3 A All the way.
- 4 Q When he was standing there, was he standing inside
5 your house or outside the house?
- 6 A Inside the house.
- 7 Q Did he ask permission to come in?
- 8 A Nope.
- 9 Q Did he knock on the door?
- 10 A No, he didn't knock on the door.
- 11 Q Was he invited in by you or anybody else?
- 12 A Nobody. It was 1:00 o'clock.
- 13 Q Did he have permission to come into your house?
- 14 A No, sir.
- 15 Q When he opened the door and he came into your
16 house, what did he say?
- 17 A He tried to talk to Eddie Pecheco, but he got his
18 hand behind him with a knife.
- 19 Q Which hand did he have behind him?
- 20 A The right hand.
- 21 Q What did he say to Eddie?
- 22 A He asked him what happened over there, why he don't
23 fight him. So Eddie tried to hit him. So he tried
24 to stab with the knife.
- 25 Q So he asked Eddie why he didn't fight him?

- 1 A Uh-huh. (Indicating affirmative response.)
- 2 Q How was Mr. Banegas acting? Was he calm or was he
- 3 mad or how was he acting?
- 4 A Who?
- 5 Q Mr. Banegas, Olbin?
- 6 A He going to -- he want to get Eddie.
- 7 Q You said he had a knife in his right hand?
- 8 A Yes.
- 9 Q When he first came in the house, where was this
- 10 knife?
- 11 A Back to his pocket. He got his hand in the back.
- 12 Q He had it in his hand already and it was behind his
- 13 back?
- 14 A Yeah.
- 15 Q Did that knife come from inside your house?
- 16 A It came from his house.
- 17 Q When he brought the knife from behind his back, he
- 18 was already inside your house?
- 19 A Uh-huh. (Indicating affirmative response.)
- 20 Q What happened next?
- 21 A When we see he want to stab Eddie, Ana Pecheco push
- 22 her brother to my back room. He was behind me and
- 23 then he grabbed another knife from my kitchen.
- 24 Q What, if anything, after Olbin came in and brought
- 25 the knife out, did he say at that time?

- 1 A He tried to get Eddie Pecheco.
- 2 Q How did he try? You say hit, hit with a fist or
3 hit with what?
- 4 A With a knife.
- 5 Q How did he do that? How did he try to do that?
- 6 A He was standing up in the front door, right. So
7 when Eddie want to fight him, he pulled the knife
8 out and tried to get him. So we push it back and
9 we let Eddie Pecheco go back to the room, and I was
10 behind Ana Pecheco.
- 11 Q What room did Eddie go to?
- 12 A To my end room, the last one in the corner.
- 13 Q Your room, the last room at the back of the
14 trailer?
- 15 A (Witness nods.) (Indicating affirmative response.)
- 16 Q Who went with him back there?
- 17 A Ana Pecheco and my girlfriend was there, too.
- 18 Q What did you do at that time?
- 19 A I was holding Olbin Banegas to go back over there.
20 He was standing behind me.
- 21 Q What was Olbin saying to you at that time?
- 22 A Let me go. Let me go. I said, You can't come in.
- 23 Q Do you know what -- was the door to your bedroom
24 opened or closed?
- 25 A It was closed.

1 Q Who was inside your bedroom at that time?

2 A Ana Mejia.

3 Q And where were Ana Pecheco and Eddie Pecheco?

4 A They was back to my room. They opened the door and
5 get in.

6 Q Did they go to your bedroom?

7 A Yes, sir.

8 Q After they went into your bedroom, what happened?

9 A Humberto, he was asleep in his room and he wake up
10 because I get in my room, told my girlfriend to
11 wake up, and then Olbin Banegas tried to wrestle
12 with Humberto.

13 Q When you were in your room, did you leave your door
14 open?

15 A No, we tried to close it because Olbin Banegas
16 tried to get in. I was holding the door.

17 Q Who was in the room with you while you were holding
18 the door?

19 A Eddie Pecheco, Ana Pecheco, and Ana Mejia and me.

20 Q What were you telling Olbin Banegas at that time
21 while you were holding the door and he was trying
22 to get in? What did you say to him?

23 A I said, I ask him, What is going on? He said, I
24 want to get Eddie. That's why he was looking for
25 Eddie.

1 Q While you were holding the door, what, if anything,
2 did Ana Pecheco and Eddie Pecheco do?

3 A Ana Pecheco and Eddie opened my back window and run
4 away.

5 Q After they ran away, did you stay in your room or
6 did you go out of the room?

7 A I go back outside.

8 Q When you got outside of your room, what do you see
9 happening?

10 A When I was in front of Humberto's room, I see when
11 Humberto and Olbin was wrestling. So Olbin took
12 Humberto to the front, to the bed, and he was in
13 the bottom. Olbin Banegas, he was on the top with
14 a knife like, and Humberto tried to hold his hand
15 to get it. I was in the front. I was looking for
16 my phone.

17 Q What bedroom were they in? You said they were on a
18 bed. What room were they in?

19 A Humberto's room, the middle room.

20 Q The middle bedroom?

21 A Yes.

22 Q Humberto was on the bed?

23 A He was in bed.

24 Q How was he on the bed? You said he was on the
25 bottom. What do you mean?

1 A He was like laying down. This guy, Olbin Banegas,
2 he was on top trying to get him, and then Humberto,
3 he was holding his hand.

4 Q How many knives did Olbin Banegas have at that
5 time?

6 A He got one and one in his pocket, one in his hand
7 and one in his pocket.

8 Q You said he came in with one behind his back. Did
9 you say something about him getting another knife?

10 A Yes.

11 Q Where did that other knife come from?

12 A The kitchen, my kitchen in my house.

13 Q So when he is in Humberto's bedroom, Humberto is
14 back on the bed, and he has two knives?

15 A Yes, sir.

16 Q One knife is in his hand?

17 A Uh-huh. (Indicating affirmative response.)

18 Q One knife is in his pocket?

19 A (Witness nods.) (Indicating affirmative response.)

20 Q What is he doing with the knife in his hand?

21 A Tried to stab Humberto.

22 Q Do you know which hand that knife was in?

23 A The right hand.

24 Q What was Humberto doing at that time?

25 A Holding his hands. He was holding his hands, Olbin

1 Banegas' hands.

2 Q So Humberto was using his hands to hold

3 Mr. Banegas' hands --

4 A Yes, sir.

5 Q -- to stop the knife from coming down and hitting
6 him?

7 A Uh-huh. (Indicating affirmative response.)

8 Q Did you hear Olbin say anything to him at that
9 time? What was he saying to Humberto?

10 A I heard nothing because I was outside.

11 Q Did you hear Humberto say anything?

12 A No, sir.

13 Q Prior to you going outside, from the time that
14 Olbin Banegas came into the house, what, if
15 anything, did you say about him being there?

16 A I told him, You need to relax. Go home. Because,
17 you know, I was on the phone already. I call 9-1-1
18 already. The police was on the way already.

19 Q Did you tell him he could stay or did you tell him
20 he needed to leave?

21 A I told him, Go back home because you got problems
22 with the police. Go back to your house and he
23 don't listen.

24 Q You said you were on the phone. Who were you
25 calling?

1 A 9-1-1.

2 Q And where were you -- did you stay in the house or
3 did you go outside while you were on the phone?

4 A I go back inside -- no, I was outside on the top of
5 the van.

6 Q So what is labeled --

7 A I was on the right.

8 Q -- Number 5, where the porch is, you were on the
9 front porch?

10 A Yeah.

11 Q And you were talking to 9-1-1?

12 A Yeah.

13 Q Who came out of the house next?

14 A Olbin.

15 Q Did you stay on the porch or did you go somewhere
16 else?

17 A I was on top of the van.

18 Q Why did you get on top of the van?

19 A Because I see Olbin with a knife in his hands.

20 Q You got on top of the van why?

21 A I was on top of the van because I see Olbin coming
22 out with a knife in his hand.

23 Q How many knives did you see in his hand at that
24 time?

25 A Two.

1 Q Were they both in one hand or how was he holding
2 them?

3 A One in each hand.

4 Q Did he say anything to you at that time?

5 A He asked me, Where's Eddie? I told him I don't
6 know where is Eddie.

7 Q What else did he say?

8 A He told me if I don't tell him where is Eddie, he
9 would kill me.

10 Q When he said he was going to kill you, where was he
11 at?

12 A He was on the bottom. I was on top of the van.

13 Q You were on top of the van and he was where?

14 A On the floor.

15 Q Was he still on the porch or had he gone down into
16 the yard?

17 A He was in the yard.

18 Q In the yard. What did you tell him when he was
19 saying he was going to kill you?

20 A I told him to go back home, we don't want no
21 problem, and he don't listen. He tried to get me
22 with the knife. He tried to jump.

23 Q He tried to jump?

24 A Get me. I was on top of the van. I jumped on top
25 of the van.

1 Q How did he try to kill you? What was he using?

2 A The knife.

3 Q What did you have to do when he was trying to kill
4 you with the knife?

5 A I was moving, like jumping. The van was big, you
6 know, the top. So I was like trying for him not to
7 get me.

8 Q As Olbin was attacking you and you were on the top
9 of the van, who came out of the house next?

10 A Humberto.

11 Q Where was Humberto at? Which door did he come out
12 of?

13 A The front door by the porch.

14 Q Did you see him up on the porch?

15 A Yeah, I see him.

16 Q When he came out of the house, what did Humberto
17 say?

18 A He told Olbin to calm down because he was making a
19 big problem inside the house, making mad inside the
20 house.

21 Q Did he have anything in his hands? When he first
22 came out, did you see anything in Humberto's hands?

23 A No, I don't see it, no.

24 Q When Humberto told Olbin to calm down, what did
25 Olbin say?

IVAN VASQUEZ -- DIRECT -- MR. GRAHAM

- 1 A He was back to the steps to get Humberto, and
2 Humberto got his hand back, right hand back with a
3 big machete. He hid it in the back.
- 4 Q Where on the porch -- you have to push down on this
5 button. Where on the porch was Humberto?
- 6 A He was right here (indicating).
- 7 Q Where was Olbin?
- 8 A Right here (indicating).
- 9 Q When Humberto told Olbin to calm down, did Olbin
10 say anything or he just did something?
- 11 A He don't say nothing. He was here and he tried to
12 get on the step.
- 13 Q How far up the steps did Olbin get?
- 14 A Like two steps.
- 15 Q What, if anything, did he have in his hands?
- 16 A The knife.
- 17 Q Which hand was the knife in?
- 18 A The right hand.
- 19 Q Were there rails on the steps?
- 20 A Uh-huh. (Indicating affirmative response.)
- 21 Q Olbin had a knife in his right hand. What was his
22 left hand doing?
- 23 A Holding like, what you call it, like when you go --
24 when you're walking.
- 25 Q The rails?

- 1 A The rails.
- 2 Q Coming up the steps?
- 3 A Uh-huh. (Indicating affirmative response).
- 4 Q So his left hand was on the rail and his right hand
- 5 held a knife?
- 6 A Yes, sir.
- 7 Q And he was coming up the stairs at Humberto?
- 8 A Uh-huh. (Indicating affirmative response.)
- 9 Q What did Humberto do at that time? What did you
- 10 see at that time?
- 11 A He put the big machete and hit him in the back in
- 12 his shirt.
- 13 Q Humberto had the machete?
- 14 A Yes, sir.
- 15 Q Do you remember which hand it was in?
- 16 A Right hand.
- 17 Q He hit him in the back. Did you see him actually
- 18 hit Olbin in the back with the machete?
- 19 A Yeah, I see it.
- 20 Q Where are you at at this time?
- 21 A On top of the van.
- 22 Q How close are they to you?
- 23 A Like one foot.
- 24 Q After Humberto hit Olbin with the machete on the
- 25 back, what happened next? What did Olbin do at

1 that time?

2 A Olbin go to the ground and he told Humberto, If you
3 hit me, you need to kill me.

4 Q Olbin fell to the ground?

5 A Yes.

6 Q Was he on the steps or is he down on the ground?

7 A On the ground.

8 Q And he said what?

9 A If you hit me, you need to kill me.

10 Q If you hit me, you need to kill me?

11 A Yes.

12 Q What happened next?

13 A Humberto tried to hit again and he can't reach him.
14 Olbin Banegas reached first. He stuck him with a
15 knife in the stomach.

16 Q How far away were they from you when that happened?

17 A One foot. I was on the car, right.

18 Q Hold it down and continue pressing it.

19 A I got it. It's not working. It's not working --
20 oh, I got it.

21 Q How far away was the van? Where was the van in
22 relation to the steps?

23 A Here is the van right here (indicating). Then
24 Humberto, Humberto he was right here (indicating)
25 and Olbin (indicating).

1 Q Let me show you a photograph and ask if you
2 recognize the photograph.

3 A Yes, the same thing right here.

4 Q You were present when that photograph was taken?

5 A Yes.

6 Q Was the purpose of that photograph to show what you
7 saw, as far as where Olbin Banegas was and where
8 Humberto was when Humberto was stabbed?

9 A Yes, sir.

10 MR. GRAHAM: Your Honor, the State would offer
11 this into evidence at this time.

12 MS. FULLWOOD: No objection.

13 THE COURT: Admitted without objection.

14 (State's Exhibit Number 14 is received into
15 evidence.)

16 BY MR. GRAHAM:

17 Q Looking at State's Exhibit Number 14 on the
18 overhead, was that photograph taken last week?

19 A Yeah, last week.

20 Q And the trailer on the right side of the picture,
21 that's ?

22 A That's right there (indicating).

23 Q That's where you were staying and Humberto and Ana
24 on August 24, 2008?

25 A (Witness nods.) (Indicating affirmative response.)

- 1 Q There is an individual standing up in the picture.
2 Who is that individual?
- 3 A That's me.
- 4 Q The one kneeling is who?
- 5 A Detective Rivera.
- 6 Q Detective Rivera?
- 7 A Yeah.
- 8 Q Sitting right over here by me?
- 9 A (Witness nods.) (Indicating affirmative response.)
- 10 Q Who are you supposed to be depicting in that
11 picture? Are you Humberto or are you Olbin?
- 12 A Humberto.
- 13 Q And Detective Rivera is kneeling down. Who is he
14 supposed to be?
- 15 A Olbin Banegas.
- 16 Q And where you all are located --
- 17 A Say again.
- 18 Q In the picture where you are standing and where
19 Detective Rivera is kneeling, is that where you saw
20 where Humberto was and where Olbin was when
21 Humberto was stabbed?
- 22 A Yes, sir.
- 23 Q Right at the bottom of your steps?
- 24 A Yeah.
- 25 Q Where you all are at, was that on the property that

1 belongs to ?

2 A Yes, it was in the front yard, like the side.

3 Q What did Humberto have in his hands?

4 A Machete.

5 Q And how was the machete? Did he have it by his
6 side or was it up?

7 A It was up and tried to hit him.

8 Q As he was trying to hit Olbin, what did Olbin do?

9 A He was in front like that and then he hit him in
10 the stomach with a knife.

11 Q Do you know whether -- were you able to see whether
12 Olbin used his right hand or his left hand?

13 A Say that again.

14 Q Was the knife in the right hand or the left hand?
15 Which hand did Olbin have the knife in, do you
16 remember?

17 A I don't remember.

18 Q Did you actually see Olbin stab Humberto?

19 A Yeah, I see it.

20 Q And how many times did you see him stab with the
21 knife?

22 A One.

23 Q After Olbin stabbed Humberto, what happened?

24 A Olbin Banegas, he was looking for his knife and he
25 run away. Because when he heard Humberto, he said,

1 He got me, so he run away.

2 Q You said he was looking for his knife, what do you
3 mean?

4 A Because, you know, he was looking for his knife,
5 another knife.

6 Q So there was one knife in his hand?

7 A Uh-huh. (Indicating affirmative response.) And
8 the other one on the floor.

9 Q He was looking for another knife that was on the
10 ground?

11 A Yeah.

12 Q What, if anything, did Olbin Banegas say at that
13 time? Did you hear him say anything?

14 A He don't say nothing.

15 Q Was he able to find the other knife?

16 A Yeah, he find it and he run away.

17 Q Please answer any questions the defense has. Thank
18 you.

19 A You're welcome.

20 CROSS EXAMINATION

21 BY MS. FULLWOOD:

22 Q Mr. Vasquez, who moved the machete from outside to
23 back into your house?

24 A Eddie Pecheco.

25 Q Eddie Pecheco? I thought he had gone by then.

1 A Yeah.

2 Q Where was he then when this whole thing happened?

3 I thought he had left the premises.

4 A Ana Pecheco and Eddie Pecheco left and then they
5 come back.

6 Q He came back?

7 A Yeah, came back.

8 Q So you saw him move the machete back inside?

9 A Yeah.

10 Q And who put the metal pipe under the kitchen
11 cabinet?

12 A I don't know about that.

13 Q Did you ever see the metal pipe that night?

14 A Yeah, I see it.

15 Q Who had that?

16 A Ana Pecheco.

17 Q What about that stick? It looks sort of like a
18 railing for steps or a porch or something.

19 A It was outside.

20 Q It was outside?

21 A Yeah.

22 Q Who had that?

23 A I don't know. I seen it on the floor, on the
24 ground.

25 Q You saw it on the ground. You didn't see it in

1 anyone's hands?

2 A Huh-uh. (Indicating negative response.)

3 Q Now, Ana Mejia saw this, too; didn't she?

4 A Yeah, that's my girlfriend.

5 Q When you are up on that car, Olbin told you to come
6 on down and let's fight without knives; right?

7 A Uh-huh. (Indicating affirmative response.)

8 Q And as a matter of fact, you told him to give one
9 of those knives to your girlfriend Ana -- do you
10 call her Ana or Carmen?

11 A I call her Carmen.

12 Q So he gave one of the knives to Carmen, right?

13 A Yeah.

14 Q Haven't you also said that he tried to give you the
15 knives?

16 A Yeah, he tried to give me the knife, but I tell
17 him, give it to my girlfriend.

18 Q In fact, he tried several times to have you to take
19 the knives; right?

20 A Yeah.

21 Q Instead he gave it to the girlfriend?

22 A (Witness nods.) (Indicating affirmative response.)

23 Q Is that about the time that Humberto came out of
24 the house?

25 A Yes, sir -- yes, ma'am.

1 Q So at that point Carmen had at least one of the
2 knives, right?

3 A Yeah.

4 Q And Humberto hit him hard enough with that machete
5 to cause him to fall down the steps onto the
6 ground, right?

7 A Yeah.

8 Q And that fall caused him to drop the knife, didn't
9 it?

10 A Yeah, he drop it.

11 Q And then Humberto went down the steps fairly
12 quickly, right?

13 A Yeah, he went down the steps.

14 Q He went right down?

15 A Uh-huh. (Indicating affirmative response.)

16 Q That's when he was standing over?

17 A Uh-huh. (Indicating affirmative response.)

18 Q So at that point Carmen has one knife and one knife
19 is on the ground, right?

20 A (Witness nods.) (Indicating affirmative response.)

21 Q That's when Humberto came at him with a machete the
22 second time?

23 A Say again.

24 Q That's when Humberto raised the machete the second
25 time?

1 A Yeah.

2 Q So if Ana had one knife and one knife was on the
3 ground, where did he get a knife from, he being
4 Olbin? Where did Olbin get the knife from?

5 A It was on the floor. Because at that time I don't
6 remember if Ana was there with a knife or not. It
7 was two knives.

8 Q So you are saying he picked it up off the ground
9 when Humberto raised the machete the second time?

10 A Uh-huh. (Indicating affirmative response.)

11 Q Let's get this straight. There was a dispute at
12 your house, correct?

13 A Uh-huh. (Indicating affirmative response.)

14 Q It went outside, correct?

15 A Uh-huh. (Indicating affirmative response.)

16 THE COURT: Yes or no, please.

17 THE WITNESS: Yes.

18 BY MS. FULLWOOD:

19 Q This lady has to take down everything you say.

20 A Okay.

21 Q You got up on the car?

22 A Yes.

23 Q Olbin wanted to fight you without knives?

24 A Yes.

25 Q He tried to get you to take the knives yourself

1 several times?

2 A Yes.

3 Q You didn't want the knives?

4 A Huh-uh. (Indicating negative response.)

5 Q You said, Give them to my girlfriend Carmen?

6 A (Witness nods.) (Indicating affirmative response.)

7 Q He gave at least one knife to your girlfriend
8 Carmen?

9 A Yes.

10 Q Humberto came outside?

11 A He came...

12 Q To the top of the stairs?

13 A Yeah.

14 Q He was standing on the top of the stairs when he
15 hit Olbin on the back with the machete?

16 A Olbin tried to get him first.

17 Q Olbin was coming up the stairs?

18 A Yes.

19 Q He got up two stairs?

20 A Yeah, I think two stairs.

21 Q And then Humberto hit him with the machete, right?

22 A Yes.

23 Q That caused Olbin to fall down, right?

24 A Yes.

25 Q When he fell that caused the knife he had to fall

1 out of his hand?

2 A Uh-huh. (Indicating affirmative response.) Yes.

3 Q Humberto came down the stairs quickly, right?

4 A Yeah.

5 Q He stood over Humberto, right?

6 A Yeah.

7 Q He raised the machete for the second time, right?

8 A Not like both in the same time, like Humberto tried
9 to block the knife.

10 Q Didn't you testify previously that Humberto raised
11 the machete with his right hand and that's when
12 Olbin stabbed him?

13 MR. GRAHAM: Objection, Your Honor. She was
14 not letting the witness finish the question. He was
15 answering. It wasn't responsive to her question, but he
16 was answering. I think he has the right to finish.

17 THE COURT: The objection is sustained. You
18 may continue answering the previous question.

19 A So when Humberto raised the machete again, while he
20 like block the knife, like he can block it, he was
21 going to put the machete like block it so this guy
22 don't get him.

23 Q That's not exactly the same thing you said earlier,
24 is it? Let me ask you this --

25 THE COURT: Do you want him to answer the

1 previous question or was it a statement?

2 MS. FULLWOOD: I thought he had finished
3 answering.

4 THE COURT: You asked him whether or not that
5 was what he stated previously. Did you want him to
6 answer that question or was it a statement by you?

7 MS. FULLWOOD: Well, I had hoped to ask it in
8 the form of a question, but he didn't seem to answer. I
9 was moving on, Your Honor.

10 THE COURT: The Court is to disregard the last
11 question. Your next question, please.

12 BY MS. FULLWOOD:

13 Q Did you give the police a written statement?

14 A Written statement?

15 Q Let me show you this.

16 A Yeah, I did that.

17 Q Okay.

18 MS. FULLWOOD: Your Honor, what I would like
19 to do is have this witness read a portion of his
20 statement in Spanish and have it translated into English
21 if that's is acceptable.

22 THE COURT: You may proceed. He is on the
23 witness stand.

24 MS. FULLWOOD: If I could have a translator.
25 I would like the translator to orient me where I am on

1 this Spanish paper. Can you tell me where it starts?

2 MR. GRAHAM: Objection, Your Honor. I don't
3 know that she has shown the witness what she is looking
4 at.

5 MS. FULLWOOD: I just showed him the
6 statement. He said it was his.

7 THE COURT: Ladies and gentlemen, I will have
8 you go to the jury room for a few minutes. Do not
9 discuss the case.

10 (The jury retires to the jury room.)

11 THE COURT: You cannot interrogate the
12 interpreter in the presence of the jury. So we will
13 have the jury -- the jury is out of the courtroom. You
14 can decide how you wish to proceed, and we will have the
15 jury to return.

16 MS. FULLWOOD: Your Honor, I apologize. There
17 is no punctuation in this statement. I was simply
18 trying to get him to show me where the last sentence
19 started and I shouldn't have done it in that manner. I
20 apologize to the Court.

21 THE COURT: No problem. We will take a few
22 minutes' break.

23 (Whereupon there is a recess.)

24 THE COURT: Bring the jury on.

25 (The jury returns to the courtroom.)

1 THE COURT: You may continue.

2 MS. FULLWOOD: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MS. FULLWOOD:

5 Q Let me give you this statement back.

6 A Okay.

7 Q And I think you already told us that is your
8 statement that you gave to the police, correct?

9 A Yes.

10 Q And you wrote it yourself, didn't you?

11 A (Witness nods.) (Indicating affirmative response.)

12 Q And the police officers didn't try to tell you what
13 to say in the statement?

14 A Say again.

15 Q The police officers didn't try to tell you what to
16 write, did they?

17 A No.

18 Q You wrote it in your own words, right?

19 A Yes, I wrote it down on my own.

20 Q And the statement is written in Spanish, isn't it?

21 A Yeah.

22 Q Do you see at the bottom of the paper --

23 A Yeah.

24 Q -- the area that is highlighted in yellow marker?

25 A Yeah.

1 Q I want you to read to the jury what you wrote and
2 read it the way you wrote it in Spanish, all right?

3 A The whole?

4 Q Just the sentence that is marked in yellow.

5 A All right.

6 MS. FULLWOOD: Your Honor, may we approach?

7 THE COURT: Yes, ma'am.

8 (Whereupon there is a bench conference off the
9 record in the presence of the jury but out of the
10 hearing of the jury.)

11 MS. FULLWOOD: If the interpreter could assume
12 his position.

13 BY MS. FULLWOOD:

14 Q Okay, Mr. Vasquez. Would you please read to the
15 jury in Spanish what you wrote, the portion that is
16 highlighted in yellow.

17 A (Speaking foreign language).

18 INTERPRETER HUNT: Then my cousin came and hit
19 him with a machete. Then my cousin came and hit him
20 with the machete, and then Olbin came and hit him with
21 the knife.

22 Q Thank you.

23 A You're welcome.

24 MS. FULLWOOD: No further questions.

25 THE COURT: Redirect?

1 MR. GRAHAM: Yes, Your Honor. If the
2 interpreter would just stay up there.

3 REDIRECT EXAMINATION

4 BY MR. GRAHAM:

5 (THROUGH THE INTERPRETER)

6 Q Ivan, this time when I ask questions, I will have
7 him interpret it for you, and I want you to speak
8 in Spanish and he can interpret it, so there is no
9 confusion.

10 A All right.

11 Q On cross examination the defense attorney asked you
12 about Carmen taking a knife from Olbin?

13 A Yes.

14 Q Did that happen inside the house or outside the
15 house?

16 A Outside.

17 Q Do you know whether Olbin got the knife back from
18 Carmen?

19 A Yes.

20 Q And when did he get the knife back from Carmen?

21 A Yes, when he went out.

22 Q Did he get the knife back inside the house or
23 outside the house?

24 A Outside.

25 Q Was that before or after Humberto was stabbed?

1 A Before.

2 Q When you were on top of the van, how many knives
3 did Olbin have with him?

4 A One.

5 Q Where was the other knife?

6 A Carmen had it.

7 Q What, if anything, did Olbin say to you about
8 coming and fighting him?

9 A He said he wanted me to come down off the van to
10 fight with him, and I said no because he has a
11 knife. I said if you give the knife to my
12 girlfriend, I will come down.

13 Q Did he give the knife -- the knife in his hand, did
14 he give that knife to your girlfriend?

15 A Yes.

16 Q Did he still have any knives on him at that time?

17 A No.

18 Q Where were the knives at that time?

19 A My girlfriend Carmen had it.

20 Q Had both knives?

21 A Both of them.

22 Q When you wouldn't come down, what did Olbin do?

23 A He took the knives from Carmen.

24 Q One knife or both?

25 A Both.

1 Q And had Humberto come out of the house yet or was
2 he still inside?

3 A He was still inside.

4 Q When Olbin had both knives in his hands, were you
5 still on top on the van?

6 A Yes.

7 Q What did he say to you at that time?

8 A He was asking about Eddie.

9 Q What was he asking about Eddie?

10 A That he wanted to kill him.

11 Q Were you able to tell him where Eddie was?

12 A No, I didn't tell him.

13 Q What did Olbin say to you?

14 A That I am going to kill you then.

15 Q What, if anything, did Olbin do with the knives at
16 that time?

17 A He was jumping up trying to hit me with the knives.

18 Q And is that when Humberto came out?

19 A Yes.

20 Q When Humberto came out, he came out the front door?

21 MS. FULLWOOD: Objection, leading.

22 MR. GRAHAM: Withdrawn, Your Honor.

23 THE COURT: All right.

24 BY MR. GRAHAM:

25 Q What door did Humberto come out of?

1 A The front door.

2 Q And where were you when Humberto came out?

3 A On top of the van.

4 Q And where was Olbin?

5 A Behind the van.

6 Q And what was Olbin doing at the time Humberto came
7 out?

8 A Trying to grab me.

9 Q To grab you or stab you?

10 A Stab.

11 Q What did Humberto say to Olbin when he came out on
12 the front porch?

13 A He told him to calm down.

14 Q And when Humberto told Olbin to calm down, what did
15 Olbin do?

16 A He went up to where Humberto was.

17 Q And what, if anything, did he have in his hand at
18 that time?

19 A The knife.

20 MR. GRAHAM: Your Honor, if I could ask the
21 witness to step down for a moment.

22 THE COURT: All right, sir. You may.

23 (Witness leaves the witness stand.)

24 BY MR. GRAHAM:

25 (NO INTERPRETER)

1 Q Ivan, face that way and come here and look that
2 way. If this over here, this bar in front of the
3 jury, is the left stair rail coming up to your
4 porch steps, what was Mr. Banegas doing as he was
5 coming up the steps? How was his body positioned?

6 A Like he was holding to the rail.

7 Q So his left hand was on the rail, and what was in
8 his right hand?

9 A The knife.

10 Q Was he standing upright and walking slowly or how
11 was he coming up the steps?

12 A Fast, like walking. He was like running.

13 Q He was running up the steps?

14 A Yes.

15 Q Was he standing straight up or how was he?

16 A Like (indicating).

17 Q He was crouched down?

18 A Crouched down.

19 Q How was he holding the knife?

20 A Like that (indicating).

21 Q He had it down to his side and was holding it out
22 in front of him?

23 A Uh-huh. (Indicating affirmative response.)

24 Q As he was running up the steps crouched down?

25 A Uh-huh. (Indicating affirmative response.)

1 Q What did you see Humberto do at that time?

2 A He hit him with the flat machete blade in the back.

3 Q Did he hit him with the sharp point or the flat
4 point?

5 A The flat.

6 Q Did he cut him?

7 A No.

8 Q Did he slap him?

9 A Yeah, he slapped him.

10 Q After Humberto slapped -- did you see that?

11 A Yes.

12 Q Were you able to tell where the flat part of the
13 machete hit Mr. Banegas?

14 A In the back side, like right hand.

15 Q On the right hand back side?

16 A Yes.

17 Q Was it on the top of the shoulder or back on the
18 shoulder?

19 A Back on the shoulder.

20 Q On the right hand side?

21 MS. FULLWOOD: Your Honor, I object. This is
22 outside the scope of redirect.

23 THE COURT: Counsel.

24 MR. GRAHAM: Your Honor, it's fleshing out
25 areas that she discussed in cross about the attack. She

1 is making it a clear point that -- her cross was
2 actually showing the Defendant was unarmed and that he
3 was being attacked by the decedent in the case. I think
4 it's only fair that we flesh out exactly what happened.

5 MS. FULLWOOD: It's not new matter.

6 THE COURT: The objection is overruled.

7 BY MR. GRAHAM:

8 Q Was it on the top of the shoulder or the back of
9 the shoulder?

10 A The back of the shoulder.

11 Q Was that on Humberto's right back shoulder or his
12 left back shoulder?

13 A Say again.

14 Q Using me, show me where Humberto was hit -- I mean,
15 where Humberto hit Olbin.

16 A (Indicating).

17 Q You are indicating my right back shoulder.

18 A Uh-huh. (Indicating affirmative response.)

19 Q And after Humberto hit Olbin in the right back
20 shoulder with the flat of the blade as he was
21 coming up the stairs with the knife in his hand,
22 what happened to Olbin?

23 A He go on the floor.

24 Q What did he say?

25 A He said, If you hit me, you need to kill me. Then

1 Humberto told Olbin he didn't want to kill him.

2 Q What did Humberto do next?

3 A He tried to hit him and he was gone. That's it.

4 Q When Olbin fell down to the ground, the knife that
5 had been in his hand as he was coming up, where was
6 that knife?

7 A The knife?

8 Q Yes.

9 A In the floor.

10 Q So --

11 A He pick it up.

12 Q When did he pick it up?

13 A When he go back -- when Humberto hit him, he took
14 the knife on the floor. So when he was looking for
15 the knife, he pick it up again.

16 Q What was --

17 MS. FULLWOOD: Your Honor, we are having
18 trouble hearing the witness over here.

19 THE COURT: Speak louder, please.

20 MR. GRAHAM: Go ahead and take the stand back.

21 (Witness resumes the witness stand.)

22 BY MR. GRAHAM:

23 Q Ivan, when Humberto hit Olbin and Olbin had the
24 knife in his hand, what happened to the knife in
25 his hand?

1 A He threw it on the floor. When he hit it, he let
2 it -- it fell on the floor --

3 COURT REPORTER: I'm having trouble
4 understanding the witness.

5 MR. GRAHAM: Let's use the translator right
6 here, please.

7 (THROUGH THE INTERPRETER)

8 A He dropped it.

9 Q And did he pick that knife back up?

10 A Yes.

11 Q And when he picked the knife up, where was
12 Humberto?

13 A He was standing in front of him.

14 Q And what was Humberto doing at the time when he
15 picked up the knife?

16 A He was with the machete in his hand.

17 Q And how was he holding the machete?

18 A When he was stabbed, he tried to pick up the
19 machete to hit him with the machete, but it wasn't
20 possible anymore because he had already been hit.

21 Q When Humberto was stabbed, where was the machete?
22 How was he holding the machete at the moment he was
23 stabbed?

24 A He had it like this (indicating), holding it in his
25 right hand.

1 Q Was it up or down?

2 A He wanted to lift it up, but he had already been
3 stabbed.

4 Q Did you ever see Humberto raise the machete up to
5 strike, other than -- you had testified previously
6 about the time he hit Olbin with the flat of the
7 blade of the machete. Other than that time, did
8 you ever see Humberto raise the machete?

9 A No.

10 Q You had testified with Ms. Fullwood asking you
11 questions about blocking, that Humberto had been
12 blocking. What did you mean by that?

13 A Like putting the machete in the way of the blow.

14 Q And where did that happen? Where did that happen
15 at?

16 A Outside when Olbin was on the ground trying to stab
17 him.

18 Q How many times did Olbin try to stab Humberto?

19 A It was very quick.

20 Q Did you still have your statement in front of you?

21 A Yes, sir.

22 MR. GRAHAM: Your Honor, the State would ask
23 that he read the entire statement into the record and
24 have it translated at this time.

25 THE COURT: Any objection?

1 MS. FULLWOOD: No, Your Honor.

2 THE COURT: You may do so.

3 A I was sleeping when I heard noise in the kitchen.
4 Then I got up to see what was happening. Later I
5 asked what was going on, and then Ana Pecheco's
6 brother --

7 MS. FULLWOOD: Your Honor, we cannot hear the
8 witness' answer.

9 THE COURT: Who are you trying to listen to,
10 the witness or the interpreter?

11 MS. FULLWOOD: Trying to listen to the
12 witness.

13 THE COURT: You need to share the mike. They
14 want to hear the Spanish translation. You need to read
15 louder.

16 A And my cousin explained to his sister he had been
17 hit where he was drinking. Then Olbin came later,
18 opened the door, and asked if he still wanted
19 trouble. Then the guy said yes, he did want
20 trouble. He said, let's go outside.

21 Then Olbin took out the knife. Then we ran to
22 my bedroom. Then my cousin came out of the room
23 and asked what was going on. Then I said somebody
24 is here to kill your brother-in-law.

25 Later I went out of my house. I was on top of

1 the car. Later Olbin told me to grab the knives.
2 He told me six times. Then he tried to jump up
3 where I was, wanting to go with the knife. Then my
4 cousin came and asked what he wanted. Then my
5 cousin came and hit him with the machete, and then
6 Olbin got him with the knife.

7 BY MR. GRAHAM:

8 Q Let me interrupt for just a second. You said that
9 Olbin struck him -- excuse me -- my cousin came and
10 hit him with the machete. Where did that hit --
11 what hit are you talking about?

12 A On the steps when Olbin tried to get over there.

13 Q Go ahead. Thank you.

14 A That's it.

15 Q Anything more or is that it?

16 A That was it.

17 Q Thank you. Please answer any questions the defense
18 counsel has.

19 MS. FULLWOOD: No questions, Your Honor.

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

21 (Witness leaves the witness stand.)

22 MS. FULLWOOD: Your Honor, may we approach?

23 THE COURT: Yes.

24 (Whereupon there is a bench conference off the
25 record in the presence of the jury but out of the

1 hearing of the jury.)

2 THE COURT: Mr. Vasquez, if you will come back
3 again.

4 IVAN VASQUEZ, having been
5 previously duly sworn, resumes the witness stand and
6 testifies as follows:

7 **RECROSS EXAMINATION**

8 BY MS. FULLWOOD:

9 Q Do you want to answer in English or Spanish?

10 A It makes no difference.

11 Q Okay. Last week you met with Mr. Graham and
12 Mr. Mobley and Mr. Rivera about this case, right?

13 A Yes.

14 Q And when they talked to you last week, you told
15 those three men that when Olbin stabbed Humberto,
16 Humberto had a machete raised; didn't you?

17 A Yeah.

18 Q So that's what you told them last week?

19 A Yes, ma'am.

20 Q And is that how it happened?

21 A Yes.

22 MS. FULLWOOD: No further questions.

23 THE COURT: You may step down, sir.

24 (Witness leaves the witness stand.)

25 THE COURT: Next witness.

1 MR. GRAHAM: The State calls Crime Scene
2 Investigator David Day.

3 DAVID DAY, being
4 first duly sworn, testifies as follows:

5 CLERK: Have a seat, please, sir. Once you
6 are seated, state your full name, spelling your last on
7 the record.

8 THE WITNESS: My name is David Day. The last
9 name is D-A-Y.

10 DIRECT EXAMINATION

11 BY MR. GRAHAM:

12 Q Investigator Day, where are you employed, sir?

13 A The Lexington County Sheriff's Department.

14 Q And how long have you been employed with Sheriff
15 Metts?

16 A Fifteen years.

17 Q Describe your law enforcement career.

18 A I started in the jail as a correctional officer for
19 about a year and eight months. I then applied to
20 go on patrol. So I started on patrol, several
21 years on the patrol. I then went into the traffic
22 division, traffic division for a couple of years,
23 got promoted to narcotics, narcotics for about a
24 year and eight months.

25 I then asked for and was granted a leave of

1 absence for two years to work overseas as a
2 civilian police officer for the United Nations for
3 the mission in Kosovo. I came back in '03 and
4 started again in the patrol. After patrol I got
5 promoted to a shift, assistant shift supervisor.
6 Then in '07 I got promoted to a crime scene
7 investigator.

8 Q What is a crime scene investigator?

9 A We basically process scenes, photograph, processing
10 by fingerprinting or taking swabs, photograph,
11 videotape, even do drawings, sketches.

12 Q Collect evidence as well?

13 A Yes, sir.

14 Q August 24, 2008, were you on call as a crime scene
15 investigator with the Sheriff's Department?

16 A Yes, I had what they call the night shift that
17 night.

18 Q Did you receive a call requiring your presence at
19 in ?

20 A Yes, sir.

21 Q What time did you receive the call?

22 A I received the call approximately 01:30 in the
23 morning.

24 Q 1:30 a.m.?

25 A Yes.

1 Q August 24, 2008?

2 A Yes.

3 Q And what time did you actually arrive on the scene?

4 A It was approximately 2:12 a.m.

5 Q What was your understanding of the kind of scene
6 you were coming to?

7 A I was advised at first that it was a stabbing and
8 while en route -- I communicate a lot with dispatch
9 and with the officers on scene because we have
10 backup officers that we might need or might have
11 equipment that we don't all have in our vehicles
12 that we keep in our lab.

13 So I was making contact with everyone to see
14 how severe the situation was. I was advised while
15 en route that the victim had died from his injuries
16 and also learned that the suspect was still at
17 large.

18 Q As you drove into
19 what were you doing?

20 A Scanning. The description was given out by
21 dispatch. So going through the mobile home park, I
22 was just looking for the suspect.

23 Q At some point did you learn that a suspect had been
24 apprehended?

25 A Yes, sir. As soon as I pulled up at and got

1 out of my vehicle, I heard over the radio they had
2 somebody in custody.

3 Q Did you begin to look at the mobile home at
4 or did you go somewhere else?

5 A I immediately got back in my vehicle and pretty
6 much drove right around the corner to where some
7 deputies where and the suspect.

8 Q What did you find when you went over there? What
9 did you see?

10 A I saw the suspect who was identified later as the
11 Defendant. He was handcuffed, laying on the
12 ground. He had a large amount of blood on his
13 clothing and on his arms. There were two officers
14 there with him.

15 They were the ones that pointed me that I had
16 some knives to collect. There were two knives that
17 they said the Defendant had on him. Also pretty
18 quick E.M.S. showed up and started tending to him,
19 cut his clothes off. I was there to collect his
20 clothing.

21 Q Did you see any obvious injuries on the Defendant
22 at that time?

23 A I did.

24 Q What did you see?

25 A He had a very large laceration on the left inside

1 wrist here (indicating).

2 Q And you stated that E.M.S. took off his clothes?

3 A Yes.

4 Q Did you take possession of his clothes?

5 A Yes, I did.

6 Q And collected that as evidence in the case?

7 A Yes.

8 Q You stated that officers who had arrested him
9 directed your attention to some items. What did
10 they direct your attention to?

11 A Two knives.

12 Q Let me show you a photograph and ask if you
13 recognize it.

14 A I do.

15 Q Did you, in fact, take that photograph?

16 A Yes, I did.

17 Q And what does that photograph reflect?

18 A It is a photograph showing a yellow number one
19 placard and two knives.

20 Q Does that fairly and accurately depict the way you
21 found the knives that night?

22 A Yes.

23 MR. GRAHAM: Your Honor, the State would offer
24 this into evidence at this time.

25 MS. FULLWOOD: Without objection.

1 THE COURT: Without objection.

2 (State's Exhibit Number 15 is received into
3 evidence.)

4 BY MR. GRAHAM:

5 Q Looking at State's 15, would you describe to the
6 jury what that is and what it shows.

7 A It shows my numbered placard as number 1 next to
8 two knives.

9 Q Let me show you two additional items marked State's
10 Exhibits Number 3 and 4 and ask if you recognize
11 those. Look inside the box, please.

12 A I do.

13 Q Whats are those two items?

14 A The two knives in the photograph that I collected.

15 Q There is some writing on the tips of the knives.
16 What does that writing reflect?

17 A It's 1.1 and 1.2. I gave it that number because
18 the knives were found in such close proximity with
19 each other. I just gave it a number 1 placard and
20 designated each one as point 1 and point 2.

21 Q That allows you to refer to them later?

22 A Yes, it's all to make it easier writing the report.

23 Q So you arrived on scene, you went over to
24 Mr. Banegas, you collected those two knives, and
25 you collected his clothing, and he was transported

1 to the hospital for treatment?

2 A Correct.

3 Q After leaving there where did you proceed to?

4 A I went back to .

5 Q In general, not particularly this case yet,
6 describe what you do when you come to a crime
7 scene, a major crime like this one.

8 A The first thing we do or I do is I speak with
9 either the on-scene officer, deputy or detective,
10 basically who has the most information because I am
11 coming in in the blind. So I listen to everything
12 they have, and then I do an initial walk-through of
13 the scene to just get a visual count of what the
14 scene looks like and kind of start making a mental
15 note of what I need to photograph or collect.

16 After I do the walk-through, I then start
17 photographing. I start, almost as you would think
18 as a large circle, and kind of work my way in. I
19 go around the residence and around the scene and
20 even into the residence, taking several pictures
21 inside.

22 In some cases we take a video of it, and then
23 we also do a hand sketch and take measurements to
24 be able to draw it out back at headquarters on the
25 computer. Then once I determine what kind of

1 evidence I want to collect, I will photograph it
2 again a little bit closer up.

3 Then I will designate some kind of placard,
4 either a number or a letter. Me personally I use
5 numbers if it's something physical that you can
6 pick up. I will give a letter to something if it's
7 going to be a swab or a photograph or a comparison
8 type.

9 After I'm done with my initial walk-through
10 photographing and laying the numbers out, I then go
11 back and meet with the detective or either the
12 officer if a deputy is going to be the one in
13 charge. I have them come through the scene.

14 I show them, this is what -- learning from the
15 information gathered and what I see inside -- this
16 is what I believe is important. Do you have
17 anything you want me to collect or anymore
18 information you've got? Once we come to an
19 agreement on that, I then start collecting the
20 items.

21 Q Is that what you did in this case?

22 A Yes, sir.

23 Q Let me show you two photographs and ask if you
24 recognize these.

25 A I do.

1 Q Do they fairly and accurately depict the outside of
2 at the time of your arrival on the morning
3 of August 24, 2008?

4 A Yes, sir.

5 MR. GRAHAM: Your Honor, the State would offer
6 these two photographs into evidence.

7 MS. FULLWOOD: No objection, Your Honor.

8 THE COURT: Without objection.

9 (State's Exhibits Number 16-17 are received
10 into evidence.)

11 BY MR. GRAHAM:

12 Q Investigator Day, looking at the overhead at
13 State's Exhibit Number 16, can you see that?

14 A Yes.

15 Q Would you describe to the jury what that shows.

16 A It shows the front side of the mobile home with the
17 porch and the vehicle.

18 Q And how would you describe that vehicle?

19 A As a van that had been backed into the parking pad.

20 Q State's Exhibit Number 17, can you see that?

21 A I can. That is showing the side door.

22 Q After looking at the outside of the scene, you also
23 go on the inside of the scene?

24 A Yes.

25 Q At some point you decide what you are going to

1 photograph and what you are going to collect from
2 the scene?

3 A Correct.

4 Q You talk with the officer and ultimately you
5 collect items and take them into your custody?

6 A Correct.

7 Q Afterwards did you prepare a diagram reflecting the
8 layout of the trailer and what items you collected
9 at ?

10 A Yes, sir.

11 Q Let me show you that diagram and ask if you
12 recognize that.

13 A Yes, I do.

14 Q And that's the diagram that you prepared?

15 A Yes, sir.

16 Q Will it assist you in explaining to the jury what
17 you did at that morning?

18 A Yes.

19 MR. GRAHAM: Your Honor, the State would offer
20 the diagram into evidence at this time.

21 MS. FULLWOOD: No objection.

22 THE COURT: Admitted without objection.

23 (State's Exhibit Number 18 is received into
24 evidence.)

25 BY MR. GRAHAM:

1 Q Looking at State's Exhibit Number 18, would you
2 tell the jury what that is.

3 A That's my drawing of the residence and the vehicle
4 found outside and some evidence and some swabs that
5 I took from the scene.

6 Q Do you have a laser pointer there, Investigator
7 Day?

8 A I do.

9 Q Would you describe the general layout of the
10 trailer, please.

11 A You come up onto a large porch, measured eight
12 feet, come into a door on the end of the trailer.
13 When you walk in, you are in the kitchen. There is
14 a really small room that is enclosed here that had
15 a bed in it. As you proceed further into the
16 trailer, you are into the living room.

17 Then you come down a hallway. To your left is
18 a small bedroom that I was advised was the victim,
19 Humberto's bedroom. When you continue down the
20 hallway, to the left is a bathroom, and then at the
21 very end, which was a larger bedroom, to me it
22 looked like the master bedroom of the residence.

23 Q Did you document the location of the vehicle?

24 A Yes. The vehicle had been -- the vehicle was
25 parked in a concrete -- I mean, an asphalt type pad

1 almost. It was backed in. I took measurements
2 from the front and the back right where the trailer
3 ended and where the porch started.

4 Q Which way was the vehicle facing?

5 A Arrows pointing out. It was backed in. It was
6 facing out.

7 Q You mentioned some measurements. Let's talk about
8 the measurements. How far was the van from the
9 trailer and what reference points did you use?

10 A From the front right corner to where the mobile
11 home stopped and the porch started, 25 feet
12 9 inches approximately. Then from the rear, it was
13 14 feet 10 inches approximately using the same
14 corner from the trailer.

15 Q Approximately how big was the trailer? I see some
16 numbers at the very bottom.

17 A Overall measurements from the end -- to the end of
18 the porch was 64 feet 3 inches approximately.

19 Q There are several items with arrows labeled on
20 there. Are those representing the items that you
21 collected?

22 A Yes, sir.

23 Q I also see on the back trailer what you refer to
24 and what you thought the master bedroom was, there
25 is some writing. What does that indicate regarding

1 the status of the window?

2 A Right here, sir, is labeled as open window. I was
3 advised by Detective Rivera that, that was specific
4 because I was given information that people had to
5 leave out of that window. So while photographing
6 it and looking, I saw the window was partially
7 open.

8 Q Item 1 that you collected in this case, 1.1 and
9 1.2, were the knives that were found?

10 A Yes, sir.

11 Q Where the suspect was apprehended. Item 2 were the
12 clothes and possessions he had?

13 A Yes.

14 Q You also collected other items and those are
15 documented on this diagram; is that correct?

16 A Correct.

17 Q What was item 3?

18 A Item 3 located right here (indicating) was a
19 machete. It was found near what I consider, I
20 guess, the back door. It was near the back door
21 underneath some kind of Sheetrock or plywood, some
22 kind of material.

23 Q Did you photograph that machete in place?

24 A Yes.

25 Q Let me show you a photograph and ask if it fairly

1 and accurately depicts the way you found and took
2 possession of the machete that night?

3 A Yes, sir.

4 MR. GRAHAM: The State would offer this into
5 evidence at this time.

6 (ATTORNEYS CONFER.)

7 MS. FULLWOOD: No objection.

8 THE COURT: Admitted without objection.

9 (State's Exhibit Number 19 is received into
10 evidence.)

11 BY MR. GRAHAM:

12 Q Looking at State's Exhibit Number 19, would you
13 describe to the jury what that shows and what that
14 is.

15 A It's a machete.

16 Q The yellow placard, what does that number indicate?

17 A That's just a placard I put down, and it's
18 basically to help me when I go back to do my report
19 of where it was located and what that item was.

20 That was the third item that I had physically
21 collected so far or was going to collect.

22 Q Let me hand you a box. Are you familiar with the
23 contents of this box?

24 A Yes, sir.

25 Q Would you please look inside it.

1 A It's the machete that I collected.

2 MR. GRAHAM: Your Honor, the State would offer
3 the machete into evidence at this time.

4 MS. FULLWOOD: No objection.

5 THE COURT: Admitted without objection.

6 (State's Exhibit Number 20 is received into
7 evidence.)

8 BY MR. GRAHAM:

9 Q Would you describe to the jury what this item is.

10 A It is a machete.

11 Q That's the machete that you found?

12 A Yes, sir.

13 Q That you collected as item number 3?

14 A Yes, sir.

15 Q What's the next item that you collected in the
16 house?

17 A Item number 4, listed like a wooden stick. It's
18 like a railing or a banister. It goes in between.
19 I guess it's to keep you from falling off the
20 porch. I'm not sure the exact terminology for it,
21 a spindle maybe.

22 Q A spindle on a porch?

23 A Yes, sir, but I labeled it as a wooden stick.

24 Q Did you take that into your possession, too?

25 A Yes, I did.

1 Q Did you do a visual examination of that?

2 A I did.

3 Q Why did you collect that?

4 A From The information that I was given, the stick
5 was in the proximity of where the final incident
6 took place outside. So I had no knowledge of the
7 information of the stick being used, but because of
8 the placement of the stick, I collected it just in
9 case.

10 Q You said you did visually examine it?

11 A Yes.

12 Q What, if anything, did you see on the stick, as far
13 as blood or fresh cut or abrasions on the wood?

14 A I didn't see any.

15 Q The next item you collected, what was that?

16 A I started labeling the next items with letters
17 because inside the residence in the kitchen is
18 letter A. and B. It looked to me to be a blood
19 drop.

20 Then continuing my walk-through and coming
21 out, I noticed what also to be more blood drops,
22 which was labeled C. and D. And behind the vehicle
23 around that stick, I found more what started
24 looking like blood. It was labeled E. and F.

25 It continued going across the street, going

1 this way (indicating). There is a road here
2 (indicating), and some more trailers here
3 (indicating). It was going across the road this
4 way (indicating), and they were continued E., F.,
5 G., H., and I.

6 Q When you say -- what did those items look like to
7 you?

8 A Blood.

9 Q Did you do any physical examination at that time or
10 is that just with your eyes?

11 A Just visual.

12 Q How do you go about collecting what you think is
13 blood?

14 A Of course, you are wearing gloves. We have sterile
15 swabs that are in a sealed package. Of course, you
16 open the package, and the first thing you have to
17 make sure is if the blood is wet, then all you do
18 is just basically put the cotton tip into the swab
19 end and roll around it and get as much on it as
20 possible. Then you seal that back up.

21 The kind of swabs that I had that night. It's
22 a long stick with a cotton swab on the end. It's
23 got a piece of plastic. It has a flip top. You
24 pop the top, slide it down, and you put it into the
25 sample. That night the sample in the kitchen was

1 dry, so I had to use sterile water, which we
2 individually buy these little tubes that are
3 sealed.

4 You pop the seal. It's a one-time use only.
5 You wet the swab and you rub it into the sample.
6 Once you have collected the sample, you just slide
7 that plastic top back on it, shut it. It then now
8 keeps it from touching against anything else, yet
9 it stills allow air to come from underneath to dry
10 the sample. You put it back into the package that
11 it come in, I fold it, and place it in a paper bag
12 for it to dry.

13 Q Let me show you some items and ask if you recognize
14 these items.

15 A I do. These are the kind of gloves that we are
16 issued, and this is the sterile water. You just
17 twist and break this top off here (indicating).
18 Can I open it.

19 Q Please.

20 A It tells you, tear here, peel here. I just peel
21 enough to get it to come out, of course, wearing
22 gloves. This is the plastic top I'm talking about.
23 You pop the top, slide it out, put a little bit of
24 sterile water, and you swab it onto the sample.

25 You try to collect as much as you can. When

1 you are done, run it up, close it, and there's --
2 the sample is on the cotton tip, and the plastic
3 tube keeps it from touching against anything else,
4 yet it has air flow that can get to it under here
5 (indicating).

6 Then you place it back into the bag it came
7 in, I fold it and, then I will seal it with some
8 evidence tape, and then I will write on here what I
9 got it from.

10 Q What is the purpose of wearing gloves while doing
11 that?

12 A One, of course, for my safety because it is a
13 biological hazard but also for any kind of cross
14 contamination.

15 Q What do you mean by cross contamination?

16 A If while doing it, if my gloves touch the sample
17 that I believe is blood, then I will take those
18 gloves off, put a new pair on when I go to do the
19 next one, so I am not bringing that sample into the
20 next sample in case the two drops are unrelated or
21 didn't come from the same person.

22 Q So when you saw the drop that you labeled A., you
23 put on a fresh pair of gloves?

24 A Yes.

25 Q You took a sterile swab out of an open pack?

- 1 A Yes.
- 2 Q And used a single swab out of that pack?
- 3 A Yes.
- 4 Q You used sterile saline. Why did you use sterile
- 5 saline. What does that mean?
- 6 A It helps. You don't want to use regular tap water
- 7 because of the chlorine or additives that are in
- 8 the water. It's easier for the analysis to get a
- 9 clean sample.
- 10 Q And is that what you did for the first blood or
- 11 what you suspected to be blood on item A.?
- 12 A Yes.
- 13 Q Did you repeat that process for all the other
- 14 letters that you indicate up on your diagram?
- 15 A Yes.
- 16 Q And how many total swabs did you collect?
- 17 A Eight. I'm sorry. There is a D. I collected
- 18 nine.
- 19 Q Could it be ten? You started with letter A. and
- 20 you made it through?
- 21 A I., ended on letter I.
- 22 Q Was there also -- I. is reflected on your diagram.
- 23 Is there also another one?
- 24 A That is correct. K. was further past.
- 25 Q Was that on the property?

DAVID DAY -- DIRECT -- MR. GRAHAM

265

1 A No.

2 Q Let me show you some photographs and ask if you
3 recognize these photographs?

4 A Yes.

5 Q Do they fairly and accurately depict the items we
6 have been discussing?

7 A Yes, sir.

8 Q Did you take these pictures yourself?

9 A Yes, sir.

10 Q Would they assist you in explaining where you found
11 these items and what you did?

12 A Yes, sir.

13 MR. GRAHAM: Your Honor, the State would offer
14 these photographs into evidence.

15 (Pause.)

16 MS. FULLWOOD: No objection, Your Honor.

17 THE COURT: They are admitted.

18 (State's Exhibits Number 21-27 are received
19 into evidence.)

20 MR. GRAHAM: Your Honor, if I can ask
21 Investigator Day to step down from the stand.

22 THE COURT: You may.

23 (Witness leaves the witness stand.)

24 BY MR. GRAHAM:

25 Q Looking at State's Exhibit Number 21, would you

1 describe to the jury what that shows? Let me
2 switch places with you so the court reporter can
3 hear you.

4 A All right. It's a picture showing all of the
5 placards that I placed out showing some of the
6 evidence that I collected, the number 4 being the
7 stick. You have got your letters coming down,
8 which to me looked to be blood.

9 Q And the letters you see on here, what letters are
10 we seeing on the porch area?

11 A C. and D.

12 Q That would correspond to the diagram that you have
13 up there?

14 A Yes. It's hard to see D. because of the lines.

15 Q Also on this photograph are two other placards,
16 lettered placards?

17 A E. and F.

18 Q Those correspond to your diagram as well?

19 A Yes.

20 Q All of the letters are blood?

21 A Yes.

22 Q Or what you thought was blood?

23 A Yes.

24 Q And you took, as you described earlier about the
25 swabs, that's how you collected these?

1 A Yes.

2 Q State's Exhibit Number 22, do you recognize that
3 photograph?

4 A Yes, it's a picture of the kitchen and my placards
5 A. and B. Next to it is what looked to be blood
6 drops.

7 Q A. and B. is reflected on the diagram as well.?

8 A Yes.

9 Q Looking at State's 23, what does that show.

10 A To me it looks to be a circular blood drop dried on
11 the kitchen floor.

12 Q State's 24 is a closeup of something. What is
13 that?

14 A The same thing. It looked to me to be dried blood.

15 Q You collected that the same as we discussed
16 earlier?

17 A Yes.

18 Q State's 25, what does that show?

19 A It shows more letters that to me looked to be blood
20 on the asphalt going across the road, going in
21 between these two trailers.

22 Q What letters are we seeing reflected there?

23 A G., H., I., J., and way over here (indicating) is
24 K.

25 Q This corresponds to the diagram for the same

1 letters?

2 A Yes.

3 Q You collected all those in the same way?

4 A Yes.

5 Q State's 26, is that a closeup of some of the other
6 items?

7 A Yes. Right in here (indicating) it looks to be
8 blood drops, and then obviously the same down here
9 with E.

10 Q And finally 27, is that a different angle of the
11 same thing?

12 A Yes.

13 Q Does that show the van in relationship to the house
14 and the trailer?

15 A Yes, sir.

16 Q You collected all these items as far as the blood
17 drops in the way we discussed earlier?

18 A Yes.

19 Q Take the witness stand again.

20 A (Witness resumes the witness stand.)

21 Q Detective Day, let me show you two more photographs
22 and ask if you recognize these two photographs?

23 A I do.

24 Q Were those photographs that you took the early
25 morning hours of August 24, 2008, inside the house

1 as well?

2 A Yes, sir.

3 MR. GRAHAM: Your Honor, the State would offer
4 these two photographs into evidence.

5 MS. FULLWOOD: No objection.

6 THE COURT: Admitted without objection.

7 (State's Exhibits Number 28-29 are received
8 into evidence.)

9 BY MR. GRAHAM:

10 Q Detective Day, looking at State's 28, do you see
11 that?

12 A I do.

13 Q Would you describe to jury what that reflects and
14 where you found it?

15 A It is damage to the drywall, and I found it just
16 inside the victim's room. If you pushed his door
17 all the way in, the doorknob would touch the
18 drywall. So it looked to have been done by the
19 doorknob being pushed into the drywall.

20 Q Were you able to tell whether that was fresh or
21 old?

22 A It appeared to be fresh.

23 Q Which bedroom are you talking about?

24 A The victim's bedroom, right here (indicating).

25 Q The middle bedroom labeled as victim's on your

1 diagram?

2 A Yes, sir.

3 Q State's Exhibit Number 29, do you see that as well?

4 A Yes.

5 Q Do you recognize that?

6 A I do.

7 Q What does that depict and where was it located?

8 A It's a square hole in the drywall. It was found
9 right next to the back door near where I found the
10 machete.

11 Q Once you collected all the items from the scene,
12 what did you do with them at that time? Excluding
13 the two knives and the machete, what did you do
14 with the victim's clothes and all of the swabs that
15 you collected?

16 A They were submitted into the lab.

17 Q Describe how they are packaged. Do you all hold
18 them there do you hold them in the trunk of your
19 car? What happens to them?

20 A We leave the scene. We have a lab that is secure
21 that we only have access to. With the clothes
22 being wet from blood, they have to be dried. We
23 actually have a drying chamber which has a H.E.P.A.
24 filter in it. It's sterile because every time you
25 use it, you have to clean it out yourself.

DAVID DAY -- DIRECT -- MR. GRAHAM

271

1 So the clothes are hung and then they are
2 dried through that chamber. It blows air in, up
3 through and out, so that helps dry the blood
4 because you cannot package wet bloody clothes
5 because they will mold, and our evidence property
6 room will not take it.

7 Q So did you dry these swabs?

8 A The clothing. I dried the clothing. By the time I
9 made it back the swabs were already dry. The swabs
10 only take a few minutes to dry. Like I showed,
11 they were evidence tape sealed, and then they were
12 packaged in a manila envelope.

13 Q At some point did the swabs and the Defendant's
14 clothes leave your possession?

15 A No.

16 Q At some point did you turn them into the evidence
17 people at the Sheriff's Department?

18 A Yes.

19 Q How many people work in the evidence area?

20 A Three. You've got two custodians and a sergeant.

21 Q Once you turned over the evidence, can you just go
22 in and get it whenever you want? How do you have
23 access to it?

24 A I almost have to make an appointment with them,
25 call them to see if they are busy and say, Hey, do

1 you have time to let me look at this?

2 Q And when you submit items that you collected from
3 the scene to the evidence people, what care, if
4 any, do you take to make sure the items don't cross
5 contaminate?

6 A They are sealed separately. The swabs have the
7 caps on them. Then they are sealed inside this
8 bag. So even with them together, they will not be
9 able to touch each other and cross contaminate each
10 other. The clothing are wrapped in that brown
11 paper and then it's within the bag itself and then
12 that bag is sealed.

13 Q Besides those items we had a couple of other items
14 you did additional things with; is that correct?

15 A Yes.

16 Q Those were the two knives and the machete?

17 A Correct.

18 Q Looking at what has been marked as State's Exhibit
19 Number 4, which is a knife, how would you describe
20 that knife?

21 A A knife with a black handle.

22 Q And how did you label it?

23 A I labeled it as 1.1.

24 Q What was your purpose in taking this knife back to
25 the lab?

1 A Of course, because it was evidence because it was
2 found on the Defendant and to process it, to swab
3 the blade and the handle for blood.

4 Q When you looked at State's Exhibit Number 4, your
5 item 1.1 what, if anything, did you see upon a
6 visual examination?

7 A Dried blood.

8 Q And when you talk about swabbing 1.1, how did you
9 do that?

10 A The first thing I used is a chemical called
11 phenolphthalein. It's a presumptive chemical that
12 will tell you if it's blood. It won't tell me if
13 it's human blood. It will react to both animal and
14 human, but it's an inexpensive way to not send
15 something off to S.L.E.D. and it not be blood.

16 I took a small swab in an area that looked to
17 be blood and then used that chemical. For a
18 positive reaction, it has to turn pink. You swab
19 it, you put the chemicals into the swab, and the
20 swab has to turn pink immediately to give you a
21 positive reaction and it did.

22 Q Once you got a positive reaction with the
23 presumption phenolphthalein test, what, if
24 anything, did you do as far as collecting evidence
25 from that knife?

1 A I then took several swabs from it, swabbing in
2 sections; both sides of the blade and on the handle
3 of both sides.

4 Q When you talk about swabs, are you talking about
5 the exact same procedure you used in collecting
6 what you believed to be blood at the scene of lot
7 ?

8 A Yes, sir.

9 Q The same sterile Q-tip with the cap to protect it
10 from cross examination contamination?

11 A Yes, sir.

12 Q And you did that on that, night?

13 A Yes.

14 Q The other knife, your label 1.2, which is State's
15 Exhibit Number 3, do you recognize that?

16 A Yes.

17 Q That's the serrated knife?

18 A Yes.

19 Q Upon a visual examination of that knife, what, if
20 anything, did you see?

21 A The same thing blood, dried blood on the blade and
22 where the handle meets.

23 Q What, if any, presumptive tests did you do on
24 State's Exhibit Number 3?

25 A The same thing, used phenolphthalein and got a

1 positive reaction for blood.

2 Q One you got a positive reaction blood on that
3 knife, what, if anything, did you do as far as
4 collecting evidence from the knife?

5 A The same thing, I took multiple swabs on both swabs
6 of the blade and both sides of the handle.

7 Q And that was in the same manner that we discussed
8 earlier?

9 A Yes, sir.

10 Q How were those items packaged? Once they are --
11 what did you do with them once you collect them?

12 A The swabs?

13 Q For those two knives.

14 A The same thing, they were sealed in their own
15 container, sealed with evidence tape, and then a
16 large envelope. They were put in an envelope to
17 keep them together so I will know that these swabs
18 came from 1.1 and this one came from 1.2.

19 Q So each swab is in its own envelope and then all
20 the envelopes that relate to each knife are in a
21 separate larger envelope?

22 A Right.

23 Q So there is an envelope for 1.1 and a different
24 envelope for 1.2 with their respective swabs in it?

25 A Yes, sir.

1 Q In addition to the two knives, did you also process
2 the machete?

3 A Yes, sir.

4 Q And did you again do a presumptive test on the
5 machete?

6 A I did.

7 Q What did you see as far as a visual examination of
8 the machete?

9 A I did not see any obvious signs of blood on it. It
10 looked, especially around the blade, it's kind of
11 dark, so that's why I just picked a section, and I
12 swabbed it and tested it with phenolphthalein. It
13 showed positive.

14 I then went down a little further in the
15 blade, took a little swab, the same thing. Then I
16 went so far as even doing one on the handle,
17 swabbing a little section of the handle, and it
18 also turned positive.

19 Q Let me show you a photograph and ask if you
20 recognize that?

21 A I do.

22 Q Does that fairly and accurately depict the machete
23 as you were processing it the morning of August 24,
24 2008?

25 A Yes, sir.

DAVID DAY -- DIRECT -- MR. GRAHAM

277

1 MR. GRAHAM: Your Honor, the State would offer
2 this photograph into evidence.

3 MS. FULLWOOD: No objection.

4 THE COURT: Admitted without objection.

5 (State's Exhibit Number 30 is received into
6 evidence.)

7 BY MR. GRAHAM:

8 Q Investigator Day, looking at Number 30, would you
9 describe to the jury what that is depicting?

10 A The three stickers on the blade, I wrote positive
11 with an arrow showing the area that I swabbed that
12 showed positive on the phenolphthalein test.

13 Q Once you got a positive on the presumptive
14 phenolphthalein test, what, if anything, did you do
15 as far as collecting evidence from the machete?

16 A The same thing from the two previous knives, I
17 would take sections of the blade and swab, section
18 of the blade and swab, each with new swabs, and
19 just took multiple swabs of both sides of the blade
20 and the handle.

21 Q Did you also take all of those swabs -- how did you
22 package that?

23 A The exact same way. They were sealed in the cap
24 inside this bag, which the bag was then sealed with
25 the evidence tape, and they were placed in an

1 envelope designating it for the machete.

2 Q And once you finished with your presumptive tests
3 and your collection of evidence from the knives and
4 from the machete, what did you do with those swabs?
5 What did you do with the packages that contained
6 the swabs?

7 A They were turned into the property room.

8 Q So at this point everything that you have collected
9 at the scene had been turned into the property
10 room?

11 A There might have been still some evidence like
12 clothes drying.

13 Q The clothes were still drying?

14 A Yes.

15 Q Ultimately everything you collected was turned into
16 the property room?

17 A That I can remember, yes.

18 Q And are you familiar with how objects are taken
19 from the property room to S.L.E.D. for testing?

20 A Yes.

21 Q Would you describe how that happens, just in
22 general terms.

23 A It's logged out at the property room to whoever is
24 taking it, then you drive it over to S.L.E.D. where
25 you meet a technician with S.L.E.D. who then looks

1 at the evidence you are turning in to make sure
2 that it's packaged properly. They will not take
3 something that is just torn open.

4 Then they take the items and they put it into
5 a heat-sealed, tamper-resistant bag. They seal it
6 in front of you, and you have to sign where the
7 heat seal seals the bag, and on top of the center
8 of the bag, you have to put your information and
9 your department.

10 Q What is the purpose of the heat-sealed bag?

11 A So that way you can tell if somebody has tried to
12 open the bag. The only way to get in the bag is
13 cut it with scissors because if you try to pull it
14 open, it will tear the bag.

15 Q Without going into the specifics, are you aware of
16 whether some of the items that you collected were
17 actually sent to S.L.E.D. for processing?

18 A Yes, they were sent.

19 Q We have now finished with the early morning hours
20 of August 24, 2008. On August 25, 2008, at
21 approximately 8:30 a.m. in the morning, where, if
22 anywhere, did you go?

23 A I attended the autopsy of Mr. Humberto and it was
24 at Newberry.

25 Q What's the purpose of you attending an autopsy?

1 A We are the representative from the Sheriff's
2 Department at the autopsy, and my job is to collect
3 evidence, if there is any evidence to collect, and
4 to take initial type photographs for the detectives
5 to view.

6 Q In addition, do you photograph the autopsy?

7 A Yes.

8 Q Were you present where the autopsy itself was
9 performed on Mr. Caballero?

10 A Yes, I was.

11 Q Who conducted the autopsy?

12 A Dr. Ross.

13 Q Dr. Janice Ross with Newberry pathology?

14 A Yes, correct.

15 Q And in addition -- well, let's talk about what, if
16 any, personal effects did you get of the victim?
17 Did you take possession of his clothes?

18 A I did.

19 Q And specifically what type of clothes did you take
20 into your possession?

21 A A T-shirt with a hole in it. He had a gray metal
22 ring.

23 Q You actually took possession of all the clothes?

24 A Yes, sir.

25 Q In addition, are you also there to obtain samples

1 for testing at S.L.E.D.?

2 A Yes, I am.

3 Q That's for toxicology and serology?

4 A Yes, sir.

5 Q What is your understanding -- what is toxicology?

6 A It samples that S.L.E.D. uses to determine if there
7 is any alcohol or drugs or any others foreign type
8 substance in the body.

9 Q That's various blood samples, stomach contents,
10 tissue samples?

11 A Yes.

12 Q And you are present when that happens?

13 A Yes, I am.

14 Q Did Dr. Ross collect those toxicology samples in
15 front of you?

16 A Yes, she did.

17 Q Did you ultimately take possession of those from
18 her?

19 A Yes, I did.

20 Q Those are all packaged individually so they don't
21 cross contaminate each other?

22 A Yes, sir.

23 Q In addition, I mentioned serology. What is
24 serology?

25 A My understanding it is blood that S.L.E.D. uses to

1 develop a D.N.A. profile.

2 Q Did you obtain a serology sample?

3 A Yes, I did.

4 Q You were present when Dr. Ross took that blood,
5 took the blood from Mr. Caballero's body?

6 A Yes, I was.

7 Q And was that in a lavender top test tube?

8 A Yes, it was.

9 Q And you took possession of that from Dr. Ross as
10 well?

11 A That's correct.

12 Q The toxicology and the serology samples that you
13 took into your custody, what, if anything, did you
14 do with them?

15 A As soon as I left Newberry and went to the
16 Sheriff's Office, I logged them into the property
17 room.

18 Q And are you aware whether those samples were sent
19 to S.L.E.D. as well?

20 A They were.

21 Q And they would have been sent there with the same
22 procedure that you described earlier?

23 A Correct.

24 Q Later on August 25, 2008, did you have an
25 opportunity to take some photographs of the

DAVID DAY -- DIRECT -- MR. GRAHAM

283

1 Defendant?

2 A Yes. When I came back from the autopsy, a short
3 time later Detective Rivera asked if I would go to
4 booking and photograph.

5 Q Let me show you some photographs and ask if you
6 recognize them.

7 A Yes.

8 Q Are those the photographs you took of the Defendant
9 that day?

10 A Yes, sir.

11 MR. GRAHAM: Your Honor, the State would offer
12 these into evidence at this time.

13 (Pause.)

14 MS. FULLWOOD: No objection.

15 THE COURT: Without objection.

16 (State's Exhibits Number 31-39 are received
17 into evidence.)

18 MR. GRAHAM: Your Honor, I would ask
19 Investigator Day to step down from the stand.

20 THE COURT: You may.

21 (Witness leaves the witness stand.)

22 BY MR. GRAHAM:

23 Q Referring to State's 31, what does that depict?

24 A Injuries to his -- it's looks like his right arm on
25 here, scratches.

1 MS. FULLWOOD: Your Honor, could we ask the
2 witness to speak up just a little louder.

3 THE COURT: Louder, please.

4 THE WITNESS: Yes, sir. Scatches right here
5 on his right arm.

6 BY MR. GRAHAM:

7 Q State's Exhibit Number 32, what does that depict?

8 A It's a closer up picture of the scratches from the
9 previous picture. There is a scale in it.

10 Q State's Exhibit Number 33, what does that depict?

11 A More injuries above his right elbow.

12 Q The injuries we have been discussing -- not that
13 you can say exactly how old they are, but did they
14 appear to be fresh or recent or old?

15 A The scratches appeared fresh to me.

16 Q How about of the elbow?

17 A Yes.

18 Q On State's 33?

19 A No, just the scratches but not the --

20 MS. FULLWOOD: Your Honor, I will object to
21 this witness giving age of injuries of wounds. He is
22 not qualified as an expert in any field that he would be
23 able to do that.

24 THE COURT: I sustain the objection.

25 MR. GRAHAM: Thank you, Your Honor.

1 BY MR. GRAHAM:

2 Q Looking at State's 34, Investigator Day, what does
3 that depict?

4 A Some more injury to the top of his right arm.

5 Q Looking in the middle of his forearm, what does
6 that appear to be?

7 A A scar.

8 Q State's 33 -- 35. I'm sorry.

9 A Just a closeup photo with the scale, injuries to
10 above the elbow.

11 Q And all these photographs so far have dealt with
12 the right arm?

13 A Yes.

14 Q What, if anything, did you see regarding the left
15 arm reflected in State's 36?

16 A A huge cut on the inside right here on the left
17 wrist.

18 Q Did you find any marks on the Defendant's back?

19 A Yes, sir, I did.

20 Q Looking at State's Exhibit 37 what was your purpose
21 in documenting that photo?

22 A Because of the design of the mark on the back, it
23 looked to be the tip of the machete.

24 Q State's 38 and 39, what did those depict?

25 A The same photograph, just closer up with the scale.

1 Q If you would have a seat, Investigator Day.

2 A (Witness resumes the witness stand.)

3 Q I will show you another photograph and ask if you
4 recognize this.

5 A Yes.

6 Q Does that fairly and accurately depict the item as
7 you photographed it?

8 A It is.

9 MR. GRAHAM: The State would offer this into
10 evidence at this time.

11 MS. FULLWOOD: No objection.

12 THE COURT: Admitted without objection.

13 (State's Exhibit Number 40 is received into
14 evidence.)

15 BY MR. GRAHAM:

16 Q What was the purpose of you taking the photograph
17 of what has been labeled State's Exhibit Number 40?

18 A To show the correlation of the design of the tip of
19 the machete to the injuries sustained by the
20 Defendant on his back.

21 Q So you took State's 39, which shows the injury on
22 the back, and photograph, State's 40, showing that
23 correlation?

24 A Yes, sir.

25 Q The following day, August 26, 2008, did you have a

1 reason to go back out to in

2 ?

3 A Yes, I did.

4 Q What was your purpose in going there?

5 A Detective Rivera contacted me and said that through
6 further investigation and follow up that he had
7 some more items that came available to him that he
8 would like for me to photograph and collect.

9 Q What items -- let's don't talk about photographing.
10 Let's talk about what you collected. What did you
11 collect?

12 A It was a pipe, a metal pipe.

13 Q Can you describe what it looked like?

14 A Almost like a piece of chain-link that would come
15 from a chain-link fence possibly.

16 Q Where did you find that?

17 A When you walk inside the house, there's some
18 cabinets, and it was underneath some cabinets.

19 Q Did you take that into possession?

20 A Yes, I did.

21 Q In addition, did you take some photographs?

22 A I'm sorry?

23 Q Additionally, did you take some photographs?

24 A Yes, I did.

25 Q Let's talk about the photographs that you took

1 inside the house. I will show you a photograph and
2 ask if you recognize it.

3 A I do.

4 Q Does that fairly and accurately depict what you
5 photographed on August 26, 2008, when you went
6 back inside ?

7 A Yes, sir.

8 MR. GRAHAM: Your Honor, the State would offer
9 this photograph into evidence.

10 MS. FULLWOOD: No objection.

11 THE COURT: Admitted without objection.

12 (State's Exhibit Number 41 is received into
13 evidence.)

14 BY MR. GRAHAM:

15 Q Looking at State's Exhibit Number 41, would you
16 describe what that is and where you found that.

17 A It is the bed in the victim's room.

18 Q What was the purpose of your taking this
19 photograph? What was it showing?

20 A Cut marks in the mattress.

21 Q Additionally did you take a look at the van that
22 was parked outside?

23 A Yes, I used the ladder. Again, according to the
24 information I was given, someone had to get up on
25 top of the van to get away from being cut with a

DAVID DAY -- DIRECT -- MR. GRAHAM

289

1 knife. So I used the ladder to get on top to
2 photograph the top and to see if there was anything
3 up there on the top.

4 Q Was that the same van you had seen when you went
5 out the early morning hours of August 24th?

6 A It is.

7 Q Let me show you three photographs and ask if you
8 recognize those photographs.

9 A I do.

10 Q Do they fairly and accurately depict the way they
11 looked when you took the pictures back in August of
12 '08?

13 A Yes, sir.

14 MR. GRAHAM: Your Honor, the State would offer
15 these three photographs into evidence.

16 MS. FULLWOOD: No objection, Your Honor.

17 THE COURT: Admitted without objection.

18 (State's Exhibits Number 42-44 are received
19 into evidence.)

20 BY MR. GRAHAM:

21 Q Investigator Day, looking at State's Exhibit
22 Number 42, would you describe to the jury what that
23 depicts and why you took that picture.

24 A It's the van and the front of the trailer,
25 basically showing that the van was still in the

1 same position that it was in the night that the
2 incident happened.

3 Q State's Exhibit Number 43, do you see that picture?

4 A Yes, sir.

5 Q What was the purpose of you taking that picture?

6 A To me it shows that somebody was up on top. It
7 looks like there are barefoot prints up on top of
8 the van.

9 Q State's 44, what does that picture show?

10 A The same thing, just at a different angle.

11 Q Thank you, Investigator Day. Please answer any
12 questions that Ms. Fullwood has for you.

13 MS. FULLWOOD: May it please the Court, Your
14 Honor.

15 THE COURT: Yes.

16 MS. FULLWOOD: If I might gather some exhibits
17 before I start.

18 CROSS EXAMINATION

19 BY MS. FULLWOOD:

20 Q Okay, Mr. Day. I think we are organized here. To
21 start off I would like to show you some photographs
22 and tell me if you can identify them. I am showing
23 you Defense 1 and 2 for identification purposes.

24 A Yes, ma'am.

25 Q Did you take those pictures?

1 A I did.

2 Q And what do they depict?

3 A It's the Defendant in handcuffs and with a large
4 amount of blood on both his hands.

5 Q All right.

6 MS. FULLWOOD: Your Honor, I would move to
7 have these admitted into evidence.

8 MR. GRAHAM: Without objection, Your Honor.

9 THE COURT: Admitted without objection.

10 (Defendant's Exhibits Number 1-2 are received
11 into evidence.)

12 BY MS. FULLWOOD:

13 Q So is this what Mr. Banegas' hands looked like that
14 night?

15 A Yes, ma'am.

16 Q And is this another view of the same thing?

17 A Yes, ma'am.

18 Q And, in fact, was this cut the type of cut that
19 meant you had to get him some medical treatment?

20 A Yes, ma'am.

21 Q How long is the blade on this machete, State's
22 Exhibit 20? How long is the blade on State's
23 Exhibit 20?

24 A Approximately 22 inches.

25 Q So almost two feet long?

1 A Yes, ma'am.

2 Q And that machete was inside the house under some
3 drywall?

4 A It looked like some kind of board or drywall or
5 something, but, yes, ma'am, it was inside.

6 Q The blade of the machete was such that you could
7 not immediately see that there had been some blood
8 on it?

9 A Right.

10 Q The blood was revealed through your swab --

11 A Yes, ma'am.

12 Q -- presumptive test?

13 A Yes, ma'am.

14 Q And I believe you testified also that outside at
15 the scene, there was blood leading from the area of
16 the sticks, sort of away from that trailer; is that
17 correct?

18 A Yes, ma'am.

19 Q Would you like to see the diagram?

20 A Yes, please.

21 Q State's Exhibit 18.

22 A You are asking from the stick?

23 Q Yes.

24 A It's going on this side (indicating) of the van
25 across the street, and there's two trailers on the

1 other side. It was going like in between there.

2 Q Speaking of that stick, did you bring it with you
3 today?

4 A Yes, ma'am.

5 Q I would like to hand you this box and ask if you
6 can identify the item inside the box.

7 A Yes, ma'am.

8 Q What is it?

9 A It is that stick labeled Number 4 that was
10 photographed and collected.

11 MS. FULLWOOD: Your Honor, I would move to
12 admit the stick into evidence.

13 MR. GRAHAM: Without objection, Your Honor.

14 THE COURT: Admitted without objection.

15 (Defendant's Exhibit Number 4 is received into
16 evidence.)

17 BY MS. FULLWOOD:

18 Q So this is the stick that was outside behind the
19 van that night?

20 A Correct.

21 Q And it was close to where the blood drops started?

22 A The blood drops started from inside, come down the
23 steps, and then there was some.

24 Q All right. Did you measure the stick?

25 A I believed I did, wooden stick approximately 35 and

1 THE COURT: Admitted without objection.

2 (Defendant's Exhibit Number 5 is received into
3 evidence.)

4 BY MS. FULLWOOD:

5 Q Did you measure this pipe?

6 A I did not measure the pipe, no, ma'am.

7 Q If I could, let me show you another photograph.

8 Can you identify this photograph?

9 A This was a photograph that I took of the Defendant
10 a couple of days later in booking after he had
11 already received medical treatment.

12 Q Okay. And it's a photograph of what part of the
13 Defendant?

14 A It is his left wrist right here.

15 MS. FULLWOOD: Your Honor, I would move to
16 admit this as Defense Exhibit 6.

17 MR. GRAHAM: No objection, Your Honor.

18 THE COURT: Admitted without objection.

19 (Defendant's Exhibit Number 6 is received into
20 evidence.)

21 MS. FULLWOOD: No further questions, Your
22 Honor.

23 MR. GRAHAM: Nothing on redirect, Your Honor.

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

TROY CRUMP -- DIRECT -- MR. GRAHAM

296

1 THE WITNESS: Thank you, Judge.

2 (Witness leaves the witness stand.)

3 MR. GRAHAM: Your Honor, if we may approach
4 for a second.

5 THE COURT: All right.

6 (Whereupon there is a bench conference off the
7 record in the presence of the jury but out of the
8 hearing of the jury.)

9 THE COURT: Next witness.

10 MR. GRAHAM: The State would call Investigator
11 Troy Crump to the stand.

12 TROY CRUMP, being
13 first duly sworn, testifies as follows:

14 CLERK: Have a seat, please, sir. Once you
15 are seated, speak up loud and clear. State your full
16 name spelling your last.

17 THE WITNESS: Troy Crump, C-R-U-M-P.

18 DIRECT EXAMINATION

19 BY MR. GRAHAM:

20 Q Investigator Crump, where are you employed?

21 A Lexington County Sheriff's Department.

22 Q And how long have you worked for Sheriff Metts?

23 A I've been at the Sheriff's Department going on 12
24 years.

25 Q And you are a crime scene investigator right now?

1 A Yes.

2 Q Did you have an occasion to obtain a D.N.A. sample
3 called a buccal swab from the Defendant,
4 Mr. Banegas?

5 A I did.

6 Q And did you obtain that sample by using a swab?
7 Would you describe the process of using a swab and
8 how you collected it.

9 A It's as prepackaged kit. It's called a buccal swab
10 kit. It contains swabs for the left side of the
11 cheek and the right side of the cheek to obtain
12 skin cells and then you package it, and it was
13 placed in the property room after that.

14 Q So you took a special swab called a buccal swab,
15 you met with the Defendant, you took that swab and
16 swabbed the inside of the cheeks of his mouth,
17 packaged the swabs, and turned it into evidence?

18 A Yes.

19 Q It's your understanding those items were eventually
20 taken to S.L.E.D. for testing?

21 A Yes.

22 Q Please answer any questions Ms. Fullwood would
23 have.

24 MS. FULLWOOD: No questions, Your Honor.

25 THE COURT: Thank you, sir.

1 (Witness leaves the witness stand.)

2 THE COURT: Ladies and gentlemen, that brings
3 us to lunchtime. I will break until 2:00 o'clock,
4 2:00 o'clock.

5 (The jury is excused at 12:53 p.m.)

6 THE COURT: We are in recess until two.

7 (Whereupon there is a luncheon recess.)

8 THE COURT: Ready for the jury?

9 MR. GRAHAM: Yes, Your Honor.

10 THE COURT: All right.

11 (The jury returns to the courtroom at
12 2:01 p.m.)

13 THE COURT: The jury is back. Mr. Beatty, I
14 will appoint you to serve as the foreperson of jury. If
15 you will come and take the first seat right here. Don
16 Beatty will be our foreperson of the jury.

17 As foreman you will serve as spokesperson for
18 the jury and preside over the jury deliberations and
19 complete the verdict form at the end of the trial
20 representing the unanimous verdict of the jury.

21 Your next witness, please.

22 MR. MOBLEY: Thank you, Your Honor. May it
23 please the Court. The State calls Shana Sorrells to the
24 stand.

25 SHANA SORRELLS, being

1 first duly sworn, testifies as follows:

2 CLERK: Once you have a seat, ma'am, please
3 state your name, spelling your last on the record,
4 please.

5 THE WITNESS: My name is Shana Sorrells,
6 S-O-R-R-E-L-L-S.

7 MR. MOBLEY: At this time, Your Honor, the
8 State would have like to have recognized that the
9 defense counsel has stipulated to the chain of custody
10 for all items that have been collected in this
11 particular matter.

12 MS. FULLWOOD: That is correct, Your Honor.

13 MR. MOBLEY: This will be pursuant to State
14 versus Williams as well, and that is 376 S.E.2d 773,
15 1989. Thank you, Your Honor.

16 THE COURT: All right.

17 DIRECT EXAMINATION

18 BY MR. MOBLEY:

19 Q Ms. Sorrells, where do you currently work?

20 A The South Carolina Law Enforcement Division, more
21 commonly known as S.L.E.D.

22 Q How long have you been employed there?

23 A Four years.

24 Q What is your educational background please?

25 A I have my Bachelor's degree from the University of

1 South Carolina in Chemistry and my Master's degree
2 in Analytical Chemistry also from the University of
3 South Carolina.

4 Q Ms. Sorrells, what is the current position that you
5 hold there?

6 A I am a forensic toxicologist.

7 Q And what does a forensic toxicologist do at
8 S.L.E.D.?

9 A A forensic toxicologist analyzes biological and
10 chemical samples for drugs, alcohol or other
11 poisons, and we interpret those findings in courts
12 of law, to pathologists and to coroners.

13 Q How long have you been in the toxicology
14 department?

15 A Four years.

16 Q So your entire tenure at S.L.E.D. you have been in
17 toxicology?

18 A I have yes.

19 Q As a forensic toxicologist, is there any type of
20 special training that you have to go through to
21 become certified?

22 MS. FULLWOOD: If Your Honor please, I will
23 stipulate to Ms. Sorrells' expertise in the field of
24 forensic toxicology.

25 THE COURT: Do you accept that stipulation?

1 MR. MOBLEY: Yes.

2 THE COURT: Ladies and gentlemen, this
3 witness, Ms. Sorrells, is an expert in the field of
4 forensic toxicology, and she can render opinions
5 concerning evidence in this matter, provided it meets
6 the test of the rules of evidence. Other witnesses
7 generally cannot offer opinions. Expert witnesses can.

8 MR. MOBLEY: Thank you, Your Honor.

9 BY MR. MOBLEY:

10 Q Now, Ms. Sorrells typically when you receive items
11 into S.L.E.D., what is the procedure by which you
12 all receive that evidence?

13 A Typically the submitting officer brings the
14 evidence into S.L.E.D. through our log-in
15 department, in which case the log-in technician
16 will enter into our system, our information system,
17 the evidence that is available, the information,
18 case history.

19 The officer then places the evidence into an
20 evidence bag. On that bag contains a S.L.E.D. lab
21 number assigned by our technician. The bag is then
22 heat sealed and the submitting officer initials and
23 dates that heat seal to say that there was no
24 tampering with the evidence upon them submitting
25 it.

1 The evidence is then placed into a temporary
2 storage container within the log-in department
3 until a technician from our lab or the toxicology
4 lab goes down, receives the evidence, brings it up
5 to toxicology department, and gives it to me.

6 Q Were there any items submitted in this particular
7 case for your analysis?

8 A Yes.

9 Q Do you recall what items were submitted to you for
10 analysis in this case?

11 A Yes. We were submitted blood, ocular fluid, or the
12 fluid from your eyes, bile, gastric contents, brain
13 sample, and a liver sample.

14 Q Do you recall if these items had a lab number
15 assigned to them?

16 A Yes.

17 Q Do you recall what that number was? If you need to
18 refer back to your notes, you may do?

19 A That lab number was L-0814188.

20 MR. MOBLEY: If I may approach, Your Honor?

21 THE COURT: Yes, sir.

22 MR. MOBLEY: Your Honor, we would offer this
23 into evidence as State's 45.

24 (Attorneys confer.)

25 MS. FULLWOOD: No objection, Your Honor.

1 THE COURT: Without objection.

2 (State's Exhibit Number 45 is received into
3 evidence.)

4 BY MR. MOBLEY:

5 Q We are going to refer to a document where there was
6 no objection to it being presented in evidence as
7 State's Exhibit Number 45. I want to hand it to
8 you. Do you recognize what that document is?

9 A Yes, I do.

10 Q Now, does that document match this particular case
11 number and name?

12 A Yes, it does.

13 Q And how do you know so?

14 A The lab number is written at the top, and it
15 matches the lab number on my case.

16 Q And on State's Exhibit Number 45, what is that
17 number, if you can place it into the record,
18 please.

19 A L-0814188.

20 Q What is that document itself?

21 A This is just our chain of custody, electronic
22 chain.

23 Q According to that chain of custody, what items do
24 you have a chain of custody for?

25 A Blood sample, ocular fluid, bile, gastric, brain,

1 and liver.

2 Q Ms. Sorrells, do you recall whether you were able
3 to do an analysis on each of those items?

4 A I did not do an analysis on each of them.

5 Q Which ones did you do an analysis on?

6 A I analyzed the blood sample and the ocular fluid.

7 Q Are you familiar with who was the submitting
8 officer for these particular items?

9 A The name I have on record is Margaret Harmon.

10 Q That's Margaret Harmon. Where is she from?

11 A Lexington County Sheriff's Department.

12 Q So those items were submitted by Margaret Harmon.
13 Then you accepted those items and began to do an
14 analysis. Before we get to the analysis itself,
15 whenever you are going through the S.L.E.D.
16 acceptance of evidence procedures, if there is any
17 tampering or anything with the bags itself, would
18 it be noted on that?

19 A It wouldn't necessarily be noted on the bag, but
20 there would be a notation within our information
21 system electronically and possibly notated within
22 my notes.

23 Q Do you have any notations by you or anyone else
24 that may have held this particular item that there
25 was any potential problems or altering of the

1 evidence.

2 A No, I did not.

3 Q So you feel comfortable that it was not tampered
4 with or contaminated?

5 A Right.

6 Q Now, what type of analysis did you perform on these
7 items itself and which items?

8 A Do you mind if I look back?

9 Q Not at all. Refresh your memory.

10 A With the blood analysis, we ran just an alcohol
11 analysis and a drug screen, and then we did a
12 general screen where we look for anything that is
13 not covered within our drug screen.

14 Q Before you give us the results of those, we are
15 going to move to the next item. Did you have an
16 opportunity to perform an analysis on the ocular
17 fluid?

18 A I did. The only analysis we did on the ocular
19 fluid was an alcohol analysis.

20 Q Are those the only two items that you did an
21 analysis on?

22 A Yes, it is.

23 Q What I want to do is hand you another document.

24 MR. MOBLEY: If I may approach the witness,
25 Your Honor?

1 THE COURT: Yes, sir.

2 BY MR. MOBLEY:

3 Q I am handing you a document. What is that
4 particular document?

5 A This is a copy of our electronic report.

6 Q And that's for this particular case?

7 A Yes, it is.

8 Q And does the lab number match the one that was
9 submitted for this case?

10 A Yes, it does.

11 Q Now, according to the report that you actually have
12 written up for this particular case itself and from
13 your compilations, what were the results of the
14 blood analysis?

15 A It was negative for alcohol and negative for our
16 general drug screen, and upon a more intensive drug
17 screen, all we found was atropine.

18 Q What is atropine?

19 A Atropine is a drug that is used with resuscitation
20 techniques. E.M.S. applies it before trying to
21 resuscitate the victim.

22 Q We may have not actually placed this on record.
23 Let's make sure the jury knows who we are speaking
24 of. What is the individual's name that this test
25 is directed to?

1 A The tube that was submitted to me was labeled
2 Humberto Caballero.

3 Q Yes, that's the victim in this particular case.
4 Now, looking at your results as well, according to
5 item number 2, that's the ocular fluid?

6 A Yes.

7 Q What are your results on that particular one?

8 A It was also negative for alcohol.

9 Q So in your expert opinion as a forensic
10 toxicologist was the victim, Humberto Caballero,
11 intoxicated under any type of influence of drugs
12 and/or alcohol?

13 A No, he was not.

14 Q Thank you.

15 MR. MOBLEY: Nothing further from this
16 witness, Your Honor.

17 THE COURT: Any questions?

18 MS. FULLWOOD: No questions, Your Honor.

19 THE COURT: Thank you. You may step down.
20 (Witness leaves the witness stand.)

21 MR. GRAHAM: The State calls Katie Urka.

22 KATIE URKA, being
23 first duly sworn, testifies as follows:

24 CLERK: Once you are seated, speak up loud and
25 clear. State your full name, spelling your last.

KATIE URKA -- DIRECT -- MR. GRAHAM

308

1 THE WITNESS: Katie Urka, U-R-K-A.

2 DIRECT EXAMINATION

3 BY MR. GRAHAM:

4 Q Ms. Urka, where are you employed, ma'am?

5 A I also work for the South Carolina Law Enforcement
6 Division.

7 Q And how long have you worked for S.L.E.D.?

8 A About four and a half years.

9 Q In what capacity have you worked for S.L.E.D.?

10 A I am forensic D.N.A. analyst.

11 Q What is your educational background?

12 A I have a Bachelor of Science degree in Forensic
13 Biological from Virginia Commonwealth University.
14 I also have a Master of Science in Forensic Science
15 from Virginia Commonwealth University.

16 Q What is D.N.A. and what is serology?

17 A Serology is the identifications of blood fluids,
18 such as blood, semen, and saliva. D.N.A. stands
19 for deoxyribonucleic acid, and it's a chemical that
20 is found in almost every cell of your body.

21 It passes all the genetic information from
22 person to person. You get half from your mom and
23 half from your dad. Your D.N.A. is unique to an
24 individual, except for identical twins.

25 Q And what is a forensic serologist or a forensic

1 D.N.A. analyst. What does the forensic part mean?

2 A We examine evidence submitted by law enforcement
3 agencies. We determine if there are body fluids
4 present, in particular blood and semen, and we
5 develop D.N.A. profiles and compare them for
6 evidence to known standards and look for matches.

7 Q And have you been qualified as an expert in the
8 courts of South Carolina as an expert in forensic
9 D.N.A. and forensic serology?

10 A Yes.

11 Q Approximately how many times?

12 A Thirteen.

13 MR. GRAHAM: Your Honor, the State would offer
14 Ms. Urka as an expert in forensic D.N.A. and forensic
15 serology.

16 MS. FULLWOOD: We would so stipulate.

17 THE COURT: She is an expert in the fields so
18 stated.

19 BY MR. GRAHAM:

20 Q Ms. Urka, did you have an opportunity to analyze
21 items and samples that were submitted to you in the
22 criminal case that we are here for today?

23 A Yes.

24 Q In general terms would you describe how those items
25 came into your possession?

KATIE URKA -- DIRECT -- MR. GRAHAM

310

1 A Typically items come into S.L.E.D. through our
2 log-in department. The submitting officer will
3 place these items in a heat-sealed pouch. He signs
4 and dates them.

5 The log-in department disburses the evidence
6 to the correct department, and we have an evidence
7 technician that takes the evidence from log in and
8 brings it to the D.N.A. department where it then
9 gets assigned to a D.N.A. analyst.

10 Q When you say a heat-sealed bag, what do you mean by
11 that? Can you describe that?

12 A It's a plastic bag that gets the little seal mark
13 on it and over the seal, the person will sign their
14 name.

15 Q What is the material of the bag?

16 A Plastic.

17 Q If it was tampered with, would you know?

18 A It should have some sort of cut on it.

19 Q When you received the items in this case that you
20 analyzed, was there anything out of the ordinary?
21 Did they appeared to be tampered with, not handled
22 properly?

23 A No.

24 Q And what would you have done if they would have
25 been?

1 A I would have noted within my case file if there
2 appeared to be tampering.

3 Q And did you, in fact, develop profiles and test
4 several items on this case?

5 A Yes.

6 Q And did you make two charts that are a summary of
7 what you found regarding the items that were
8 submitted to you?

9 A Yes.

10 Q And would those summaries assist you in explaining
11 to the jury what you did in this case?

12 A They can.

13 Q Let me show you two charts and ask if you recognize
14 them.

15 A These appear to be copies of my table from my
16 reports that were issued on December 7, 2009, and
17 October 25, 2010.

18 Q Those are charts that you prepared?

19 A Yes.

20 Q Would they assist you in explaining to the jury
21 what you did?

22 A Yes.

23 MR. GRAHAM: Your Honor, the State would offer
24 those two items into evidence at this time.

25 MS. FULLWOOD: No objection.

1 THE COURT: Admitted without objection.

2 (State's Exhibits Number 46-47 are received
3 into evidence.)

4 BY MR. GRAHAM:

5 Q Ms. Urka, are you able to see that chart?

6 A Not very clearly.

7 Q Do you have a copy of the chart in front of you?

8 A Yes, I have a copy.

9 MR. GRAHAM: If you can dim the lights just a
10 little bit, please.

11 BY MR. GRAHAM:

12 Q Item 7 on the top line up there, what is that item?

13 A Item 7 is a blood standard from Humberto Caballero.

14 Q And tell me what you mean by a blood standard.

15 What do you do? How did that come to you and how
16 do you develop a blood standard?

17 A A blood standard can be submitted as a known D.N.A.
18 sample from individuals. Typically blood standards
19 come from autopsies.

20 Q And did you, in fact, in this case receive a
21 lavender top test tube with blood that was labeled
22 Humberto Caballero?

23 A Yes.

24 Q That's what item 7 is referring to?

25 A Correct.

1 Q There are multiple rows and columns on here. What
2 do the columns represent?

3 A Each of these columns is a location on the D.N.A.
4 that I am testing. There are 15 columns.

5 Q What are those columns? If you had to give it a
6 name, what is the scientific name for what those
7 are?

8 A Locus.

9 Q Is it fair to say that is a location on the D.N.A.
10 chain?

11 A Yes.

12 Q Under each one of those for Mr. Caballero, the
13 first item, item number 7, there are numbers. What
14 do those numbers represent?

15 A Each number representing what we call an allele.
16 You get one from your mom and one from your dad.
17 So at this location there was only one number.
18 That indicates that that same number was received
19 from both parents.

20 Q So in the example that you pointed to, he got a 10
21 from his mother and a 10 from his father?

22 A Right. At locations where there are two numbers,
23 it means you got one number from mom and one from
24 dad.

25 Q The next item down on that is item number what?

1 A Thirty.

2 Q And what was that identified to you as?

3 A Item 30 was listed as buccal items from Olbin
4 Banegas-Maldonado.

5 Q Were you able to develop a D.N.A. profile for the
6 Defendant in this case?

7 A Yes.

8 Q That's what the second row is?

9 A Correct.

10 Q In the far right column of those on all of these or
11 most of these, there is an X. and Y. What does
12 that mean?

13 A The last column on this table is where we are
14 testing a gender determination. It gives an X. or
15 Y. for a male and X.X. for female.

16 Q So is it fair to say that the first two items are
17 the known standards for the victim and for the
18 Defendant in this case?

19 A Yes.

20 Q And you were able to develop full D.N.A. profiles
21 for them?

22 A Yes.

23 Q The next item is item what?

24 A Nineteen point four.

25 Q And what does 19.4 refer to? When it's submitted

1 to you, how was it described?

2 A Nineteen point four is a swab from the blade of the
3 knife labeled 1.1.

4 Q So that is a swab from the blade of the knife
5 labeled 1.1?

6 A Yes.

7 Q Were you able to develop a profile from that?

8 A A partial profile.

9 Q Were you able to match that partial profile with
10 either of the known standards?

11 A The partial D.N.A. profile developed from item 19.4
12 matched the D.N.A. profile of Olbin
13 Banegas-Maldonado.

14 Q Following the row that is also labeled blade, it
15 has a different item number. What is that item
16 number?

17 A Nineteen point five.

18 Q Again, is that off the knife from the knife labeled
19 1.1?

20 A Yes.

21 Q There are dashes, several dashes across on that row
22 in different columns. What do dashes represents?

23 A A dash represents that no D.N.A. type was developed
24 at that location.

25 Q There are also some numbers in parentheses. What

KATIE URKA -- DIRECT -- MR. GRAHAM

316

1 does that mean?

2 A We have a set threshold when we are looking at a
3 D.N.A. profile. Numbers below a certain threshold
4 we are to interpret with caution.

5 Q Looking on 19.5 there is a 12 in parentheses. Is
6 there also a 12 in the D.N.A. profile of the
7 Defendant, Mr. Banegas?

8 A Yes.

9 Q Is there a 12 in the victim, Humberto Caballero's,
10 loci for that same allele in the same column?

11 A No.

12 MS. FULLWOOD: Your Honor, I will object to
13 comparing alleles on items where a identification can't
14 be made.

15 THE COURT: Counsel?

16 MR. GRAHAM: I'm sorry, Your Honor?

17 THE COURT: Any response?

18 MR. GRAHAM: She is explaining what her
19 results are. She's not stating that anything was
20 claimed. She was not making an identification. She is
21 explaining what she found and how that compares with
22 other items and whether those numbers were found in
23 other places.

24 MS. FULLWOOD: I think that there is an
25 obvious inference the solicitor is trying to seek to

1 have drawn from that comparison, and if the profile
2 developed isn't sufficient to match it with a particular
3 individual, then I think that type of testimony would be
4 properly excluded.

5 THE COURT: Any further comment?

6 MR. GRAHAM: No, Your Honor.

7 THE COURT: I overrule the objection.

8 BY MR. GRAHAM:

9 Q Ms. Urka, moving to following item, what is that
10 item described as and what is the number related to
11 that?

12 A Item 23.1 is listed as a cutting from jean pants
13 from the subject.

14 Q Were you able to develop a D.N.A. profile from
15 that?

16 A Yes.

17 Q And that profile matched who?

18 A The D.N.A. profile developed from item 23.1 matches
19 the D.N.A. profile of Olbin Banegas-Maldonado.

20 Q So the item labeled as subject jeans matched the
21 subject; is that correct?

22 A Yes.

23 Q Moving on to the next item, what did you find?
24 What were you analyzing for the next one?

25 A Item 25.1 is a cutting from cap also listed as the

1 subject's cap.

2 Q Ms. Urka, were you able to develop a D.N.A. profile
3 from that cutting from the cap?

4 A Yes.

5 Q That D.N.A. profile matched who?

6 A The D.N.A. profile developed from 25.1 also matched
7 Olbin Banegas-Maldonado.

8 Q The following item that you analyzed, what is the
9 number and what was it?

10 A Item 27.1 was listed as cutting from jeans pants
11 from the victim.

12 Q Were you able to develop a D.N.A. profile from that
13 cutting?

14 A Yes.

15 Q Who did that D.N.A. profile match?

16 A The D.N.A. profile developed from 27.1 matches the
17 D.N.A. profile of Humberto Caballero.

18 Q So the victim's clothes matched the victim?

19 A Correct.

20 Q And the last item on this sheet is what?

21 A Twenty-nine point one, a cutting from the tank top
22 of the victim.

23 Q And were you able to develop a profile from that
24 item?

25 A Yes.

1 Q And who did that profile match with?

2 A The victim.

3 Q Again the, victim's clothes matched the victim's
4 known blood standard?

5 A Yes.

6 Q Were there also some other items that you tested
7 that didn't make your chart in this submission?

8 A No human D.N.A. was obtained from items 8 and 22.1,
9 which were a swab labeled A. and a cutting from a
10 polo shirt from the subject.

11 Q So item number 8 was labeled as what? I'm sorry,
12 Ms. Urka.

13 A Swab labeled A.

14 Q Swab labeled A. Prior to testing it, did you do --
15 what kind of testing did you do prior to actually
16 trying to develop a profile?

17 A Serological testing.

18 Q What does that mean?

19 A I try to identify any body fluids that may be
20 present on that item.

21 Q Were you able to identify anything on it?

22 A Blood was indicated on that item.

23 Q So swab A., your item Number 8, was initially
24 tested came as blood indicated; is that correct?

25 A Correct.

1 Q And then when you went to develop a D.N.A. profile,
2 you weren't able to?

3 A No human D.N.A. was obtained from that swab.

4 Q Does that mean that there wasn't blood there or
5 what does that mean?

6 A It means no human D.N.A. was detectable on the
7 swab. There still could have been blood, which I
8 have that serological result.

9 Q Item 22.1, I believe, is the other item you
10 referred to as not being able to find human D.N.A.
11 on. What was item 22.1?

12 A A cutting from a polo shirt from the subject.

13 Q And did you again do serological testing on it?

14 A Yes.

15 Q Were you able to determine whether blood was
16 present or not?

17 A Blood was indicated.

18 Q Were you able to able to develop a D.N.A. profile
19 from that item?

20 A No.

21 Q In addition to those items, were there initial
22 submissions to S.L.E.D. requiring you to attempt to
23 develop D.N.A. profiles?

24 A Yes.

25 Q Is that information reflected in the chart

1 Number 47, State's Exhibit 47, that I showed you
2 earlier?

3 A Yes.

4 Q Do you have a copy of that in front of you?

5 A Yes.

6 Q Beginning at the top of that, Ms. Urka, it says
7 item 7 again. What was item 7?

8 A The known D.N.A. standard for Humberto Caballero.

9 Q And that's the same profile you had on the previous
10 chart?

11 A Yes.

12 Q The next item was item number what?

13 A Thirty.

14 Q And that, again, was the known standard for the
15 Defendant in the case?

16 A Yes.

17 Q Then following, the next item down, what is that
18 item labeled as?

19 A That is S.L.E.D. item number 9.

20 Q And what is that described as?

21 A Swab B.

22 Q Swab B.?

23 A Yes.

24 Q And it looks like there you didn't develop much on
25 that; is that correct?

KATIE URKA -- DIRECT -- MR. GRAHAM

322

1 A Right.

2 Q And one of the alleles, the eight or ninth column,
3 you develop a partial profile. What number was
4 that?

5 A Fourteen.

6 MS. FULLWOOD: Your Honor, again, I object to
7 making any comparisons where she only was able to get
8 one allele at one loci and trying to compare that with
9 any known standards. I think it's misleading and not
10 sufficient to make an identification and should be
11 excluded from evidence.

12 THE COURT: What says counsel?

13 MR. GRAHAM: The same argument I made the last
14 time, Your Honor.

15 THE COURT: Let me hear the question again.

16 MR. GRAHAM: At this point I only asked her --
17 I haven't asked her to compare anything. I asked her
18 what number was in that location.

19 THE COURT: You are objecting to the testimony
20 of what number is in that location?

21 MS. FULLWOOD: Yes, sir.

22 THE COURT: I overrule the objection.

23 BY MR. GRAHAM:

24 Q Ms. Urka, what number is developed on that profile?

25 A Fourteen.

1 Q Was the number 14 that was developed there, is that
2 found in the standard of the Defendant?

3 MS. FULLWOOD: Objection, irrelevant. Again,
4 if it doesn't -- if she can't make an identification to
5 an individual on that sample, then there shouldn't be
6 testimony comparing one number on the loci with any
7 known standards.

8 THE COURT: Solicitor?

9 MR. GRAHAM: It would be the same argument,
10 Your Honor. She is just reading her chart off of what
11 she found.

12 THE COURT: I overrule the objection.

13 BY MR. GRAHAM:

14 Q Ms. Urka, for the same column that you found the 14
15 in, was there a 14 in the Defendant's known
16 standard?

17 A Not at that location.

18 Q Moving on to the next row, the next item, what was
19 that?

20 A Item 19.2.

21 Q And how was that labeled?

22 A It was labeled as swab from knife, 1.1.

23 Q And were you able to develop a profile from that
24 swab?

25 A Yes.

- 1 Q Who, if anyone, of your known standards did that
2 profile match?
- 3 A The profile from 19.2 also matched the D.N.A.
4 profile of Olbin Banegas-Maldonado.
- 5 Q The following row, how was that row identified and
6 what was that item?
- 7 A That was item 20.1, labeled as knife, 1.2.
- 8 Q And did you develop a D.N.A. profile from that
9 item?
- 10 A Yes.
- 11 Q Who, if anyone, did that profile match?
- 12 A The D.N.A. profile developed from item 20.1 matches
13 Olbin Banegas-Maldonado.
- 14 Q The following row, what was that item?
- 15 A Twenty point two, labeled as knife, 1.2.
- 16 Q Did you develop a D.N.A. profile from that knife or
17 that swab?
- 18 A A partial profile.
- 19 Q Is that a partial profile you can match to someone
20 or not?
- 21 A No.
- 22 Q Moving on to the next row, what is that?
- 23 A Item 20.3.
- 24 Q And how was that item described?
- 25 A Swab from the handle of knife, 1.2.

1 Q Did you develop a D.N.A. profile from that swab?

2 A Yes.

3 Q And who, if anyone, did that profile match?

4 A The D.N.A. profile developed from 20.3 matches the
5 D.N.A. profile of Olbin Banegas-Maldonado.

6 Q The next line, how is that item described?

7 A Item 20.4, a swab from the blade of knife, 1.2.

8 Q Did you develop a D.N.A. profile from that swab?

9 A Yes.

10 Q And who, if anyone, did that profile match?

11 A The D.N.A. profile developed from item 20.4 matches
12 the D.N.A. profile of Olbin Banegas-Maldonado.

13 Q And I believe we have two more lines. The next
14 row, what is that item described as?

15 A Item 21.1 it's swabs from the handle of the
16 machete.

17 Q Were you able to develop a D.N.A. profile from the
18 swabs from the handle of the machete?

19 A Yes.

20 Q Who, if anyone, did that profile match?

21 A The D.N.A. profile developed from item 21.1 matches
22 the D.N.A. profile of Humberto Caballero.

23 Q The last item is item what?

24 A Twenty-one point two.

25 Q And what is that item described as?

1 A Twenty-one point two is swabs from the blade of a
2 machete.

3 Q Were you able to develop a D.N.A. profile from the
4 swabs from the blade of the machete?

5 A Yes.

6 Q Who, if anyone, did that profile match?

7 A The D.N.A. profile developed from item 21.2 matches
8 the D.N.A. profile of Olbin Banegas-Maldonado.

9 Q In addition to the items that you reported out,
10 were there also some other items that you analyzed
11 that you were not able to report out as finding
12 D.N.A.?

13 A Yes.

14 Q What items were those, Ms. Urka?

15 A Item 12, 19.1, and 19.3.

16 Q What was item 12 labeled as?

17 A Swab labeled E.

18 Q And, again, did you do any type of serological
19 testing prior to attempting to develop a profile?

20 A Yes.

21 Q What did you discover when you did that on swab
22 labeled E.?

23 A Blood was indicated.

24 Q But, again, you were not able to develop a D.N.A.
25 profile?

1 A There was no human D.N.A. on the swab.

2 Q Item number 19.1 and 19.3, what were those swabs
3 from?

4 A They were swabs from the knife labeled 1.1.

5 Q And, again, serological testing, what, if anything,
6 did you find?

7 A Blood indicated.

8 Q Were you able to find human D.N.A. on those two
9 items?

10 A No.

11 Q Please answer any questions Ms. Fullwood has for
12 you, Ms. Urka.

13 **CROSS EXAMINATION**

14 BY MS. FULLWOOD:

15 Q Ms. Urka, did you yourself perform this presumptive
16 testing or was it performed by Katie McCoy or Katie
17 Coy?

18 A I am the same person.

19 Q Oh, you are?

20 A Yes.

21 Q Okay. That clears that up. In your report that is
22 dated October 25th of 2010, don't you state that
23 the partial D.N.A. profiles developed from item 9
24 and 20.2 are insufficient for reliable
25 interpretation?

1 A Correct.

2 Q So that means you really shouldn't be trying to
3 arrive at any conclusions as a result of what you
4 found, right?

5 A Right. That generally means that there is not
6 enough information there for me to make any kind of
7 exclusive statement about it.

8 Q Just to summarize things, Humberto Caballero's
9 blood was found on his clothes; right?

10 A I believe so, yes.

11 Q And Olbin Banegas' blood was found on his clothes,
12 correct?

13 A Yes.

14 Q And Mr. Banegas' D.N.A. was found on both knives
15 and the blade of the machete, correct?

16 A Yes.

17 Q And Mr. Humberto Caballero's D.N.A. was found on
18 the handle of the machete, right?

19 A Yes.

20 MS. FULLWOOD: No further questions.

21 THE COURT: Anything further?

22 MR. GRAHAM: Nothing for this witness, Your
23 Honor.

24 THE COURT: You may step down.

25 (Witness leaves the witness stand.)

1 MR. GRAHAM: Your Honor, could we take a
2 five-minute break at this time?

3 THE COURT: Ladies and gentlemen, we will take
4 a break.

5 (The jury retires to the jury room.)

6 (Whereupon there is a recess.)

7 THE COURT: You can bring the jury.

8 (The jury returns to the courtroom.)

9 THE COURT: The jury is back. Your next
10 witness.

11 MR. GRAHAM: Thank you, Your Honor. The State
12 calls Dr. Janice Ross to the stand.

13 JANICE EDWARDS ROSS, being
14 first duly sworn, testifies as follows:

15 CLERK: Please have a seat. State your full
16 name, spelling your last.

17 THE WITNESS: Janice Edwards Ross, R-O-S-S.

18 DIRECT EXAMINATION

19 BY MR. GRAHAM:

20 Q It's Dr. Ross, isn't it?

21 A Yes.

22 Q Would you tell the jury about your educational
23 background, please, Doctor.

24 A Yes. I have a Bachelor's from the University of
25 South Carolina and my M.D. degree from Upstate

JANICE ROSS -- DIRECT -- MR. GRAHAM

330

1 Medical Center in Syracuse, New York, where I did
2 further training in pathology. I am board
3 certified in three areas of pathology: Anatomic,
4 clinical, and forensic pathology.

5 MS. FULLWOOD: Your Honor, we would stipulate
6 that Dr. Ross is an expert in the field of forensic
7 pathology.

8 MR. GRAHAM: That would be fine, Your Honor.

9 THE COURT: So stipulated.

10 BY MR. GRAHAM:

11 Q What is pathology, Dr. Ross?

12 A Pathology is the study of diseases. We look at
13 tissues that comes out of you from surgery to tell
14 if it's cancer or not, look at tissue under the
15 microscope.

16 We learn how to do autopsies in a specific
17 manner to identify diseases and injuries and causes
18 of death. Forensic pathology, the word forensic
19 means legal. We use our pathology knowledge for
20 legal matters and further learn how to document
21 injuries and causes of death, manner of death.

22 Q How many times have you testified as an expert in
23 forensic pathology?

24 A Over 70 in South Carolina.

25 Q Did you have an occasion to do an autopsy on this

1 case on an individual named Humberto Caballero?

2 A Yes.

3 Q When and where did you do that autopsy?

4 A August 25, 2008, in the morgue at Newberry County
5 Memorial Hospital.

6 Q And generally, not in specifics yet, would you
7 describe what you do during an autopsy?

8 A When we receive the body, we take photographs of
9 the body clothed and then do an inventory of
10 clothing. Then we do a thorough examination of the
11 internal parts of the body and take pictures. We
12 systematically go through and dissect out the
13 organs one by one and look at them individually to
14 identify further the injuries or diseases.

15 Q And do you also collect samples for toxicology and
16 serology to be sent to S.L.E.D.?

17 A Yes.

18 Q Did you do that in this case as well?

19 A Yes.

20 Q What, if anything, did you notice when you did your
21 external examination of Mr. Caballero? What did
22 you find his height and weight to be?

23 A He was 63 inches and a half in height, five foot
24 three and a half inches. We estimate the weight at
25 145-pounds.

1 Q When you did an external examination, what, if
2 anything, did you find?

3 A We found a few injuries. Majorly we found a single
4 stab wound in the abdomen. We found some other
5 wounds. There was abrasion of the bridge of the
6 nose over on the temple, right temple of the head,
7 the forehead.

8 We found some incised wounds which are made
9 from sharp instruments, such as a knife. We found
10 one on each thumb. We found a superficial incised
11 wound on the inside of the right upper arm.

12 Q Were those wounds documented through the use of
13 photography?

14 A Yes.

15 Q Let me show you some photographs and ask if you
16 recognize those photographs, Doctor.

17 A Yes, I recognize them.

18 Q Do they fairly and accurately depict the injuries
19 that you observed on Mr. Caballero during your
20 external examination of his autopsy?

21 A Yes.

22 MR. GRAHAM: Your Honor, I believe without
23 objection the defense will agree to admitting these in
24 evidence.

25 MS. FULLWOOD: That's correct, Your Honor.

1 THE COURT: Admitted without objection.

2 MR. GRAHAM: That's State 48, Your Honor,
3 through 54.

4 (State's Exhibits Number 48-54 are received
5 into evidence.)

6 BY MR. GRAHAM:

7 Q Dr. Ross, could you step down from the stand,
8 please.

9 A (Witness leaves the witness stand.)

10 Q Referring to State's Exhibit Number 48, what does
11 that show?

12 A This is the right temple of the face of the
13 decedent, the victim, showing these abrasions which
14 are superficial scrapes of the skin caused by blunt
15 force injury. There is no pattern to say exactly
16 what caused it.

17 Q Were you able to determine whether those injuries
18 were recent? Were they fresh?

19 A Yes.

20 Q They were fresh?

21 A Yes.

22 Q In addition to the abrasions to the right temple,
23 what does State's Exhibit Number 49 show?

24 A It shows a similar abrasion over the nose, bridge
25 of the nose, again, without specific pattern.

1 Q Were those also fresh abrasions?

2 A Yes.

3 Q State's Exhibit Number 50, what are you documenting
4 in that photo, Doctor?

5 A This shows a wound on the left thumb which is an
6 incised wound caused by a sharp instrument, such as
7 a knife, and such that it went under the skin and
8 caused an evulsion of the skin. Evulsion means
9 it's just a flap of skin that can be raised.

10 Q If I use the word or the phrase defensive wound,
11 what does that mean?

12 A Defensive wounds are wounds placed on the forearms
13 or hands, and they depict the idea that the wounds
14 were received by a victim who had their hands up or
15 arms up in a defensive manner.

16 Q The incised wound on Mr. Caballero's left thumb, is
17 that consistent or inconsistent with a defensive
18 wound?

19 A It's consistent with one.

20 Q State's Number 51, what are you documenting in that
21 photograph?

22 A Again, an incised wound on the thumb, base of the
23 thumb of the right hand, similarly caused by a
24 sharp instrument.

25 Q And would that wound depicted in State's 51 be

1 consistent or inconsistent with a defensive wound?

2 A Consistent with a defensive wound.

3 Q State's Number 52, what are we documenting in this,
4 Doctor?

5 A This is a very superficial wound, a scratch or
6 superficial incised wound, on the inner aspect of
7 the right arm, again, which could be caused by a
8 sharp instrument, the tip of a sharp instrument,
9 and, again, it is consistent with a defensive
10 wound.

11 Q Doctor, State's Exhibit Number 53, what is that?

12 A This is the stab wound which is just below and to
13 the right of the belly button. It's before it has
14 been cleaned off.

15 Q State's Number 54, what does that document, Doctor?

16 A This is the stab wound after it has been washed
17 off, and it just shows the wound in the skin, in
18 the abdomen, the stomach.

19 Q Would you retake the witness stand.

20 A (Witness resumes the witness stand.)

21 Q Was there anything else on the external examination
22 that you noticed, Doctor?

23 A No, sir.

24 Q Let's talk about the internal. After you do an
25 external examination, what comes next?

JANICE ROSS -- DIRECT -- MR. GRAHAM

336

1 A We open up the body and look at the organs
2 individually.

3 Q And when you did, for lack of a better word, an
4 internal examination after the dissection, what did
5 you find?

6 A We found that the stab wound went in the abdomen to
7 the stomach, into the abdominal cavity. It hit a
8 portion of a small intestine but also went far
9 enough in to hit the -- perforate the aorta down
10 the lower part of the abdomen.

11 Q What is the aorta, Doctor?

12 A The aorta is the main artery coming off the heart.
13 The heart pumps blood into the aorta, and the blood
14 then goes around to the different organs. As blood
15 goes down the aorta, little vessels come off, for
16 instance, the lungs, the heart, the kidneys, the
17 liver. So the aorta is the main artery.

18 Q That is not only around the heart? Where else?

19 A It comes off the heart and curves around and goes
20 down through the chest and down to the abdomen.
21 Then down into the lower abdomen, it divides into
22 two arteries to go to each leg.

23 Q And his aorta was damaged during the stabbing?

24 A Yes, the wound went into the aorta.

25 Q And were you able to determine a cause of death for

1 Mr. Caballero?

2 A Yes.

3 Q What was that?

4 A It's exsanguination, which means to bleed out,
5 because of the blood flowing out of the aorta
6 freely into the abdomen cavity due to the stab
7 wound of the abdomen.

8 Q In your description of the stab wound, can you
9 describe what you found as far as the -- describe
10 the entrance and any angle or anything like that
11 that you can tell us about the wound itself.

12 A The wound was vertical. It was up and down. It
13 was relatively long, but it had a little bit of a
14 curve in it, which we call a compound wound. In
15 other words, when someone is stabbed and they are
16 moving or the knife is moving, you can have a
17 bigger or longer wound in the skin than the knife
18 is wide. So it appeared that as the knife went in
19 and came out, it made a long wound.

20 Q Can you describe the path of the wound through
21 Mr. Caballero's body.

22 A It went front to back, from right slightly to the
23 left and slightly downward.

24 Q Did investigators with the Lexington County
25 Sheriff's Department also bring some knives for you

JANICE ROSS -- DIRECT -- MR. GRAHAM

338

1 to look at?

2 A Yes.

3 Q Let me show you two items that have been introduced
4 into evidence, State's Exhibit Number 3 and 4 and
5 ask if you recognize those items, Doctor.

6 A Yes, those appear to be the knives that we have a
7 picture of from the autopsy.

8 Q And what, if any, opinion do you have about the
9 ability of one or both of those knives to cause the
10 fatal injury that resulted in Mr. Caballero's
11 death?

12 A Either one of the knives could have made that
13 wound.

14 Q One of those knives is a straight edge and one is a
15 serrated edge?

16 A Yes.

17 Q Did you find any evidence of serration on
18 Mr. Caballero's wound?

19 A No, I did not.

20 Q Would that necessarily rule out a serrated knife
21 from causing that wound?

22 A No, it does not.

23 Q Thank you, Dr. Ross. Please answer any questions
24 that Ms. Fullwood has.

25 THE COURT: Cross examination.

1 CROSS EXAMINATION

2 BY MS. FULLWOOD:

3 Q Dr. Ross, let me show you some additional pictures
4 that we have put in evidence. I am going to show
5 you Defendant's Exhibit 1 and Defendant's Exhibit 2
6 and ask you if you can describe what you see on
7 those pictures.

8 A It's a wound to the left inner wrist of a hand --
9 of an arm with quite a bit of blood around it. The
10 wound looks like an incised wound. It's hard to
11 see.

12 Q I am going to hand you Defendant's Exhibit 6 and
13 ask if you can describe that.

14 A This looks like a wound that has been sewn up on
15 the inner aspect of the left wrist just above the
16 wrist. It's consistent with an incised wound.

17 Q And does Defendant's Exhibit 6 appear to be the
18 same wound cleaned up as Defendant's Exhibit 2 and
19 1?

20 A Yes.

21 Q And when you say it's an incised wound, you mean it
22 was more than likely made by some sharp object?

23 A By a sharp object as opposed to being hit by a
24 blunt -- like a hammer or something, something
25 sharp.

JANICE ROSS -- DIRECT -- MR. GRAHAM

340

1 Q And can you tell us the direction of the wound?

2 A May I stand up?

3 Q Yes, ma'am.

4 A This is the anatomic position, normal anatomic
5 position. So the wound is -- would slice the skin.
6 It would be going upwards, away from the wrist, to
7 cause a flap of skin to evulse upward. So it's
8 going away from the wrist, I guess is the best way
9 to describe it.

10 Q So towards the elbow?

11 A Correct.

12 Q When you gave that demonstration, you are not
13 trying to suggest that wrist was in this position
14 when the wound was received?

15 A No.

16 Q Could the wound have been received with the arm in
17 this position (indicating)?

18 A Yes.

19 Q Is that wound consistent with a defensive wound?

20 A Yes.

21 Q All right. I am trying to back off so everybody
22 can see it. If you need to look closer, I can
23 bring it to you. Could this machete have inflicted
24 that wound?

25 A I can't really see it.

1 Q I will bring it up to you.

2 A Yes.

3 Q All right. I want to show you State's Exhibits 37,
4 38, and 39 and ask you if you can describe what
5 these depict.

6 A It looks like an abrasion on the back. It's almost
7 a right angle and it's V-shaped.

8 Q All right. So the jury knows what we were talking
9 about, I will go to the machine for a moment. When
10 you say an abrasion, you don't mean -- you mean
11 it's not a cut, correct?

12 A Correct.

13 Q Is that more like a scrape?

14 A A scrape of the skin, yes.

15 Q And could the flat edge, the flat tip of this
16 machete, have inflicted that injury?

17 A Yes.

18 Q It could. I will try to do this from the
19 projector. If you need to see the pictures, please
20 let me know, will you?

21 A Yes.

22 MS. FULLWOOD: Could we lower the lights a
23 bit.

24 BY MS. FULLWOOD:

25 Q Can you describe for us what this depicts.

1 A I would like to look at it closer, please.

2 Q And this would be State's Exhibit 34.

3 A It looks like a similar abrasion as the one on the
4 back.

5 Q Is it your opinion it was inflicted -- could it
6 have been inflicted by the same instrument?

7 A Yes, on the flat surface.

8 Q And what part of the body is that wound on?

9 A It looks like the right forearm near the elbow.

10 Q I want to show you State's Exhibits 31 and 32 and
11 ask you what they depict.

12 A These are very superficial scratches or incised
13 wounds that appear to be on the -- again, the right
14 forearm, the side of the arm.

15 Q All right. Are they consistent with defensive
16 wounds?

17 A Yes.

18 Q No further questions. Thank you very much.

19 MR. GRAHAM: Just a few, Your Honor.

20 **REDIRECT EXAMINATION**

21 BY MR. GRAHAM:

22 Q Dr. Ross, I'm not sure which item you were talking
23 about. You were talking about an abrasion that was
24 similar to the one on the back. Which photograph
25 was that?

1 A You can see it in this one. It's Number 34.

2 Q Could you step down Doctor, please.

3 A (Witness leaves the witness stand.)

4 Q Looking at State's Number 34, would you describe to
5 the jury what you are talking about.

6 A This wound is almost like a V-shape here
7 (indicating). It's an abrasion.

8 Q Your testimony is that is consistent with the flat
9 of the blade of the machete?

10 A It could be made by the blade hitting the flat
11 side.

12 Q Thank you, Doctor.

13 MR. GRAHAM: Nothing else, Your Honor.

14 THE COURT: Anything further?

15 MS. FULLWOOD: No, Your Honor.

16 THE COURT: Thank you, Doctor.

17 (Witness leaves the witness stand.)

18 MR. GRAHAM: Your Honor, the State would rest.

19 THE COURT: Ladies and gentlemen, that is the
20 State's case. I need to discuss some matters outside
21 your presence. I will ask that you go to the jury room.
22 Please do not discuss the evidence.

23 (The jury retires to the jury room.)

24 THE COURT: The jury is out. Matters of law?

25 MS. FULLWOOD: Yes, sir. At this time we move

1 for a directed verdict, Your Honor. The grounds for the
2 motion are that the evidence as a whole is insufficient
3 to convince a rational trier of fact beyond a reasonable
4 doubt that every element of each offense charged has
5 been proved.

6 Specifically to murder, Your Honor, the
7 evidence doesn't show malice. The evidence shows
8 that -- the evidence is all over the place. At best it
9 shows that there was some dispute that evening.

10 There are a number of people involved in that
11 dispute. There were people engaged in mutual combat,
12 that several people, in addition to the Defendant, were
13 armed with weapons.

14 The fatal blow was struck while the deceased
15 was armed with a machete with which he had already
16 struck the Defendant. I think under those circumstances
17 malice hasn't been shown to a degree where it would
18 raise a question for a jury.

19 At best it might make out a case of a killing
20 in the heat of passion upon sufficient legal
21 provocation. So for that reason we would ask that the
22 Court not submit the charge of murder to the jury.

23 THE COURT: Solicitor.

24 MR. GRAHAM: Your Honor, as to the murder
25 charge, I believe that the testimony in the light most

1 favorable to the State would create a jury question out
2 of the question of malice.

3 The testimony is that Mr. Pecheco came into
4 the house the early morning hours, that he was upset,
5 crying, scared, mad, claiming that the Defendant had
6 assaulted him.

7 Approximately ten minutes later the testimony
8 is the Defendant came in, pushed his way into the door,
9 that he had a knife in his hands. He came to the
10 location with a knife. It's not a pocketknife that
11 anyone would carry around with him. Your Honor has seen
12 the knife.

13 He comes into the house and begins to try to
14 attack Mr. Pecheco stating he was going to kill him. He
15 chases them into a back bedroom where they barricade a
16 door. Mr. Pecheco and Ana go out.

17 At that point one of the homeowners or the
18 people living -- not homeowner -- but a person staying
19 there, living there on the premises, Mr. Humberto
20 Caballero, the victim comes out and he confronts the
21 Defendant.

22 He tells him to calm down and he begins to
23 attack him and tell him he's going to kill him, too. He
24 came over there with malice. He brought the knife with
25 him and he wanted to fight.

1 He forced his way into the house uninvited,
2 and he basically attacked and threatened everybody in
3 the house who was there. He was told to calm down and
4 he was told to leave. He refused to. You have heard
5 the testimony and I believe there is sufficient evidence
6 of malice to go to the jury for a conviction of murder.

7 THE COURT: All right. Anything further?

8 MS. FULLWOOD: No, Your Honor.

9 THE COURT: I was about to mention that malice
10 can be inferred from the use of a deadly weapon. I
11 recognize the Court, under State versus Belcher, has
12 determined that that is no longer good law in a case of
13 a claim of a self-defense, I guess.

14 MR. GRAHAM: Your Honor, if I may?

15 THE COURT: Yes, sir.

16 MR. GRAHAM: I think Belcher stands for the
17 proposition that there used to be a jury charge that
18 Your Honor would give to the jury about malice being
19 inferred from the use of a weapon. I think that it
20 still allows us to address that as malice in closing
21 arguments, just that there is not a jury charge to go
22 along with that anymore.

23 THE COURT: Do you agree with that, counsel?

24 MS. FULLWOOD: Well, I certainly think they
25 can argue to the jury that under their version of the

1 facts that he was armed when he went there is evidence
2 of malice. I don't think they can argue that it's a
3 legal presumption or that the law permits them to reach
4 an inference of malice simply because he was armed.

5 THE COURT: Well, I understand. The testimony
6 in the case, in the light most favorable to the State,
7 is that the Defendant went to the residence with the
8 express intention to kill -- what is the guy's name?

9 MR. GRAHAM: Eddie or Edin Pecheco.

10 THE COURT: Pecheco. Since he couldn't get to
11 Pecheco, he then wanted to kill Vasquez. Then when the
12 victim came out in attempting to defend his home, he was
13 killed. So the malice has been expressed through the
14 lips of the Defendant in this case, indicating that he
15 was there to kill.

16 The fact that he didn't kill any of the two
17 that he had expressly stated he wanted to kill, he
18 killed a third party, that doesn't eliminate the malice
19 as being proven.

20 I think taking the testimony in the light most
21 favorable to the State, there is a clear indication of
22 malice by the Defendant, and I deny the motion. What
23 else?

24 MS. FULLWOOD: If I could address a scheduling
25 matter, Your Honor?

1 THE COURT: Sure.

2 MS. FULLWOOD: One of our translators tells me
3 that he hasn't had an opportunity to vote today. We
4 would have two witnesses at most. If we call two, one
5 of them would be a very short witness.

6 Like I told you, Your Honor Monday,
7 Mr. Banegas has a second grade education. He is not
8 very assimilated into American culture. And while he
9 certainly understands he is on trial, he doesn't
10 understand the finer points of what goes on in an
11 American courtroom.

12 I would like an opportunity to at least talk
13 to him this afternoon to make sure that he fully
14 understands his constitutional rights insofar as it
15 concerns presenting a defense to this jury.

16 So I would ask that we be able to continue
17 with testimony tomorrow. I think, barring the State
18 calling a plethora of reply witnesses, that this case
19 will go to the jury tomorrow.

20 THE COURT: All right. We are at 3:35. The
21 polls close at 7. I'm not sure where the translator has
22 to go to vote. I have an appointment at 8 tomorrow
23 morning and a luncheon at 12:30 tomorrow in Columbia --
24 both in Columbia. You don't want to do anything more
25 today, counselor?

1 MS. FULLWOOD: I prefer to present my --

2 THE COURT: Excuse me. Then I have to be in
3 Columbia for a moot court judging at 5:30 today. We
4 have some lag time in there that seems like it's being
5 created. I certainly understand your wanting to have
6 time to talk to your guy or to try to talk with him.

7 MS. FULLWOOD: I prefer to do it all at one
8 time, Your Honor. Mr. Banegas is not what I call a
9 difficult client. He is very polite. He doesn't have
10 an attitude with me whatsoever.

11 But the fact remains that because he's in a
12 strange environment, it takes a lot longer to explain
13 things to him to the extent I feel certain he fully
14 understands it than it would somebody raised on watching
15 Dragnet and C.S.I. and Law and Order. That's just the
16 way it is.

17 THE COURT: I understand. No problem. Let's
18 bring the jury. Anything further?

19 MR. GRAHAM: The only thing I was going to
20 say, Your Honor, if we are going to dismiss the jury at
21 this point, I would at least say because of what
22 Ms. Fullwood is saying that we go ahead and go over his
23 rights to testify or not, so we can get that out of the
24 way today.

25 THE COURT: We will do that today. We will

1 talk about anything you want to talk about regarding
2 jury charges. I guess that may involve interpreters,
3 may or may not. Let's let the jury go.

4 MS. FULLWOOD: One other quick matter. I take
5 it when you denied my directed verdict motion, Your
6 Honor addressed the murder charge since that is
7 primarily what I argued, but I assume that the ruling
8 included a denial of the directed verdict on the charge
9 of burglary, too.

10 THE COURT: Right. No specific argument was
11 made concerning the burglary, but there is evidence,
12 taking the testimony in the light most favorable to the
13 State, that the Defendant entered the dwelling of the
14 folks who lived there without their consent with the
15 intent to commit a crime during the nighttime. Those
16 are elements which constitute first degree burglary, and
17 I deny the motion on that as well.

18 MS. FULLWOOD: Yes, Your Honor.

19 THE COURT: Let's bring them in.

20 (The jury returns to the courtroom.).

21 THE COURT: Ladies and gentlemen, Mr. Foreman,
22 you have heard the State's case. Next will be the
23 defense's turn. We also have to give some of the trial
24 participants an opportunity to vote who have not voted.
25 I think we have reached a good point to stop for the

1 day, not knowing whether you all have voted or not.

2 We indicated we would break early today
3 because of this being election day. We will start again
4 tomorrow around 10:00 o'clock. So I will let you all go
5 early today and be back at 10:00 o'clock tomorrow
6 morning. Please do not discuss the case.

7 (The jury is excused for the day at 3:43 p.m.)

8 THE COURT: Yes, ma'am.

9 MS. FULLWOOD: If you are going to go over the
10 rights with Mr. Banegas, may I have five or ten minutes
11 to explain to him what is about to happen so that he is
12 not apprehensive about this process?

13 THE COURT: Sure. We will be in recess for a
14 little bit.

15 (Whereupon there is a recess.)

16 THE COURT: Ms. Fullwood, do you want me to
17 talk to Mr. Maldonado about his rights to testify or not
18 testify?

19 MS. FULLWOOD: Yes, Your Honor. I just ask
20 that you let him make his final decision tomorrow
21 morning.

22 THE COURT: Not a problem. Mr. Maldonado, if
23 you will come forward, please.

24 (Pause.)

25 THE COURT: Sir, what name do you like to go

1 by?

2 INTERPRETER HUNT: Maldonado.

3 THE COURT: Mr. Maldonado, at this time I am
4 going to -- first we have to swear him, I believe.

5 CLERK: Yes, sir.

6 OLBIN BANEAS-MALDONADO,
7 is first duly sworn through the interpreter.

8 THE COURT: Mr. Maldonado, at this time I am
9 going to explain to you certain rights that you have. I
10 am going to explain certain of your rights. If you do
11 not understand anything that I say, please let me know.
12 If you want me to explain anything in more detail,
13 please let me know. Do you understand?

14 INTERPRETER HUNT: Yes.

15 THE COURT: We have now or soon will reach --
16 we have now reached the stage of the trial where you may
17 present your defense. You have the right to claim the
18 protections given to you by the Fifth Amendment to the
19 Constitution of the United States. Do you know what I
20 mean when I say you have the right to present your
21 defense?

22 INTERPRETER HUNT: Yes.

23 THE COURT: I am going to explain to you
24 certain rights that you have under the Constitution of
25 the United States. You have certain protections given

1 to you by the Fifth Amendment to the Constitution of the
2 United States.

3 The Fifth Amendment states in part that no
4 person can be compelled in any criminal case to be a
5 witness against himself. This means that you cannot be
6 required or made to testify in this case. Do you
7 understand?

8 INTERPRETER HUNT: Yes, I understand.

9 THE COURT: You have the right to testify on
10 your own behalf if you would like to, but no one can
11 make you testify. This is a personal right that you
12 have, and no one can waive this right except you. Do
13 you understand?

14 INTERPRETER HUNT: Yes, I understand.

15 THE COURT: If you decide to testify, take the
16 witness stand and testify, you will be subject to the
17 same rules governing witnesses in this court. You may
18 be examined, that is, you may be asked questions by your
19 lawyer, and you may be cross examined, meaning asked
20 questions by the prosecutor, the solicitor, on any
21 relevant issue in this case.

22 In addition, if you have any convictions, if
23 you have a criminal record involving dishonesty or false
24 statements or if you have been convicted of any crimes
25 punishable by more than one year in jail, meaning you

1 could have gotten more than one year in jail for the
2 crime you were convicted of, and I determine that the
3 probative value of admitting this evidence outweighs its
4 prejudicial effect to you, the solicitor then will be
5 able to introduce or use your criminal record to attack
6 your credibility. Do you understand what I mean?

7 INTERPRETER HUNT: Yes, I understand.

8 THE COURT: If you decide to testify, this
9 decision on your part must be your decision. It must be
10 a free and voluntary decision, an intelligent decision
11 made by you with full knowledge of the protections given
12 to you by the Fifth Amendment, as I just explained, as
13 well as the consequences of your decision to testify.

14 If you decide not to testify, if you decide
15 that you do not wish to testify or do not want to
16 testify, if you decide you are not going to testify, I
17 will instruct the jurors, I will tell the jurors, that
18 they cannot give the fact that you did not testify any
19 consideration whatsoever, and there is to be absolutely
20 no prejudice to you because you did not testify.
21 Understand?

22 INTERPRETER HUNT: I understand but...

23 THE COURT: But what?

24 INTERPRETER HUNT: I would like to testify.

25 THE COURT: It's left entirely up to you

1 whether or not you testify. You may talk with your
2 lawyer, Ms. Fullwood, and your family, if you have
3 family available, or friends or anyone else you would
4 like to.

5 Certainly you have the right to testify and
6 can testify if that's what you decide you want to do. I
7 am explaining all of this to let you know that the final
8 decision of whether or not you testify is left entirely
9 up to you. It's your decision whether or not you
10 testify. Do you understand?

11 INTERPRETER HUNT: Can I decide later?

12 THE COURT: Yes, you can decide later. You
13 can't testify now. The jury is gone. If you want to
14 testify, you can't testify before tomorrow. You can
15 decide tomorrow morning if you want to.

16 INTERPRETER HUNT: Okay. I will decide
17 tomorrow.

18 THE COURT: Do you have any questions about
19 anything that I have -- do you have any questions about
20 anything that I have just explained to you?

21 INTERPRETER HUNT: No.

22 THE COURT: Have you talked with your lawyer,
23 your lawyers, about whether or not you should testify?

24 INTERPRETER HUNT: Yes, I have spoken with
25 them.

1 THE COURT: Do you want to talk with them some
2 more about that.

3 INTERPRETER HUNT: Yes, I would like to speak
4 with them.

5 THE COURT: All right. Very good.

6 MR. GRAHAM: Your Honor?

7 THE COURT: Yes, sir.

8 MR. GRAHAM: If we may decide his record and
9 what his impeachable offenses would be.

10 THE COURT: Yes, sir.

11 MR. GRAHAM: The only thing I reflect is he
12 had a petty larceny conviction April of 2007, which I
13 believe under 609(2) would be admitted as a crime of
14 dishonesty and would not require the balancing test.

15 THE COURT: All right. Do you understand that
16 he does have a conviction for that, Ms. Fullwood?

17 MS. FULLWOOD: He does have that conviction,
18 Your Honor.

19 THE COURT: Do you understand or do you agree
20 that that does not require the Court to engage in this
21 balancing test under State versus Green or Colf or
22 whatever the cases are?

23 MS. FULLWOOD: I would think that the Court
24 would nevertheless have the authority to rule that under
25 the particular circumstances of this case that they

1 should not be allowed to use that conviction.

2 This is a case where credibility is of the
3 utmost importance. The two fact witnesses for the State
4 have given testimony that is inconsistent with each
5 other and internally inconsistent.

6 If Mr. Maldonado chooses to testify, his
7 credibility will be crucial. He was convicted of a
8 magistrate level offense. I would ask that using the
9 principles of fundamental fairness and applying the
10 rights guaranteed by the Fifth, Sixth, and Fourteenth
11 Amendments to the United States Constitution and the
12 comparable provisions of our State Constitution that the
13 Court rule that he cannot be impeached with that
14 conviction.

15 THE COURT: All right. Solicitor, any
16 response?

17 MR. GRAHAM: Twofold, Your Honor. I think
18 that the law is clear that a crime involving dishonesty
19 comes in and is not subject to the balancing test.
20 However, I believe even if you use the balancing test,
21 it would come in.

22 I believe a balancing test goes to -- its
23 probative value is probative of truthfulness. He
24 committed the crime of petty larceny. He stole. That
25 is probative to his credibility. This isn't a murder

1 case where he has got a prior conviction for murder, and
2 we are not going to talk about it because it would
3 prejudice the jury.

4 THE COURT: Under State versus Shaw, the prior
5 conviction for shoplifting can be used to impeach a
6 witness under Rule 609(a)(2).

7 It appears, Ms. Fullwood, if your argument is
8 that it's not because it's similar to the offense that
9 he is on trial for, that it's dissimilar, but because it
10 can affect the juror's view of his credibility based on
11 the disputed testimony, it should not be admitted.

12 Basically I think your argument seems to be
13 that the Court should disregard Rule 609(a)(2), which
14 clearly provides that this conviction is admissible. Of
15 course, the purpose of it being admitted is for the jury
16 to consider it on the issue of credibility.

17 That's the reason why the solicitor would want
18 to utilize it. So either we have a rule or we don't
19 have a rule, and the rule is if he has a conviction, it
20 can be used.

21 Of course, on the balancing issue, I will
22 think about it overnight on the question as to whether
23 it was necessary to engage in any further balancing as
24 to probative versus prejudicial.

25 I will think about it overnight on that issue.

1 You have the record settled, and I don't believe that
2 the Court is required to rule on the admissibility of
3 convictions prior to hearing testimony.

4 MS. FULLWOOD: Yes, sir. Thank you, Your
5 Honor.

6 THE COURT: Anything else on this issue?

7 MR. GRAHAM: Not from the State, Your Honor.

8 MS. FULLWOOD: No, sir.

9 THE COURT: So, Mr. Maldonado, tomorrow
10 morning we will hear your decision regarding whether or
11 not you will testify, okay?

12 INTERPRETER HUNT: Okay. Thank you.

13 THE COURT: Very good. Thank you.

14 MS. FULLWOOD: Thank you, Your Honor.

15 THE COURT: Now, on the requested jury charge,
16 do y'all have any thoughts about that? At this juncture
17 we can talk about it.

18 MS. FULLWOOD: Your Honor, depending -- did
19 you want someone to speak?

20 THE COURT: Yes.

21 MS. FULLWOOD: Depending on, of course, what
22 the testimony does or does not show tomorrow if we have
23 any, my plan would be to request, Your Honor, a charge
24 on voluntary manslaughter.

25 I think that inferences can be drawn from the

1 evidence as it stands now that would support such a
2 charge. Depending on tomorrow's testimony, again, if
3 it's presented, we would also be asking for a charge on
4 self-defense, I would imagine.

5 THE COURT: All right. From the State?

6 MR. GRAHAM: Your Honor, I don't think at this
7 time there is sufficient evidence on either one of those
8 issues for a charge of self-defense or voluntary
9 manslaughter. I don't know whether you are asking to
10 make that decision now or we are just having a
11 discussion.

12 THE COURT: We prepare our charge in advance
13 to give to the jury in the end. I am getting an
14 advanced idea as to what you all might be seeking. I am
15 very liberal in my giving the jury options of weighing
16 various charges if there is any evidence from which the
17 jury could conclude that a person -- that the charge
18 applies.

19 We will see how it goes based on the
20 testimony. We will break until tomorrow then. Ten
21 o'clock will probably be as early as I will be able to
22 get here.

23 (Whereupon the proceedings are concluded for
24 November 2, 2010.)

25 (The following proceedings are reported on

1 November 3, 2010.)

2 THE COURT: The issue that lingered from
3 yesterday on the question of whether a balancing test is
4 necessary under 609(a)(1) where it involves a person who
5 has been convicted of a theft offense, Mr. Graham?

6 MR. GRAHAM: Your Honor, I don't believe that
7 (a)(1) is appropriate because the crime doesn't carry
8 more than a year. So I don't think the balancing test
9 would apply to petty larceny.

10 THE COURT: Pardon me?

11 MR. GRAHAM: I don't think a balancing test
12 would apply to a petty larceny conviction because I
13 believe it has to be punishable by in excess of a year.

14 THE COURT: So is it the State's position that
15 it's admissible or not admissible?

16 MR. GRAHAM: I believe, even after going back
17 and reading the law, I don't believe that a petty
18 larceny, absent me being able to show that it involved
19 dishonesty above the theft itself, would be admissible
20 at all. I don't have the evidence in the case to do
21 that. So I don't believe that his petty larceny would
22 be admissible.

23 THE COURT: All right. Very good. Yes,
24 ma'am.

25 MS. FULLWOOD: Your Honor, at some point I

1 would like to be able to briefly explain to
2 Mr. Maldonado the import of what the solicitor just
3 said.

4 THE COURT: All right.

5 MS. FULLWOOD: Perhaps Ms. Henry and Mr. Smith
6 could explain that to him.

7 THE COURT: You need to do it now.

8 MS. FULLWOOD: That's why I am asking them to
9 do it now.

10 THE COURT: Because I intend to ask him
11 whether or not he intends to testify.

12 (Pause.)

13 MS. FULLWOOD: Thank you, Your Honor.

14 THE COURT: Mr. Maldonado, have you decided
15 whether or not you want to testify.

16 INTERPRETER HUNT: Yes.

17 THE COURT: Have you talked with your lawyer
18 about it enough and had enough time to discuss it with
19 your lawyers and anyone else you want to talk to you as
20 to whether or not you should testify?

21 INTERPRETER HUNT: Yes.

22 THE COURT: And are you going to testify?

23 INTERPRETER HUNT: Yes.

24 THE COURT: Counsel, are you ready to proceed?

25 MS. FULLWOOD: I am, Your Honor.

1 THE COURT: Very good. Let's bring the jury.
2 (The jury returns to the courtroom at
3 10:20 a.m.)

4 THE COURT: The jury is back. Good morning,
5 ladies and gentlemen. It's time for the defense's case.
6 Ms. Fullwood.

7 MS. FULLWOOD: Your Honor, the defense calls
8 Olbin Banegas-Maldonado.

9 OLBIN BANEGAS-MALDONADO,
10 being first duly sworn, testifies as follows:

11 CLERK: Once you are seated, I need you to
12 state your full name spelling your last.

13 INTERPRETER HUNT: Olbin Noel
14 Banegas-Maldonado.

15 DIRECT EXAMINATION
16 (THROUGH THE INTERPRETER)

17 BY MS. FULLWOOD:

18 Q Olbin, how old are you?

19 A Right now I'm 24.

20 Q How old were you in August of 2008?

21 A I would have turned 22.

22 Q How much education do you have?

23 A Well, I only arrived to the second grade.

24 Q Can you read and write?

25 A Well, I know how to read more but write very

OLBIN BANEGAS-MALDONADO -- DIRECT -- MS. FULLWOOD 364

- 1 little.
- 2 Q What part of Honduras are you from?
- 3 A Well, Comoyagua.
- 4 Q Did you know Ana Flores in Honduras?
- 5 A Yes, I knew her.
- 6 Q What name do you call her by?
- 7 A For her I call her Suapa.
- 8 Q So when you are talking about Suapa, you are
- 9 talking about Ana Flores?
- 10 A Yes.
- 11 Q Did you know Eddie Pecheco in Honduras?
- 12 A Yeah, I knew him.
- 13 Q And what name do you know him by?
- 14 A I know him by Alexander.
- 15 Q So when you say Alexander, you are talking about
- 16 the person called Eddie?
- 17 A Yes.
- 18 Q Did you know Ivan Vasquez in Honduras?
- 19 A Ivan, I knew very little. I probably saw him maybe
- 20 three times.
- 21 Q What name do you know him by?
- 22 A I knew him as Ever.
- 23 Q Did you know Humberto Caballero in Honduras?
- 24 A Yes.
- 25 Q Did you associate with Ana, Humberto, Eddie, and

1 Ivan in the United States?

2 A Yes, we were living in the same trailer with my
3 brother, with Suapa, with Jose, who is Humberto's
4 brother, and there is another brother of Humberto's
5 who name is Abino. We all lived together in the
6 same trailer.

7 Q How long did you live with those people in that
8 trailer?

9 A About two months.

10 Q Was that here in South Carolina?

11 A Yes.

12 Q Did you eventually move away?

13 A Uh-huh. (Indicating affirmative response.) I
14 left.

15 Q And the other people moved to different houses
16 also?

17 A No, I only knew of Humberto, Suapa, and the brother
18 Alexander moving.

19 Q And when you say the brother Alexander, is that the
20 same person as Eddie?

21 A Yes.

22 Q Did you continue to associate with Ana and Humberto
23 and Eddie and Ever once you moved from that trailer
24 and they moved away, too?

25 A Yes, I would go visit them at their house.

OLBIN BANEGAS-MALDONADO -- DIRECT -- MS. FULLWOOD 366

- 1 Q What kind of things did you do together?
- 2 A Well, we would play cards.
- 3 Q And how often would you see them, say, in a week?
- 4 A Well, we weren't, so maybe I would go visit them on
- 5 Saturday or sometimes in the afternoons if there
- 6 was time.
- 7 Q Did you folks ever eat together?
- 8 A Yes, we did eat together.
- 9 Q And who would prepare meals for you folks?
- 10 A Suapa always cooked.
- 11 Q And had you visited them before at this trailer at
- 12 ?
- 13 A Yes, that's where I always visited them.
- 14 Q And when you went to visit them, did you knock on
- 15 the door before you went inside the trailer or
- 16 would you just go on in the trailer?
- 17 A Sometimes I would knock on the door and sometimes I
- 18 would just open the door.
- 19 Q Would they get upset about that if you went in?
- 20 A Well, when -- no.
- 21 Q If they came to see you, would they knock on the
- 22 door or just come on inside your trailer?
- 23 A They would knock because the door was locked.
- 24 Q Now, I want to talk now about the night of
- 25 August 23 and 24, 2008; okay?

1 A Yes.

2 Q Did you work that day?

3 A That day I did not work.

4 Q And what did you do that evening?

5 A I was at my house and then I realized that there
6 was going to be a party. Then I went to the party,
7 and there were many friend there who knew me. So
8 we were drinking, and then Alexander, I don't know
9 what happened, but he had problems with all the
10 people there.

11 Q Well, again, when you say Alexander, is that the
12 same person as Eddie?

13 A Yes, he is the same.

14 Q And what was Eddie doing at the party?

15 A Well, I don't know exactly, but he was very angry,
16 and everyone wanted him to not be there with us.

17 Q What was he doing? How did you know he was angry?

18 A Everyone was mad that he was doing something bad
19 and wanted to hit him.

20 Q What was he doing bad?

21 A I don't know what he was doing, but another person
22 came and grabbed him. They grabbed him here
23 (indicating), and he got very angry. Later I was
24 just standing there and I had a beer in my hand and
25 my other hand in my pocket, and then he came over

1 there and he pushed me to the ground.

2 Q Were you injured when you got pushed on the ground?

3 A Yes, I injured my elbow here (indicating).

4 Q And did that make you mad at Eddie?

5 A Yes, that made me mad at Alexander. I asked him
6 why did you do that to me? I didn't do anything to
7 you. So I said we need to talk. I want to talk
8 with you a little bit, I told him.

9 Q And what did you mean by that when you said, We
10 need to talk?

11 A I wanted to ask him why he did that to me. I
12 wanted to find out why because we had always gotten
13 along together.

14 Q Did you drink beer at that party?

15 A Yes, we were beginning to drink.

16 Q Did you drink anything other than beer at that
17 party?

18 A Well, I didn't drink too much there. I didn't
19 drink after a while.

20 Q Had you been drinking before the party?

21 A Before the party, no.

22 Q How many beers do you think you drank at the party?

23 A No, I was okay. I don't think I had even drank
24 three.

25 Q Who left the party first, you or Eddie?

- 1 A Eddie.
- 2 Q And how long after Eddie left did you leave?
- 3 A About 30 minutes later I went to his house.
- 4 Q Now, did you have a knife on your person that
- 5 night?
- 6 A No, I hadn't had a knife for a while.
- 7 Q And you left the party and went to Eddie's house;
- 8 is that correct?
- 9 A Yes.
- 10 Q And what were your intentions in going to Eddie's
- 11 house?
- 12 A Well, I got to Alexander's house just to talk with
- 13 him only.
- 14 Q Did you want to fight with him?
- 15 A I didn't even have the intention of fighting with
- 16 him.
- 17 Q Do you know what time of night this was?
- 18 A Around 1:30.
- 19 Q How did you get into their trailer?
- 20 A I got to the trailer and the door was cracked, and
- 21 I opened the door and went in.
- 22 Q Did you rush in in an angry manner?
- 23 A No, I just went in. The only thing I saw was Ever.
- 24 Q Did you have a knife in your hand when you went in?
- 25 A I didn't have a knife.

OLBIN BANEGAS-MALDONADO -- DIRECT -- MS. FULLWOOD 370

1 Q What happened once you got inside the trailer?

2 A I asked Alexander where Ever was -- excuse me -- I
3 asked Ever where Alexander was, and he said he's
4 not here.

5 Q So you asked Ever, who is the same person as Ivan
6 here, or Alexander, the same person as Eddie?

7 A Yes, I did.

8 Q And once you asked Ever that, what happened next?

9 A Humberto came out and he had already talked to
10 Alexander, and he asked me if I wanted to have
11 problems with Alexander.

12 Q What happened after Humberto said that?

13 A Well, Humberto got mad at me, and I said, Humberto,
14 I just want to talk to Alexander.

15 Q And how do you know Humberto was mad at you?

16 A Because he said if I had any problems with
17 Alexander, I was going to have problems with him.

18 Q What happened next?

19 A Then he grabbed something to hit me with.

20 Q What did he grab?

21 A So I grabbed the knife out of the kitchen.

22 Q What did Humberto grab to hit you with?

23 A I saw, I don't know, a stick that he grabbed.

24 Q Let me show you State's Exhibit 4. Can you see it?

25 A Yes, I see it.

1 Q Does that look like the stick Humberto grabbed?

2 A Yes, the stick he grabbed.

3 Q You say you grabbed a knife?

4 A I grabbed the knife from the kitchen.

5 Q And let me show you two knives. They are State's

6 Exhibit 3 and State's Exhibit 4?

7 A The first one was this one (indicating).

8 Q This knife, State's Exhibit 3, was this the knife

9 that was in the kitchen?

10 A Yes.

11 Q What happened once Humberto had the stick and you

12 had the knife? What happened next?

13 A I went back outside again to where the stairs were.

14 Q Let me ask you this. Why did you grab the knife?

15 A Because they were going to hit me.

16 Q When you say they, you talked about Humberto being

17 there with a stick. Were there any other people

18 there?

19 A Also, Ever was there but he didn't have anything in

20 his hand.

21 Q So it was you and Humberto and Ever in the room at

22 that point?

23 A Yes.

24 Q Did you go into the bedrooms of the house?

25 A I did not go in the bedrooms.

OLBIN BANEGAS-MALDONADO -- DIRECT -- MS. FULLWOOD 372

- 1 Q So where were you in the house where you had the
2 knife and Humberto had the stick and Ever was
3 present?
- 4 A I was near the living room.
- 5 Q And at that point you went where?
- 6 A I went by a bathroom that was there, and I found
7 another knife.
- 8 Q And was that the second knife I showed you?
- 9 A No, it was another.
- 10 Q So it's not State's Exhibit 4?
- 11 A I don't know.
- 12 Q Is this the knife from the bathroom? Do you know
13 if it's the knife from the bathroom?
- 14 A That's the one I found in the bathroom.
- 15 Q Did you see Ana Suapa in the house?
- 16 A I don't remember having seen Suapa.
- 17 Q What about Carmen? Did you see her in the house?
- 18 A I didn't see Carmen either.
- 19 Q I am going to show you Defense Exhibit 5, a pipe,
20 did you see this that night?
- 21 A Yes.
- 22 Q Where did you see it?
- 23 A Outside. Suapa had it.
- 24 Q Suapa had it outside?
- 25 A Yes.

- 1 Q All right. Once you had the two knives and
2 Humberto had the stick, where did you go from
3 there?
- 4 A I went outside near where the van is by the steps.
- 5 Q Why did you go outside by the van?
- 6 A I went outside and I saw Ever, Ivan, and I asked
7 again, Where is Alexander.
- 8 Q Why did you ask for Alexander?
- 9 A Well, I wanted to speak with him.
- 10 Q Where was Ivan when you were asking him this?
- 11 A Ivan was on top of the van.
- 12 Q Why was he on top of the van?
- 13 A I was below and maybe he was scared.
- 14 Q Were you trying to stab him with those knives while
15 he was on top of the van?
- 16 A I didn't try to do anything to him. I didn't try
17 to stab him.
- 18 Q Was Carmen inside or outside of the house at that
19 point?
- 20 A I didn't see Carmen. She may have been inside. I
21 didn't see her.
- 22 Q At what point did you see Ana Suapa outside?
- 23 A When I was outside with Ever.
- 24 Q How long did you talk to Ever while he was on the
25 van?

OLBIN BANEGAS-MALDONADO -- DIRECT -- MS. FULLWOOD 374

1 A Just a little while.

2 Q What happened next?

3 A I told Ever to get down off the van. I told him, I
4 don't want to have any problems with you. I just
5 want to see Alexander.

6 MS. FULLWOOD: Your Honor, may Mr. Maldonado
7 come down?

8 THE COURT: Yes.

9 BY MS. FULLWOOD:

10 Q Would you please come down here.

11 A (Witness leaves the witness stand.)

12 Q I want you to stand right here, please, sir. I
13 want the jury to be able to see you and see all
14 these pictures, okay?

15 A Okay.

16 Q I am going to show you what is marked as State's
17 Exhibit 31. Whose arm is that?

18 A Mine.

19 Q And what is on your arm?

20 A Hits.

21 Q How did you get those hits on your arm?

22 A That was when I got hit inside in the living room.

23 Q I am going to show you State's Exhibit 34. Whose
24 arm is that?

25 A Mine.

1 Q What is on your arm?

2 A The same blood that they gave to me when I was
3 inside.

4 Q And what did they use to make that blow?

5 A With a stick.

6 Q And who had the stick when it made that injury?

7 A Humberto had the stick.

8 Q I want to show you State's Exhibit 33. Whose arm
9 is that?

10 A Mine.

11 Q And what is on your arm?

12 A That was the injury I got when Alexander threw me
13 to the floor when we were at the party.

14 Q That's on your elbow?

15 A Yes.

16 Q You can go have a seat.

17 A (Witness resumes the witness stand.)

18 Q You were outside and Ivan was on the car. Please
19 tell the jury what happened after that.

20 A Ever told me, Give the knives to Carmen.

21 Q Where was Carmen?

22 A She was inside.

23 Q As a result of what Ever said, what did you do?

24 A I said I would give the knives to Carmen, but I
25 just got up to the second step.

OLBIN BANEGAS-MALDONADO -- DIRECT -- MS. FULLWOOD 376

1 Q What happened next?

2 A But then I didn't give the knives to her. I just
3 threw them on the ground, threw the knives to the
4 ground.

5 Q And where were you when you threw the knives on the
6 ground?

7 A I was on the stairs.

8 Q At that point did Ever say anything to you?

9 A No, he didn't.

10 Q Did you say anything to him?

11 A No.

12 Q So you say you were on the second step when that
13 happened?

14 A Yes.

15 Q What happened next?

16 A Well, I saw from up there, from up on the top of
17 steps where the trailer was, that Humberto was
18 there coming out with a machete.

19 Q And where were the knives at that point?

20 A The knives were down on the ground.

21 Q What, if anything, did Humberto say to you?

22 A He said, What's up? What is going on? And then he
23 hit me in the shoulder with the machete.

24 Q What edge of the machete did he hit you with?

25 A With the wide part.

1 Q Was it a strong blow or a light blow?

2 A It was a strong blow.

3 Q As a result of the blow, what happened?

4 A I fell down. I couldn't support the blow, and I
5 fell down the steps.

6 Q Where did you end up?

7 A I fell down on the ground on the grass, and then I
8 looked around behind me, and I saw that he was
9 coming at me with the machete right in the middle
10 of my body.

11 MS. FULLWOOD: At this point if he may come
12 down, Your Honor.

13 THE COURT: He may.

14 (Witness leaves the witness stand.)

15 BY MS. FULLWOOD:

16 Q Now, Olbin, obviously this is a toy and it's not as
17 big as a machete. But can you face me and if I am
18 you and you are Humberto, show me how he used the
19 machete when he hit you while he was standing at
20 the top of the stairs?

21 A I saw that he was up there and was coming down, and
22 I saw he had the machete and he turned it and hit
23 me on the shoulder.

24 Q That would be with the flat side?

25 A Yes.

OLBIN BANEGAS-MALDONADO -- DIRECT -- MS. FULLWOOD 378

1 Q And show the jury how you ended up on the ground.

2 A I fell and I fell down the steps with my hands
3 down.

4 Q Can you get down on the floor and show them how you
5 ended up?

6 A I fell like this (indicating).

7 Q Back up a little bit so everybody can see you.

8 A I fell like this (indicating), like this, and then
9 I got up and I looked around behind me and I saw
10 that he was coming at me with the machete.

11 Q When you say you got up, did you get up and stand
12 all the way up?

13 A No, I just was like this, still kind of squatting
14 down.

15 Q Show the jury how you fell and then how you got up
16 squatting down.

17 A I fell like this (indicating) and then I went to
18 get up. When I got up like this (indicating) and
19 then the knives were here. Everything was very
20 quick, and then I did like this (indicating) with
21 the knife.

22 Q Were the knives in your hand the first time he hit
23 you with the machete on the back?

24 A No, the knives were on the ground.

25 Q Did you land by the knives when you fell down the

1 stairs?

2 A Yes, I fell almost on top of the knives.

3 Q Show us how Humberto was holding the machete
4 while -- after you fell down and he came at you.

5 A He came after me after I got up, and he was coming
6 at me like this (indicating), and then I tried to
7 grab him and then it went like this (indicating).

8 Q So I want to show you Defense Exhibit 2. Whose arm
9 is that?

10 A Mine.

11 Q And you got that injury when?

12 A That was when I was trying to grab the machete.

13 Q Can you show me exactly how your arm got hurt with
14 the machete. First of all, am I holding the
15 machete properly here?

16 A No, it was more like this (indicating).

17 Q Like this (indicating)?

18 A Yes. So I was like this and he was coming at me
19 straight on. So I moved to one side like this and
20 he came down on my arm.

21 Q With the machete (indicating)?

22 A Yes.

23 Q What did you do with your other hand?

24 A That was later. I grabbed the knife and did like
25 this (indicating).

OLBIN BANEGAS-MALDONADO -- DIRECT -- MS. FULLWOOD 380

1 Q You can have a seat.

2 A (Witness resumes the witness stand.)

3 Q At that point once you had been hit on the back
4 with the machete, what did you want to do?

5 A Well, I didn't have any other choice. I didn't
6 have the opportunity to run.

7 Q Okay.

8 A I was afraid that they were going to kill me.

9 Q What did you think Humberto was going to do with
10 the machete?

11 A Well, he was going to kill me.

12 Q And how did that make you feel?

13 A Well, I felt fear.

14 Q Were you in control of your actions once you felt
15 that fear?

16 A Well, the thing is, the thing I am trying to say, I
17 never had any intention of doing that to Humberto.

18 Q Did you like Humberto?

19 A Yes, he was a friend.

20 Q Did you even think about what you were doing when
21 you grabbed that knife?

22 A No. The knife was on the ground and I wanted to go
23 to my house.

24 Q And what emotions were you feeling at that point in
25 time?

1 A Well, I was -- in my thoughts maybe I should go to
2 my house.

3 Q And what were the emotions you felt when you saw
4 the machete coming at you with the sharp side the
5 second time?

6 A I just felt fear, fear.

7 Q You were acting on instinct when you picked up the
8 knife?

9 MR. GRAHAM: Objection, leading.

10 THE COURT: Objection sustained.

11 BY MS. FULLWOOD:

12 Q What led you to pick up the knife?

13 A Out of fear I grabbed the knife. I didn't have any
14 other option.

15 Q Did you stab Humberto?

16 A Yes.

17 Q What happened after that?

18 A Well, after that he didn't have any other action.
19 He just fell to the ground.

20 Q And what did you do?

21 A Well, I saw that. I was very sad and very afraid.

22 Q And why were you sad?

23 A I was very scared to see what I had done to him.

24 Q So you felt very bad about what happened?

25 A Yes, because I never thought I could do damage like

OLBIN BANEGAS-MALDONADO -- DIRECT -- MS. FULLWOOD 382

1 that.

2 Q Did you go over there intending to hurt anyone?

3 A No, I didn't go there with the intention to kill
4 anyone. I just went over there to talk with
5 Alexander.

6 Q Did you have want to have any type of physical
7 confrontation with anybody at that trailer?

8 A Yes.

9 Q Did circumstances get out of control?

10 A Yes.

11 MS. FULLWOOD: Beg the Court's indulgence.

12 (Pause.)

13 MS. FULLWOOD: No further questions, Your
14 Honor.

15 MR. GRAHAM: Your Honor, if I can have a
16 five-minute break to get some exhibits for cross.

17 THE COURT: Ladies and gentlemen, we will have
18 you go to the jury room at this time. Please do not
19 discuss the case.

20 (The jury retires to the jury room.)

21 THE COURT: Five minutes or so.

22 (Whereupon there is a recess.)

23 THE COURT: Ready for the jury?

24 MR. GRAHAM: Yes, Your Honor. Thank you.

25 THE COURT: Let's bring them on.

1 (The jury returns to the courtroom.)

2 THE COURT: The jury is back. Cross
3 examination.

4 MR. GRAHAM: Thank you, Your Honor.

5 **CROSS EXAMINATION**

6 BY MR. GRAHAM:

7 Q Mr. Maldonado, you were friends with Suapa; weren't
8 you?

9 A Yes.

10 Q And you still consider her your friend today?

11 A Yeah, for me she will always continue being my
12 friend.

13 Q And she wouldn't lie about what happened that
14 night, would she?

15 A Yes, there has been a lot of lies.

16 Q I agree, there has been lies. Ivan is your friend?

17 A We weren't friends-friend, but we got along pretty
18 much pretty well.

19 Q Why would Ivan come into court and lie about what
20 happened?

21 A I don't know what happened but they lied.

22 Q What time did you go to the party that night?

23 A To the party around ten, ten.

24 Q Were you there at the party the whole time until
25 you left to go confront Eddie?

1 A No, no, the party was still going on.

2 Q Did you stay at the party from the time you got
3 there at 10:00 o'clock until you left to go to
4 Eddie's trailer and talk to him?

5 A The whole time, no. I wasn't there the whole time
6 at the party.

7 Q Where else were you?

8 A When I left there, I went to where Alexander was.

9 Q You got to the party at 10:00 o'clock, correct?

10 A Uh-huh. (Indicating affirmative response.)

11 Q And you didn't leave the party until you went over
12 to see Alexander at about 1:30, correct?

13 A Yes.

14 Q And you were drinking at the party?

15 A We were beginning to drink.

16 Q But the party began at 10:00 o'clock, correct?

17 A Yes.

18 Q And your testimony is that you only had three
19 beers, correct?

20 A Yes.

21 Q Over three and a half hour time, you only drank
22 three beers; is that correct?

23 A I didn't want to drink that much. I was just calm.
24 I just wanted to be light.

25 Q And you didn't drink anything else but those three

1 beers over that three and a half hour period,
2 correct?

3 A Yes.

4 Q So you were not drunk?

5 A No, I was not drunk.

6 Q You were calm?

7 A Yes.

8 Q And you knew what you were doing?

9 A Yeah.

10 Q And it's your testimony that Eddie came and pushed
11 you down?

12 A Yeah. When he came he pushed me. I fell to the
13 ground.

14 Q And you fell hard enough that you hurt your elbow?

15 A Yeah. When I fell to the ground, I injured my
16 elbow, and the bottle I had in my hand broke.

17 Q So he pushed you very hard?

18 A Yes.

19 Q And he was mad at you when he pushed you?

20 A I said, Why did you do that to me if you don't have
21 problems with me, rather with the other people?

22 Q My question was, was he mad at you when he pushed
23 you?

24 A Yes.

25 Q But you had testified that he was your friend,

1 correct?

2 A Yeah.

3 Q And your testimony is that you were not mad at him
4 even though he was mad at you and pushed you hard
5 enough to fall and hurt yourself and break a
6 bottle, correct?

7 A Yeah, I didn't have any problem with anybody there.
8 I was just calm.

9 Q You were calm even though he was mad at you, and he
10 had pushed you down hard enough to hurt yourself
11 and break a beer bottle? Is that your testimony?

12 A Yes.

13 Q You did not grab his neck and make a mark on his
14 neck?

15 A No, it was someone else. He had problems with,
16 another person named Thomas. Thomas is the one who
17 grading him there.

18 Q Did you see that happen?

19 A I saw that.

20 Q Did you go over to help your friend?

21 A No, I didn't want to get involved. I didn't take
22 any action.

23 Q So Eddie was your friend and you didn't want to get
24 involved, and you let somebody else attack him?

25 A No, he didn't anymore damage. He just did the

1 trying. He just tried.

2 Q So a friend of yours had been attacked by somebody
3 else and came over and upset, and you knew why he
4 was mad; didn't you?

5 A Yeah, he was mad at everyone there. Everyone there
6 thought he should go home and shouldn't be there
7 anymore.

8 Q And you knew that, didn't you?

9 A Yes.

10 Q So when he brushed by you, did he hit you on
11 purpose or was it an accident when he knocked you
12 down?

13 A Maybe he was mad at everyone and he just pushed me.

14 Q But it's your testimony that you went to go talk
15 with him to find out what was wrong?

16 A Yes, that's right.

17 Q To find out why he pushed you, correct?

18 A Yeah. Since I hurt my arm, I went to talk to him
19 to find out why he did that because I never had any
20 problems with him.

21 Q But you knew why he did it from your testimony
22 earlier, right?

23 A Yeah, he was mad at everybody.

24 Q And you were mad at him, correct?

25 A I wasn't mad at him. I was calm.

1 Q He pushed you down and hurt you and he disrespected
2 you, didn't he?

3 A Yeah, I just thought of it as a lack of respect
4 because we were friends. We played together and
5 all.

6 Q And you waited about 30 minutes before you went
7 over to confront him and talk to him and address
8 the lack of respect he showed you?

9 A Yes.

10 Q And you came with a knife in your hand, didn't you?

11 A No, I didn't arrive with a knife in my hand.

12 Q State's Exhibit Number 4, do you recognize that
13 knife?

14 A That's the knife I grabbed out of the bathroom.

15 Q That's the knife that you took to the door that
16 night, wasn't it?

17 A No, I didn't have a knife.

18 Q Would you agree with me that that knife has been
19 sharpened and it's very sharp?

20 A Yes.

21 Q It's not a kitchen knife like the other knife, is
22 it, with a serrated edge?

23 A No.

24 Q When you went to the door of Humberto's house, the
25 door was not open wide enough for you to walk in;

- 1 was it?
- 2 A No, it wasn't open all the way, just cracked.
- 3 Q And you pushed the door open, didn't you?
- 4 A Yes.
- 5 Q And you did not knock, did you?
- 6 A No, I didn't knock on the door.
- 7 Q No one invited you in, did they?
- 8 A No.
- 9 Q And you did not have permission to go in, did you?
- 10 A No, I just went in like I did sometimes. Sometimes
- 11 I didn't knock on the door.
- 12 Q But no one had ever told you that you could come
- 13 and go whenever you wanted, have they?
- 14 A No.
- 15 Q And you came in wanting to confront Eddie about his
- 16 lack of respect, didn't you?
- 17 A Well, uh-huh.
- 18 Q You were mad at him, weren't you?
- 19 A No, I didn't arrive to the house mad. I just
- 20 wanted to talk to him.
- 21 Q When you pushed open the door, who did you see?
- 22 A I saw Ever.
- 23 Q Anybody else?
- 24 A Just him.
- 25 Q And he told you to leave, didn't he?

OLBIN BANEGAS-MALDONADO -- CROSS -- MR. GRAHAM 390

1 A No, he didn't tell me. I just asked for Alexander,
2 and he said Alexander wasn't there.

3 Q So why didn't you leave at that time?

4 A Well, later Humberto came out.

5 Q The question was when you were told that Eddie
6 wasn't there, why didn't you leave?

7 A Well, I said I was going to go out, but I didn't go
8 out, and I stood at a certain place.

9 Q You didn't have a reason to stay there anymore if
10 the only reason you came was to talk with Eddie,
11 correct?

12 A Yes.

13 Q Yes, you had no reason to stay there anymore;
14 correct?

15 A Well, I didn't have a reason. So later I went to
16 my house.

17 Q When you came in and Eddie was not there, when Ivan
18 told you Eddie was not there, you had no reason to
19 stay anymore because the only reason you testified
20 to is you wanted to come talk to him; correct?

21 A Yeah.

22 Q So the truth is you stayed because you wanted to
23 find Eddie to confront him, didn't you?

24 A Yeah.

25 Q About his lack of respect?

- 1 A Yeah.
- 2 Q And Ivan wouldn't tell you where he was, would he?
- 3 A No, he just told me that he wasn't there.
- 4 Q And you believed that Ivan was hiding him, didn't
- 5 you?
- 6 A Uh-huh. (Indicating affirmative response.)
- 7 Q You threatened to kill Ivan, didn't you?
- 8 A No, inside, I never made any attempt to threaten.
- 9 Q The truth you saw Eddie when you came in the door,
- 10 didn't you?
- 11 A No, I didn't see Eddie.
- 12 Q And you pulled out a knife and chased him down the
- 13 hall in the house, didn't you?
- 14 A No, I didn't chase anyone because I didn't see
- 15 Eddie.
- 16 Q How long did you stay there before Humberto came
- 17 out?
- 18 A Humberto came out later, later, like three minutes,
- 19 two minutes.
- 20 Q And when Humberto came out, he came out of his
- 21 bedroom?
- 22 A Yeah.
- 23 Q And when Humberto came out, he did not have
- 24 anything in his hands; did he?
- 25 A No. He just came out and said why was I looking

OLBIN BANEGAS-MALDONADO -- CROSS -- MR. GRAHAM

392

1 for Eddie, to have problems?

2 Q And he told you to leave then, didn't he?

3 A No, he didn't say that.

4 Q Humberto never told you to leave?

5 A No. He just said if you want trouble with
6 Alexander, you are going to have trouble with me,
7 with me.

8 Q And when he told you that, that's when you picked
9 up a knife?

10 A I grabbed the knife out of the kitchen.

11 Q You grabbed a knife out of the kitchen after he
12 told you, If you have trouble with Eddie, you have
13 trouble with me?

14 A Yeah.

15 Q When he told you you would have trouble with him if
16 you had trouble with Eddie, you should have left;
17 shouldn't you?

18 A The thing is since he grabbed something to hit me
19 with.

20 Q You should have left when he told you that if you
21 have a problem with Eddie, you have a problem with
22 him; shouldn't you?

23 A Yeah, I was already going outside.

24 Q It was not your house and you should leave,
25 shouldn't you?

- 1 A Yeah.
- 2 Q But instead you grabbed a knife, didn't you?
- 3 A Yeah.
- 4 Q Because now Humberto was disrespecting you, wasn't
- 5 he?
- 6 A Yeah. I told him, With you, I don't want to have
- 7 any problems.
- 8 Q But now Humberto was disrespecting you by
- 9 threatening you, wasn't he?
- 10 A Yeah.
- 11 Q And he did not have anything in his hands at that
- 12 time, did he?
- 13 A Then he had a stick.
- 14 Q You testified earlier when he first came out of the
- 15 bedroom, he had nothing in his hands; correct?
- 16 A Yeah. When he came out of the room, he didn't have
- 17 anything in his hands.
- 18 Q The next thing that happened was he told you, if
- 19 you have a problem with Eddie, you have a problem
- 20 with me; correct?
- 21 A Yes.
- 22 Q Do you understand my English?
- 23 A No. I understand a little.
- 24 Q Humberto came out of his room and told you, If you
- 25 had a problem with Eddie, you had a problem with

OLBIN BANEGAS-MALDONADO -- CROSS -- MR. GRAHAM 394

1 him, and he has nothing in his hands; isn't that
2 correct?

3 A Uh-huh. (Indicating affirmative response.)

4 Q He disrespected you and you picked up a knife,
5 didn't you?

6 A I did grab the knife.

7 Q After you grabbed the knife, Humberto picked up the
8 stick? Is that your testimony?

9 A Yes, yes, he grabbed it.

10 Q How far into the trailer did you go?

11 A Like what? Could you repeat that?

12 Q Did you go -- when you came in the door, you walked
13 into the kitchen area?

14 A Yeah.

15 Q Did you go into the living room area or did you
16 stay in the kitchen area?

17 A I was close to the kitchen and close to the living
18 room. I was close to the kitchen.

19 Q Did you ever go past the kitchen?

20 A Yes, I past it.

21 Q Why?

22 A By myself, I just arrived to a certain point in the
23 living room.

24 Q So you never went past the living room further into
25 the trailer?

1 A I never went inside any further.

2 Q Looking at State's Exhibit Number 5 on the
3 overhead, can you see that? Do you see the diagram
4 of the trailer?

5 A Yes.

6 Q And you came in the front door here (indicating)?

7 A Yes.

8 Q Uninvited and without permission?

9 A Uh-huh. (Indicating affirmative response.)
10 Without permission.

11 Q And you came in to confront Eddie?

12 A Yes, I did go in to speak with Eddie.

13 Q You went into the kitchen?

14 A Yes.

15 Q And you went into the living room?

16 A Yes.

17 Q You never went further than right here
18 (indicating)? Is that your testimony?

19 A No, I didn't pass it.

20 Q So you never went back to the bedrooms?

21 A No, I was just in the living room.

22 Q You never chased Eddie so that he had to climb out
23 the back window?

24 A No, Eddie I didn't. I didn't see him. I didn't
25 chase him.

1 Q You never went into Humberto's bedroom?

2 A No.

3 Q You never went to the bathroom?

4 A In the bathroom, no.

5 Q You testified earlier that this knife came from the
6 bathroom, didn't you?

7 A The knife I found in the bathroom, I grabbed the
8 knife.

9 Q But you just testified that you never went to the
10 bathroom, didn't you?

11 A Well, I don't remember very well. I did find the
12 knife there.

13 Q The truth is you never went into the bathroom and
14 that you brought this knife to the house that
15 night, isn't it?

16 A Yes.

17 Q You did bring the knife to the house that night?

18 A No, I didn't bring the knife. I grabbed both
19 knives there.

20 Q But you don't remember now where you got that knife
21 from; is that correct?

22 A The knife I got from the trailer.

23 Q You testified that you got it from the bathroom,
24 correct?

25 A I remember that I grabbed the knife from inside.

- 1 Q So when you testified that you got it from the
2 bathroom, that was a lie; wasn't it?
- 3 A Yes, it was a lie. I can't remember if I got it
4 from the bathroom or from the living room.
- 5 Q But you testified under oath that it came from the
6 bathroom, didn't you?
- 7 A Yes.
- 8 Q And you never went into Humberto's bedroom? That's
9 what you testified, correct?
- 10 A No.
- 11 Q Is that a truth or is that a lie?
- 12 A No, no, I didn't go in the bedroom.
- 13 Q State's Exhibit Number 7, do you see that
14 photograph on the overhead?
- 15 A Yes.
- 16 Q That's Humberto's bedroom, would you agree with me?
- 17 A Humberto's room, I never saw. The thing is they
18 had just rented that trailer and I never went in
19 it.
- 20 Q You never went in the trailer before?
- 21 A Yeah, but not in the bedroom.
- 22 Q So you don't know how that damage came on the back
23 of the drywall behind the doorknob?
- 24 A No.
- 25 Q That did not happen when you were attacking

1 Humberto?

2 A No, nothing ever happened to the walls.

3 Q State's Number 13 is Humberto's bedroom window.

4 There is a broken window in there. Do you see it?

5 A Yes.

6 Q Isn't it true that window got broken when you
7 attacked Humberto in his own bedroom?

8 A I didn't see the window because it had a curtain.

9 Q Isn't it true that it got broken when you were
10 attacking Humberto?

11 A No.

12 Q State's Exhibit Number 10, do you see the cuts in
13 the mattress?

14 A Yes.

15 Q Isn't it true that you caused those cuts when you
16 had two knives in your hand and you were attacking
17 Humberto in his own bedroom?

18 A I never did that.

19 Q So it's your testimony that you did not cause those
20 cuts in the bed?

21 A I want to be sincere. I did not do that.

22 Q You did not cause the broken window?

23 A No.

24 Q That you did not cause the drywall to be broken
25 behind the doorknob?

- 1 A No.
- 2 Q That you did not attack Humberto in his room with
- 3 two knives in your hand?
- 4 A Never. I never attacked Humberto.
- 5 Q When you picked up the knife in the trailer, that's
- 6 when Humberto picked up the stick? Is that your
- 7 testimony?
- 8 A Yes.
- 9 Q And at that time is that when you told Humberto you
- 10 were going to kill him?
- 11 A No, I never said anything, that I would kill him.
- 12 Q Did Humberto ever threaten to kill you?
- 13 A You mean hit me with the stick?
- 14 Q Did he ever threaten to hit you with the stick?
- 15 A Yes.
- 16 Q Where did that happen?
- 17 A That happened in the living room.
- 18 Q And did he hit you with the stick?
- 19 A Yes, he hit me on my arm.
- 20 Q With the stick?
- 21 A Yes.
- 22 Q I am handing you three photographs, State's 31, 34,
- 23 and 35, and ask if you can show me where you were
- 24 hit with the stick.
- 25 A There (indicating).

OLBIN BANEGAS-MALDONADO -- CROSS -- MR. GRAHAM 400

1 Q Where my finger is?

2 A (Witness nods.) (Indicating affirmative response.)

3 Q When he hit you with the stick, you had two knives
4 in your hand?

5 A Yes.

6 Q And you had already threatened to kill him, didn't
7 you?

8 A No, I just had the knives in my hand. I didn't
9 threaten.

10 Q The other marks on your hand or on your arm, lower
11 on State's 31, do you see those? I asked only at
12 this time if you see them in the photograph? Do
13 you see them?

14 INTERPRETER HUNT: Should the interpreter say
15 what his answer was?

16 MR. GRAHAM: Your Honor, I asked a yes or no
17 question, and he was starting to say something very
18 long. So I cut him off and I asked him to answer my
19 question only if he had seen it, and our interpreter
20 doesn't know what to say.

21 THE COURT: Restate the question, please.

22 BY MR. GRAHAM:

23 Q Did you see, in State's Exhibit Number 31, do you
24 see the scratch marks that are on your arm that are
25 below where you say where Humberto hit you with the

1 stick, yes or no?

2 A No, just the one on top.

3 Q In the photograph do you see the scratches that I
4 am talking about, the ones below on your arm? Do
5 you see them?

6 A Yes.

7 Q Isn't it true that those scratches came from
8 Humberto's hands, his fingernails?

9 A No.

10 Q Isn't it true that they came when he was fighting
11 for his life and holding your wrist to stop you
12 from stabbing him in the bedroom?

13 A No.

14 Q Didn't you become mad at Humberto when he picked up
15 a stick?

16 A Yes, yes, I got mad.

17 Q And that's why you attacked him with the two
18 knives, isn't it?

19 A No, I didn't attack him. I didn't attack him with
20 a knife.

21 Q But he attacked you with a stick? That's your
22 testimony?

23 A Yeah. He was going to hit me, but I backed off a
24 little bit from him.

25 Q And you did not cut him inside the trailer; is that

1 correct?

2 A No, I didn't cut him.

3 Q Did you ever cut him, other than the one time you
4 testified that you stabbed him?

5 A No, I didn't hit him at all.

6 Q You didn't stab him or hit him; is that correct?

7 A Well, at the end, yes, but before I didn't do
8 anything.

9 Q So you didn't stab him in the trailer; is that
10 correct?

11 A No.

12 Q You didn't cut him in the trailer; is that correct?

13 A No, I didn't cut him.

14 Q You did not hit him with anything inside the
15 trailer; is that correct?

16 A No, I didn't even hit him at all.

17 Q When you went outside, what was Humberto doing?

18 A He went to the door but then he went back in again.

19 Q And that's when you went outside to talk with Ivan?

20 A Yes.

21 Q So at this point you have been disrespected by
22 Eddie, correct?

23 A Yes, before.

24 Q And you now have been disrespected by Humberto,
25 correct?

- 1 A Yes.
- 2 Q And you go outside not to leave but to confront
- 3 Ivan, correct?
- 4 A No, Ivan, when I went outside, I just asked him
- 5 where Eddie was.
- 6 Q And when you did that, Ivan was on top of the van;
- 7 wasn't he?
- 8 A Yes.
- 9 Q Because you had two knives in your hand, correct?
- 10 A Yes.
- 11 Q Because you were mad, correct?
- 12 A I just wanted to talk to Eddie. I said I just want
- 13 to talk to him. That's what I asked Ever.
- 14 Q You should have left at that time, shouldn't you?
- 15 A Yeah, but I wanted to go to my house.
- 16 Q But you didn't go to your house then. You stayed
- 17 and you still wanted to find Eddie, didn't you?
- 18 A Yeah.
- 19 Q Humberto had told you to leave and to go home,
- 20 hadn't he?
- 21 A No.
- 22 Q Ivan told you to leave and go home, didn't he?
- 23 A Yeah, he did when I threw the knives to the ground.
- 24 Q But you didn't go home, did you?
- 25 A No.

OLBIN BANEGAS-MALDONADO -- CROSS -- MR. GRAHAM

404

1 Q The truth is you were trying to lure Ivan off the
2 car so you could attack him; isn't that true?

3 A No, I had no intention of that.

4 Q It was your testimony that Ivan told you to give
5 the knives to Carmen; is that correct?

6 A That's true.

7 Q Where was Carmen at? Was she down on the ground
8 with you?

9 A No, Carmen was above.

10 Q Did you give the knives to Carmen?

11 A I was going to give them to her, but I did not give
12 her the knives.

13 Q You didn't give her the knives because you wanted
14 to keep control of them; isn't that true?

15 A Yes, but later I threw the knives to the ground
16 below the steps.

17 Q It's your testimony that you had no knives in your
18 hand at that point?

19 A At that moment I did not.

20 Q You had a chance to leave right then, didn't you?

21 A Yeah.

22 Q But you didn't, did you?

23 A Yes, I was going to leave. Then all of a sudden
24 Humberto hit me in the shoulder.

25 Q But you had time to leave before Humberto hit you,

1 didn't you?

2 A No, Humberto came out suddenly.

3 Q It's your testimony that Humberto came out with a
4 machete in his hand?

5 A Yeah, that's true.

6 Q And you were on the steps or you were down on the
7 grounds?

8 A I was on the steps.

9 Q And you had one hand on the rail?

10 A No.

11 Q Were you going up the steps then?

12 A No, I had stopped on the second step.

13 Q But you were still facing going up?

14 A No, I was heading down.

15 Q So how did you see Humberto if your back was to him
16 and you were going down the stairs?

17 A No, I wasn't walking down the steps. I was facing
18 down and saw from around my back Humberto.

19 Q It's your testimony that you had just tossed the
20 knives down on the ground; isn't that correct?

21 A Yes.

22 Q And your body and head were facing the van and
23 where you threw the knives at the bottom of the
24 stairs; isn't that corrects?

25 A Yes, looking down toward the ground.

OLBIN BANEGAS-MALDONADO -- CROSS -- MR. GRAHAM

406

1 Q You were looking down toward the ground?

2 A Yes, I was looking toward down.

3 Q So there was no way that you could see Humberto
4 come out of the door, is there, in that position?

5 A I heard him as he was coming down, and I turned
6 around and suddenly saw him.

7 Q Did you turn to the right or to the left?

8 A I turned backwards like this (indicating).

9 Q You are indicating over your right shoulder?

10 A Yeah.

11 Q Did he have a machete in his hand?

12 A Yes, he had a machete.

13 Q And at that point you turned around to go up the
14 stairs at him?

15 A No, I just looked around and saw him with the
16 machete.

17 Q And what did he do at that time?

18 A He hit me with the wide part of the machete.

19 Q State's Exhibit Number 37, do you see that
20 photograph, Mr. Maldonado?

21 A Yes.

22 Q The injury that is shown on your shoulder, did that
23 come from when Humberto hit you with the wide part
24 of the machete?

25 A Yes.

1 Q But it's your testimony that you turned to the
2 right to face him; isn't that correct?

3 A Yes, I turned like this (indicating).

4 Q So the right part of your body was facing him?

5 A Yes, like this (indicating).

6 Q And he was above you on the steps of the porch?

7 A Yes.

8 MR. GRAHAM: Your Honor if he could step down
9 for a moment, please.

10 THE COURT: You can step down.

11 (Witness leaves the witness stand.)

12 BY MR. GRAHAM:

13 Q Stand here, Mr. Maldonado. I am going to be you.
14 I know we are different heights. It's your
15 testimony that you were facing away; is that
16 correct?

17 A Yes.

18 Q That you turned like I am now over your right
19 shoulder; is that correct?

20 A Yes.

21 Q Which hand was Humberto holding the machete in?

22 A In this hand (indicating).

23 Q Show me. Demonstrate to the jury how he struck you
24 with the flat part of the machete.

25 A With the machete he hit me like this (indicating)

1 on the back.

2 Q Demonstrate on me and show me how he did that.

3 A He was on top and I was like this (indicating) and
4 then he did this (indicating).

5 Q On me show me how he struck you. I am you. You
6 are him. Show me how he struck you.

7 A The thing is I turned around like this (indicating)
8 and then he went wham.

9 Q So it's your testimony that he was coming down to
10 cut you on your head?

11 A No, the first time he hit me with the wide part of
12 the machete.

13 Q Why did you turn your body to him to confront him?

14 A I just looked this way to see him.

15 Q Explain to me in State's Exhibit Number 37 how the
16 point of the machete made that mark on your back
17 and how you were describing what happened.

18 A It was from the point of the machete.

19 Q You would agree that that was from the point of the
20 machete?

21 A Yes, it is.

22 Q If you were facing the other way and you opened
23 your body to him, explain to the jury how the point
24 of the machete could be here (indicating) with the
25 point facing that way (indicating)?

1 A Well, that's how we were.

2 Q You cannot explain how the point of the machete is
3 facing that way on your back, can you?

4 A Yes.

5 Q Explain it, please.

6 A Okay. What are you asking?

7 Q I want to explain to the jury how you have
8 described everybody's positions, how the tip of the
9 machete made that mark on your back, how the
10 machete came all the way around your body and
11 wrapped and went back and slapped you facing this
12 way (indicating).

13 A He extended his hand and the machete hit me in the
14 back.

15 Q He reached all around you and wrapped his arm
16 around you and got close to you so that he could
17 slap you in the back with the machete? That's your
18 testimony?

19 A Yes.

20 Q Please have a seat. Mr. Maldonado.

21 A (Witness resumes the witness stand.)

22 Q The truth is you were going up the stairs with the
23 knife in your hand, isn't it?

24 A Well, when I was going to give the knives to
25 Carmen, yes, I was going up.

OLBIN BANEGAS-MALDONADO -- CROSS -- MR. GRAHAM 410

1 Q When Humberto hit you with the flat blade of the
2 machete, you had a knife in your hand and you were
3 going up to attack him; isn't that true?

4 A No, I was on the ground below.

5 Q When you fell to the ground below, didn't you tell
6 Humberto, You hit me. You better kill me?

7 A No. When I fell down, no.

8 Q Because by this point he has disrespected you,
9 hasn't he?

10 A Uh-huh. (Indicating affirmative response.)

11 Q And he has attacked you in his house, hasn't he?

12 A Yeah.

13 Q And now he has struck you with the machete?

14 A The first time he hit me with the flat part, but
15 the second time he was trying to hit me in my face
16 with the sharp part.

17 Q At the time that he struck you with the flat blade
18 of the machete and you fell, he had disrespected
19 you, he had hit you with a stick in the house, and
20 he had hit you with the flat blade of the machete;
21 isn't that correct?

22 A Yeah, because with him, I didn't have any problems.

23 Q You didn't have any problems but he had
24 disrespected you, he had assaulted you with a
25 stick, and now he has hit you with a machete, but

1 you don't have any problems with him?

2 A No, I wasn't interested in problems with him.

3 Q When you fell off the -- your testimony is that he
4 hit you on your back and you fell onto the ground;
5 is that correct?

6 A Yes.

7 Q You were facing -- and you were going down the
8 steps when you got struck; is that correct?

9 A No, I was standing on the steps.

10 Q But you were facing away from Humberto down toward
11 the van? That's what you testified earlier; isn't
12 that correct?

13 A Yes, I was looking toward the van.

14 Q And when you fell, you fell toward the van?

15 A I fell down toward where the stairs end.

16 Q And which way was your body facing?

17 A I just remember that I fell face down on the
18 ground.

19 Q You don't know which way you were facing?

20 A No, there was some confusion.

21 Q When you fell down onto your hands and knees? Is
22 that what you demonstrated to the jury earlier?

23 A Yes.

24 Q And you could have left at that time, couldn't you?

25 A Yes, I could have, but I didn't have a chance to

OLBIN BANEGAS-MALDONADO -- CROSS -- MR. GRAHAM 412

1 run.

2 Q Because it's your testimony that Humberto came
3 after you at that point; is that correct?

4 A No, not come after me.

5 Q What did he do at that point?

6 A That's when he was going to try to hit me with the
7 machete the second time.

8 Q You were at the bottom of the steps, correct, on
9 the ground?

10 A Yes.

11 Q And Humberto was still up on the porch; isn't that
12 correct?

13 A Yes.

14 Q He was about ten feet away from you; is that
15 correct?

16 A He was a little above me.

17 Q Was he as far as you and I are away from you?

18 A No, no, no. No, we were much closer. We were on
19 the same stairs.

20 Q You weren't on the stairs, you were on the ground
21 you testified; isn't that true?

22 A No, before. When he hit me, I was on the ground.

23 Q Before he hit you --

24 A Before I fell to the ground.

25 Q When you fell to the ground, you were on the ground

1 and Humberto was still up on the porch; isn't that
2 true?

3 A Well, he was on the steps coming toward me.

4 Q And you could have left at that time, couldn't you?

5 A Well, it was very quick. I couldn't have left.

6 Q When he came down where was he when -- tell me what
7 happened next. You are down on the ground and he
8 is up on the steps coming toward you. What
9 happens?

10 A He was above me, again, with the machete like he
11 wanted to cut me in half.

12 Q Were you standing up or were you still down on the
13 ground?

14 A No, I was on the ground. I was in the process of
15 getting up.

16 Q And that's when he hit you?

17 A Yeah, I put my arm up. That's when he gave me the
18 machete blow, and that's when I grabbed the knife.

19 Q And that's when you stabbed him?

20 A Yes.

21 Q And after you stabbed him, you ran away?

22 A Yes. I grabbed the knives, one that was in my hand
23 and the other one on the ground, and I left.

24 Q And there was no other altercation between you and
25 Humberto outside the trailer, other than what you

OLBIN BANEAS-MALDONADO -- CROSS -- MR. GRAHAM

414

1 have described; is that true?

2 A No.

3 Q No, there was no other altercation?

4 A No.

5 Q You did not cut him outside?

6 A No, I didn't cut him. I just did that.

7 Q He never tried to grab the knives from you?

8 A No.

9 Q You never hit him outside?

10 A No.

11 Q Looking on the projector, that is State's Exhibit
12 Number 51. That's Humberto's right hand. Do you
13 see the wound on that?

14 A Yes.

15 Q You heard Dr. Ross say that that was a defensive
16 wound and a cut, didn't you?

17 A Yes, I heard what she said.

18 Q But your testimony is that you didn't do that;
19 isn't that true?

20 A No, I didn't do that. I just did what happened.

21 Q You have no idea how that happened, do you?

22 A No.

23 Q That is not from Humberto trying to protect himself
24 and fending you off while you were attacking him
25 with two knives, is it?

1 A No, I didn't attack him.

2 Q State's 52, do you see the cut on Humberto's arm?

3 A Yes.

4 Q You did that when you were attacking him with
5 knives, didn't you?

6 A No, I didn't do that.

7 Q Do you see the cut on Humberto's left hand in
8 State's Exhibit Number 50?

9 A Yes.

10 Q Humberto got that when he was unarmed trying to
11 protect himself while you were attacking him in his
12 own house, didn't he?

13 A I didn't know. I never attacked him inside the
14 house.

15 Q It's your testimony you didn't cause that injury;
16 is that correct?

17 A No.

18 Q State's Exhibit Number 48, do you see the injuries
19 on Humberto's temple?

20 A Yes.

21 Q And it's your testimony that you didn't cause that
22 either; is that true?

23 A No, I never hit him.

24 Q State's Exhibit Number 49, do you see Humberto's
25 face?

1 A Yes.

2 Q Do you see the injury to the bridge of his nose?

3 A Yes.

4 Q You caused that, didn't you?

5 A No, I did not do that.

6 Q But you did cause him to die that night, didn't
7 you?

8 A Yes, I did.

9 Q You killed him, didn't you?

10 A I didn't have any intention to kill him. I didn't
11 mean to kill him. It wasn't my intention to kill
12 him.

13 Q When you drove that knife into his stomach, deep
14 enough to puncture his aorta, you meant to kill
15 him; didn't you?

16 A Well, my intention was not to kill him. I never
17 had the intention of taking his life.

18 Q But you did mean to drive that blade into his
19 stomach?

20 A I didn't. I just did like this. It was just a
21 reaction I had. I did like this.

22 Q But you were calm, weren't you?

23 A Yes, it was just fear when he was coming toward me
24 like that.

25 Q But you knew what you were doing, didn't you?

1 A For a moment there, I didn't know what I was going
2 to do.

3 Q Your testimony is that you put your hand up when
4 Humberto brought the machete down; is that correct?

5 A Yes.

6 Q If you could step down and show me how that
7 happened.

8 A (Witness leaves the witness stand.)

9 Q If I am you, tell me how I should be positioned
10 when he is striking you with the machete.

11 A I was here and he was on this side (indicating).

12 Q If we could spin this way so the jury can see you.
13 You are Humberto and I am you. How am I?

14 A Down like this (indicating) trying to get up.

15 Q Down on one knee?

16 A I was in the process of getting up.

17 Q Am I how you were?

18 A I was like this.

19 Q Where were the knives?

20 A One was on this side and one was on this side.

21 Q One was on the left and one was on the right?

22 A Like this and this (indicating).

23 Q On the left and on the right?

24 A No, not like that. I was kind of between the two
25 knives.

1 Q There was a knife on one side of your body and a
2 knife on the other side?

3 A Yes.

4 Q You are Humberto. Where are you in relation to me,
5 which was you that night?

6 A I was here and Humberto was up, way above me.

7 Q Position yourself toward me as if I am you getting
8 up and you are Humberto.

9 A Humberto was here (indicating).

10 Q Was the machete in Humberto's left hand or right
11 hand?

12 A In this one (indicating).

13 Q Did he raise it up like you have it?

14 A Yeah, he raised his hand because he was going to
15 hit me.

16 Q And it's your testimony that you had no knives in
17 your hand?

18 A No.

19 Q And did he bring the blade down toward you?

20 A Yeah. When I saw he had the machete, I put my hand
21 up.

22 Q Which hand?

23 A This one (indicating).

24 Q The left hand like I have up?

25 A Yeah, I had my hand like this.

1 Q Do I have my hand like you had yours that night?

2 A I just did like this with my hand, like I was going
3 to grab the machete.

4 Q You were grabbing the machete?

5 A I didn't. I wasn't able to grab it and it went to
6 one side, and the machete chopped me like this.
7 May I speak?

8 Q Sure.

9 A In the same instant I put my hand up like this, I
10 grabbed the knife with this hand.

11 Q You can have a seat.

12 A (Witness resumes the witness stand.)

13 Q Isn't it true that you weren't trying to grab the
14 machete, you were trying to block it?

15 A I was trying to grab it, but my hand went too far
16 to one side.

17 Q And you blocked it?

18 A No, it just went like this (indicating).

19 Q You blocked it so that you could pick up the knife
20 and kill Humberto, didn't you?

21 A I just went like this (indicating) and in the same
22 instant grabbed the knife and went like this
23 (indicating).

24 Q Have you ever practiced or been trained in using a
25 knife?

1 A I never have fought with a knife.

2 Q State's Exhibit Number 34, can you see that
3 photograph?

4 A Yes.

5 Q What is that scar from?

6 MS. FULLWOOD: Objection, Your Honor. I have
7 a matter of law.

8 THE COURT: Counsel approach.

9 (Whereupon there is a bench conference off the
10 record in the presence of the jury but out of the
11 hearing of the jury.)

12 THE COURT: Ladies and gentlemen of the jury,
13 we will break for lunch now. Please be back in the jury
14 room at 2:15. Please do not discuss the case.

15 (The jury is excused for lunch at 12:40 p.m.)

16 THE COURT: We will be in recess until
17 2:00 o'clock.

18 MR. GRAHAM: Your Honor, would you instruct
19 the witness to not discuss his testimony.

20 THE COURT: The witness is not to discuss his
21 testimony with anyone.

22 (Whereupon there is a luncheon recess.)

23 THE COURT: You wanted to be heard on
24 something?

25 MS. FULLWOOD: Yes, sir. Your Honor,

1 Mr. Graham --

2 THE COURT: Let's hear from Mr. Graham first.

3 MR. GRAHAM: The State will withdraw the
4 question.

5 THE COURT: Okay. How about that,
6 Ms. Fullwood?

7 MS. FULLWOOD: I'm pleased, Your Honor.

8 THE COURT: All right. Let's bring the jury
9 back.

10 MS. FULLWOOD: Would Your Honor instruct the
11 jury to disregard the last question.

12 THE COURT: What was the question?

13 MS. FULLWOOD: We don't want them to hear the
14 question again.

15 THE COURT: Okay.

16 MS. FULLWOOD: Perhaps it better just to leave
17 it.

18 THE COURT: All right.

19 (The jury returns to the courtroom at
20 2:25 p.m.)

21 THE COURT: The jury is back. Mr. Graham.

22 MR. GRAHAM: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. GRAHAM:

25 Q Mr. Maldonado, after you stabbed and killed

OLBIN BANEGAS-MALDONADO -- CROSS -- MR. GRAHAM

422

1 Humberto, didn't he say, You killed me?

2 A Yes.

3 Q And didn't Ana come over and say, You killed
4 Humberto?

5 A No, I didn't know about that. I just heard him say
6 that and I left.

7 Q And didn't you say after you stabbed him, Don't
8 play with me?

9 A No, I didn't speak anything else to him.

10 Q You testified on direct examination that at that
11 moment you were sad and afraid; is that correct?

12 A Yes.

13 Q You were sad because you had killed your friend?

14 A Yes.

15 Q Why were you afraid?

16 A Because what I did, because what I did to him.

17 Q Because what you did was wrong?

18 A Yes.

19 Q You ran away, didn't you?

20 A Yes.

21 Q But before you ran away, you picked up the other
22 knife; didn't you?

23 A Yes.

24 Q And you picked up those knives because you didn't
25 want to leave them behind for the police to find;

1 isn't that true?

2 A No, I was worried that they could chase after me
3 with the knives.

4 Q Who was going to chase after you with the knives?

5 A In my thoughts Ever was there and also I thought
6 maybe Alexander.

7 Q You didn't stay and help Humberto, did you?

8 A No, I left after a little bit.

9 Q You didn't stay and help your friend because you
10 wanted him dead, didn't you?

11 A No, I just was scared and left. That's it.

12 Q Did you call an ambulance for Humberto?

13 A No.

14 Q You just left him there to die, didn't you?

15 A Well, I thought that maybe he wouldn't die.

16 Q But you didn't do anything to help him, did you?

17 A No.

18 Q And then you hid from the police, didn't you?

19 A Yes.

20 Q Because you know you had done wrong?

21 A Yes.

22 Q When the police found you, you still had that knife
23 in your hand; didn't you?

24 A I can't remember, maybe. Since I was -- I had lost
25 a lot. I don't remember.

1 Q You don't remember the police officers having to
2 point their guns at you while you held the knife in
3 your hands?

4 A No, I just remember that they sprayed me in the
5 face.

6 Q The truth is you went over to kill Eddie, didn't
7 you?

8 A Where?

9 Q Over to the trailer that night.

10 A No, I didn't go there to kill him. I just went
11 there to talk to him.

12 Q And you came to kill him with a knife in your hand,
13 didn't you?

14 A No.

15 Q And when you couldn't get to him, Humberto got in
16 your way and he told you to leave; didn't he?

17 A No, he didn't tell me to leave.

18 Q You threatened to kill him when he wouldn't tell
19 you where Eddie was, didn't you?

20 A No, I didn't threaten him.

21 Q He was defending his house and his home and his
22 friends, wasn't he?

23 A Perhaps he was defending Alexander, his
24 brother-in-law.

25 Q He got in your way, didn't he?

1 A Well, I guess because it was his brother-in-law,
2 but with him I didn't have any problems.

3 Q You drove the knife into his stomach and killed him
4 and you meant to, didn't you?

5 A I didn't mean to.

6 Q He disrespected you and you wanted him to die,
7 didn't you?

8 A No, I didn't want him to die.

9 MR. GRAHAM: Your Honor, I have no further
10 questions.

11 THE COURT: Any redirect?

12 MS. FULLWOOD: Briefly, Your Honor.

13 **REDIRECT EXAMINATION**

14 BY MS. FULLWOOD:

15 Q Olbin, Mr. Graham asked you did you leave Humberto
16 there to die. When you left, who else was
17 there with Humberto?

18 A Close to him? There wasn't anybody.

19 Q Were other people still at the trailer?

20 A I don't know if they were inside or if they went
21 somewhere else.

22 Q Was Ivan there?

23 A Ivan was on top of the van, but there were other
24 people on the other side.

25 Q So Ivan was near Humberto?

OLBIN BANEGAS-MALDONADO -- REDIRECT -- MS. FULLWOOD⁴²⁶

1 A Ivan, yes. Ivan saw everything, how it happened.

2 Q Did Ivan have a phone?

3 A I didn't notice if he had a phone or not.

4 Q Were the people who lived in that trailer relatives
5 of each other?

6 A No -- well who? The ones in the same trailer?

7 Q That's correct.

8 A Well, Ivan is Humberto's cousin.

9 Q Are Humberto and Alexander related to one another?

10 A Alexander is Humberto's brother-in-law.

11 Q And how is Ana related to those people?

12 A You mean with Alexander?

13 Q Or Humberto or Ivan?

14 A Alexander is Ana's brother. Humberto is the
15 husband of Ana.

16 Q Is the fact that they are all related part of why
17 you were scared that they might come after you?

18 MR. GRAHAM: Objection, leading.

19 THE COURT: Objection sustained.

20 BY MS. FULLWOOD:

21 Q What made you think they might come after you?

22 A Because they were still there, and they were family
23 with him. He had several siblings.

24 Q Mr. Graham questioned you about whether or not you
25 were trying to block or grab the machete.

1 A To grab it, like grabbing his hand?

2 Q Do you remember him asking you about blocking
3 versus grabbing the machete?

4 A I just put my hand up to try to grab the machete
5 but, no.

6 Q Well, regardless of the words you used for putting
7 your hand up, if you hadn't have put your hand up,
8 what would have happened to you?

9 A Well, what I did was I raised my arm, and I moved
10 to the side a little.

11 Q If you hadn't what would have happened to you?

12 A He would have cut me in the middle of my body.

13 Q Mr. Graham was talking to you about being calm that
14 night. Did you feel calm at the club?

15 A Yes.

16 Q How did you feel when you saw the blade of the
17 machete about to cut you in half?

18 A I felt afraid that he was going to cut me.

19 MS. FULLWOOD: No further questions, Your
20 Honor.

21 MR. GRAHAM: No questions, Your Honor.

22 THE COURT: Step down.

23 (Witness leaves the witness stand.)

24 THE COURT: Counsel?

25 MS. FULLWOOD: Your Honor, the defense rests.

1 THE COURT: Ladies and gentlemen, you have
2 heard the defense's case. Any reply by the State?

3 MR. GRAHAM: No reply, Your Honor.

4 THE COURT: Ladies and gentlemen of the jury,
5 you now have heard all of the evidence in the case. The
6 next step will be closing arguments and jury charge and
7 jury deliberations. I need to talk with the lawyers
8 before we proceed. Please go to the jury room.

9 (The jury retires to the jury room.)

10 THE COURT: Yes, Ms. Fullwood.

11 MS. FULLWOOD: Your Honor, at this time I
12 would renew my motions for a directed verdict. The
13 grounds are the same grounds that the motions were based
14 on at the close of the State's case.

15 THE COURT: Anything by the State?

16 MR. GRAHAM: No, Your Honor. I would stand on
17 the testimony you have heard.

18 THE COURT: I deny the motion for the same
19 reasons stated at the close of the State's case.
20 Regarding requests to charges, anything?

21 MS. FULLWOOD: Yes, sir, we would request a
22 charge of self-defense and on voluntary manslaughter.

23 THE COURT: What says the State?

24 MR. GRAHAM: Your Honor, I think as a matter
25 of law there is not evidence that he was not without

1 difficulty in bringing the encounter on. In fact, his
2 own testimony says he went over there to confront
3 someone and talk to them.

4 It can be argued, I guess, whether he had
5 opportunity to retreat or not. He was on somebody
6 else's property. He did have a duty to retreat. But I
7 would say that the evidence, even in the light most
8 favorable to the Defendant, he went over there to cause
9 a confrontation with someone.

10 THE COURT: He says he went there for peaceful
11 purposes and not to start any trouble and trouble came
12 to him against his will and that he was defending
13 himself. I believe he has made out a case for the jury
14 to consider on the issue of self-defense. Yes, ma'am.

15 MS. FULLWOOD: In connection with the charge
16 on self-defense, I would ask for the wording to include
17 that when self-defense is raised, the burden is on the
18 State to disprove beyond a reasonable doubt each element
19 of self-defense. That might be in the Court's standard
20 charge.

21 THE COURT: It's fairly standard.
22 Self-defense is a complete defense, and the State has
23 the burden of disproving self-defense beyond a
24 reasonable doubt. Anything else?

25 MS. FULLWOOD: Will the Court charge voluntary

1 manslaughter?

2 THE COURT: What says the State about
3 voluntary manslaughter?

4 MR. GRAHAM: Your Honor, I don't believe that
5 his testimony establishes the elements necessary for
6 voluntary manslaughter. He has to have not only a legal
7 provocation, which I'm not sure what that provocation
8 was because I believe his own testimony stated he was
9 told to leave.

10 He was attacked inside and had a chance to
11 leave and chose not but instead still continued to try
12 to find out where Eddie was afterwards. Then it's not
13 only the legal provocation, but it has to be in sudden
14 heat of passion.

15 And just because he was attacked, even if you
16 believe his story, Your Honor, doesn't mean that his
17 response was in the sudden heat of passion. He
18 testified it happened quickly, but I don't know whether
19 he said that he couldn't control himself when he did.

20 I'm not sure exactly what his words were or
21 not. I would say since he didn't say it was an
22 uncontrollable response, he would not get a voluntary
23 manslaughter charge as well.

24 THE COURT: Ms. Fullwood.

25 MS. FULLWOOD: Your Honor, according to State

1 versus Pittman, an overt threatening act or physical
2 encounter may constitute sufficient legal provocation.
3 As far as heat of passion, he testified that he was in
4 fear, and fear can lead to sudden heat of passion.

5 He also testified, I believe on cross
6 examination, For a moment I didn't know what I was
7 doing. That is testimony from which a jury could
8 conclude his senses were overborn, and he was simply
9 reacting as a person would do when in such a state. I
10 think it's a jury question. I think we have put up
11 enough evidence that raises a question for the jury to
12 decide whether -- what the State of mind is.

13 THE COURT: Anything further?

14 MR. GRAHAM: Your Honor, the only thing I
15 would do is direct the Court to State versus Starnes,
16 698 S.E.2d 604, which came out this past summer here out
17 of Lexington County.

18 It said that basically and I'm summarizing
19 that a person's fear immediately following the attack or
20 threatening act which may cause person to act in a
21 sudden heat of passion, but the mere fact the person is
22 afraid is not alone sufficient to entitle the Defendant
23 to a voluntary manslaughter charge.

24 In order to constitute sudden heat of passion
25 upon sufficient legal provocation, the fear must be the

1 result of the legal provocation and cause the Defendant
2 to lose control and create an uncontrollable impulse to
3 do violence. I don't know that there was testimony that
4 establishes that he had an uncontrollable impulse to do
5 violence.

6 THE COURT: What is the cite on that Starnes
7 case?

8 MR. GRAHAM: 698 S.E.2d 604, Your Honor.

9 THE COURT: S-T-A-R-N-E-S?

10 MR. GRAHAM: Yes, sir.

11 THE COURT: What say you, Ms. Fullwood?

12 MS. FULLWOOD: In Starnes the reason that the
13 defendant wasn't entitled to a charge on voluntary
14 manslaughter is that that defendant's testimony was that
15 he was in fear, but there was no testimony that he was
16 out of control as a result of the fear.

17 There is a difference here because
18 Mr. Maldonado has not only testified that he was
19 frightened but that for a moment he didn't know what he
20 was doing as a result of the fear, that he saw the
21 machete coming towards him. It scared him. He didn't
22 know what he was doing. He picked up the knife and he
23 stabbed.

24 So Starnes is -- the holding in Starnes is
25 very fact specific to the case. In fact, the Court said

1 that it reaffirmed the principle that fear right after
2 an attack or threatening act can cause a person to act
3 in sudden heat of passion. It certainly doesn't stand
4 for the proposition that fear can't be the basis of
5 sudden heat of passion.

6 THE COURT: I will take a moment and review
7 the Starnes case. They have a lengthy discussion on the
8 issue, and I will announce my ruling. It is likely that
9 I will charge voluntary manslaughter, but I will review
10 that before making a final decision on that issue.
11 Anything else?

12 MS. FULLWOOD: No, Your Honor.

13 THE COURT: We will give you a few moments to
14 collect your thoughts while I review this case, and we
15 will have the jury come back for closing arguments. We
16 will take -- how many minutes do you need to focus on
17 closing, five minutes, ten minutes, 15, 20?

18 MS. FULLWOOD: I'm willing to work with
19 whatever the court decides.

20 THE COURT: Mr. Graham.

21 MR. GRAHAM: I'm ready, Your Honor.

22 THE COURT: We will take about five minutes
23 and then press on.

24 (Whereupon there is a recess.)

25 THE COURT: On the issue of whether or not to

1 charge voluntary manslaughter, the Starnes case is an
2 interesting case. I think I remember Mr. Starnes. I
3 believe he was pro se?

4 MR. GRAHAM: Yes, Your Honor.

5 THE COURT: I had a death penalty case over
6 here, and he observed to get ready for his trial.
7 Apparently he didn't do too well. But the Court in this
8 opinion goes through a good, long analysis of this
9 question of when the Court must or should charge in
10 self-defense.

11 Referencing State versus Pittman, the Court
12 first says that the Court has previously held that an
13 overt, threatening act or a physical encounter may
14 constitute sufficient legal provocation.

15 The Court goes on to talk about the fact that
16 the Court has held that fear resulting from an attack
17 can constitute a basis, yet the inquiry doesn't end
18 there.

19 While the Court has held that -- defined the
20 sudden heat of passion, what constitutes it, the Court
21 concludes that and reaffirms that that though fear may
22 cause a person to act in a sudden heat of passion, the
23 mere fact that a person is afraid is not sufficient in
24 itself to entitle a defendant to a voluntary
25 manslaughter charge.

1 There must be fear. This fear must be the
2 result of sufficient legal provocation and cause the
3 Defendant to lose control and create an uncontrollable
4 impulse to do violence.

5 Where the Defendant's fear manifests itself in
6 an uncontrollable impulse to do violence where there is
7 a sudden heat of passion upon sufficient legal
8 provocation, then that would constitute a basis to
9 charge voluntary manslaughter.

10 Of course, the Court found that that did not
11 exist in Mr. Starnes' case. Where there is any evidence
12 from which the jury could conclude that there is both
13 the fear brought upon by sufficient legal provocation
14 and the uncontrollable impulse to do violence, the Court
15 is duty bound to charge voluntary manslaughter, in that
16 the Court must look at the evidence in the light most
17 favorable to the Defendant.

18 In this case this Defendant contends he went
19 to the house to talk with Eddie. He didn't go to create
20 any problems. He wanted to talk to Eddie about what
21 occurred earlier, that he did not initiate the
22 controversy, did not bring about the trouble.

23 The trouble came about when the machete
24 appeared and when he was assaulted by Mr. Humberto.
25 When struck by Mr. Humberto, he was on the porch. He

1 was knocked down. He lost control of himself. He
2 didn't know -- he was out of control in effect as a
3 result of being struck with the machete and Humberto's
4 attempt to strike him again with the machete and that as
5 a result, he stabbed Humberto.

6 The facts here certainly show -- the facts are
7 different from Mr. Starnes, who says the guy pointed the
8 gun at him and turned around and shot two people. He
9 was scared and frightened, but the Court said fear
10 itself is not sufficient, that he had no basis to have
11 this uncontrollable impulse to do violence.

12 This Defendant, Mr. Maldonado, contends that
13 he had this uncontrollable impulse to do violence as a
14 result of the actions of Mr. Humberto. I think all of
15 that entitles him to a jury charge on voluntary
16 manslaughter. I will charge that.

17 Let's bring the jury. Who is going first?
18 State waives opening?

19 MR. GRAHAM: Yes, sir.

20 (The jury returns to the courtroom.)

21 THE COURT: The jury is back. Ladies and
22 gentlemen, you have heard all of the testimony, you have
23 received all of the evidence. It's now time for closing
24 arguments. The State waives opening. It's the
25 defense's turn to argue. Ms. Fullwood.

1 MS. FULLWOOD: May it please the Court, Your
2 Honor.

3 THE COURT: Yes.

4 CLOSING ARGUMENT

5 MS. FULLWOOD: Mr. Foreman, ladies and
6 gentlemen of the jury, at this part of the trial, the
7 lawyers involved in the case summarize the evidence for
8 you and talk to you about what they believe the evidence
9 shows. So that's what I'm going to do right now.

10 Now, under the Court rules, the defense argues
11 first. That's because the prosecution has the burden of
12 proof, and they get to make that last argument to you.
13 I'm sure that Mr. Graham is going to get up here and
14 rebut much of what I have said. That's how it done.

15 I am quite sure that I probably won't have
16 anticipated every argument he is going to make, and
17 maybe I don't rebut everything he says to you. That's
18 just how it works.

19 But I remind you that this is a criminal case.
20 The burden of proof is beyond a reasonable doubt, and
21 it's your responsibility as jurors to look for every
22 reasonable doubt in the case, whether I bring it to your
23 attention or not. Like I said to you Monday, it's your
24 responsibility to examine this evidence in a real
25 critical type of manner.

1 What I want to talk to you about though are
2 the reasonable doubts in the case. That means just
3 common sense doubts, just things you know from your life
4 and your experience that make you kind of look askance
5 at situations or at persons.

6 It makes you think, Oh, I'm not sure I buy
7 that. I'm not sure I better go with this because
8 reasonably I just don't buy it. That's what I am asking
9 you to look for.

10 This case involves four different legal
11 concepts. They are burglary in the first degree, they
12 are murder, they are self-defense, and they are
13 voluntary manslaughter.

14 Each one of those legal principles has what we
15 call a set of elements, in other words, specific factual
16 things that have to be proved by the State or disproved
17 by the State in the case of self-defense before you can
18 say they proved their case. So the law is that they
19 have to prove to each and every one of your satisfaction
20 beyond a reasonable doubt every element of all four of
21 those principles.

22 So the first one of those principles I am
23 going to talk about is burglary in the first degree.
24 This is what that is. It pretty easy to boil down.
25 It's not real fancy at all.

1 It's going into somebody's house where they
2 live -- that's pretty basic -- without consent and with
3 intent to commit a crime inside. Then if those things
4 are proved, going inside of a house without consent
5 intending to commit a crime inside, then they have to
6 prove in this particular case that the person was armed
7 when they went inside, that they became armed while they
8 were inside, that they caused physical harm to somebody
9 while the burglary was in process.

10 In this case I would submit to you, ladies and
11 gentlemen, that they haven't proved the most basic part
12 of the burglary. Now, in a little while I will be
13 talking with you about the witnesses and why I think you
14 should discredit what a lot of the witnesses say.

15 But at this point I will say this, I think
16 there is a problem with the notion that this wasn't a
17 consensual entry. I think that there is reason for you
18 folks to doubt that the witnesses for the State were not
19 being forthright with you.

20 I think what the evidence shows here is this
21 was a group of people, young people, who socialized
22 together a lot. They were with each other a lot. They
23 are all from the same country, from the same area of
24 that country. You know, they are kinsmen and fellow
25 ex-patriots, I guess.

1 They were together a lot of time. They have
2 one of those easy social type of relationships like
3 young people often have. I know one of my office mates
4 was talking today about the concept a lot of young
5 people talk about, couch surfing. Young people come
6 over to another person's house and just stay there.

7 In this case I think it was sort of the
8 situation and I think you can conclude that it was a
9 situation where they were very easy with each other,
10 came over, it wasn't formal like maybe us older people
11 are in our social relationships.

12 It wasn't ring the doorbell and come dressed
13 up. It was come as you are. We will play cards. We'll
14 eat. It was easy. Ask yourself this when you are
15 thinking about, did he really come in without consent.

16 If all that trouble hadn't started later on,
17 would these people have called this in as a burglary? I
18 don't think so. Again, I'm going to talk to you about
19 the witnesses and their testimony later on.

20 But I also think that there is grave
21 reasonable doubt as to what his intentions were when
22 Olbin went in the house. Because that's what you have
23 got to focus on when you decide if it's been proved
24 beyond a reasonable doubt, that he intended to commit a
25 crime at the time he went inside the house.

1 You heard his testimony. He went for peaceful
2 reasons. He just wanted to talk to Eddie, just wanted
3 to try to straighten things out. That is not a crime.
4 That's not a crime. There is no evidence that is
5 credible, that is believable that he went inside
6 intending to commit a crime that night.

7 Now, I want to turn and discuss with you next
8 the crime of murder, which Olbin has been indicted for.
9 Of course, we all know that is the most serious crime
10 known to all mankind.

11 Technically, legally what murder means is
12 unlawfully killing another person with malice
13 aforethought, all right. So what is really important
14 and really what your job is here is you have got to
15 decide the truth about what Olbin's state's of mind was
16 that night in August of 2008.

17 We know Olbin stabbed Humberto and we know
18 Humberto died. This isn't some type of whodunit. It's
19 what was in his mind and what was in his heart. They
20 have got to prove malice and they failed to do so.

21 Malice is sort of a vague sort of legal
22 concept, but it's something you can determine. What it
23 means, it means deliberately taking action to take
24 somebody's life, not for any lawful reason, not because
25 of any extenuating circumstances, just intentionally

1 doing it, deliberately, just unlawfully doing something
2 out of meanness and to do it because you mean to do it,
3 all right.

4 It has to be aforethought. It doesn't mean it
5 has to be premeditated. It means that at least for some
6 period of time before a person is killed, the person
7 accused has to have in his mind, I'm going to kill him
8 just out of meanness. That hasn't been proved beyond a
9 reasonable doubt in this case.

10 There is, I think, no question that Humberto
11 came at Olbin with a machete. There is no question that
12 the knives were on the ground at that point. There is
13 no question that he was doing anything but, at that
14 time, acting in a survival mode.

15 That's not malice. That's something else,
16 which we will talk about later, but that is not malice
17 legally. That's why I told you yesterday -- well,
18 Monday -- this isn't a case of murder.

19 Now, self-defense is another legal proposition
20 that the judge is going to tell you about. Let me tell
21 you this right now. It's not incumbent on Olbin to
22 prove he acted in self-defense, okay. It's incumbent
23 upon the prosecution that he didn't.

24 The elements that the judge is going to tell
25 concerning self-defense are these. First of all, you

1 have to be without fault in bringing on the difficulty.
2 In this case that pretty much boils down to the
3 credibility of the witnesses, which again I will talk to
4 you about later.

5 But you heard Olbin's testimony that he went
6 there to talk, that he went there unarmed, and then just
7 havoc broke loose because of the reaction of the people
8 in the house.

9 Second, a person acting in self-defense has to
10 actually be in danger of being killed or seriously hurt,
11 and that belief has to be reasonable. In other words,
12 it's reasonable if a man has a machete raised about to
13 strike a blow to think you could be killed or seriously
14 hurt. It wouldn't be if they had a Lincoln log or
15 something. It has to be reasonable.

16 In this case there is no question but that he
17 was faced with a situation where he very well could have
18 been killed or could have been hurt. I really don't
19 think that that is in dispute, and I really think that
20 is pretty well settled, that he was going to get cut.

21 Then, finally, if you are not at your own
22 house, you have the responsibility to try to get away
23 from the trouble if you can do so without increasing the
24 danger to yourself.

25 I want to ask you at this point when you are

1 thinking about that, the focus should be on the trouble
2 that gave rise to him acting in self-defense. That's
3 the trouble when the machete came up, and at that point
4 he had no choice. He has no chance, no opportunity to
5 get away. He was half on the ground. He was kneeling.
6 There was nowhere to go without increasing the risk to
7 himself.

8 The judge is also going to submit to you what
9 we call a lesser-included offense called voluntary
10 manslaughter. Voluntary manslaughter means killing
11 someone in sudden heat of passion on sufficient legal
12 provocation.

13 Sudden heat of passion, again, that's focusing
14 on what is in somebody's mind, what is in their heart at
15 the time something like this happens. It means that the
16 person is in a mental state where they can't think
17 clearly. They are just sort of acting on instinct.
18 They are in survival mode.

19 I will tell you fear, fear of losing your life
20 can create that sudden heat of passion. I don't think
21 there is any dispute in this case that Olbin was in
22 great, great fear of losing his life. Like he testified
23 to you, I think the exact words were, I wasn't really
24 thinking. In other words, he was acting on instinct.

25 Then sufficient legal provocation, that is

1 provocation that would make anybody or most people or a
2 reasonable person get into that state. Being faced with
3 threatening actions by another is something that can
4 give rise to sufficient legal provocation, and I submit
5 to you that it's clear that is what happened in this
6 case.

7 Now, I would like to talk about the witnesses
8 a little bit. Mr. Graham, in examining Olbin this
9 morning, said why would Ana and Ivan lie about you? I
10 don't exactly know, but that's not something that Olbin
11 has to prove.

12 I think what is important here, the thing to
13 focus on, is the fact that they have lied, and the fact
14 that they have lied should give rise in your minds to
15 reasonable doubt as to whether you are going to believe
16 any of their testimony.

17 I mean, look at Ana's testimony. Look at the
18 manner in which she testified. I understand people can
19 get nervous, and, you know, I understand she is not used
20 to judicial proceedings.

21 But it's something about that body language,
22 sort of looking down when you are talking -- well, ask
23 yourself when you are dealing with people just in your
24 everyday life and they won't look you in the eye, what
25 you conclude about the truthfulness, okay.

1 What about her amnesia? When an uncomfortable
2 question came up, if the answer might put her or one of
3 her housemates in an unfavorable light: I don't know.
4 I don't know. I don't know.

5 Then she got to the point where, I don't want
6 to answer questions anymore. Is that being forthright?
7 Is that trying to let you 12 men and women know the real
8 truth or is it trying to withhold inconvenient truths
9 from you?

10 Because I will tell you what, these folks are
11 hiding something from you. I don't know their motives,
12 but they are hiding something from you. I mean, if they
13 weren't trying to hide something, why was that metal
14 pipe found under the kitchen cabinet?

15 If they weren't trying to hide something, why
16 was this machete under some drywall at their house?
17 More importantly, even though that machete had produced
18 a wound on Olbin, you can see from the pictures, that
19 bled and bled and bled, why had it been cleaned off so
20 the police didn't see the blood on it at first, that
21 they realized after they swabbed it, that Olbin's blood
22 was on the blade of that knife.

23 They are hiding something. There is something
24 they don't want you to know. That, again, should give
25 rise in your minds to a reasonable doubt as to why you

1 shouldn't believe any of their testimony.

2 You know, moving to Ivan, some of his
3 testimony contradicted what Ana said, but what really
4 struck me was the fact that his testimony was internally
5 inconsistent. He constantly contradicted himself.

6 He got up on direct examination and testified
7 to one set of facts. This is how it happened. Oh, we
8 were all so innocent and Olbin was oh so bad. We are
9 completely innocent. It was just terrible. We didn't
10 do anything.

11 Then on cross examination he testified to some
12 facts that sort of switched that around. Yeah, he had
13 given the knives to Carmen. He did have the knives on
14 him. He didn't have the knives. The knives were on the
15 ground. They were all over the place.

16 But at the end when he finally admitted that
17 Humberto had the machete like this (indicating), it
18 suddenly dawned on him, Oops, that is making one of us
19 look bad. So he wants to backtrack.

20 Then the prosecutor examines him again, and
21 this time he testifies in Spanish. He comes down here
22 and the prosecutor leads him through more or less the
23 same version he gave for the prosecutor when he had
24 testify the first time. It changes a little.

25 Then he is going to be cross examined again.

1 It's brought to his attention that just last week he
2 told the prosecution team that the machete had been
3 raised with the blade out.

4 He said, Oh, yes, that's what happened. On
5 recross examination he was given the choice. Are you
6 more comfortable testifying in English or Spanish? He
7 chose the language and he contradicts himself again.

8 Is that how it happened? Yeah, the machete
9 was raised. Is he really worthy of belief? He is a
10 young fellow. Young people pick up languages good. He
11 understands English. He understands Spanish. He just
12 doesn't understand how to tell the truth. That's the
13 bottom line.

14 And why? I think because there is more to it.
15 I think the actions of people who lived in that trailer
16 were probable more provocative than they want to let on.
17 And don't you think that they might be worried that
18 there could be legal repercussions for them if the
19 extent of their actions were known.

20 And don't you think they could also be
21 concerned that there could be some legal repercussions
22 from the fact that Ivan was living over there with a
23 15-year-old girl under the age of consent, and all the
24 other of-age people were allowing it to happen? That's
25 a crime too. That's a crime.

1 MR. GRAHAM: Objection, Your Honor. That is
2 not a crime.

3 MS. FULLWOOD: Fifteen?

4 THE COURT: The objection is sustained.

5 MS. FULLWOOD: Just use your common sense as
6 to what they might want to hide. I want to talk a
7 little bit about Olbin's testimony. He wasn't the
8 perfect witness either, but I will tell you one thing.
9 Nobody charged with a crime in this country has to get
10 up there and testify and take the stand.

11 It's for good reason. Because most people who
12 come into a courtroom, they don't have the legal
13 education. They don't know the ins and outs of the law.
14 It's hard to get up there and face cross examination by
15 an experienced prosecutor.

16 But knowing that and despite that and despite
17 the fact that he really doesn't speak very much English,
18 doesn't speak it well, he got up there and told you in
19 his own words what happened.

20 You folks saw him there on the stand. You
21 folks saw him. He didn't look down. He didn't have an
22 ongoing case of amnesia. He looked you in the eye and
23 told you the best he could about what happened that
24 night.

25 You know, on some points he might have

1 contradicted himself a little, but think about this.
2 Think about this. This is a man, a young man from
3 another country. He has got a second grade education.
4 He's illiterate even in his own native tongue, and he is
5 getting into a match of wits with somebody with 19 years
6 of education and umpteen years of experience in a
7 courtroom.

8 On the whole he held his own. He was
9 respectful. He was direct. He answered as best he
10 could. He came down here and you saw him. Mr. Graham
11 wanted to make a big thing, Oh, they disrespected you,
12 like it's some kind of macho thing that was going on.

13 You saw his demeanor. Is he macho? Is he
14 macho or he is humble, maybe a little shy, reticent, but
15 doing the best he can? I don't think the demeanor you
16 saw in the courtroom was the demeanor of somebody with
17 that type of an attitude. You heard his testimony.

18 Another thing, another thing Mr. Graham wanted
19 to argue with him about is the impact of the blade on
20 his back. The poor fellow, you probably noticed he
21 doesn't know left from right. He just knows this hand
22 and this hand.

23 You mean the machete circled around you? But
24 you know when you think about, what he said made perfect
25 sense. He said I was facing the ground. I looked

1 behind me to my right and see him. Well, what happens?
2 What is the instinct?

3 What is the instinct if you see a weapon from
4 here (indicating) coming from behind? That makes sense.
5 He got his words -- he got twisted around by someone
6 with a legal education. He was telling you the best he
7 could and he told you right. That is logical.

8 You heard what he said. He said it from the
9 heart. He said it over and over again. He was in fear.
10 He was in fear. This turned into a situation was over
11 everybody's head.

12 He was unarmed. A man was -- he was on his
13 knees and a man was standing over him with a machete.
14 Just think. You have the pictures. If by the time he
15 could get to his knees, Humberto was front of him with
16 the machete. Humberto was moving fast, moving
17 aggressively. He was scared to death.

18 Like he said, I just had a reaction. He was
19 just acting on instinct. It was just the urge for
20 self-preservation, survival. It's just a reaction I
21 had. You have heard him say that he regrets this, and I
22 know every minute of every day since he has felt bad
23 about it.

24 But Mr. Foreman, ladies and gentlemen, this
25 wasn't a burglary and it wasn't a murder, and he is

1 entitled to verdicts of not guilty on those charges.

2 Thank you very much.

3 THE COURT: Solicitor.

4 CLOSING ARGUMENT

5 MR. GRAHAM: Murder on his mind, malice in his
6 heart, and a knife in his hand. Olbin Noel
7 Banegas-Maldonado went over to in
8 the early morning hours of August 24, 2008, with
9 murder on his mind, malice in his heart, and a knife in
10 his hand.

11 He told you that he had been pushed down and
12 assaulted by Eddie. He told you that he wanted to go
13 confront him, and that part is true. He didn't go over
14 there calm. He went over there mad.

15 He went over disrespectful. He had been hurt
16 and he was going to go take care of it and confront
17 Eddie, and he did. He came to the door and the door was
18 cracked. We know from Ivan's testimony that Eddie came
19 in and he had a mark on him, and he was mad and he was
20 yelling and he was upset and he was nervous and he was
21 scared.

22 He was not invited into the house. He does
23 not have permission. He's coming in to confront
24 somebody with a knife in his hand. What else is he
25 there for but to commit a crime? And that's exactly

1 what he did.

2 He opened the door and he committed a
3 burglary. He came in and he committed a burglary. He
4 violated the sanctity of their home when he had no
5 right.

6 Ivan told you that the knife was behind him
7 when he came in. He told you that Eddie said something
8 to him. At that moment he charged in, he brought the
9 knife out and charged -- he was already in.

10 He continued on through the house and said,
11 I'm going to kill you. He went back and Eddie ran and
12 went out the window. There is a window. There is a
13 photograph of the window that is open from that bedroom.

14 Humberto Caballero Padillo is dead, but he was
15 not just dead. He was murdered, a man who was sleeping
16 in his own bed, in his own house and who did nothing
17 wrong was killed by that man who meant to kill him.

18 Humberto woke up because there was people in
19 his house. There were loud noises. What's going on?
20 And, you know, even if there's two stories because there
21 are and there are differences, the Defendant told you
22 that Humberto came out and he said what?

23 He said, If you've got a problem with Eddie,
24 you've got a problem with me. What did he tell you? He
25 had nothing in his hand. Eddie is running through the

1 house going out the back wound, and Humberto is standing
2 in the way protecting his brother-in-law.

3 Ivan tells you that he has a knife in his
4 hand. He told you that he didn't come in with a knife.
5 But he did tell you that before anybody threatened him
6 in any way, he picked up two knives when Humberto's
7 hands were empty and all he said, You've got a problem
8 with him, you've got a problem with me. He should have
9 left the house at that moment. He had no right to be
10 there. He had no right to be armed in somebody else's
11 house.

12 Let's talk about credibility for a second.
13 Ms. Fullwood wants to tell you that Ana is a liar
14 because she wouldn't look you in the eyes and because
15 her cries were downcast, that she is not telling you the
16 truth. She is not from here. She's not from the United
17 States. She is from Honduras. Women are subservient to
18 men.

19 MS. FULLWOOD: Objection, outside the record.

20 THE COURT: I did not hear the comment.

21 MR. GRAHAM: Use your life experience and what
22 you know. She looked down at the ground. She didn't
23 look at him either, and maybe it's because she was
24 afraid to look at the man who had made her a widow, who
25 with two knives in his hands broke into her house and

1 killed her husband. Maybe that's why her eyes were
2 down.

3 Ms. Fullwood gave you no reason that she was
4 lying today, no motive for her to lie. Maybe she did
5 get confused on some things. Maybe people do remember
6 things a little differently when they happen.

7 She wants to tell you that Ivan is a liar.
8 What motive in the world does he have to come and lie to
9 you all this week? None has been presented to you. He
10 has no axe to grind and no reason to lie.

11 Ms. Fullwood wants you to believe that when
12 Ana got up there and said, I don't remember, that
13 somehow she is lying. I know somebody who was lying in
14 the courtroom, and that was him. You all heard him get
15 up and testify, and he admitted that he lied.

16 Let's talk about how those knives -- let's
17 talk about where they come from. Ivan tells you he came
18 in the house with one, and Mr. Banegas-Maldonado grabbed
19 another one from the kitchen.

20 Mr. Banegas-Maldonado wants you to believe
21 that he grabbed both of them in the house. He was
22 confident when he came in that the first one came from
23 the kitchen, and he was confident the second one came
24 from the bathroom. He was sure.

25 But then he told you that he had never been

1 beyond the living room. So there is no way he could
2 have gone into the bathroom. Oops, I lied. I don't
3 remember. Maybe it didn't happen that way, and it
4 didn't.

5 He got one knife from the kitchen and the
6 other knife came with him in the house when he came to
7 confront and kill Eddie for disrespecting him.
8 Unfortunately Humberto got in the way defending his own
9 house, his own friend, and his own family.

10 What did Humberto do to deserve to die? What
11 gives him the right to stand up -- sit in that box and
12 stand before you and say that it happened in
13 self-defense?

14 MS. FULLWOOD: Objection, Your Honor.

15 MR. GRAHAM: Yes, he has a constitutional
16 right.

17 THE COURT: What is the basis of your
18 objection?'

19 MS. FULLWOOD: What gives him the right to
20 take the stand? That's a comment on him exercising the
21 right.

22 THE COURT: Objection overruled. You may
23 proceed.

24 MR. GRAHAM: Thank you, Your Honor. Let's
25 talk about some physical evidence that was found in the

1 house. State's Number 7 shows you a photograph of
2 damage behind the door. That was not there, through the
3 testimony, from before this happened and was there
4 afterwards.

5 It's consistent with the doorknob being pushed
6 into the drywall, consistent with a struggle happening
7 in the victim's bedroom, a place that the Defendant
8 tells you he never went that night. How did it happen?

9 State's Exhibit Number 13 shows you a window
10 that is broken in the same bedroom with a curtain above
11 it, a curtain. Mr. Maldonado told you he never went in
12 that room, and then he said something about, I didn't
13 see that it was broken because the curtain was in the
14 way.

15 He caused the broken window when he was there.
16 Maybe he didn't see it because the curtain was in the
17 way, but for him to say that, he was in the room. He
18 lied to you. If you lie about little things, you sure
19 will lie about big things.

20 State's Exhibit Number 10 shows you what has
21 been identified as cuts in the bed, cuts that Ana tells
22 you were not there before the struggle that were there
23 after. It is consistent with Humberto fighting for his
24 life on his back while Mr. Banegas-Maldonado is towering
25 over him and attacking him on his bed, but he wants you

1 to believe that he wasn't there.

2 Let's talk about some of the machete marks.
3 State's Number 34 shows you Mr. Maldonado's right
4 forearm, and you can see that mark right there
5 (indicating).

6 He says that happened with a stick that the
7 defense attorney put in evidence and showed you that the
8 police department, the Sheriff's Department,
9 Investigator Day collected at the scene. It was outside
10 in those pictures.

11 He told you that he did a visual inspection.
12 He didn't see any cuts on it, fresh cuts that it had
13 been used, and didn't see any blood on it. Dr. Janice
14 Ross, an expert in forensic pathology, she admitted --
15 Ms. Fullwood said she was an expert -- tells you that
16 mark is consistent with the blade -- excuse me -- the
17 flat part of the blade of the machete.

18 What did Ivan tell you? That he was outside
19 on top of the van and he was watching and that Humberto
20 was trying to block knife strikes by whipping the blade
21 around, consistent with this injury, not consistent with
22 being hit with a stick.

23 You can see the clear line that is on there
24 and then the start of the curve of the shape of the tip
25 of the blade. State's 37, the imprint on the back.

1 If you all believe the way that he described
2 what happened to you, then just let him go home. If he
3 didn't get up there and lie to you and make up how that
4 mark happened, let him go.

5 Let's talk about some other injuries.
6 Mr. Maldonado told you that he didn't strike Humberto in
7 the house, he didn't hit him, he didn't cut him, he
8 didn't stab him, he didn't do anything to him in the
9 house. He didn't do anything outside, except for the
10 fatal stab wound. That's what he said.

11 But we know that's not true. State's
12 Number 51 shows you Humberto's right hand and the cut
13 that is on it. It's not just a cut, it's a defensive
14 wound that you get when you put up your hands to defend
15 yourself, just like somebody who might be attacking you
16 with knives, but Mr. Maldonado didn't do it. He is not
17 guilty.

18 State's Number 52 shows an incised wound on
19 Humberto's bicep consistent with a knife, but
20 Mr. Maldonado didn't do it. State's Number 50 shows you
21 Humberto's left hand, and you can see where his thumb
22 has been sliced deeply underneath the skin, another
23 defensive wound consistent with protecting yourself when
24 somebody is attacking you with a knife, but
25 Mr. Maldonado told you he didn't do it.

1 State's 48, injuries to the right temple of
2 Humberto. How did they get there if Mr. Maldonado
3 didn't do it? State's 49, you can see the injuries on
4 the bridge of Mr. Caballero's nose, but Mr. Maldonado
5 didn't do it.

6 He just wants you to believe that the only
7 thing he did was defend himself. He did nothing wrong.
8 He went over there with peaceful intentions. He didn't
9 take a knife. He wasn't mad. He wasn't upset. He
10 never threatened to kill anybody.

11 But he armed himself with two knives for no
12 reason only because somebody told him, If you've got a
13 problem with him, you've got a problem with me. He
14 wants you to believe he never threatened to kill
15 anybody, that he never chased anybody into a bedroom,
16 and he never towered over him with two knives in his
17 hand and tried to stab him, resulting in damage to the
18 bedroom and to the bed.

19 He doesn't know how the injuries to him
20 happened. All he wants you to believe is he did it and
21 he was justified, that he had the right to go into
22 somebody else's house, to threaten to kill almost
23 everybody who was in the house, and that's okay. That's
24 not okay. Maybe in Honduras when you have been
25 disrespected, you can do that. This is the United

1 States of America.

2 How many times was he told to leave? Humberto
3 told him to leave and he didn't. Ivan told him to leave
4 and he didn't. The Defendant even admitted on the stand
5 he was told to leave. He had the opportunity to and he
6 chose not to.

7 He chose to stay because he still wanted to
8 track down Eddie because he had been disrespected by
9 Eddie, he had now been disrespected by Humberto, and he
10 was mad and people were going to pay.

11 You better tell me where Eddie is or I'm going
12 to kill you. You will see the photos where Ivan is up
13 on the van and moving around trying to avoid knives.
14 There is not a conversation. Ivan is not just standing
15 there. You can see where he is moving on the top. He
16 is avoiding knives.

17 The Defendant tells you that he was in the
18 house, that he got two knives, and at that point
19 Humberto grabbed a stick. Well, who wouldn't? He had
20 every right in the world to do that, defending his house
21 and defending his friends and family with the man who
22 has got two knives. He wants you to think that is
23 somehow wrong. Somehow that provokes him.

24 He goes outside and he's talking to Ivan. He
25 could have left. He didn't. He had the chance.

1 Humberto wasn't chasing him. Humberto wasn't following
2 him. Humberto wasn't threatening him, but he wanted to
3 stay.

4 Humberto comes out and does he have a machete?
5 Yes, he has a machete. Who wouldn't? He still says,
6 What's the problem? Why are you here? Go away. Go
7 home. Calm down. And what does the testimony show?
8 Did he go away? Did he calm down? No, he turned around
9 with a word and came up the stairs.

10 He crouched down with his left hand on the
11 rail and had his right hand low with the knife, and he
12 came up the stairs. What did Humberto do? Humberto
13 could have killed him at that moment, but he didn't. He
14 hit him with the blade to knock him down and to back him
15 off.

16 That's what that print is consistent with. He
17 was coming up the stairs with his left hand like this
18 (indicating) and with Humberto up here coming down like
19 that (indicating), and he chose to hit him with the
20 blade.

21 It knocks him down. I don't know whether he
22 dropped his knife or not, maybe he did. But what did he
23 say? What did he say? You heard testimony from that
24 stand that said, You hurt me, you better kill me.

25 What is Humberto supposed to think at that

1 moment? Good gosh, I have done everything I can. What
2 is he supposed to do. He has threatened his house. He
3 has threatened his friends. He has threatened his
4 family.

5 You have hurt me, you better kill me. So,
6 yeah, he comes down the stairs with a machete in his
7 hand, and he has every right in the world to do it. And
8 what does he do? He puts his hand up. The cuts are not
9 here (indicating).

10 Does he have a machete cut? It looks like one
11 to me. Did he grab the blade? Did he grab his hand?
12 Did he grab the handle? He blocked it. He blocked it.
13 He sacrificed his arm so he could get the killing blow.
14 He knew what he was doing.

15 If you don't think he had malice before, he
16 had malice at the moment he drove that blade deep into
17 Humberto's stomach and killed him, and that's all that
18 murder requires. At that moment he meant to kill him
19 and he did. He sacrificed his arm to do it.

20 Did he leave at that moment? Did he push the
21 blade away and go? No. He had a knife. Did he cut
22 him? No, he chose to kill him when he buried that blade
23 in his stomach and he pulled it out.

24 What did everybody agree that Humberto said?
25 Something along the lines of, You have killed me.

1 That's undisputed. What did he say back? Don't play
2 with me. Why would Ana make that up?

3 What does that show? That shows you what his
4 heart was at the time he drove that blade into him and
5 the moment he killed him. Don't play with me. Don't
6 disrespect me. Don't interfere with me. I can do
7 whatever I want. I don't care if it's your house. I
8 will come in with a knife and do what I want, and you
9 don't play with me.

10 Did he stay and help his friend? No. Did he
11 make sure he got medical attention? No. Did he call
12 for an ambulance for himself? The police came and had
13 to hunt him down. Over an hour after this happened, he
14 is still running around. He told you that all he wanted
15 to do was go home. Did he go home? No. He went and
16 hid.

17 He didn't go alone. He took the knives with
18 him. Nobody was going to chase him. He didn't want to
19 leave those knives there. Those were evidence. He knew
20 the police were going to come. He knew he was in
21 trouble. He told you he had done wrong.

22 When the police finally got to him, an hour
23 and something after this happened, did he walk up to
24 them and do like this (indicating)? What did he do?
25 Knife in his hand. Because he can do whatever he wants.

1 Don't play with him. Don't mess with him.

2 The officers had to pull guns on him while he
3 held a knife in his hand the other one is in his back
4 pocket because he was guilty of burglary and he was
5 guilty of murder; and he knew it.

6 Self-defense? He wants you to let him go
7 because he tells you he had the right to defend himself.
8 The judge will tell you about the elements of it. One
9 of them is bringing on the difficulty.

10 If you bring on the difficulty, if you somehow
11 start this problem, if you start this encounter, you
12 can't claim self-defense. That's for you all to
13 consider.

14 If you think he has done nothing wrong, if you
15 think he didn't go over there to start a fight or to
16 start a problem, if he didn't bring this on, then let
17 him go home.

18 If you think he didn't have any other means of
19 avoiding this and he couldn't have retreated, that's he
20 didn't block that knife, block that machete and stab him
21 on purpose, let him go home. If you think he has
22 established self-defense, then he is not guilty.

23 Olbin Noel Banegas-Maldonado is guilty of
24 murder with malice in his heart and a knife in his hand,
25 he drove it into Humberto's stomach. He broke into that

1 house at night with a weapon in his hand with intent to
2 commit a crime, to attack and assault Eddie. He is
3 guilty of burglary first.

4 You have hurt me, you better kill me. Don't
5 play with me. Not a slice, not a cut, but a fatal stab.
6 On August 24, 2008, in the early morning hours, Olbin
7 Noel Banegas-Maldonado had murder on his mind, malice in
8 his heart, and a knife in his hand. He is guilty.
9 Thank you.

10 (Whereupon the Court charged the jury as
11 follows.)

12 THE COURT: Mr. Foreman, and members of the
13 jury, you have heard the testimony and evidence and
14 arguments of the State and the Defendant. I will now
15 explain to you the law that applies to this case.

16 Under the Constitution and the laws of South
17 Carolina, you are the finders of the facts in this case.
18 I do not have the right to pass upon the facts or even
19 to express any opinion that I might have as to them.
20 This is a matter solely for you the jury to determine.

21 As jurors then it is your duty to determine
22 the effect, the value, the weight, and the truth of the
23 evidence presented during this trial. You are also the
24 judges, the sole judges of the credibility, that is, the
25 believability of the witnesses who have testified in

1 this case.

2 In passing upon their credibility, you may
3 take into consideration many things, such as, the
4 demeanor or manner of testifying, whether the witness
5 had reason to be biased or prejudiced, whether a
6 witness' testimony was contradicted on the one hand or
7 supported and corroborated on the other hand.

8 You may believe a small portion of a witness'
9 testimony and disregard the larger or vice-versa. You
10 may believe one witness against many or many against
11 one.

12 All these things you will consider, bearing in
13 mind that you should give the Defendant the benefit of
14 any reasonable doubt. It becomes your duty as jurors to
15 analyze and evaluate the evidence and determine that
16 evidence which convinces you of its truth.

17 As the trial judge, it is my responsibility to
18 preside over the trial of this case, and I also have the
19 duty to rule upon or pass upon the admissibility of the
20 evidence offered during this trial.

21 You are to consider only the testimony which
22 has been presented from this witness stand, together
23 with any exhibits which have been made a part of the
24 record in this case and any stipulations of counsel made
25 into the record.

1 I have the additional duty to charge you the
2 law applicable to this case. As the presiding judge, I
3 am the sole judge of the law of this case. It is your
4 duty as jurors to accept and apply the law as I now
5 state it to you and then reach your verdict. Finally, I
6 charge you in this regard that you should not be
7 concerned with what you think the law ought to be, but
8 what I charge you the law is.

9 Now, the fact that the Defendant was arrested,
10 charged, and indicted in this case is not evidence in
11 this case and cannot be considered by you as evidence of
12 guilt in this case, nor does it create any presumption
13 or inference of guilt.

14 These indictments are simply the formal
15 written instruments which contain the charges made
16 against the Defendant. An indictment is the formal
17 document by which a case is brought into this court.

18 The Defendant has pled not guilty to these
19 indictments, and that plea puts the burden on the State
20 to prove the Defendant guilty. A person charged with
21 committing a criminal offense in South Carolina is never
22 required to prove himself innocent.

23 I charge you that it is an important rule of
24 law that the Defendant in a criminal trial, no matter
25 what the seriousness of the charge may be, will always

1 be presumed to be innocent of the crime for which the
2 indictment was issued unless guilt has been proven by
3 evidence satisfying you of that guilt beyond a
4 reasonable doubt.

5 This presumption of innocence does not end
6 when you begin your deliberations, but it accompanies
7 the Defendant throughout the trial until you reach a
8 verdict of guilt based on evidence satisfying you of
9 guilt beyond a reasonable doubt.

10 The presumption of innocence is like a robe of
11 righteousness placed about the shoulders of the
12 Defendant which remains with the Defendant until it has
13 been stripped from the Defendant by evidence satisfying
14 you of the Defendant's guilt beyond a reasonable doubt.

15 The presumption of innocence is not a mere
16 legal theory. It's not just a legal phrase. It is a
17 substantial right to which every defendant is entitled
18 unless you the jury are satisfied from the evidence of
19 the Defendant's guilt beyond a reasonable doubt. The
20 State must prove the Defendant guilty beyond a
21 reasonable doubt.

22 So what is a reasonable doubt in the law? A
23 reasonable doubt is a doubt which makes an honest,
24 sincere, conscientious juror in search of the truth
25 hesitate to act.

1 Proof beyond a reasonable doubt must therefore
2 be proof of such a convincing character that a
3 reasonable person would not hesitate to act and rely
4 upon it in the most important of his or her own affairs.
5 Proof beyond a reasonable doubt can also be described as
6 proof that leaves you firmly convinced of the
7 Defendant's guilt.

8 Now, there are very few things that we know in
9 this world with absolute certainty, and in criminal
10 cases the law does not require proof that overcomes
11 every possible doubt.

12 If based on your consideration of the evidence
13 you are firmly convinced that the Defendant is guilty,
14 then you must find him guilty. If, on the other hand,
15 you think there is a real possibility that he is not
16 guilty, you must then give him the benefit of the doubt
17 and find him not guilty.

18 The indictments in this case allege two
19 separate offenses against the Defendant. The charges
20 are murder and first degree burglary. Each indictment
21 charges a separate and distinct offense.

22 You must decide each indictment separately on
23 the evidence applicable to it, uninfluenced by your
24 decision as to any other indictment. The Defendant may
25 be convicted or acquitted on any or all of the offenses

1 charged. You will be asked to write a separate verdict
2 of guilty or not guilty for each indictment.

3 The Defendant is charged with first degree
4 burglary. The State must first prove beyond a
5 reasonable doubt that the Defendant entered a dwelling
6 without consent. A dwelling is any building or portion
7 of a building in which a person ordinarily sleeps.

8 In order to prove that the Defendant entered
9 the dwelling, the State does not have to show that the
10 Defendant's entire body entered the dwelling. The
11 smallest entry is sufficient. It may be any part of the
12 body, such as a hand or a foot or even an instrument.
13 In addition, the State does not have to prove that force
14 was used to gain entry.

15 Next, the State must prove beyond a reasonable
16 doubt that the Defendant intended to commit a crime,
17 either a felony or a misdemeanor, at the time of the
18 entry. The mere entry into a dwelling without consent
19 is not burglary. If the intent to commit a crime is
20 formed after the entry, it is not burglary.

21 On the other hand, if the Defendant intended
22 to commit a crime at the time of the entry, it is a
23 burglary even if the intent was abandoned after the
24 entry. Intent may be shown by acts and conduct of the
25 Defendant and other circumstances from which you may

1 naturally and reasonably infer intent.

2 Finally, the State must prove beyond a
3 reasonable doubt that when entering, while in the
4 dwelling or when fleeing, the Defendant was armed with a
5 deadly weapon or when entering, while in the dwelling or
6 when fleeing, the Defendant caused physical injury to
7 anyone not participating in the crime or when entering,
8 while in the dwelling or fleeing, the Defendant used or
9 threatened to use a dangerous object or when entering,
10 while in the dwelling or when fleeing, the Defendant
11 displayed what was or appeared to be a deadly weapon or
12 that the Defendant entered or remained in the dwelling
13 in the nighttime.

14 Nighttime is the period between sunset and
15 sunrise during which there is not enough daylight to
16 recognize a person's face, except by artificial light or
17 moonlight.

18 The Defendant is charged with murder. The
19 State must prove beyond a reasonable doubt that the
20 Defendant killed another person with malice
21 aforethought.

22 Malice is hatred, ill will or hostility
23 towards another person. It is the intentional doing of
24 a wrongful act without just cause or excuse and with an
25 intent to inflict an injury or under circumstances that

1 the law will infer an evil intent.

2 Malice aforethought does not require that
3 malice exist for any particular time before the act is
4 committed, but malice must exist in the mind of the
5 Defendant just before and at the time that the act is
6 committed. Therefore there must be a combination of the
7 previous evil intent and the act.

8 Malice aforethought may be express or
9 inferred. These terms, express or inferred, do not mean
10 different kinds of malice but merely mean the manner in
11 which malice may be shown to exist, that is, either by
12 direct evidence or by inference from the facts and
13 circumstances which are proved.

14 Express malice is shown when a person speaks
15 words, which express hatred or ill will for another or
16 when the person prepared beforehand to do the act which
17 was later accomplished, for example, lying in wait for a
18 person or any other acts of preparation going to show
19 that the deed was within the Defendant's mind would be
20 express malice. Malice may be inferred from conduct
21 showing a total disregard for human life.

22 If you find that the State has failed to prove
23 beyond a reasonable doubt that the Defendant committed
24 murder, you may consider whether the State has proved
25 beyond a reasonable doubt that the Defendant committed

1 voluntary manslaughter.

2 To prove voluntary manslaughter, the State
3 must prove beyond a reasonable doubt that the Defendant
4 took the life of another in the sudden heat of passion
5 based upon sufficient legal provocation. Both heat of
6 passion and sufficient legal provocation must be present
7 at the time of the killing to constitute voluntary
8 manslaughter.

9 Sudden heat of passion may for a time affect a
10 person's self-control and temporarily disturb a person's
11 reason. The sudden heat of passion must be the type
12 that would make an ordinary person unable to coolly
13 reflect on his actions and would produce an
14 uncontrollable impulse to do violence.

15 Sufficient legal provocation must be the type
16 that would make a person of ordinary reason and caution
17 become enraged and to lose control temporarily. The
18 provocation needed for voluntary manslaughter must come
19 from some act of or related to the victim.

20 Words alone, however vulgar or insulting, are
21 not enough to be legal provocation. Where death is
22 caused by the use of a deadly weapon, the words must be
23 accompanied by some overt, threatening act which would
24 have produced the heat of passion.

25 The exercise of a legal right, no matter how

1 offensive it is to another, is never sufficient legal
2 provocation for voluntary manslaughter. If the heat of
3 passion had cooled or if there was enough time between
4 the provocation, if any, and the killing for the passion
5 of a reasonable person to cool, the killing would not be
6 voluntary manslaughter.

7 In deciding whether a reasonable person would
8 have had enough time to cool off, you should consider
9 all the circumstances surrounding the killing. You may
10 consider the nature of the provocation, if any, the
11 Defendant's mental and physical state, and the
12 circumstances and relationships between the parties.

13 As to the charge of murder, the Defendant has
14 raised the defense of self-defense. Self-defense is a
15 complete defense and if it is established, you must find
16 the Defendant not guilty.

17 The State has the burden of disproving
18 self-defense by proof beyond a reasonable doubt. If you
19 have a reasonable doubt of the Defendant's guilt after
20 considering all the evidence, including the evidence of
21 self-defense, then you must find the Defendant not
22 guilty.

23 On the other hand, if you have no reasonable
24 doubt of the Defendant's guilt after considering all the
25 evidence, including the evidence of self-defense, then

1 you must find the Defendant guilty.

2 The following elements are required to
3 establish self-defense. One, without fault. First, the
4 Defendant must be without fault in bringing on the
5 difficulty.

6 If the Defendant's conduct was the type which
7 was reasonably calculated to and did provoke a deadly
8 assault, the Defendant would be at fault in bringing on
9 the difficulty and would not be entitled to an acquittal
10 based on self-defense.

11 Contemptuous language. Self-defense is not
12 available to a person who uses language which is so
13 contemptuous that a reasonable person would expect it to
14 bring on a physical encounter and which did actually
15 contribute to the physical encounter.

16 Mutual combat. If the Defendant voluntarily
17 participated in mutual combat for purposes other than
18 protection, the killing of the victim would not be
19 self-defense. This is true even if during the combat
20 the Defendant feared death or serious bodily injury.

21 However, if before the killing is committed,
22 the Defendant withdraws and tries in good faith to avoid
23 further conflict and either by word or act makes that
24 fact known to the victim, he would be without fault in
25 bringing on the difficulty.

1 For mutual combat there must be a mutual
2 intent and willingness to fight. This intent may be
3 shown by the facts and conduct of the parties and the
4 circumstances surrounding the combat. In addition, it
5 must be shown that both parties were armed with a deadly
6 weapon.

7 The second element of self-defense is imminent
8 danger. The second element of self-defense is that the
9 Defendant was actually in imminent danger of death or
10 serious bodily injury or that the Defendant actually
11 believed he was in imminent danger of death or serious
12 bodily injury.

13 If the Defendant was actually in imminent
14 danger, it must be shown that the circumstances would
15 have warranted a person of ordinary firmness and courage
16 to strike the fatal blow to prevent death or serious
17 bodily injury.

18 If the Defendant believed he was in imminent
19 danger of death or serious bodily injury, it must be
20 shown that a reasonably prudent person of ordinary
21 firmness and courage would have had the same belief.

22 In deciding whether the Defendant actually was
23 or believed he was in imminent danger of death or
24 serious bodily injury, you should consider all of the
25 facts and circumstances surrounding the crime, including

1 the physical condition and character of the Defendant
2 and the victim.

3 The Defendant does not have to show that he
4 was actually in danger. It is enough if the Defendant
5 believed he was in imminent danger and a reasonably
6 prudent person of ordinary firmness and courage would
7 have had the same belief.

8 The Defendant has the right to act on
9 appearances even though the Defendant's beliefs may have
10 been mistaken. It is for you to decide whether the
11 Defendant's fear of immediate danger of death or serious
12 bodily injury was reasonable and would have been felt by
13 an ordinary person in the same situation. Words
14 accompanied by hostile acts may, depending on the
15 circumstances, establish self-defense.

16 The third element and final element of
17 self-defense is that the Defendant had no other probable
18 way to avoid the danger of death or serious bodily
19 injury than to act as the Defendant did in this
20 particular instance.

21 The Defendant had no duty to retreat if by
22 doing so the danger of being killed or suffering serious
23 bodily injury would increase. A person cannot be
24 required to make an exact calculation as to the degree
25 or amount of force which may be needed to avoid death or

1 serious bodily injury.

2 Therefore, in self-defense the Defendant has
3 the right to use the force needed to avoid death or
4 serious bodily harm. The force used in self-defense
5 does not have to be limited to the degree or amount of
6 force used by the victim.

7 The Defendant has the right to use so much
8 force as appeared to be necessary for complete
9 self-protection and which a person of ordinary reason
10 and firmness would have believed to be needed to prevent
11 death or serious bodily harm.

12 Mr. Foreman, and members of the jury, you have
13 been selected by both the State and the Defendant to be
14 fair and impartial jurors. It is your duty then in your
15 joint deliberations to determine the truth in this case,
16 giving the Defendant the benefit of every reasonable
17 doubt on each and every issue.

18 And from the facts which you determine to be
19 true, you take and apply the law which I have just given
20 you and thus arrive at a verdict which speaks the truth
21 of this case.

22 I have told you the standards you have to
23 apply to the charges of murder and first degree
24 burglary. I will give you a copy of these instructions
25 in written form during your deliberations.

1 You may refer to the instructions to guide
2 your decision making. You must consider the
3 instructions as a whole and not follow some and ignore
4 others. Please return the instructions to the Court at
5 the time your verdict is rendered.

6 You have heard the evidence and now you have
7 heard the law. Whatever your verdict as to each charge,
8 Mr. Foreman, you will indicate it by checking not guilty
9 or guilty on the verdict form or by checking voluntary
10 manslaughter if that is your verdict as to the murder
11 charge.

12 There is no significance in the order in which
13 I state these possible verdicts. It's simply that one
14 must be stated first. You will then sign the verdict
15 form. Remember that although the foreperson is the only
16 juror who signs this verdict, it is not his alone.

17 The verdict has to be a unanimous verdict as
18 to the charges. Mr. Foreman, you are not authorized to
19 write or sign that verdict until all of you have agreed
20 as to what the verdict should be.

21 The verdict form, Mr. Foreman, is this form
22 right here which speaks to the charges. As to the
23 charge of murder, your verdict is either not guilty,
24 guilty of voluntary manslaughter or guilty.

25 As to the charge of first degree burglary, the

1 verdicts are either not guilty or guilty. You will date
2 and sign it after checking the appropriate box
3 representing your verdict.

4 Now, ladies and gentlemen, I am going to send
5 you to your jury room, all of you except the two
6 alternates who were selected, the last two jurors
7 selected, but do not begin your deliberations and to
8 discuss this case until you have received a copy of this
9 jury charge, the verdict form, and the exhibits.

10 Once you receive these things, that will be
11 your signal to begin your deliberations. Once you begin
12 your deliberations, you will deliberate until you have
13 reached a verdict, at which time you will knock on the
14 door, advise the bailiff, and we will bring you into the
15 courtroom to receive your verdict.

16 We selected 14 jurors for this trial, and we
17 do so because in the event something might happen to one
18 of the first 12 or two of the first 12, we will have two
19 other jurors.

20 But from the first 12 jurors selected, if any
21 of the first 12 jurors selected is unable to continue
22 with the deliberations, let me know now before I let the
23 two alternates go.

24 In fact, if from the first 12 if you are all
25 able to continue with the deliberations, raise your hand

1 indicating that you are able to proceed with the
2 deliberations.

3 (All jurors so indicate.)

4 THE COURT: All hands are raised. That means
5 the two alternates will remain while the other jurors
6 retire to the jury room. So please go to the jury room
7 at this time.

8 (The jury retires to the jury room.).

9 THE COURT: Any additions or exceptions to the
10 charge from the State?

11 MR. GRAHAM: For clarification, Your Honor,
12 you are sending back everything you read there, your
13 entire charge?

14 THE COURT: Yes, in verbatim form. Any
15 additions or exceptions to the charge from the defense?

16 MS. FULLWOOD: Yes, sir. I take exception to
17 the charge on mutual combat because it places a
18 limitation on his ability to claim self-defense, and it
19 tends to burden shift by putting their burden to
20 disprove self-defense on him to prove it.

21 THE COURT: Mr. Solicitor.

22 MR. GRAHAM: I don't really have any position
23 on that, Your Honor.

24 THE COURT: It was my impression through your
25 arguments yesterday that you requested a mutual combat

1 charge. It perplexed me as to why you would, but I
2 think you did.

3 MS. FULLWOOD: Your Honor, I did not request a
4 mutual combat charge. I requested a charge on
5 self-defense and voluntary.

6 THE COURT: Part of the self-defense charge
7 you argued that the parties engaged in mutual combat.
8 Otherwise, I would have not included it in my charge.

9 MS. FULLWOOD: I don't recall saying that but
10 if that's the Court's recollection.

11 THE COURT: We are getting an affirmative nod
12 from Mr. Mobley there. What do you think? What do you
13 recall?

14 MR. MOBLEY: Yes, Your Honor, I do recall
15 something to the effect of mutual combat. Exactly
16 where, I'm not sure but if we have to go back through
17 the record.

18 THE COURT: What would you like for me to do
19 then, Ms. Fullwood? Do you want me to tell them to
20 disregard mutual combat? Do you want me to give them
21 the charge all over again? What do you want me to do?

22 MS. FULLWOOD: I would request that you tell
23 them that the law of mutual combat does not apply to
24 this case and, of course, that you take it out of the
25 written instructions that you send to the jury room.

1 THE COURT: All right. Any comment from the
2 State?

3 MR. GRAHAM: No, Your Honor.

4 THE COURT: I have no problem doing that.
5 Bring the jury back in for a few moments. While you go
6 back, you can get back the alternates' things.

7 I think you claimed in your argument that they
8 were fighting and engaged in mutual combat and that was
9 what was indicated by the testimony. Because when you
10 made that argument to the Court, we were preparing the
11 jury charge at that time.

12 MS. FULLWOOD: At that time or in my directed
13 verdict motion?

14 THE COURT: It could have been in your
15 directed verdict motion. It's no problem. We will
16 delete it.

17 MS. FULLWOOD: Yes, sir.

18 (The jury returns to the courtroom.)

19 THE COURT: Mr. Foreman, and members of the
20 jury, as part of the self-defense charge and in
21 instructing you as to the elements required to establish
22 self-defense, I instructed you regarding the law of
23 mutual combat.

24 The law of mutual combat does not apply to
25 this case, and it is being taken out of the instruction.

1 You are to disregard the instruction regarding mutual
2 combat because it does not apply to this case and is not
3 part of the law of self-defense applicable to this case.

4 That will be deleted from the written
5 instructions that I will give to you. So please return
6 to the jury room and wait for the charge, exhibits and
7 all, and that will be your signal to begin
8 deliberations.

9 (The jury retires to the jury room.)

10 (The alternates are excused.)

11 THE COURT: Any exceptions to the charge?

12 MR. GRAHAM: Not from the State, Your Honor.

13 MS. FULLWOOD: No, Your Honor.

14 THE COURT: Very good. Check those exhibits
15 while we are scurrying around to get an undated jury
16 charge.

17 (Pause.)

18 (The jury commences its deliberation at
19 5:00 o'clock p.m.)

20 (The following occurred at 7:12 p.m.)

21 THE COURT: I think everyone is here. The
22 jury has been deliberating for a little over two hours.
23 I am thinking of having them come in and asking them
24 whether they want to continue deliberating or whether
25 they want to adjourn for the night, cease deliberations,

1 adjourn for the night, and return tomorrow morning at
2 9:30 or thereabouts. What says the State?

3 MR. GRAHAM: The State has no position on
4 that, Your Honor.

5 THE COURT: What says the defense?

6 MS. FULLWOOD: We have no position.

7 THE COURT: Do you have any objection to the
8 jurors leaving for the night and coming back tomorrow
9 morning if that's what they want to do? Defense?

10 MS. FULLWOOD: None whatsoever and I'm sure
11 the Court will give them a cautionary instruction.

12 THE COURT: All right. Let's bring them in if
13 they are at a good point where they can come in.

14 (The jury returns to the courtroom.)

15 THE COURT: Ladies and gentlemen, you have
16 been deliberating now for a little over two hours. It's
17 now 7:14 p.m. Mr. Foreman, I would like to know whether
18 the jury would like to continue deliberating tonight or
19 to cease deliberations and come back tomorrow morning at
20 10:00 a.m.

21 So if you will return to the jury room with
22 the jurors, your fellow jurors, and discuss that. Then
23 when you get an answer, knock on the door, and we will
24 have you come back out and tell us what your decision
25 is.

1 FOREMAN: Okay.

2 THE COURT: Thank you very much.

3 FOREMAN: Yes, sir.

4 (The jury retires to the jury room.)

5 THE COURT: We will sit right here and see
6 what they want to do.

7 (Pause.)

8 BAILIFF: Your Honor, they are ready.

9 THE COURT: The jury is about to come back in.

10 (The jury returns to the courtroom at
11 7:18 p.m.)

12 THE COURT: Mr. Foreman, what would you like
13 to do?

14 FOREMAN: We have voted to go home tonight and
15 come back tomorrow and start fresh.

16 THE COURT: Very good. So based on your
17 decision to go home tonight and come back tomorrow and
18 start fresh, I will give you this cautionary
19 instruction, and that is that the jury can only discuss
20 the case with all jurors present and participating in
21 the jury room and in the jury room only.

22 That means it would be a violation of your
23 oath as jurors to discuss this case in any manner with
24 anyone else, other than your fellow jurors in the jury
25 room. So you are prohibited from discussing the case

1 with family and friends and others not involved in this
2 case.

3 Obviously you can't go home and deliberate. A
4 deliberation is a discussion. You can't go home and
5 deliberate with someone who is not on the jury, who has
6 not heard the testimony, who has not gone through the
7 experience of this trial that you all have gone through.

8 You must resist all temptations to talk with
9 anyone about this case, particularly family members or
10 any other juror on a one-on-one situation because all
11 jurors must discuss the case in the jury room with all
12 jurors present and participating.

13 With that admonition, Mr. Foreman, and members
14 of the jury, we will break deliberations for tonight and
15 resume tomorrow morning, I think at 10:00 o'clock
16 tomorrow morning, considering that it's now past seven.
17 If y'all would be back at 10:00 a.m. tomorrow morning
18 and report back directly to the jury room. Thank you
19 very much.

20 FOREMAN: Yes, sir.

21 THE COURT: Leave all exhibits where they are,
22 and the bailiff will take care of them.

23 (The jury is excused for the day at 7:21 p.m.)

24 THE COURT: Any exceptions?

25 MS. FULLWOOD: No, Your Honor.

1 MR. GRAHAM: No, Your Honor.

2 THE COURT: We will be back at 10 tomorrow
3 morning.

4 (Whereupon the proceedings are concluded for
5 November 3, 2010.)

6 (The following occurred at 12:25 p.m. on
7 November 4, 2010.)

8 THE COURT: On the Maldonado case, the jury
9 sent out a note that says: What happens in case of a
10 hung jury? Does the Defendant go free or is there a
11 retrial? What says the State?

12 MR. GRAHAM: I think an Allen charge might be
13 appropriate.

14 THE COURT: The defense?

15 MS. FULLWOOD: I think an Allen charge is
16 premature. They haven't indicated that they are hung.
17 I would request the Court instruct them if they can't
18 reach a verdict that the case is retried.

19 THE COURT: Pardon me?

20 MS. FULLWOOD: Just to answer the question
21 asked at this point. It's only been about four hours or
22 so. This is a murder case, a serious charge, and there
23 are some thorny issues for them to work through. It's
24 not as if they have engaged at this point in any long
25 deliberations.

1 THE COURT: What do you want me to do?

2 MS. FULLWOOD: Simply answer the question.

3 THE COURT: You want me to give a partial
4 Allen charge?

5 MS. FULLWOOD: I suppose the part wherein if
6 this jury does not arrive at a verdict, then the case is
7 retried.

8 THE COURT: That's a partial Allen charge. I
9 would be part of the Allen charge.

10 MS. FULLWOOD: I imagine, yes, sir, there is
11 some language to that effect in an Allen charge.

12 THE COURT: It's part of the Allen charge.

13 MS. FULLWOOD: Yes, sir. But since they
14 haven't indicated they are deadlocked, I think it's
15 premature to actually give them the Allen charge. I
16 don't want this jury to feel pressured at this point to
17 arrive at some verdict when they haven't said they are
18 not able to.

19 THE COURT: Mr. Graham?

20 MR. GRAHAM: What was the question?

21 THE COURT: What happens in case of a hung
22 jury? Does the Defendant go free or is there a retrial?

23 MR. GRAHAM: I don't know how to answer that.
24 Whether he goes free or not, I don't know that we can
25 answer that. You are only answering half the question

1 if we do anything else. I don't know, Your Honor.

2 THE COURT: Should I just ignore the question?
3 Their job is to deliberate, not send out questions about
4 what is happening in the future or what happens if this
5 or if that? How does that relate to their duty to
6 deliberate?

7 MR. GRAHAM: What if we sent back a response
8 that said something along those lines. Your duty is
9 continue to deliberate. You are unable to reach a
10 verdict and are hung, then notify the Court. At that
11 time you could give an Allen charge.

12 THE COURT: Mr. Mobley.

13 MR. MOBLEY: Your Honor, right along those
14 same lines though, I would ask if we were to do that,
15 not to include the hung part. We don't want to give
16 them an out by saying if you are hung and then tell them
17 -- like kind of giving them direction where they can
18 say, We are hung. Now we can get out of this
19 deliberating. You see what I mean? So say, continue to
20 deliberate and notify the Court when you come to a
21 conclusion.

22 THE COURT: All right.

23 MS. FULLWOOD: I still think we should answer
24 their question if that's the jam at this point. I think
25 the question needs to be answered.

1 MR. GRAHAM: What was the language in your
2 charge about the verdict being unanimous, Your Honor?

3 THE COURT: That though the foreperson signs
4 the verdict form, it is not his decision alone. All of
5 you must agree. The verdict must be a unanimous
6 verdict.

7 MR. GRAHAM: What if we refer them back to
8 their charge?

9 MS. FULLWOOD: Your Honor, they have the
10 charge in the jury room. They can refer to it
11 themselves. It sounds to me like what they are asking
12 is, is a failure to reach a verdict tantamount to an
13 acquittal, sort of like what would happen at the penalty
14 phase of a death penalty trial. If there is a failure
15 to reach a verdict, it swings over to a life sentence.
16 I think that's what they are asking.

17 THE COURT: They have specifically asked what
18 they want to ask. What happens if it's a hung jury?
19 Does the Defendant go free? Is there a retrial?

20 MS. FULLWOOD: Right, and that sounds to me to
21 go free is the about the same as an acquittal.

22 THE COURT: I would think so if you go free.

23 MS. FULLWOOD: Yes, sir.

24 MR. GRAHAM: That's why I want to Allen charge
25 them because the Allen charge answers that question. It

1 tells them what happens if they are hung. They don't
2 need to be concerned about whether he is -- the Allen
3 charge says that another jury, another time will hear
4 the same evidence and have to make a decision just like
5 here today.

6 THE COURT: So it's a partial Allen charge,
7 what they are requesting.

8 MS. FULLWOOD: Then yes, sir.

9 THE COURT: I'm not going to give a partial
10 Allen charge, either a complete Allen charge or not
11 answer the question.

12 (Pause.)

13 THE COURT: We will take the next guilty plea
14 and then come back to this question.

15 (Whereupon there is a recess in the
16 proceedings.)

17 (The following occurred at 12:47 p.m.)

18 THE COURT: What do you say, Solicitor?

19 MR. GRAHAM: Your Honor, I think an Allen
20 charge is probably inappropriate. They clearly have not
21 said they are hung. I do believe we need to answer them
22 in some way or form because they may be sitting back
23 there waiting for you to answer.

24 Even if we sent something back that said, We
25 are not going to answer, I think we need to send

1 something to them. I would propose we say something to
2 the effect that you are not allowed to take into account
3 or to speculate what may occur if you do not reach a
4 verdict.

5 THE COURT: At this stage you are not allowed
6 to speculate as to what may occur if you do not reach a
7 verdict.

8 MR. GRAHAM: Words something to that effect.

9 THE COURT: What says the defense?

10 MS. FULLWOOD: First of all, I have a motion,
11 and that is a motion for a mistrial. It's clear from
12 the question the jury gave the Court their deliberations
13 have turned from the evidence into matters of
14 speculation of things outside the evidence.

15 It looks like they are prepared to base a
16 verdict or a decision upon those speculations. I think
17 it's speculation. The horse is out of the barn. I
18 think it's's clear that deliberations have gone -- they
19 have derailed, and they are talking about improper
20 reasons to reach a verdict.

21 That's depriving Mr. Maldonado of his
22 constitutional right to a verdict based on the
23 evidence -- based on only the evidence and free of any
24 kind of speculation or talk about things in the future.

25 So it's denying him his right to a fair trial,

1 to due process, and I think at this point in light of
2 the question, we are entitled to a mistrial.

3 THE COURT: Do you have any legal authority on
4 which you are basing that argument?

5 MS. FULLWOOD: Your Honor, I do not have my
6 computer here with me.

7 THE COURT: We can take time if you need to
8 consult your computer. I would like to have some
9 authority for your argument.

10 MS. FULLWOOD: Yes, sir.

11 THE COURT: Rather than just a random
12 argument.

13 MS. FULLWOOD: I understand. It just came up.

14 THE COURT: We will take another guilty plea
15 and revisit this to see if you have some authority based
16 on your consulting with your computer.

17 MS. FULLWOOD: The computer is at the office.

18 THE COURT: I thought it was Mr. Smith. Did
19 you ever look up that computer you were attempting to
20 hook up?

21 MS. FULLWOOD: We left it at the office.

22 THE COURT: Oh, you left your computer.

23 MS. FULLWOOD: Since the trial -- it did not
24 seem we would need the computer today.

25 THE COURT: I understand. I'm just asking.

1 We will take another guilty plea to see if you have some
2 authority before I address this issue.

3 (Whereupon there is a recess in the
4 proceedings.)

5 THE COURT: Let's deal with this jury
6 question. Final comments from counsel. Research and
7 all of that, Mr. Graham? Well, first the motion is by
8 Ms. Fullwood. Yes, ma'am.

9 MS. FULLWOOD: Your Honor, my research skills
10 are not shining today nor is my computer doing what I
11 think I'm telling it to do. However, there is a line of
12 cases, Judge, where it's improper for the jury to
13 consider certain things in its deliberations, for
14 example, in a death penalty case the possibility to
15 parole isn't to be considered when they trying to
16 determine the appropriate punishment.

17 In a case like this one where they are just
18 trying to decide guilt or innocence, it's improper for
19 them to consider what the potential punishment is for
20 the crimes that they are trying to decide guilt or
21 innocence on.

22 This is, while it not directly the same thing,
23 it's analogous in that they are speculating. And heaven
24 knows what they think. We know for sure at least some
25 people think the wrong thing about what would happen if

1 they hang up.

2 Since the jury deliberations have moved in
3 that direction, since at this point they are based on
4 speculation about things that are not in the record and
5 not appropriate matters for them to consider during
6 deliberations, I think his right to a fair trial has
7 been impinged upon, and he is entitled to under the
8 Fifth, Sixth, and Fourteenth Amendments to a mistrial.

9 THE COURT: Mr. Graham.

10 MR. GRAHAM: Your Honor, I don't think the
11 question warrants a mistrial. I'm not sure that the
12 analogies, while I understand them, they don't apply in
13 this case.

14 They are indicating they are having trouble
15 reaching a verdict. They have not indicated yet that
16 they are totally deadlocked. I think a mistrial is an
17 extreme reaction on the judge's part. I know it's
18 supposed to be done very rarely and for specific reasons
19 that are clear, and I don't think that is the case here.

20 THE COURT: Thank you. I think it's common
21 sense and reasonable for any juror who has been
22 deliberating for a period of time to wonder what will
23 happen if we don't reach a decision. That's the gist of
24 this question from the jury.

25 I don't find that that's something that

1 indicates that the jurors have gone beyond their duty as
2 to deliberating. They simply sent out a question.
3 There is no problem with them sending out a question.

4 The concern of the Court or the duty of the
5 Court is to respond properly to questions that are posed
6 by the jury. So I am going to bring them out and give a
7 response to their question. If you will bring them out,
8 please. I deny the motion for a mistrial.

9 (The jury returns to the courtroom at
10 1:45 p.m.)

11 THE COURT: Mr. Foreman, and ladies and
12 gentlemen of the jury, you sent out a question, two
13 questions. One, what happens in a case of a hung jury?
14 The second question, does the Defendant go free or is
15 there a retrial?

16 Mr. Foreman, and members of the jury, your
17 purpose and your duty as jurors is to determine the
18 facts of the case based on the evidence presented during
19 the trial and to apply those facts to the law as I have
20 stated it to you and deliberate in an effort to reach a
21 unanimous verdict. Whatever verdict you reach must be a
22 unanimous verdict.

23 Now, we have ordered lunch for you. The lunch
24 is here. You can recess deliberations if you want to
25 while you have your lunch in the jury room. After doing

1 so you are instructed to resume your deliberations.
2 Thank you very much. Please return to the jury room at
3 this time.

4 (The jury retires for lunch at 1:48 p.m.)

5 THE COURT: Any additions or exceptions to the
6 charge from the State?

7 MR. GRAHAM: No, Your Honor.

8 THE COURT: From the defense?

9 MS. FULLWOOD: Yes, Your Honor. I except to
10 that portion of the charge where the Court told the jury
11 its verdict must be unanimous without also telling the
12 jurors that it had to be the verdict of each juror.

13 In other words, by telling them that it had to
14 be unanimous without further explaining that it had to
15 be each juror's individual opinion as to guilt or
16 innocence, it creates the danger that they think it has
17 to -- it can be by majority vote or make jurors feel
18 compelled to change their vote not because of their view
19 of the evidence, but because the Court has told the jury
20 that it has to be unanimous. They would feel compelled
21 to abandon their view of the evidence in favor of
22 unanimity.

23 In addition, the second question, What
24 happens? Does he go free or is he tried again? I think
25 it does show that they have been speculating, and I

1 reiterate my request for the Court to give the jury a
2 partial Allen charge where that specific question is
3 answered.

4 I think the question shows they have already
5 engaged in speculation, and without the question being
6 answered, the taint is still there, and there is still
7 the danger of a verdict being based upon the speculation
8 as to the answer to that question, rather than correct
9 information.

10 THE COURT: Your exception is noted. We will
11 be back in recess in this case and will be waiting for
12 the jury.

13 (The following occurred at 2:33 p.m.)

14 THE COURT: Do we have everyone here? Are we
15 still waiting on interpreter number two?

16 MS. FULLWOOD: No, sir. We only need one
17 today, Judge .

18 MR. GRAHAM: I know the victim's family is
19 back on their way and should be here in a few moments.
20 I don't know if you want to delay the verdict for that
21 or just wait for sentencing.

22 THE COURT: No, we will wait for them. Just
23 let me know when they have arrived.

24 (Whereupon there is a recess in the
25 proceedings.)

1 (Court's Exhibit Number 1 is marked for
2 purposes of the record).

3 (The following occurred at 2:40 p.m.)

4 THE COURT: I understand we have a verdict.
5 Bring the jury. Invite the jury in, please.

6 (The jury returns to open court to report its
7 verdict.)

8 THE COURT: Mr. Foreman, if you will stand for
9 me, the foreman only. Madame Clerk.

10 CLERK: Mr. Foreman, have you reached your
11 verdicts?

12 FOREMAN: We have.

13 CLERK: Please pass them up by the bailiff.

14 (Hands to Court.)

15 THE COURT: You may publish the verdict.

16 (Whereupon the verdicts of the jury are
17 published as follows).

18 (Whereupon the verdicts of the jury are
19 published as follows).

20 CLERK: Indictment 2009-GS-32-00820 and
21 Indictment 2009-GS-32-00821, the State versus Olbin Noel
22 Banegas-Maldonado.

23 THE COURT: If the Defendant will stand. You
24 may publish the verdict.

25 CLERK: We the jury by unanimous consent find