

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

DeAndrea G. Benjamin, Circuit Court Judge

Case Nos. 2012GS1040032 and 2012GS1040033

The State, ... Respondent,

v.

Brett D. Parker, ... Appellant.

**RECORD ON APPEAL
VOLUME VII**

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State's Exhibits

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484 - X-ray of Bryan Capnerhurst	on file with this Court
486 - Diagrams	on file with this Court
487 - Diagrams	on file with this Court
490 - Diagram	on file with this Court

Defendant's Exhibits

4 - Transcript of Audio Call	on file with this Court
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1 His own wife, the mother of his children. We are
2 here today because he shot and brutally murdered
3 Bryan Capnerhurst, his friend, co-worker. And it
4 wasn't enough just to kill him. He would leave
5 Bryan branded a robber and a murderer.

6 Brett Parker is no victim. And let's be
7 clear. This is not a case of self-defense. This
8 is calculated, premeditated, cold-blooded murders.
9 And it doesn't get much colder than this.

10 Now, this is my one and only opportunity to
11 address you directly. And as you have learned
12 throughout the course of this trial, my name is
13 Nicole Simpson, and I, along with my co-counsel,
14 Senior Assistant Solicitor Luck Campbell and
15 Assistant Solicitor Meghan Walker, together we
16 represent the State of South Carolina, the citizens
17 of Richland County, and the victims in this case.

18 Now, I want to take this time to thank you for
19 your time, your patience, and your service in this
20 case.

21 It is said that jury service is perhaps the
22 greatest service that a man or woman can render in
23 his or her country during times of peace.

24 Well, that couldn't be more true than it is
25 here today. And I have watched, since you have

1 been very attentive and listened to the witness
2 testimony from this witness stand and observed the
3 evidence as it was presented to you, and you have
4 been patient with the delays in this case, confined
5 to a space, a small space, with people you didn't
6 know and hadn't met before.

7 And I'm sure that when you got your jury
8 summons in the mail, you probably had a million
9 other things that you would rather be doing.
10 Things that you needed to be doing. But you came
11 here, and you are serving your duty as citizens.

12 And this is a very important case. It is
13 important to the State of South Carolina, it is
14 important to the Defendant, and it is important to
15 the victims and their families.

16 And while our system of justice could do
17 without the lawyers, could do without the judges,
18 it cannot do without you.

19 So I thank you.

20 Now, I also want to apologize if myself or
21 co-counsel have done anything to offend you during
22 this trial. I know at times our questions have
23 been unartful and clumsy, we have argued over legal
24 objections, things have been inadmissible and then
25 later admissible, and you've been shuffled in and

1 out of this courtroom. And if we have done
2 anything to offend you, please don't hold it
3 against the victims in this case.

4 Now, I'm going to talk to you just a bit about
5 the law in this case. And as Your Honor said, then
6 Defense counsel is going to get up here and talk to
7 you about the evidence and what they think the
8 evidence shows. And then my co-counsel,
9 Ms. Campbell, is going to come before you and talk
10 about the facts in this case and what happened on
11 April the 13th of 2012.

12 Now, if I misquote the law or misstate the law
13 in any way, it is not intentional. You are to
14 follow Judge Benjamin's instructions to you.

15 Now, the roles in this courtroom are very
16 defined. As the State, we serve as ministers of
17 justice. And it is our job to bring forth to you
18 the relevant evidence that is also deemed
19 admissible by Her Honor to prove the Defendant
20 guilty.

21 Defense counsel's job is pretty clear. He is
22 to ensure his client's rights to a fair trial and
23 represent his client to the best of his ability.

24 And, as I said, Her Honor is the sole judge of
25 the law in this case, and she will instruct you at

1 the end of this on the law as you are to apply it
2 to the facts in this case.

3 With all of that said, no one is going to come
4 in here and question that you have the most
5 important job in this case, because you are the
6 sole finders and judges of the facts.

7 And what that means is that each of you here
8 today is wearing a black robe. And individually
9 and collectively you must decide, and only you can
10 decide what happened on that day and if the
11 Defendant is guilty.

12 So if either side mischaracterizes, misstates,
13 or just plain makes up the facts in this case, you
14 remember them, because you heard the testimony and
15 you'll have the evidence with you.

16 Now, at this point in the trial you have heard
17 all the evidence that you can consider in this
18 case.

19 So what exactly is evidence? Well, evidence
20 is the sworn testimony from this witness stand, the
21 answers. It is the demonstrative evidence that was
22 presented through the witnesses in this trial. And
23 it is all this physical evidence that you will
24 carry back with you to the deliberation room.

25 Now, what is not evidence is questions or

1 commentary by the lawyers, fishing expeditions,
2 speculation, conjecture, innuendo, or just plain
3 old-fashioned wishful thinking. That is not
4 evidence and you cannot consider that when you
5 decide this case.

6 Now, criminal cases are somewhat unique,
7 because the Defendant has the absolute
8 constitutional right, as he should, to confront
9 each and every witness before him.

10 And what that means is that as the State, who
11 bears the burden of proof, we must bring forth to
12 you live testimony from that witness stand. It is
13 very different than a civil case, in which some of
14 you may have been in or heard about, where there
15 are depositions taken, and those can be introduced.

16 Well, we can't just introduce a report. And
17 you have heard reference to incident reports,
18 investigative reports, reports from the experts,
19 the ballistics, GSR, DNA, the pathologist, witness
20 statements, things of that nature. But we can't
21 just bring a report and read it to you. We have to
22 bring those witnesses to the witness stand to
23 testify.

24 Now, there is one exception to that, and that
25 is the Defendant's statement. And we'll get to

1 that momentarily.

2 Now, an important principle of the law that
3 the judge is going to instruct you on is that the
4 Defendant is presumed innocent until proven guilty.
5 And, as the State, we bear the burden of proof in
6 this case, just as we do in the prosecution of
7 every criminal case.

8 And what that means is that we have to prove
9 to you beyond a reasonable doubt each element of
10 the crime for which the Defendant is charged.

11 But remember that every criminal Defendant who
12 ever started his trial and was ultimately found
13 guilty started it presumed innocent until he was
14 found guilty beyond a reasonable doubt by a jury of
15 his peers.

16 So while our burden is high, as it should be,
17 it is not insurmountable. And I can tell you in
18 this case we welcomed our burden.

19 And I submit that after you consider all of
20 the evidence, we will have not only met but
21 exceeded our burden in this case.

22 Members of the jury, it was mentioned
23 probably from the beginning, you heard a little bit
24 in the openings, and you are going to hear it
25 several times throughout this case, as I said, we

1 have to prove to you beyond a reasonable doubt each
2 element of the crime for which the Defendant is
3 charged.

4 So what is proof beyond a reasonable doubt?
5 Well, proof beyond a reasonable doubt is
6 essentially and simply proof that leaves you firmly
7 convinced of the Defendant's guilt.

8 Now, there are very few things that we know in
9 this world with absolute certainty. And the law
10 does not require the State to produce proof that
11 overcomes all doubt or every possible doubt, but
12 only that doubt which is reasonable, that kind of
13 doubt that would cause a reasonable person to
14 hesitate to act, proof that leaves you firmly
15 convinced.

16 And if, based on your consideration of the
17 evidence, you are firmly convinced that the
18 Defendant is guilty of the crime charged, you must
19 find the Defendant guilty.

20 If, on the other hand, you think there is a
21 real possibility that the Defendant is not guilty,
22 you must give the Defendant the benefit of the
23 doubt and find him not guilty.

24 So what exactly must we prove to you? Well,
25 murder is absolutely one of our most serious

1 offenses, and yet probably has the shortest
2 definition in this state.

3 Murder is the killing of any person with
4 malice aforethought, either express or inferred.
5 Let me say that again. Malice aforethought is
6 either express or inferred.

7 Now, what you don't see in this definition is
8 premeditation, or motive. Because the State does
9 not have to prove premeditation or motive.
10 However -- and we'll get to it -- you have those
11 things in this case. What we must prove is malice
12 aforethought, either express or inferred.

13 So what is malice? Well, our courts and our
14 laws have kind of developed definitions for malice.
15 It is a legal term implying wickedness and
16 excluding a just cause or excuse. The term malice
17 indicates a formed purpose and design to do a
18 wrongful act under the circumstances that exclude
19 any legal right to do so. And it is something
20 which springs from wickedness, from depravity, from
21 a heart devoid of social duty and fatally bent on
22 mischief. Malice must be express or inferred.

23 And I submit here -- and I'm going to talk
24 some more about malice -- no one is going to come
25 in this courtroom and say that Tammy Parker wasn't

1 murdered that day. Seven shots, five striking her,
2 a fatal one to the head. Malice. This case reeks
3 of malice.

4 Now, one of the things, when you hear the term
5 express or inferred, it doesn't have different
6 types of malice. Malice aforethought may be
7 express or inferred. These terms do not mean
8 different kinds of malice, but merely the manner in
9 which malice may be shown to exist. That is,
10 either by direct evidence or by inference from the
11 facts and circumstances which are proved.

12 Express malice is shown when a person speaks
13 words which express hatred or ill-will for another,
14 or when that person prepared beforehand to do the
15 act which was later accomplished. And I'll come
16 back to that -- prepared beforehand.

17 For example, lying in wait for a person or any
18 other act of preparation going to show that the
19 deed was within the Defendant's mind would be
20 express malice.

21 Here, let's be clear, again, the Defendant had
22 a plan. A plan to kill Tammy Parker and set up
23 Bryan Capnerhurst to take the fall. Express
24 malice.

25 Malice may be inferred from conduct showing a

1 total disregard for human life.

2 Now, malice aforethought, it can be a little
3 tricky with the term aforethought. But our law is
4 very specific because, as I said, premeditation is
5 not required. Malice aforethought does not require
6 that malice exist for any particular time before
7 the act is committed, but malice must exist in the
8 mind of the Defendant just before and at the time
9 the act is committed. Therefore, there must be a
10 combination of the previous evil intent and the
11 act.

12 A second before he pulls the trigger
13 premeditated is enough. There doesn't need to be a
14 lapse of time. Aforethought is not premeditation.
15 But, as I said, we have premeditation in this case.

16 My co-counsel is going to talk to you more
17 about this. Again, we have the plan to kill Tammy
18 and Bryan and set it up to look like a murder and
19 an armed robbery.

20 And Defense makes a big deal of him acting
21 normal on that day. Well, that is part of the
22 plan. He has to. He needs to. Everything needs
23 to be just so. Because that is how plans go.

24 And the Defendant knew that Bryan would be on
25 time. And that he would show up. You heard his

1 testimony on the witness stand: He was where he
2 needed to be.

3 And all the evidence in this case shows that
4 Bryan was punctual, dependable. And the Defendant
5 knew it. The Defendant counted on it.

6 What he didn't count on was Bryan telling
7 everyone where he was going, what he was doing,
8 what time he was going to be there, and that the
9 Defendant told him to bring a bag.

10 Bryan told everyone, and not just his own
11 friends and family, but the Defendant's father,
12 Jack Parker, where he was going. And why? Why
13 bring that bag? That goes to premeditation.

14 And consider the testimony, because you heard
15 it, the Defendant initially denied anything about
16 the bag, then later, when confronted, admitted it,
17 said, Yes, I told him.

18 And then when the money became an issue, it
19 couldn't have been to carry the money, the money
20 fits in your pocket. Well, then it became the
21 receipts, the gambling receipts. He was going to
22 collect them, he needed a bag. Well, those
23 receipts were in his car, not in the office where
24 Bryan was going, in the car where he put them
25 earlier.

1 Why the bag? Because it went to the plan. He
2 needed a place to put that empty clip -- and I
3 emphasize -- empty clip. And that box of
4 ammunition perfectly placed on top with the
5 Defendant's fingerprints, staged. He needed Bryan
6 to bring that bag.

7 Other evidence of premeditation, the planting
8 of evidence. He planted that gun, that
9 9-millimeter Smith & Wesson. And later on -- and
10 my co-counsel will talk more about it -- the
11 injuries to his arm. And, members of the jury, you
12 have heard the testimony from the officers in this
13 case about in their experience how that gun would
14 be knocked from his hand with that kind of fall,
15 that kind of shot, that kind of impact. And that
16 is not even considering his injuries, which made it
17 impossible for him to hold anything, much less a
18 gun. Planted it. Premeditation. And remember,
19 too, that Bryan knew about Tammy.

20 Consider all these things when you look at
21 this evidence and review that video. You see the
22 Defendant opening and closing the blinds, because
23 he is looking for Bryan. He comes out of the
24 garage, nervous energy because Tammy is dead,
25 pursuant to the plan. Premeditation.

1 Now, the other thing I told you that we don't
2 have to prove is motive. But where there is
3 evidence of motive, we can present it to you and
4 you must consider it when you decide this case.

5 And on the point of motive, I want you to
6 consider that the Defendant wants you to look at
7 Bryan Capnerhurst's \$20,000 credit card debt --
8 credit card debt -- as motive. But yet wants you
9 to ignore his own motive, his own credit cards, one
10 of which was even more than that, the gambling debt
11 in the amount of \$176,000 or so, from two accounts,
12 one a fictitious Hal account, and he didn't know
13 that Lanny didn't know that Hal was him. And he
14 wants you to ignore that 1.1 plus million gain from
15 Tammy's death. He wants you to ignore Lindsay
16 Mullins and Natasha Nadkarni. And ignore the fact
17 that in addition to Bryan being the perfect fall
18 guy, he would clear that \$21,000 debt to him.

19 And Bryan Capnerhurst was a threat to the
20 Defendant because Tammy didn't know about the
21 online gambling. Tammy didn't know that Bryan
22 hadn't been paid.

23 And consider the timing of all of this in this
24 case. Because Defense counsel said in his opening
25 statement that this case was about a man at the end

1 of his rope who had a desire for money and
2 violence. Consider the timing. What was the
3 Defendant facing. His motive. His back is against
4 the wall. His debt is huge. He has borrowed money
5 time and time again. And all of this is about to
6 come to light.

7 And if Bryan had told Tammy that he hadn't
8 been paid or about the Defendant's gambling, you
9 heard the testimony, she had already said she would
10 leave him if she caught him gambling again, because
11 of that prior incident which cost them essentially
12 their life savings.

13 Now, my co-counsel is going to talk more in
14 depth, but consider these things as you listen to
15 the arguments in this case.

16 And with respect to the disclaimer, he wants
17 you to believe that he disclaimed the money. The
18 money doesn't go to him. So therefore, as his
19 attorney said, motive is off the table.

20 Well, that wasn't his idea to disclaim the
21 money. You heard the testimony from Ben Staples,
22 it was his idea. And their own witness, Dave
23 Sojourner, Ben Staples is the one that came to me.

24 And let's be clear, while disclaiming the
25 money, who does it go to? B.P. [REDACTED], primary

1 beneficiary. Yes, it goes to the children, but,
2 remember, who has custody of them but Jack and
3 Linda Parker? And if the Defendant gets through
4 all this, who will have custody of them? The
5 Defendant. He controls the kids. He controls the
6 money.

7 And you saw B.P. testify in support
8 of her dad. She didn't want to do that. And we
9 know she lied. And we're going to get to that. We
10 know she lied.

11 He controls the kids. He controls the money.

12 And don't forget, that no matter, disclaimer
13 or not, at the time this happened, he had no reason
14 to doubt that all of that money, the life
15 insurance, the pension plan, and everything else
16 would come to him.

17 The Defendant is a gambler. Remember that as
18 you consider the evidence.

19 And with respect to motive, you can also
20 consider Bryan Capnerhurst's lack of a motive,
21 because, essentially, to believe the Defendant, you
22 have to believe that Bryan Capnerhurst came there
23 to kill both him and Tammy and take the money from
24 the safe.

25 Credit card debt. He had a plan. He was

1 working on it. He wasn't gambling, as Defense
2 counsel said in his opening. And there was no
3 gambling debt.

4 And James Morgan, you saw him testify, you
5 heard the evidence in this case: He is not a
6 bookie. And he had a walk-away plan. \$20,000 in
7 credit card debt. And it is his and Cindy
8 Capnerhurst's, his wife, their combined debt. And
9 he had a way to pay it off. And he also had a job
10 offer with Jack Parker, the Defendant's dad.

11 Didn't like guns, didn't own a gun, you heard
12 all that testimony. Bryan Capnerhurst never had
13 that 9-millimeter Smith & Wesson handgun until the
14 Defendant planted it in his hand.

15 At the end of the day, why kill Tammy? Ask
16 yourselves that question throughout your
17 consideration in this case. Why kill Tammy?

18 Initially it was just for the credit card
19 debt, but then when confronted, when it came to
20 light about the Defendant's own debt, well, then it
21 became: Well, Bryan killed Tammy because he was
22 jealous of her because his own wife was not as
23 successful.

24 And then we had yet another story in this
25 case: That the reason he killed Tammy was because

1 she wasn't going to pay him that \$6100. Please.

2 And there was no argument in the house about
3 anything. Bryan just went up there, shot Tammy in
4 cold blood, and then put a gun to the Defendant's
5 head and walked him to the safe. It just didn't
6 happen like that. Use your common sense throughout
7 this case.

8 Now, the judge is going to instruct you that
9 there are generally two types of evidence, both
10 direct and circumstantial evidence.

11 Direct evidence is the testimony of a person
12 who claims to have actual knowledge of a fact, such
13 as an eyewitness. It is evidence which immediately
14 establishes the main fact to be proved.

15 Circumstantial evidence, on the other hand, is
16 proof of a chain of facts and circumstances
17 indicating the existence of a fact. It is evidence
18 which immediately establishes the collateral facts
19 from which the main fact may be inferred.
20 Circumstantial evidence is based on inference and
21 not on personal knowledge or observation.

22 With respect to direct evidence, you heard
23 from a number of witnesses. We often call them lay
24 witnesses, people who saw, observed, or heard
25 things.

1 And circumstantial evidence -- and I submit
2 you have a substantial amount in this case -- one
3 of the analogies that we use for that is, just to
4 kind of explain or understand how it works, let's
5 just assume that I look out my window before I go
6 to bed and the ground is clear, nothing there. But
7 as soon as I wake up, the snow -- snow covers the
8 ground as far as I can see.

9 Now, I didn't see it snow, but when I woke up
10 I can infer, reasonably infer, that it snowed that
11 night.

12 Well, that is kind of how circumstantial
13 evidence works in this case.

14 And my co-counsel is going to talk to you
15 about the specific evidence later.

16 Now, one thing I want to make very clear here
17 is that the law makes absolutely no distinction
18 between the weight or value to be given to either
19 direct or circumstantial evidence, nor is a greater
20 degree of certainty required of circumstantial
21 evidence than of direct evidence.

22 So you will consider both direct evidence and
23 circumstantial evidence in the same way and give it
24 the weight that you think it deserves. No one is
25 any better than the other.

1 Now, one of the other things we must prove to
2 you is criminal intent. And in order to establish
3 criminal liability, criminal intent is required.

4 For example, the mental state required to be
5 proven by the State for a particular crime might be
6 purpose, intent, knowledge, recklessness, or
7 criminal negligence. Criminal intent must be
8 proven beyond a reasonable doubt. It is always a
9 matter that must be determined by the jury from the
10 circumstances surrounding the situation.

11 There is no way to prove intent to a
12 mathematical degree of certainty. And there is no
13 way that medical science can dissect a person's
14 brain, go in and figure out exactly what that
15 person had in mind at the time of these crimes.

16 So the law says that criminal intent may be
17 inferred from circumstances shown to have existed.
18 This is how you make the determination.

19 It is not necessary to establish intent by
20 direct or positive evidence, but it can be
21 established by inference in the same way that any
22 other fact may be established in a case. It is a
23 mental state, a conscious wrongdoing.

24 And here criminal intent is clear. The
25 Defendant planned and executed the murders of Tammy

1 Parker and Bryan Capnerhurst.

2 And you will consider all the evidence. It is
3 up to you to determine what the Defendant intended
4 to do based on the circumstances shown to have
5 existed.

6 It can arise from actions or failure to act.
7 It may arise from negligence, recklessness, or an
8 indifference to duty or consequences that are
9 considered by the law to be the equivalent of
10 criminal intent.

11 I submit that there is no doubt of the
12 Defendant's intent that day.

13 Now, you have heard evidence too, and this is
14 one of those things I talked about earlier, where
15 there is an exception for certain statements that
16 can come into a case. And you heard evidence and
17 testimony about the Defendant's written statement
18 in this case.

19 And I want to talk to you just a little bit
20 about the timeline of that statement, because we--
21 have the initial 9-1-1 call. Officers arrive at
22 the scene. He is advised of his rights on the
23 scene.

24 Investigators Major Smith and Matt Ellis come
25 by, talk to the Defendant. Once again, Major Smith

1 advises him of his rights. And then they go to
2 headquarters where the Defendant is again advised
3 of his rights. And at no point during this was the
4 Defendant in custody or under arrest.

5 Now, the judge has deemed that the statement
6 is admissible in court, but it is up to you to
7 still determine the voluntariness of that
8 statement.

9 And in this case you have heard some
10 testimony, and I guess some questions on
11 cross-examination, things of that nature, by
12 Defense counsel that would suggest or infer that
13 the Defendant's statement to law enforcement that
14 day wasn't voluntary.

15 Well, that just simply is not the case. It
16 absolutely was voluntary.

17 And when you consider the statement, you must
18 consider whether -- that the statement was not
19 caused by pressure, force, fear, threats, coercion
20 or intimidation, or by hope or promise of leniency
21 or reward of any kind.

22 In determining whether it was voluntary, you
23 should consider both the characteristics of the
24 Defendant -- and you saw him on the stand. And as
25 much as they want to make him out to be stupid or

1 dumb, he is clearly not a dumb guy. You can
2 consider the Defendant's education, his mental
3 ability or capacity, his IQ, intelligence, the
4 background and environment, the place and length of
5 detention, the nature of the questioning and the
6 advice, or lack thereof, of the Defendant -- to the
7 Defendant of his constitutional rights, including
8 but not limited to the right to remain silent, the
9 right that any statement could be used against him
10 in the court of law, and the right to have a lawyer
11 present, and that if he cannot afford a lawyer, one
12 would be appointed to represent him, and that he
13 could stop making the statement at any time.

14 You must carefully consider all of the
15 surrounding circumstances when deciding whether his
16 statement to law enforcement was voluntary.

17 Advice of Rights. Now, again, I remind you,
18 that 9-1-1 call during the Defendant's mental state
19 where he claims he was out of whack? Listen to
20 that call, because there is a lot of information in
21 it. He gave the gun to Bryan. It was that gun.
22 He apparently had time to see it. He gives you a
23 lot of information in that call.

24 And when law enforcement officers arrive on
25 scene, he is advised of these very same rights.

1 And then he is advised again of those rights. And
2 this is his written form which you will have to
3 take back there with you. And he waived those
4 rights. And his statement absolutely was
5 voluntary, because at that point he had to get his
6 story out. This was planned. The problem is with
7 this written statement that he wants to claim, oh,
8 my mental state was all messed up -- now, he
9 admitted he didn't have PTSD, or anything of that
10 nature. His mental state? He doesn't want this
11 statement because half of the evidence isn't out
12 yet. I submit that he thought they would just take
13 this statement at face value. But now, when we get
14 to this trial, this statement is no longer
15 voluntary.

16 Now, he puts Bryan Capnerhurst's motive out
17 there, but neglects to tell them about his
18 gambling, his affairs, other things of that nature.
19 And he lies. You are going to hear -- you heard
20 the testimony about the inconsistencies in his
21 statement.

22 Well, they continue throughout this case and
23 up to the point of trial. So make no mistake about
24 it: His statement was voluntary. But that is for
25 you to decide and consider.

1 You have also heard some testimony, and the
2 judge will instruct you, on prior inconsistent
3 statements. There has been evidence presented that
4 witnesses have made prior statements which are not
5 consistent with the witness's present testimony.
6 You may use this evidence to decide whether to
7 believe the witness. You may also use evidence of
8 the earlier contradictory statement to determine
9 the truth of those statements. It is up to you to
10 decide whether to believe the earlier statements or
11 the testimony given at trial or, I submit, none of
12 the above.

13 If a witness has shown to have knowingly
14 testified untruthfully concerning any material
15 matter, you may consider this in determining
16 whether to trust the witness's testimony as to
17 other matters. You may reject all of the testimony
18 of that witness, or give it all or part of the
19 weight that you think it deserves.

20 Now, I put two bullets up here for the
21 Defendant and B.P. [REDACTED].

22 Now, with respect to the Defendant, you heard
23 the testimony, numerous inconsistent statements,
24 and he lied time and time again. And these aren't
25 just little insignificant matters. They are

1 important, important facts and details in the case.

2 And B.P. [REDACTED], his 14-year-old daughter,
3 we saw her take the stand. And you know that she
4 lied. But whose idea do you think that was? She
5 never saw Bryan and the Defendant talking about a
6 gun. That meeting never happened.

7 And you saw what happened as she brought her
8 notes up to try and remember that story, because
9 you have that call, or you heard testimony about
10 that call where the Defendant, I submit, has put
11 her up to this to help him.

12 He is selfish. His own daughter. Put her up
13 here to lie. And let's be clear: Yes, she cried,
14 but she did lie.

15 Now, you have also heard from a number of
16 experts in this case. And expert testimony, as the
17 judge has instructed you, pretty much each time
18 that an expert witness takes the stand, normally
19 witnesses can't give opinions as to certain
20 matters, but based on education, training,
21 background, and things of that nature, an expert
22 that is deemed qualified can testify as to an
23 opinion.

24 And you heard from John Barron and you heard
25 from John Roberts in this case. You heard from

1 Terri Gleason. So you heard about firearms, GSR,
2 DNA, and a number of other things which my
3 co-counsel is going to address in detail.

4 But with respect to those witnesses, you
5 consider their testimony as you do any other
6 testimony in this case. And you weigh it and judge
7 it by the same factors.

8 Now, I saved this board for close to the end.
9 You heard from a number of witnesses. You heard
10 from the State's witnesses, to include the
11 responding officers, you heard from people who
12 observed the Defendant's behavior, you heard from
13 Lanny Gunter, Harry Benenhaley, people who loaned
14 him money. You heard from the investigators in the
15 case. A number of people. We've been in here for
16 a number of weeks. And it is ultimately up to you
17 to judge the credibility of each and every witness
18 that takes that stand.

19 And in doing so, you can believe some of what
20 a witness says, all of what a witness says, or you
21 don't have to believe anything that a witness says.
22 You can believe one against many, or many against
23 one. That decision is solely for you all
24 individually and collectively to decide.

25 But when doing so, we ask that you consider

1 several things: What was that witness's demeanor
2 on the stand? Was that witness hesitant or
3 forthright when testifying? Was the testimony of
4 that witness consistent within itself? Is that
5 testimony corroborated by other evidence in this
6 case? And perhaps most importantly, did that
7 witness have any reason to be biased or prejudiced?

8 I am going to leave that up here for a minute
9 because at this point I want to talk to you about
10 the Defendant's case.

11 Now, the Defendant has absolutely no -- no
12 reason -- no burden in this case. He doesn't have
13 to put up a case or any witnesses. But when he
14 chooses to put up a case and exercise his right to
15 put up a case, you judge the credibility of his
16 witnesses and his evidence, or lack thereof, by the
17 same standards that you do the State's evidence.

18 So consider those witnesses: Brad Spehl, the
19 MetLife guy; consider B.P. [REDACTED]; consider Wendy
20 Combs-Kiser; consider Sheri Armstrong; Robert
21 Bowers, and their expert testimony; and the
22 Defendant's own testimony at trial, which has been
23 different, and different than the numerous
24 statements he gave time and time again.

25 Now, the defense of self-defense has been

1 raised in this case. And self-defense is very
2 specific within our law. It is not just enough for
3 somebody to be, like, I was acting in self-defense,
4 or, I was in fear. We have certain requirements
5 that must be met.

6 And as I said earlier, this is not a case of
7 self-defense. But we have to disprove it beyond a
8 reasonable doubt.

9 And the following elements that have to be
10 required to establish self-defense is that: The
11 Defendant must be without fault in bringing on the
12 difficulty. And the Defendant was in or believed
13 himself to be in actual imminent danger of losing
14 his life or sustaining serious bodily injury. And
15 if his defense is based on his belief of imminent
16 danger, he must show that a reasonably prudent
17 person of ordinary firmness and courage would have
18 entertained the same belief and would have struck
19 the fatal blow in order to save himself.

20 Now, with respect to the Defense's
21 self-defense claim, that can only apply to Bryan
22 Capnerhurst, because he claims that he didn't kill
23 Tammy Parker.

24 And essentially, members of the jury, we're
25 going to talk about one more defense as well.

1 Either you believe the Defendant's 15 or so
2 different versions of what happened and it is
3 self-defense, which is a complete defense, and he
4 is not guilty, or you believe the scientific
5 evidence in this case, the forensic evidence in
6 this case. And then you can also consider the fact
7 that he lied time and time again.

8 I'll address this briefly. As I said, the
9 Defendant must be without fault in bringing on the
10 difficulty. If his conduct was the type which was
11 reasonably calculated to and did provoke the deadly
12 assault, the Defendant would be at fault in
13 bringing on the difficulty, but, as I said, without
14 fault, actual imminent danger, or belief of
15 imminent danger.

16 When you consider these, remember this is a
17 case of self-defense or it isn't. And it
18 absolutely is not.

19 Another defense that you will be charged on is
20 the defense of habitation. It essentially says
21 that if the Defendant or a member of the
22 Defendant's household is attacked in the
23 Defendant's own home, the Defendant may use force
24 which appears to be needed to protect himself or
25 his household from death or serious bodily injury.

1 And if a trespasser -- and I highlighted and
2 underlined here -- trespasser refuses to leave the
3 home when asked to leave, the Defendant may use the
4 necessary force to eject the trespasser.

5 If, in the effort to eject the trespasser, the
6 life or safety of the Defendant or a member of the
7 household is jeopardized, the Defendant may take
8 the life of the trespasser. The kind and degree of
9 force which are justified depends on the conduct of
10 the trespasser.

11 Bryan Capnerhurst at no point was a trespasser
12 in this case. And at no point, even by his own
13 testimony, did he ever -- was he ever asked to
14 leave.

15 And, again, we're kind of in the same position
16 with self-defense and the defense of habitation.
17 It either happened the way the Defendant said it
18 did and he didn't kill Tammy, Bryan killed Tammy,
19 or it happened the way the evidence, credible
20 evidence, in this case supports.

21 Now, there are two very important witnesses
22 who did not testify here today, and that is common
23 sense and human nature. And I ask that when you go
24 back to that jury room, you use your common sense
25 and what you know about human nature when you

1 decide this case.

2 And I submit that when you do, your verdict
3 will become clear.

4 There is a quote in this courthouse, it is
5 very small, on one of the back halls. And it is
6 framed. And I was reminded -- I saw it some time
7 ago, but I was reminded of it again as we started
8 this trial. And it is a quote by President
9 Theodore Roosevelt who said: No man is above the
10 law and no man is below it; and we ask no man's
11 permission when we require him to obey it.

12 Hold Brett Parker accountable. Truth is the
13 mother of justice. And it is your job, your duty
14 here today to find the truth and to speak justice.

15 And at the end of your deliberations, there
16 will be only one just verdict. And so I ask you
17 now for a verdict that the evidence supports and
18 that justice demands. I ask that you find the
19 Defendant, Brett Parker, guilty of killing his
20 wife, Tammy Parker, and guilty for killing his
21 friend and his co-worker, Bryan Capnerhurst.

22 Thank you.

23 THE COURT: Yes, sir?

24 MR. WHITLARK: May it please the Court?

25 THE COURT: Yes, sir.

CLOSING STATEMENT

MR. WHITLARK: Good morning.

THE JURY: Good morning.

MR. WHITLARK: Last night I started writing, trying to write a summary about this case. And when I got to the 10th or 12th page of it to talk about the evidence in this case, I started thinking about what has happened in here for the last three weeks. And I know you have been listening. And it has been painful at times, I know. But the truth of the matter is this: You didn't hear them talking just now about -- a whole lot about the evidence in this case. You know, verdicts are based on evidence. And the verdict in this case, if it is based on the evidence in this case, it is going to be not guilty, because there is just no way around this.

The first thing you look at, ladies and gentlemen, in this case is the fact that two eyewitnesses who were police officers saw this man holding a gun in his hand when they got there. They didn't have -- his hand wasn't sitting on it, his fingers were wrapped around it.

The next thing you look at is the GSR. They keep talking about GSR. And I hate to even say it

1 to you again, you heard it so many times. But the
2 man had enough GSR on his hand that the only way it
3 could have gotten there is if he is shooting a
4 9-millimeter seven times and then had the powder
5 off of the Taurus Judge on it.

6 And one thing that the SLED expert said, he
7 said he would feel comfortable with that. Y'all
8 know what he said, just like I do. He also said,
9 but I would be comfortable if it was a defense
10 thing too.

11 But the thing to remember is he didn't talk
12 about Brett Parker's hand. And the truth is, if
13 Brett Parker had shot that gun, that 9-millimeter,
14 seven times, like they are saying, his hand would
15 have been covered in it after he shot the Taurus,
16 and it wasn't.

17 And so, I mean, they have got an answer for
18 everything in this case, no matter what. And the
19 bottom line is, they say Tammy Parker has to be
20 dead to fit this theory about it. But simple
21 things you have got to look at.

22 You are going to see the evidence of the
23 Subway bill. We know what time she got there. She
24 got there right before 12:00. And she ate -- I
25 mean, I don't know how fast she eats, but if she is

1 the fastest eater in the world she still couldn't
2 have digested her food like they found at the
3 autopsy. Her food is digested. How can that be?
4 It can't be.

5 These are the kinds of things you need to look
6 at. I mean, I guess everybody forgot what James
7 Morgan, Bryan Capnerhurst's best friend, said. He
8 said he was obsessed with this and he had to have
9 this money. And I don't care if it was a dollar,
10 if a man -- somebody is obsessed with something,
11 they have got to have it. I mean, he said he was
12 going crazy about it. He said he -- you know, you
13 saw him put his hands in his face and say, you
14 know, he had a wife who was a spending addict and
15 that she, you know, had done it to him again. And
16 the man was just simply out of his mind. He was
17 obsessed. I mean, they just ignore that.

18 Have you noticed that they don't even talk
19 about that? They don't talk about the GSR. They
20 don't talk about the fact that they don't find DNA
21 from Brett Parker on this bag. That the shell case
22 thing, they stopped looking once they found Brett
23 Parker's fingerprint on it. And they could have
24 checked for DNA on that, and they all admit that
25 they didn't do that. Because when they found his

1 fingerprint, they said, there we go.

2 And I am going to tell you why. I have
3 already told you why. They found out he was a
4 bookie and they profiled him. And that is a fact.

5 And they talked to the two people that were
6 involved, Cindy Capnerhurst and James Morgan. And
7 what did they both say?

8 The man -- all he talked about for two weeks
9 was getting this money. He was going over there.
10 And there is going to be violence. I mean, this
11 non-violent fellow, his wife has admitted under
12 oath that he was going to commit a violent act.

13 And even James Morgan, his best friend, I call
14 Mr. Morgan a rain main, but he said he was going to
15 make issue about that money and he had to have it.

16 They don't really talk about it, you know?
17 You know why? Because Brett Parker is the only one
18 left alive here. And he told the truth. Did he
19 tell them where all his money was, I'm a bookie, I
20 have affairs, and all that? Because he didn't run
21 up to them and tell them all this he is a liar.

22 And, folks, he misrepresented facts to them.
23 There ain't no question about that. But what did
24 he tell them that was true? What happened. He
25 told them the truth. It all fits if you look at

1 the evidence.

2 I don't really know Brett Parker that good. I
3 met him some in this thing. And my good friend
4 called me, Mr. Fedor, and he said, Will you take a
5 look at this? And I did. And it became clear to
6 me what was going on.

7 And, you know, if you wake up some days and
8 you don't know what you are going to do or what you
9 are fighting for, but when I looked at this, I know
10 what I'm fighting against. This is oppressive
11 prosecution of this man after they profiled him.
12 And they poured it on. And the case had publicity
13 and it had notoriety and glamor. And they brought
14 the entire weight of the State down on this man's
15 head. And they didn't waste any time getting to it
16 either.

17 An hour after this happened they had him down
18 there questioning him. They downloaded his
19 telephone. And they heard from these two people.
20 And that was it for him.

21 I told you at the beginning of the case that
22 they put blinders on and tunnel vision. And that
23 is a fact. That is exactly what happened here.

24 They kept talking about, we're trying to fit a
25 square peg into a round hole. I mean, it is real

1 obvious that that is what they have been doing
2 here.

3 They changed testimony during trial, ladies
4 and gentlemen, during this trial. Talking about
5 that telephone and about is it in his right pocket
6 or left pocket. I mean, I made Major Smith read to
7 you from his report where Cindy Capnerhurst says,
8 he always carries it in his right pocket.

9 The policeman who got the thing, it was out of
10 his right pocket. Oh, okay, that's fine.

11 Now it is in his left pocket. Why? So they
12 can fit something else they found or they
13 decided -- because they don't think this other
14 thing they have been telling y'all is working real
15 good. I think, you know, I think y'all know that.
16 When your own expert admits it and says, you know
17 what, the guy probably did fire that
18 9-millimeter -- because that is where the case is
19 over.

20 They had these results six days later, this
21 powder on the hands. Six days later. And they
22 don't say a word about it in those reports. They
23 don't even want to talk about it. You know why?
24 Because it proves Brett Parker is telling the
25 truth, at least about that.

1 But you know why -- I don't like the way this
2 man was profiled. I don't like it one bit. It has
3 happened a lot in this country. And we are on the
4 verge of again being a great nation. And we're
5 doing the right things. But this kind of stuff has
6 got to be stopped.

7 If what you are saying as an innocent person
8 and you take it and just pour it on until you give
9 up -- a lot of times when I was in this trial when
10 it went on for days and days and hours, I mean, I
11 was about to give up. I was going to say, I can't
12 take no more.

13 I mean, they sat here and poured on evidence.
14 But what is it really? When you boil it down, what
15 did they put up here? Evidence that proves Brett
16 Parker is telling the truth.

17 But they don't -- they will bend it and
18 they'll smoke-and-mirror it as much as they can.

19 I mean, the first thing is -- I mean, the
20 evidence says this, but you have got to think about
21 the humanity of this thing.

22 They are saying that this man, who has been
23 married 15 years, who has got no history of
24 violence, he has got problems, he makes mistakes,
25 but he goes and buys lunch for his wife -- this is

1 premeditated, now -- and goes and sits down with
2 her and eats with her, and then just murders her.

3 I mean, I have done a lot of cases before and
4 I don't see many people that cold-blooded. I can
5 tell you this man is not cold-blooded like that.
6 It is impossible, in my opinion. Of course, you
7 know, that is no weight to you, but I have been
8 doing this for a long time.

9 MS. CAMPBELL: Objection, Your Honor. His
10 opinion. It is not proper.

11 MR. WHITLARK: I withdraw it. I'm sorry. I
12 already told them --

13 THE COURT: Sustained.

14 MR. WHITLARK: I know one thing. I know that
15 they targeted him. That is a fact.

16 And so what does that mean? Anything good for
17 him, they didn't even look at it or they forgot
18 about it. They called 152 witnesses up here, but,
19 you know what, they didn't call people that can do
20 anything good for Brett Parker, like his maid, who
21 said, I have never seen a gun in there, 14 years
22 they worked with them, or whatever.

23 And they didn't call -- they didn't give him a
24 fair shot on checking about this blind test and
25 all. They didn't even ask. Forty-three days

1 later, I mean, they are counting on this blind test
2 to prove something that can't be. But did they go
3 even take the time to be fair to this man? And
4 asked officers in the same building, you know, did
5 anybody look out of that blind or anything that day
6 when they were all in there, and plus the 43 days
7 after that? No. But they'll drive to Atlanta,
8 Georgia to talk to his prom date to get evidence
9 against him, but they can't even walk down the hall
10 and ask people that were in that house that day, By
11 the way, did you look out of those blinds?

12 And, of course, that test itself is just --
13 the objective test is negative or inconclusive.
14 And this stuff we are dealing with is microscopic.
15 You have to get an electron microscope to see it.
16 Transfer is easily done. And they found, like,
17 what I'd have to say are, you know, that are
18 molecules of lead, or something, but they didn't
19 check any other window blinds. That would have
20 been the fair thing to do. They didn't do it.
21 They didn't even ask did anybody else touch it.

22 And the toilet seat was up. Okay, he is
23 guilty of murder. That proves it. I mean, you
24 know, what -- if they asked that of all the people
25 there that have come in here and testified, of

1 these officers, they would have. Well, we didn't
2 use the bathroom. They were there for 24 hours and
3 nobody used the downstairs bathroom.

4 I said, okay, that's fine, I guess that means
5 he is a murderer.

6 I don't see how anybody can stand against what
7 has happened here. He can't stand against this
8 kind of -- this kind of pressure being brought down
9 here. They jumped all over Mr. Richard Ernest
10 about charging money to do this. This man has got
11 30 years of police experience. He is an expert.

12 I believe you heard Ms. Gleason, who used to
13 be under him down at the Georgia Bureau of
14 Investigation, and he testified honestly and he
15 testified very professionally, ladies and
16 gentlemen. And what he said was that in his
17 opinion that Bryan Capnerhurst fired that
18 9-millimeter pistol because he had enough GSR on
19 his hand to prove that along with the Taurus, that
20 Brett Parker did not fire that 9-millimeter. That
21 is what he said. He said in his opinion. But he
22 just didn't have the gunpowder molecules that they
23 found there. And they had all this six days later.
24 And then they took 97 days -- 97 -- to arrest this
25 man. Ninety-seven days. It don't make sense. It

1 don't add up.

2 If they were going to arrest him after this
3 blind test 43 days later, they didn't do that.
4 They waited another, whatever it was, 46 more days,
5 or whatever.

6 I mean, basically, ladies and gentlemen, they
7 tripped Brett Parker up on his testimony. We all
8 know that now. You know, he didn't say -- he lied
9 about an affair. I mean, and he didn't want to
10 tell them who all his gambling buddies were, his
11 clients and all that. But, you know, I don't agree
12 with what he did -- the way he did on that. But
13 you know what? I can understand it. I mean, I can
14 see him not wanting to say that, not wanting to
15 admit these things.

16 I told you at the beginning of the case what
17 you needed to do is look at the evidence in this
18 case, the hard evidence. And the hard evidence
19 shows that Brett Parker is telling the truth about
20 what happened there that day.

21 Now, I'm sorry that Bryan Capnerhurst was
22 obsessed with this money and that he looked worse
23 than he had looked in two weeks to his friends and
24 that he was -- they said he was happy he was going
25 to get it.

1 But I am going to tell you what. That fellow
2 went over there that day, and he did have that gun,
3 and he didn't tell anybody he had that gun. How
4 come nobody knew he had that gun? Well, I think we
5 all know why, don't you? You don't tell anybody
6 you have a gun for a few weeks because you are
7 going to use that gun if you don't get what you
8 want. That is what happened.

9 Tammy Parker was involved in the gambling
10 business. You didn't hear them talk a whole lot
11 about that either. The State did not want to say
12 that. They don't want her involved in it. She is
13 an angel, and all this. I think at this point we
14 know that she had the same kind of human failings
15 everybody does. But she was involved. And she
16 wasn't going to pay that. You heard James Morgan,
17 she ain't going to pay that \$6,100. So he is
18 already down from \$21,300, which is written down on
19 that piece of paper, and that makes him dead even
20 when you look at it. You know which two things.
21 You will see what I'm talking about. But she
22 already wasn't going to pay that.

23 And I think -- when you say -- you know what
24 he told James Morgan is he knew that. He knew
25 that. And when he went over there that day, you

1 know, he comes over there about 12:32, or whatever.
2 You know, her time of death was 12:36. That is
3 what they put down. And of course Bryan
4 Capnerhurst died at 12:40, about a minute or so
5 before Brett Parker called 9-1-1. And these are
6 facts. These are -- this is evidence.

7 And we didn't put a whole lot of evidence in.
8 You know why, ladies and gentlemen? This case
9 should have been over with very shortly after this
10 event happened, but it went on for 97 days. But
11 they don't -- they still don't have the evidence.
12 Still.

13 You can't change it. That is the thing about
14 it, ladies and gentlemen. And why he killed Tammy
15 Parker and why did he -- why was he going to do
16 this? He knew Brett Parker had been in some
17 trouble before about five or six years before this.
18 He knew that he made a half-hearted suicide
19 attempt. He knew that. Bryan Capnerhurst knew
20 that. He knew he wasn't going to work with him
21 anymore. That was a fact.

22 He also knew that if he shows -- he kept
23 talking about 9-1-1. You remember that? 9-1-1.
24 It is a funny thing about that, by the way. The
25 two people that he said was going to call 9-1-1 for

1 some trouble, you know, neither one of them did.
2 That is a real funny thing about it. That has
3 always stuck in my head. Neither one of them
4 called. They were going to call if they didn't
5 hear from him, but neither one of them called.
6 Nobody called 9-1-1. That is hours and hours
7 later. That is always -- that has always bothered
8 me.

9 But, anyway. Bryan Capnerhurst was obsessed
10 with this money. His best friend said so. His
11 wife said he was going to commit a violent act.
12 And he went over there that day, ladies and
13 gentlemen, and he killed Tammy Parker. He shot her
14 and killed her. And he was going to kill Brett.
15 He was going to wait and he was going get him to
16 open the safe. He had to keep him alive long
17 enough to do that. And as soon as he got that safe
18 open, he was going to shoot him in the head and put
19 that gun back in his hand. You know why? It would
20 have been a very neat trick. Because that gun
21 belonged to Brett Parker. That is Brett Parker's
22 gun. I don't know what you're talking about. I
23 ain't got no gun. He didn't tell nobody about it.
24 None of them called 9-1-1 when they talk about all
25 this trouble. These are funny things about this

1 case. Real funny.

2 They say that he didn't have a gambling
3 problem and he quit gambling in 1995. Bryan
4 Capnerhurst quit gambling in 1995, his wife said.
5 But she embezzled \$35,000 from a bank to pay his
6 gambling debts, is what she swore to in court. And
7 six or seven years after 1995. She knew what was
8 going on with him. And that is a misrepresentation
9 to say that in here, especially with the
10 seriousness of this matter and people's lives on
11 the line. She didn't want anybody to know what he
12 was doing or whether he was gambling or not.

13 I don't know -- we don't have any burden of
14 proving any of that. I don't have any burden of
15 proving that James Morgan hadn't had a job in so
16 long he can't -- he don't remember. But he does
17 know quite a bit about horse racing and fancy
18 baseball and stuff.

19 You know, he was a nice fellow. But when I
20 asked him whether or not he was in the gambling
21 business, he didn't give a real clear answer to me.
22 It wasn't clear to me where he works, how he lives,
23 and things. But, anyway.

24 One second please, Your Honor.

25 (Pause.)

1 MR. WHITLARK: Trying to fit a square peg into
2 a round hole. That is exactly what the State is
3 doing here. And once they set out on this thing
4 and they profiled him and they decided they were
5 going to prosecute him the first day, and there
6 wasn't no stopping them. And, you know, like I
7 said, it has happened time and time again.

8 And, you know, I feel bad about sitting up
9 here and talking this long to y'all about this,
10 because all you have got to do is look at this
11 evidence on this GSR, the evidence of where the gun
12 was fired from, in the doorway where you can see
13 both stairs in case Brett comes up either one of
14 them. These are facts. No DNA of Brett Parker on
15 that bag.

16 Oh, yeah, the bag. Let's talk about the bag.
17 His own co-worker said he always carried that bag
18 with him. And Brett Parker told the police the
19 same thing, that he always had that bag with him.
20 And he carried receipts.

21 You heard the Secret Service agent. Yes, the
22 ash pile. You know what they said? Because there
23 was an ash pile they burned receipts in. You know
24 the way it was characterized? Garbage pile. They
25 burn garbage in it. And I knew he was burning

1 those receipts in there. The Secret Service knew
2 it. They actually looked in there and found pieces
3 of it. And they said you would need a bag to carry
4 it. And he did do that.

5 It don't matter what Brett Parker says, they
6 are going to come up with something else that he
7 did this. It just ain't no stopping them.

8 It is the weight of an oppressive prosecution,
9 ladies and gentlemen. Brett Parker was alive at
10 that house and he was a bookie and they just -- he
11 did some things -- he misstepped the first couple
12 of hours, and that was it for him.

13 And, you know, I talked to you about the
14 importance of jury service. You have heard it.
15 And it is important. And the reason it is
16 important is because it is the only thing that
17 stands between this kind of prosecution and a
18 citizen -- this -- the jury. It is the only thing
19 that can save somebody that this is being done to.
20 And this is what is going on here.

21 And Brett Parker did not kill his wife, ladies
22 and gentlemen. He did not kill his wife. He
23 killed Bryan Capnerhurst because he had to. But
24 Bryan Capnerhurst was going to for sure kill him.
25 There ain't no doubt about that.

1 And they call it a murder-suicide. 9-1-1.
2 Oh, my God, I found a murder-suicide. 80 or 90 --
3 you know what they didn't prove in this case? I
4 forgot to say this. I'm probably not going to say
5 everything I should say to you. Mr. Fedor is going
6 to come up here and talk to you about a lot of
7 stuff. But -- I lost my train of thought for a
8 second. I wanted to tell you, it was important
9 too, I need to remember it.

10 (Pause.)

11 MR. WHITLARK: Oh, yeah. You know what? I
12 asked -- you know, y'all saw me cross-examine a lot
13 of police in this case, and I'm hoping you remember
14 what I basically had to make them say the truth
15 about things. And they had to admit it. I think I
16 made every one admit something that helped Brett
17 Parker, because somebody needed to do it.

18 But one of the things is this: There is no
19 evidence that Brett Parker knew Bryan Capnerhurst
20 was obsessed. They didn't see each other for two
21 weeks about. And Brett Parker proved it.

22 I asked him, you got any proof Brett Parker
23 knew he was obsessed? Do you have any proof that
24 they are talking about how much money is in his
25 safe? Eighty to 100 thousand dollars.

1 Brett Parker didn't know this. Brett Parker
2 didn't know that he was going to commit a violent
3 act or that he was so mad about this he was going
4 to take issue with it. Brett Parker did not know
5 this. He hadn't talked to him.

6 I keep thinking I'm going to forget something
7 important to tell you, but really the important
8 thing to remember is that, as a jury, you stand --
9 and you are the only one standing between this kind
10 of oppressive prosecution and somebody who has
11 been -- he has been identified as a criminal. He
12 has been bookmarked and put into a hole, he is a
13 criminal. And they will do anything to get him.
14 And you lose your rights then, and you shouldn't,
15 because of what happened here. And here we are. I
16 mean, they are still doing it.

17 They are still changing stories right in the
18 middle of this trial. This stuff about, he was
19 talking about the insurance, he was talking about
20 this. I mean, look at the source of this
21 information.

22 First of all, you may remember, I asked these
23 officers up here, I said, show me where that is in
24 your report. All of them. Every investigator up
25 here. Not one of them could, about what the

1 Staples fellow said.

2 I mean, if he had told them that, if that man
3 had told him he was talking about, change your
4 testimony and give me all -- and help me out with
5 the life insurance and I know how much it is, that
6 would have been the front page of these reports:
7 We got him now. They ain't heard a word about it
8 till this trial started.

9 There is a lot of stuff like that in this
10 case, ladies and gentlemen. A lot of things. Like
11 that telephone, I told you, I told you there was
12 something hanky-panky about that. I am telling you
13 right now. And they are going to get up here and
14 talk about there was some kind of 9-1-1 misdial,
15 you know. There is a lot of hanky-panky with that
16 telephone.

17 Y'all saw me focus on it. And that was for a
18 reason. Because when I was looking through all the
19 stuff, I saw it. I saw they were doing something
20 with it.

21 And I said, well, you know, I want to know.
22 You are not supposed to be touching that man.

23 But let me just leave you with this. Those
24 two officers came in here and saw that man holding
25 that gun, holding that gun in his hand. And they

1 base this whole case -- and I forgot -- I forgot,
2 ladies and gentlemen, I put this out of my mind --
3 I swear this is the last thing I am going to say.
4 Dr. Marcus. That man said there is no way he could
5 have held that gun in his hand.

6 And I said, well, tell me a little bit about
7 the arm and tell me about some stuff. He couldn't
8 name a single muscle in the arm. Or a nerve or a
9 tendon, or anything else.

10 And I asked him, do you know what cadaveric
11 rigidity is, post-mortem rigidity, or cadaveric
12 spasms, you know, you call it death grip.

13 He said, there is no way he could have held
14 it. That man didn't know what he was talking
15 about. I made him read it to you. I made him read
16 this to you: Cadaveric spasm often crystalizes the
17 last activity one did prior to death and is
18 therefore significant in forensic investigations,
19 for example, holding onto a knife tightly.

20 And I said to him: Or a gun?

21 And he said: Yes.

22 He was wrong, ladies and gentlemen. And there
23 is nothing in his report about that. You know why?
24 They had to have something when they went back. It
25 wasn't in his report either, and he admitted it.

1 There is so many things in here. And a lot of
2 times -- I mean, I wanted to get up and run out of
3 this courtroom sometimes during these last three
4 weeks, I just couldn't take it anymore. But I had
5 to stay here because I believe in our system and I
6 believe -- and I know this is wrong. And I know he
7 didn't kill his wife. And I know he didn't.

8 Listen to what Mr. Fedor tells you about what
9 the law is and how you should apply it in this
10 case.

11 Ladies and gentlemen, when you come to the end
12 of this thing you remember -- I told Mr. Fedor I
13 was going to tell one story, if he didn't mind,
14 because he is the one who taught me a lot of stuff
15 when I was a young lawyer.

16 There was a man named Martin Niemoller, who
17 was a philosopher in Germany during the 30s right
18 before the war started, and he wrote this.

19 He said: First they came for the Jews. And I
20 didn't speak up because I wasn't a Jew. Then they
21 came for the trade unionists. And I didn't speak
22 up. I wasn't in the union. So then they came for
23 the Catholics. And I didn't speak up because I was
24 Protestant. Then they came for me. And by that
25 time there was no one left to stand up.

1 Ladies and gentlemen, stand up for Brett
2 Parker in this case. He is an innocent man.

3 Thank you.

4 CLOSING STATEMENT

5 MR. FEDOR: Good afternoon.

6 THE JURY: Good afternoon.

7 MR. FEDOR: As an officer of this court and a
8 senior officer of this court, it now comes my time
9 to talk about the law and the facts in this case.

10 First, as did the Solicitor, I want to thank
11 you for all the time and the attention you have
12 paid during this case.

13 It is the most important case in the history
14 of the world for Brett Parker. And it is also the
15 most important case you people will ever sit on.
16 You are the fortress that stands between truth and
17 non-truth.

18 And you have a tremendous responsibility here
19 today. You have in your hands the life of a fellow
20 citizen.

21 This trial is not a case of two sets of
22 lawyers, one against another. Your job is to
23 render justice and follow the laws that our judge
24 will give to you. But it is not a popularity
25 contest between one lawyer and other lawyers. It

1 is a search for the truth.

2 Your job today is to bring justice and, as our
3 law commands you, if you have any reasonable doubt
4 in this case to a moral certainty, you must find
5 Brett not guilty. And we're going to show you a
6 ton of them.

7 This is the first time we have been able to
8 speak to you as a jury. The Prosecution tells you
9 that this case -- this man has been indicted by the
10 Grand Jury. Let me tell you something about the
11 Grand Jury. It is 18 people or more as opposed to
12 you 12. But there is a great difference in the
13 Grand Jury and you.

14 First of all, we had no right to be there. We
15 couldn't even ask a question. That is the system.
16 We had no right to present evidence as we did in
17 this case. That's the system. Brett Parker wasn't
18 allowed to be there. This is the first time he has
19 faced a jury. This isn't a Grand Jury that we love
20 and respect like we do a trial jury.

21 It has been said in South Carolina a
22 Prosecutor could indict a ham sandwich if he wanted
23 to, because we're not allowed to be there. I
24 wasn't allowed to be there to ask any questions.
25 And this is the first time that we have that right.

1 Now, you have heard in this case and you know
2 that the Prosecution had over 100 deputies working
3 on this case. They have listed in their original
4 questions to be asked by the judge did anybody know
5 any of these witnesses. Two hundred and fifty
6 people are on this list. All the SLED, all the
7 FBI, all the Treasury Department, all of the
8 forensic people that they hired, they have all of
9 these people. And all Brett had was Mark Whitlark
10 and myself.

11 But today he has got something more. He's got
12 the truth, and he has got a jury. And we thank you
13 for being here.

14 There are certain rights that a man has when
15 he comes to trial that cannot be taken away by the
16 Prosecution or by anybody else in our system, and
17 it has been working for 200 years.

18 First of all, Brett Parker, when he came into
19 this jury room to face you people, all through the
20 trial, and when he sits there right now, he is
21 presumed to be innocent. And every piece of
22 evidence that comes into this case, every piece of
23 evidence that you heard from that stand, if it is
24 able to be interpreted in two ways, he must be
25 given the benefit of the presumption of innocence.

1 Secondly, the burden of proof in this case --
2 and it is a heavy, heavy burden -- is upon the
3 Prosecution. They have to convict you -- convince
4 you -- of everything they have said.

5 Now, many of you may have sat on a civil jury
6 before, but in a civil jury case as compared to a
7 criminal case, the scales of justice start
8 completely even.

9 And I have tried the majority of my life civil
10 cases. But in this case, a civil case, which it is
11 not, all you have to do is prove it by tilting of
12 the scale, 51 percent to 49 percent.

13 But in a criminal case, and as Her Honor will
14 instruct you, Brett Parker comes into this
15 courtroom with the scales tilted 100 percent in his
16 favor. And every bit of evidence that comes to
17 that stand, you must assume he is not guilty. But
18 to convict him, the Prosecution has to pull that
19 scale down completely, 100 percent.

20 If we were playing a football game, in a civil
21 case you have to win 21 to 20. In a criminal case,
22 you have got to win 100 to zero.

23 Question yourself: Do you think they have
24 proven 100 percent of what they said?

25 And the final thing Her Honor will instruct

1 you, they have to prove Parker's guilt beyond a
2 reasonable doubt and to a moral certainty. He is
3 presumed to have that right, and he has it in its
4 entirety.

5 Now, what do we have in this case? We have an
6 act of self-defense and the murder of Tammy Parker
7 and Bryan Capnerhurst. Those are the facts that
8 have been proved.

9 Now, this incident happened April 13th, 2012.
10 No arrest was made for 97 days. Of course, they
11 had these 250 folks working night and day to find
12 something. Because of the situation and the
13 publicity, they had to indict the person they
14 indicted, Brett Parker.

15 And in the arrest warrant it says as
16 follows --

17 MS. CAMPBELL: Objection, Your Honor. I'm
18 sorry, it is just not in evidence, and I don't
19 think he can read from it.

20 MR. FEDOR: He was indicted and he was
21 arrested.

22 THE COURT: Any testimony regarding that?

23 MS. CAMPBELL: No, ma'am.

24 THE COURT: All right, the objection is
25 sustained.

1 MS. CAMPBELL: Thank you.

2 THE COURT: All right.

3 MR. FEDOR: Ninety-seven days later they
4 arrested Brett Parker.

5 Many people have difficulties explaining and
6 understanding why this case must be proven beyond
7 all reasonable doubt and to a moral certainty.

8 The reason is, if a mistake is made and a man
9 is put into the penitentiary for life, it is a
10 horrible thing.

11 MS. CAMPBELL: Objection, Your Honor. May we
12 approach?

13 THE COURT: Sustained.

14 MR. FEDOR: If a man is arrested --

15 THE COURT: Hold on. Sustained. Let me see
16 y'all.

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

20 THE COURT: All right, ladies and gentlemen of
21 the jury, I am going to ask you to disregard that
22 last statement.

23 All right, yes, sir, you may continue.

24 The objection is sustained.

25 MR. FEDOR: People think if we make a mistake

1 in this case the Supreme Court --

2 MS. CAMPBELL: Objection, Your Honor. Same
3 thing.

4 THE COURT: Sustained.

5 MR. FEDOR: The judge will charge you on
6 reasonable doubt. That is her duty. And your duty
7 is to listen to her. But in this case there is not
8 one doubt, there are many doubts.

9 Suppose you have a house and you are going to
10 buy it for your family and it has a crack in the
11 foundation. If you find one crack, one crack in
12 the Prosecution's case, under your duty as jurors
13 you must find Brett not guilty.

14 Now, I had an old teacher at law school who
15 taught me a theory about reasonable doubt. And
16 this is that theory: Suppose you have a shoebox
17 like so (indicating). And you put a cat inside
18 that box. And you put a mouse inside that box.
19 And you leave the room and you come back in 30
20 minutes and you open the box. And what do you
21 have? You have a cat and no mouse.

22 Now, that is circumstantial evidence. It is
23 assumed and presumed that the cat ate the mouse.

24 But suppose you take that same box and you put
25 another cat in that box and another mouse in that

1 box and you leave the room for 30 seconds, 30
2 minutes, 30 days, you come back, you open the box,
3 you see the cat, but you see a hole in the corner
4 of the box. Did the cat eat the mouse or did the
5 the cat let the mouse escape because he got through
6 the hole in the box? And that is what your
7 situation is here today.

8 You have got to understand that if there is
9 reasonable doubt -- a hole in that box -- you must
10 find an accused person under our law not guilty.

11 Now, talking about reasonable doubt, let's go
12 through a lot of the holes in the Prosecution's
13 case. The Book of Isaiah put it best.

14 MS. CAMPBELL: Objection, Your Honor.

15 THE COURT: Sustained.

16 MR. FEDOR: All right. Come, let us reason
17 together. Which is the way the world's problems
18 should be solved.

19 Now, the first thing, as I have already
20 mentioned, 97 days and they couldn't find an
21 answer. And they still haven't found an answer to
22 this case.

23 Now, you heard the testimony of Brad Spehl,
24 the insurance man from MetLife, who is the general
25 manager of the company. He testified that when

1 this incident occurred he was notified by his
2 company to get on the case and help Brett Parker
3 with the paperwork.

4 He did so. He hadn't talked to Brett in
5 several years. He did state to you that two years
6 before this he tried to sell Brett Parker insurance
7 on his wife, and Brett says, I don't want any of
8 that, this is not for me.

9 And he testified to the fact that when he
10 called Brett and they set up an appointment and
11 Brett came in, he was absolutely stone-cold knocked
12 down by the amount of insurance his wife had.

13 Brad Spehl said Brett didn't know what his
14 wife had. Didn't know at all. So he helped him
15 with the paperwork, submitted it to the company,
16 continued to call and work with Brett Parker.

17 He called him back in and said, I don't know
18 what to do with this money, I want to give it to my
19 children. And he did.

20 You heard the attorney, David Sojourner, said
21 he set up the accounts for the children. The money
22 was sent to the children. And it is there today.

23 By signing disclaimers in South Carolina or in
24 any state, you cannot touch that money ever again
25 as long as you live.

1 He didn't kill his wife for money. If he did,
2 he would have certainly tried to keep it. But what
3 did he do? He set up accounts for his lovely
4 children.

5 And then you had a fellow who got up on this
6 stand by the name of Ben Staples. Now, I have read
7 probably 2000 pages of reports in this case. Never
8 to the time he got on that stand did he ever say to
9 anybody, oh, yeah, I heard Brett talk about the
10 money. That is not true. It is a bold-faced lie.

11 And you will also learn that this stellar
12 gentleman was having an affair with Brett's wife
13 that Brett didn't know about until Leon Lott told
14 him about it.

15 Then he tried to convince you, well, I quit
16 having an affair in 2010 and I've been a wonderful
17 fellow ever since. Do you believe that hogwash?

18 Brett didn't know about this money. When he
19 found out about it he left it to his children and
20 signed all the necessary papers that completely
21 show he was not doing any killing for murder[sic].

22 Now, we have another hole in the cat box over
23 here. Do you think that anybody would shoot to
24 death his wife when his children are expected home
25 in an hour to an hour and a half? That is just

1 ludicrous. Do you think he would kill his wife
2 with all this gambling paraphernalia in his house?
3 He never tried to hide a thing.

4 Now, you saw Brett on the stand and you heard
5 the testimony. And I really have learned to like
6 Brett a great deal during this trial. Not just
7 because he is a client, but because he is a good
8 man. Granted, he was a bookie. This is a case of
9 murder by gambling, is all it is. He had an
10 affair. So he did. I hope the Lord will forgive
11 him. But that is something for you to consider,
12 but it is not a reason to convict him of murder.

13 Now, why do you think -- another hole in the
14 box -- a man would kill his wife, the mother of his
15 children, when she is making \$160,000 a year to
16 support the family and to support the children,
17 kill her, in cold blood, and she is the goose that
18 lays the golden egg? I mean, that is just rank
19 stupidity to think that anybody would do that.

20 If I had a wife making \$160,000 a year, do you
21 think I would continue practicing law out here? It
22 is just ludicrous to think it.

23 And you have to put into your thought process
24 the character of Brett.

25 Now, you heard his dearest friend from

1 childhood, Robert Bowers, testify from this stand.
2 He said that Brett was one of the soft-heartedest
3 fellows he had ever seen. They ate at each other's
4 home. They lived and grew up together for 30
5 years. And he testified, there is no way Brett
6 Parker could have killed any human being. He never
7 even had a fist-fight in his life. I hate to say
8 it, but he is a milk toast fellow.

9 And they say -- and I wrote this down before,
10 and I'll call it to your attention now -- this is
11 from the records of the Prosecution.

12 Bryan Capnerhurst arrived at 12:31:55. They
13 say 12:32. Their own records that they then try to
14 say it was just an estimate, Tammy Parker was dead
15 at 12:36. Capnerhurst was dead at 12:40. In a
16 panic, Brett called 9-1-1 at 12:41. That is a
17 total of nine minutes it took this incident to end.

18 Now, Brett -- and you have heard from him, the
19 testimony and the cross-examination -- he is a nice
20 fellow, but he is not an Einstein. And neither am
21 I. I'm just a guy with an average IQ who practices
22 law. But I couldn't possibly think to set up this
23 scenario where I would change the pistol and put it
24 in the man's hand, do all this other stuff in nine
25 minutes. It is just impossible. And it is their

1 records.

2 Now, what do we really have? And they want to
3 talk about forensic evidence. Now, they took, at
4 my count, and it might be incorrect, 1,123
5 photographs of the inside of this house. It took
6 them hours. But in this house, when they took
7 those photographs, not one picture did they have --
8 that is the first thing an officer does in a murder
9 case, you take a picture of where the pistols
10 are -- not one picture did they have showing the
11 pistol in Capnerhurst's left hand. But you did
12 have two officers from the Richland County
13 Sheriff's Department that testified they saw the
14 pistol in Capnerhurst's left hand and they had to
15 shake it three times to get the gun out of his hand
16 because they thought he would rise up from the dead
17 and shoot somebody, I guess, but they had to shake
18 it three times.

19 And it has been proven over and over and over
20 in this case that Capnerhurst had gunshot residue
21 galore on his left hand where they found the pistol
22 before they shook it loose.

23 Now, do you think that is a reasonable doubt?
24 And nobody has contradicted that. Their own
25 officers took the pistol from his hand, and they

1 had pounds of gunshot residue on his hand. And how
2 much more gunshot residue did they shake loose when
3 they are shaking his hand? Nobody has disproved
4 that, and that is the theory of the case. The gun
5 was in Capnerhurst's left hand when he shot him.

6 Now, if they think a man is going to -- and
7 they insinuate to you and, in fact, they state to
8 you Brett Parker shot Tammy with the gun, the
9 9-millimeter pistol that was found in Capnerhurst's
10 hand, then took that gun, after he killed
11 Capnerhurst, and put it into his left hand and
12 jammed the fingers around it.

13 That does not happen in real life. And this
14 is a fantasy land prosecution. It is not a true
15 prosecution.

16 It has been shown the day of this incident,
17 the conduct of Brett Parker and the conduct of
18 Capnerhurst.

19 So what do we have with Brett Parker that day?
20 He gets up in the morning. He goes to work. He
21 stops at his mom's place of employment about
22 11:00 o'clock. He is introduced to her new boss,
23 Fred Green, who testified from that stand. He
24 talks with him about ten minutes, gets to know the
25 fellow. And two people from his place of

1 employment testified without a doubt he was out at
2 his place of employment that morning repairing a
3 wheelchair. Shortly after he goes and gets the
4 lunch for he and his wife.

5 Do you think that is a cold-blooded killer
6 that goes out and fixes wheelchairs?

7 And what do we have with Capnerhurst that
8 morning? Six or seven telephone calls to his
9 friend Morgan in North Carolina telling him, I'm
10 going to get that money today. What do you think
11 is going to happen? And Morgan testifies -- this
12 is his words -- he was obsessed with getting that
13 money.

14 He tells -- it is his wife's testimony that
15 there was going to be violence over there that day.
16 It might just be a fist-fight, but this is going to
17 be violence. This comes from the Prosecution.
18 Brett had no idea there was going to be any
19 violence. They had been friends for six, seven
20 years, and nothing like that occurred.

21 And Capnerhurst and his wife knew Brett. They
22 thought he had 80 to \$100,000 in the safe.

23 I said from the very beginning, this is a
24 robbery that went bad. And that is exactly what
25 did happen that day.

1 They are trying to really convict an innocent
2 man by throwing every bit of so-called evidence
3 they had into this case. They spent three weeks.
4 You sat there and I sat there generally bored to
5 death about what they are trying to prove. Three
6 weeks. And they don't have any more evidence now
7 than they had at the beginning of this trial. At
8 the beginning of the 97-day investigation.

9 And what did we do? We took two days to put
10 the whole case up before you. The case should have
11 been stopped when Brett told the man, I didn't know
12 how much money my wife had on insurance. I'm
13 shocked. And Brad continually, the insurance man,
14 said, this is what it is, I'll do all the work for
15 you.

16 Is that reasonable doubt?

17 I took this out of the police records that
18 were given to us: Bryan knew where the safe was
19 and where the safe was hidden. Brett would have 80
20 to \$100,000.

21 Does that solidify what we have been telling
22 you from the get-go?

23 And the records that were given to us:
24 Gunshot wounds. Gunshot residue. And this is
25 police reports.

1 One gunshot residue kit from the interior of
2 the house. The results are inconclusive.

3 One particle lifted from the side blind
4 handle. No gunshot was found.

5 One particular label lifted indoor handle. No
6 gunshot residue was found.

7 The blind handle. The results are
8 inconclusive.

9 The blind string. No gunshot residue was
10 found.

11 One particle lifted in Blind Number 6. The
12 results are inconclusive.

13 They want you to believe the case should be
14 considered closed because they found the particle
15 43 days later on a blind.

16 You heard the expert from Texas, one of the
17 most renowned experts in the country on gunshot
18 residue, and he said, 43 days later? Good Lord,
19 anything could have transferred from the
20 circulatory systems of the fans and the air
21 conditioning, from anything. That proves nothing,
22 according to one of the greatest experts ever in
23 this country. And you heard his credentials.

24 You heard the statement testified to, in
25 addition to the statement about the day this

1 happened. An hour or so after this horrific
2 situation, they took Brett to the police station.
3 Of course, what do you think a man's state of mind
4 is when he has just seen his wife murdered and
5 kills another fellow? Do you think he was
6 absolutely in good shape at that time to talk about
7 it, but he was just asked, tell me what happened
8 inside the house.

9 And he told them. And he has not changed that
10 statement from that date until today. He has never
11 changed that statement. He has told what happened
12 inside the house.

13 Now, they have hammered him because he
14 couldn't remember incidences about who he was
15 gambling with and what the money was, and so forth.
16 That is not important in this case. Granted, if he
17 didn't tell the truth, he didn't tell the truth.
18 But that has nothing to do with the murders.

19 There is an old police adage: Arrest made,
20 case closed. Well, this case ain't closed yet.
21 Because they don't have the facts to prove an
22 innocent man is guilty.

23 There is also another thing they always talk
24 about: Well, we didn't get it exactly right, but
25 it is close enough for government work. That is

1 the statement that is made often.

2 Well, this case must be proven beyond a
3 reasonable doubt, and it isn't close enough for
4 government work. You have got to hit every nail on
5 the head, and they haven't done so.

6 And let me ask you, do you believe you would
7 want to be treated by a doctor --

8 MS. CAMPBELL: Objection.

9 THE COURT: Sustained.

10 MR. FEDOR: Now, they also made, they thought,
11 gains by saying Brett's daughter B.P. [REDACTED], the young
12 lady you saw, got on that stand and lied.

13 She didn't lie at all. And it is not her
14 fault she was up there. She wanted to be there,
15 but it was my decision, Fedor's decision. She
16 wanted to tell her daddy was innocent and tell what
17 happened that date. And if you blame it on
18 anybody, blame it on her dumb lawyer, Fedor. But
19 it didn't happen that way. She was a truthful
20 witness. I wanted her up there to show her daddy
21 and to show the world she believed that her daddy
22 is innocent because she knows her daddy and she has
23 been with him forever. He doesn't lie to her. And
24 she doesn't lie under oath.

25 They called this young lady a liar just

1 because she told the truth that didn't fit their
2 Disney World theory of what happened in this case.

3 Now, with all the stuff they threw in this
4 case, three weeks' worth, it is the ole situation
5 of, let's throw how much mud we can against a man
6 and hope some of it sticks. It didn't stick in
7 this case, because this man is innocent.

8 And the circumstantial evidence, the
9 Prosecutor tried to show you that circumstantial
10 evidence is just as good as direct evidence.

11 Well, think that if you want to. But in
12 circumstantial evidence you have got to connect all
13 the dots. And there must not be another reasonable
14 hypothesis.

15 MS. CAMPBELL: Objection, Your Honor.

16 THE COURT: Sustained.

17 MR. FEDOR: A man's life is involved --

18 MS. CAMPBELL: Objection, Your Honor.

19 THE COURT: Sustained.

20 MR. FEDOR: I haven't said anything yet,
21 Judge.

22 THE COURT: Let me see you.

23 (WHEREUPON, a bench conference was held
24 in the presence of the jury but out of
25 the hearing of the jury.)

1 THE COURT: All right, ladies and gentlemen of
2 the jury, please disregard the last comment.

3 The objection is sustained.

4 Yes, sir, Mr. Fedor, you may continue.

5 MR. FEDOR: When I finish, the Prosecutor, who
6 under our law has the burden of proof, gets up and
7 asks to speak. I cannot respond to anything the
8 Prosecutor says. I will sit over there grinding my
9 teeth because I know I could get up and answer
10 anything they say, but I do not have that
11 opportunity. This is the last opportunity I have
12 to speak.

13 But take my place. You are every bit as wise
14 and every bit as knowledgeable and have as much
15 wisdom as I ever have had, you answer for me the
16 questions she puts to try to get beyond a
17 reasonable doubt. You answer for me as you know
18 that I would answer.

19 MS. CAMPBELL: Objection, Your Honor.

20 THE COURT: All right.

21 MS. CAMPBELL: I don't think he can put jurors
22 in someone else's role.

23 THE COURT: Objection sustained.

24 MR. FEDOR: The Prosecutor wants to win. That
25 is her job. And she is good. And I admire her

1 ability, and the whole prosecution team. But her
2 job is done when justice is done. And what I have
3 said about reasonable doubt, she will agree with.
4 And she will also tell you, if you have a
5 reasonable doubt on any of these factors, you must
6 find Brett Parker not guilty.

7 On the wall of the oldest courthouse in
8 America it says this: The State never loses, for
9 when justice is done to the least of our citizens,
10 the State always wins.

11 When you go back into your jury room, look at
12 everything that has been produced in this trial, in
13 this case. Do not commit injustice.

14 I spent over half my life in courtrooms in
15 America, in South Carolina, and I have complete and
16 utter faith in our jury system, simply because it
17 works.

18 And tomorrow morning when you wake up, fix
19 your hair or shave or get ready for the day's work,
20 look deeply into your own eyes and say to yourself:
21 Yes, I found the truth. Yes, I did what I should
22 have done. Yes, I did not convict an innocent man.

23 Send Brett Parker home to raise these two
24 beautiful children. Give him back his reputation
25 as a good man, not as a murderer.

1 Several hundred years ago in America there was
2 an Indian tribe. The tribe had a strong, old, wise
3 Indian chief.

4 And a young brave just coming into his manhood
5 said, I want to take this tribe over. The old man
6 is too old.

7 So he said, I'm going to catch a bird and I'm
8 going to take it to the next council meeting. And
9 I'll go before the chief and I will say, Old man,
10 what do I have in my hands?

11 He'll say: You have a bird.

12 And is it alive or dead?

13 If he says, It is alive, I will crush the
14 bird.

15 If he says, It is dead, I will open my hands
16 and away the bird will fly.

17 So the young brave caught that bird and he
18 took it to the council meeting and went up to the
19 old chief and said, Old man, what do I have in my
20 hands?

21 And the chief of the great tribe said, My son,
22 you have a bird.

23 Is it alive or dead?

24 The old chief looked at him with tears of
25 wisdom and knowledge rolling down his cheeks, and

1 said, My son, the bird is in your hands.

2 And, ladies and gentlemen, the life of Brett
3 Parker is in your hands.

4 And I ask you, with all my heart and all the
5 love and faith I have in our jury system, to send
6 Brett back to his family, and don't let this
7 injustice continue.

8 Thank you.

9 THE COURT: All right, ladies and gentlemen of
10 the jury, we've been going over two hours, so we
11 are going to take a break. We are going to take
12 about a five minute bathroom break. I'm sure your
13 food may be back there, but we're going to keep
14 going. And then we'll give you a break, a lunch
15 break. We will take about five minutes to use the
16 restroom real quick.

17 All right. Thank you.

18 (WHEREUPON, the jury retires to the jury
19 room at 1:23 p.m.)

20 THE COURT: All right, we'll take about five
21 minutes. We will take about five minutes. And I
22 will just tell everybody -- I will go ahead and
23 give y'all a heads-up, that Ms. Campbell will do
24 her closing, and then I'm going straight into the
25 charge on the law. There will be a brief moment,

1 but once the charge on the law takes place, the
2 doors will be locked, so you will not be able to
3 leave out of the courtroom. So if you are going to
4 go, you are going to need to leave right after she
5 finishes. I will give a short break for people to
6 leave, but they will lock the doors at that point.

7 (WHEREUPON, a break was taken.)

8 THE COURT: Jurors are important, important
9 people in here today, and they said they wanted to
10 eat. I gave them a couple of minutes to eat their
11 lunch that was sitting back there. They said they
12 were hungry and asked if they could they eat. So
13 they should be finishing up. And we will be ready
14 to start.

15 Can I see the lawyers real quick?

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

19 THE COURT: All right, I'm going to bring them
20 in.

21 (WHEREUPON, the jury came into open
22 court at 2:18 p.m.)

23 THE BAILIFF: The jury is seated, Your Honor.

24 THE COURT: All right, ladies and gentlemen of
25 the jury, I hope you got to take a couple of bites

1 of your lunch. And we'll hold it back there for
2 you.

3 We'll continue on with Ms. Campbell with her
4 closing argument on behalf of the State.

5 Yes, ma'am.

6 MS. CAMPBELL: May it please the Court?

7 CLOSING STATEMENT

8 MS. CAMPBELL: Good afternoon.

9 THE JURY: Good afternoon.

10 MS. CAMPBELL: In every case when preparing
11 for trial you try and anticipate what the defense
12 may be. And typically in a murder case it is
13 usually one of two or three options.

14 Number One, ID is the issue. Perhaps we have
15 the wrong person. Maybe there is a single
16 eyewitness who just misidentified the person who is
17 on trial here today. Or in some cases it can be
18 that actually this isn't actually a murder at all.
19 It is merely like a drug deal gone bad. It is a
20 manslaughter. Or some lesser included. Or in many
21 cases it is a case of self-defense.

22 And when I first looked at this case, that is
23 what it started out to be, a case of self-defense,
24 with a rather bizarre twist in which this
25 Defendant's best friend, for some unknown reason,

1 decided to come to his house on the afternoon of
2 April the 13th, that Friday the 13th, with the
3 intent to murder his wife and ultimately him for
4 money.

5 But as this case continued, it didn't just
6 seem that simple anymore, because, very simply,
7 under that theory, there are only two possibilities
8 in this case: Either, Number One, Brett Parker is
9 a cold, malicious murderer; or Bryan Capnerhurst is
10 a cold malicious murderer. And those are the only
11 two options that seemed apparent to me in
12 preparation.

13 But as this trial has progressed, it has
14 become much more convoluted than that. As the
15 Defense has questioned witnesses, it became the
16 conspiracy, this is a frame-up between family
17 members, Tammy's family members, who would get up
18 on the stand and maliciously frame poor, innocent
19 Brett Parker.

20 It became more of a conspiracy. His
21 co-workers would get up here and talk about things
22 he said to them and things he did, pointing to the
23 guilt of this Defendant. A conspiracy.

24 And then throws in the police. And now
25 ultimately here today in this courtroom, it is the

1 Prosecution in on it too.

2 But if that didn't work, go to Plan B. Just
3 attack the police. Talk about how they didn't do
4 their job. View them with disdain. Attack what
5 they did.

6 And if that didn't work, just go to their
7 final defense: Brett is just too stupid. That is
8 novel. Their defense is Brett Parker is too stupid
9 to have committed these murders.

10 And, ladies and gentlemen, for that final
11 defense, I agree with one thing -- he is too stupid
12 to get away with it.

13 Brett Parker is the victim here. That is
14 their defense. Just asks you to ignore the
15 gambling, the debts, the adultery, the vengeance
16 about Tammy having an affair. Ignore his lie after
17 lie after lie. Just ignore all that evidence.
18 Because he is the victim.

19 The Defense wants you to ignore the forensic
20 evidence in this case, the gunshot residue on the
21 hands of all the victims, the gunshot residue on
22 the blinds, which somehow mysteriously was floating
23 through the air. Ignore the distance testing.

24 And I guess at this point their own expert is
25 in on the conspiracy because their own expert says

1 the distances, which totally contradict what Brett
2 Parker said happened that day, are even closer than
3 what our expert said. They said between two and
4 three feet, not even the three to four our expert
5 was comfortable with. Ignore those facts which
6 totally -- that evidence alone, just that one piece
7 proves that Brett Parker made up this whole story
8 in order to get out from under his debt, in order
9 to get out from under his bad marriage, and in
10 order to get out by saving face in his community.

11 His gambling debts were in excess of \$176,000.
12 Not even his personal debts, which I'll talk about
13 in a minute.

14 They want you to ignore the video and the
15 9-1-1 call and the timing on that, which I'll get
16 back to you in a minute.

17 They want you to ignore the gun being planted
18 in the hand and how we know that was done.

19 They want you to ignore the Defendant's own
20 inability to stick to any story without telling yet
21 lie after lie.

22 Because, ladies and gentlemen, the only reason
23 he has to lie or omit or avoid or dispute is
24 because he killed his wife and then he framed his
25 best friend.

1 That, again, just taken in and of itself, his
2 statement alone proves that Brett Parker is guilty
3 of two counts of murder.

4 Now, the Defense got up here in opening
5 statements and, as they told you, and we'll tell
6 you again, the burden of proof is on the State of
7 South Carolina to prove this Defendant guilty
8 beyond a reasonable doubt.

9 And the judge will tell you, she is not going
10 to give you some scales, she is going to tell you
11 what the definition of reasonable doubt is.

12 The simplest definition typed out: What makes
13 a reasonable person hesitate to act. But, very
14 simply, ladies and gentlemen, the law goes further
15 than that in explaining it.

16 We don't have to overcome every possible
17 doubt, although I submit, ladies and gentlemen, in
18 this prosecution we have.

19 What we must do is leave you firmly convinced
20 of the Defendant's guilt. That is our burden of
21 proof.

22 The law recognizes that we don't have to
23 overcome every possible doubt, although, again, I
24 submit in this courtroom, with these facts, with
25 this Defendant, we have.

1 In opening statement, the Defense got up there
2 and made some assertions. And one of the first
3 things they said to you was, there is no doubt this
4 man is telling the truth.

5 Well, I submit, ladies and gentlemen, the one
6 thing we do know after being in this courtroom over
7 the last three weeks is that man is almost
8 incapable of telling the truth.

9 They then said in their opening statement that
10 the State did not tell you, but the children will
11 get the money, not him.

12 And that, fortunately, because Ben Staples
13 looked out for the well-being of these children, is
14 true. But it is not because he wanted it to be
15 that way. It was only after he realized that
16 either the children got the money or no one did,
17 that he agreed reluctantly to relinquish at least
18 some of the money to the children, over whom he
19 would have custody.

20 They told you the Defendant does not have to,
21 but they will prove his innocence.

22 They told you they will bring in experts to
23 tell you about this gunshot residue to dispute the
24 State's expert testimony.

25 Those are assertions, even though the burden

1 is on us, that they made. And once they make those
2 assertions, just as once they put up a defense,
3 which they don't have a duty to do, then you have
4 the right to judge their credibility in the same
5 manner as you do any witness in this case.

6 In opening argument, they talked about that
7 you will find -- and, ladies and gentlemen, it was
8 the State's witnesses the State put up before you
9 that the gun was in Capnerhurst's hands when the
10 police got there.

11 I don't know why that has been in dispute in
12 this case. We know the gun was in his left hand
13 with the fingers, remember, two or three fingers
14 wrapped around the base, not a finger in the
15 trigger. And that is important. I'll get back to
16 that.

17 There is no picture. And I thought about
18 that. There is no picture. The priority when you
19 get to a scene where someone has allegedly just
20 committed or tried to commit -- committed one
21 murder and tried another -- is officer safety.
22 Other people's safety.

23 These officers, despite assertion, innuendo,
24 speculation by the Defense, did it by the book.
25 They disarmed Bryan Capnerhurst. Because at that

1 point the only information they had was what he
2 wanted out there. They did it by the book.

3 There is no question that that gun was in his
4 hand. They didn't take a picture of it. And I
5 submit, ladies and gentlemen, even in TV -- I was
6 thinking about it -- even on TV when they run up to
7 the scene where there has been a shootout, they
8 quickly kick away the gun out of the person's
9 reach. Even on TV they don't put it in his hand,
10 because they know in multiple gunshots -- and we
11 won't even go into the manner in which he was shot,
12 in the arm -- that there is no way they would hang
13 onto it as their body is riddled with bullets.

14 They talk about how you will find that the
15 Defendant -- that Bryan Capnerhurst's fingerprints
16 were all over the gun. And that simply isn't true.
17 Although the gun was in his hand. It had been
18 placed there.

19 They talked about there was no DNA on the bag.
20 And I submit, there was none of Brett Parker's DNA
21 on the bag. Did he use the T-shirt to hold that
22 bag? Did he even have to move the bag? Hadn't he
23 just gotten Bryan Capnerhurst to put it down?

24 There is no DNA on the zipper, be it Bryan
25 Capnerhurst's or Brett Parker's. And, very simply,

1 if someone touches something, the reality is, it
2 was touch DNA, not blood, that they may not leave
3 anything.

4 They talked about how Capnerhurst was obsessed
5 with the money. And we heard that language over
6 and over. The State brought before you Capnerhurst
7 wanted his money. He was owed over \$20,000. He
8 had worked for it. He went over there.

9 On the weekend, worked his second or third or
10 however you put it job. He had earned that money.
11 That was his money. He should have to have it.
12 However you characterize it or take it out of
13 context, he wanted his money.

14 They talked about how they would prove James
15 Morgan was a bookie and a felon. And I submit
16 neither of those are true.

17 They talked about Cindy Capnerhurst. And it
18 is true, back in the year 2000 she pled guilty and
19 was convicted of embezzlement. She was forthcoming
20 and forthright about her problems.

21 And then they talked about how 34 days later
22 we want you to listen about some gunshot residue
23 that was collected from the blinds.

24 Then on cross-examination they went further.
25 They talked about -- remember the words -- would it

1 surprise you. That was the cross-examination
2 question, would it surprise you.

3 They talked about the crime scene log and how
4 the crime scene was left unattended, which simply
5 was not true.

6 They talked about the phone calls. Remember
7 the inference? The phone calls from Capnerhurst,
8 for the first 10 or 15 minutes before we put up the
9 phone records, which showed that if they looked at
10 the correct time zone they would know when the
11 phone calls actually occurred, which was prior to
12 his death on Capnerhurst's phone.

13 They told you they would bring in two
14 independent witnesses that would show you that
15 Capnerhurst had the handgun. I'm still waiting.

16 They showed you they would prove Capnerhurst
17 had gambled because of all the 1-800 numbers on
18 James Morgan's phone. Undisputed. They went to
19 bank credit cards, one to a mortgage company, and I
20 forgot the others. Y'all remember.

21 Told you they would have proof Morgan was a
22 bookie.

23 And then remember he did the whole scenario
24 with the coroner, where he got him down, and
25 Mr. Fedor got down on the ground? All the shots

1 were upward, which is also not true. But even so,
2 that that would completely and totally corroborate
3 Brett Parker.

4 I guess if, when someone is about to get shot,
5 they think it is best to then just give up and lie
6 there, as the pathologist told you, in a supine
7 position to receive the gunshots that are going to
8 kill their life, that could be true.

9 They didn't talk to you any about the rest of
10 the evidence that not only disputes what they say,
11 but totally and completely.

12 This is not a case where the State is asking
13 you to rely on just one piece of evidence, one ID,
14 one DNA match. Ladies and gentlemen, this evidence
15 is overwhelming.

16 I believe just now in closing argument they
17 referred to us as being the -- and let me get these
18 phrases correct -- oppressive prosecution. This is
19 an oppressive prosecution. This is an oppressive
20 prosecution. Fantasyland. Disney World.

21 Ladies and gentlemen, I guess when the
22 evidence is overwhelming, it is oppressive, because
23 all the State is asking you to do is base your
24 verdict on all the evidence in this case, the
25 overwhelming evidence, that I want to talk to you a

1 little bit about.

2 So as much as the Defense gets up here and
3 uses catchphrases and talks about a cat in a box
4 with a hole in it -- I'm not sure about that -- we
5 aren't asking you to do any cute moves. We aren't
6 asking you to look beyond any evidence. We brought
7 it all to you, the total picture.

8 Because, ladies and gentlemen, when you look
9 at all the evidence in this case, it is
10 overwhelming, not just oppressive, but
11 overwhelming, as far as this Defendant's guilt.

12 But I want to take this opportunity and talk
13 to you a little bit about the actual evidence in
14 this case. We aren't trying to do smoke and
15 mirrors. We want to talk about the evidence, the
16 hard cold facts that prove Brett Parker had no
17 other alternative in his mind but to set up the
18 murder of his wife and frame his best friend.

19 We talked to the first officers on the scene.
20 Deputy Joseph Ryan, Lieutenant Joe Odom, Officer
21 Harvel. Remember? It has been a while. When they
22 got to the scene what they did. And they did it by
23 the book, as much as they might try to say that the
24 police didn't do their job in this instance, in
25 this prosecution. They did. And they didn't do it

1 because he is a bookie.

2 And I find it offensive to say they profiled
3 that Defendant.

4 What did they tell you? Joseph Ryan. Met him
5 in the driveway. The 9-1-1 call. I'll get back to
6 that in a minute.

7 Once they got there, Lieutenant Joe Odom,
8 Deputy Austin Harvel went inside. They first found
9 Tammy Parker's body, then they found Capnerhurst's
10 body in the attic area.

11 At that point they felt it necessary, which
12 has been testified to over and over, to disarm him.
13 They had to shake his arm in order to get it to
14 come out.

15 Investigator Brian Metz went there on the
16 scene that night. And what did he get? Something
17 that ends up being very key in this case if you
18 think about it. Because what Brett Parker didn't
19 anticipate was how good the security system was.
20 He didn't realize it would pick up on all these
21 little subtleties that he conveniently leaves out
22 of any of his statements and only tries to get
23 around later when confronted, subtleties such as:
24 Just a few minutes before he is seen looking out
25 the blinds. That is because the police reviewed

1 this video over and over and over. They did their
2 job, unfortunately for him.

3 And when they reviewed that video, what did
4 they see? They saw the blinds opening and closing.
5 And where are the blinds located? Oh, it just
6 happened to be in the area that would be
7 overlooking the driveway, where someone would go.

8 And, oh, what did those blinds show at a later
9 time once they discovered that evidence? It just
10 happens that when they go back to that that there
11 is lead particles on those blinds that just happen
12 to be the exact blinds -- and depending on which
13 statement you -- you know, at one point I think he
14 said he looked out the upstairs blinds in his son's
15 room, and at one point he finally admitted, well,
16 yeah, I looked out the blind, I do that all the
17 time when people come over.

18 Again, Brett Parker. And in this entire case
19 all he ever thought he had to do was keep talking.
20 If he just kept talking, everybody is going to
21 believe him. Because that is how Brett Parker has
22 done all his life.

23 What else did they see on that video? You see
24 right before Capnerhurst pulls up -- and y'all have
25 the video and y'all have seen it. At the corner of

1 the garage, where he didn't think he would be seen.
2 He is so nervous at that point, because, remember,
3 it is very -- it is essential -- he is gambling,
4 but it is essential that Bryan Capnerhurst show up,
5 like he always does; dependable Bryan, punctual
6 Bryan, at 12:30, because he has got to show up and
7 he has got to have that bag, because he has got to
8 plant the evidence.

9 He is nervous at that point. Tammy is dead
10 upstairs. He is worried he is going to have to go
11 to Plan B. And Lord knows what that would have
12 been.

13 He goes to the edge of the garage. And you
14 saw it on the video. He looks out down the
15 driveway again. He has already been and looked at
16 the blinds and can't find him.

17 He is nervous. But Cap showed up.

18 And the video comes into play later. I'll get
19 back to that.

20 You heard from Investigator Matt Ellis, who
21 first talked to the Defendant at the scene.

22 You heard from Investigator Maria Yturria.
23 And what did she tell you? And, again, this is
24 just one small piece of this puzzle. Maria Yturria
25 was in charge of getting the children around. They

1 made sure the children didn't know anything. They
2 wanted to make sure Brett had the opportunity -- at
3 this point everybody is believing him -- had an
4 opportunity to tell his children.

5 And what did she tell you she heard at the
6 scene? She and Nina Ducate were in charge. One of
7 the first things this Defendant says: What does my
8 father think happened?

9 And that in and of itself, maybe no, but think
10 of it. Take it in context of what you know now.
11 Why is he worried about what his father thinks? Of
12 course his father should believe him. Of course
13 his father should have faith that his son would
14 never do this. Why ask the question? Of all the
15 people that should believe him. Or perhaps not.

16 Maria Yturria took the children to the home so
17 that they could be united with their father, so
18 that he could break the news about their mother's
19 death to them.

20 And she told you what happened that day. And,
21 again, ladies and gentlemen, this in and of itself,
22 by itself, does not mean anything. But think about
23 it taken in context of what you know now. They go
24 into the room. The Parkers were there. Brett is
25 there. The children are there.

1 And he looks at them, and his way of breaking
2 it to his children is, Your mother is dead. Not
3 one hug. Not one condolence.

4 MR. FEDOR: Your Honor, that is going outside
5 the record, and it is not in the record. That is
6 untrue.

7 THE COURT: Your objection is overruled.

8 MS. CAMPBELL: Thank you, Your Honor.
9 Nothing. Cold.

10 Finally Ms. Yturria goes to **B.P.** to comfort
11 her.

12 And what do the Parkers and Brett Parker do?
13 Because they are thinking. Think about it. They
14 know him. They are like, We need to go in the
15 other room and talk about getting a lawyer. That
16 is that family's way of telling the grandchildren
17 or the children about their mother's murder.

18 You heard from Investigator Nina Ducate. She
19 also heard certain things. And Maria Yturria.
20 What else did they hear that day?

21 When Linda Parker comes up on the scene -- and
22 things are chaotic. There are people out there.
23 There is a double homicide involved. Linda Parker
24 comes up. And Jack looks at her and says to her,
25 Tammy has been shot.

1 And what are her first words: Did Brett kill
2 Tammy?

3 So the first two things out of his parents'
4 mouth that day, or about his parents is: What does
5 my father think? And, Did Brett kill Tammy?

6 But that alone, ladies and gentlemen, is not
7 significant by itself, but taken in context with
8 everything else we know in this case -- and I want
9 to keep talking about it.

10 The coroner was actually there, Gary Watts,
11 and overheard those same two statements.

12 You then heard from Lieutenant Scott McDonald.
13 And what is he important about? And, again, taken
14 by itself, it may not be significant. But what
15 Brett didn't tell the police that day was that
16 after entering the home he ever saw Capnerhurst
17 dialing the phone. And why would he? It doesn't
18 even make sense.

19 But what he did do, when they did their
20 careful review of the records and when they were
21 able to verify the time periods that actually do
22 apply in this courtroom, what did they find? At
23 12:33 p.m. -- and, remember, he enters -- he gets
24 there a little after 12:31. He is in the house
25 before 12:32. So at 12:33 -- and remember the time

1 periods, which were verified by the video -- Cap is
2 trying to make a phone call. And, again, ladies
3 and gentlemen, by itself, it may not be
4 significant, 7*4401. What is going on? At this
5 point he is inside the house. He has walked
6 upstairs. Has Brett pulled the gun on him? Did he
7 sense something is wrong? Is he trying to dial
8 out? He is already nervous. He can't see Tammy.
9 What is going on? He is trying to stay calm and
10 cool.

11 Why is Bryan Capnerhurst trying to dial
12 whatever number, be it 9-1-1, be it whatever
13 number, one minute after entering that house? And
14 I submit, ladies and gentlemen, because he knew
15 things weren't right.

16 Scott McDonald also testified to you about the
17 time period that you see on the video. And y'all
18 have the video. And the video has the timestamp on
19 it. And it has been verified.

20 And when you look at that evidence, ladies and
21 gentlemen, Brett's story is -- and I will get back
22 to the story in more detail -- is basically after
23 the shooting he goes and checks Tammy, and then
24 believing on which -- it depends on which version
25 of the events you say, he either went back upstairs

1 at that point or back to the attic and checked on
2 Bryan or then he went down. But, no matter what,
3 he says at some point he goes downstairs to get the
4 phone to call 9-1-1.

5 Capnerhurst arrives at the scene you will see
6 at 12:31:15. He gets inside the house before it is
7 12:32, okay? Look at the video. Brett Parker
8 comes outside at 12:43:10. Ostensibly, according
9 to him, after the 9-1-1 operator is on the line,
10 and he has been talking to them inside, had
11 conversations about what is going on.

12 Because it is very important to Brett Parker's
13 story -- think about it, ladies and gentlemen -- he
14 has got this videotape on the outside. It has been
15 useful before. Apprehended some unknown burglar.
16 So he wants to use it. Think about it. He needs
17 to display for the world how upset he is. He needs
18 to be outside on camera flopping around on the
19 ground. Rubbing his hands. Being upset. All
20 these things. This is part of the whole staging.

21 But they just didn't answer the 9-1-1 call
22 really fast, because 9-1-1 doesn't come on the line
23 until 40 seconds after he is outside.

24 Just another contradiction of the Brett Parker
25 story.

1 What else did you learn from Investigator
2 Chris Lindler? They followed up on things. They
3 checked the phone numbers.

4 Investigator Travis Holdorf told you about
5 this entire investigation, which was very
6 important. And he is there that day when that
7 first statement is taken.

8 And, ladies and gentlemen, there has been a
9 lot made about how he may have PTSD or be suffering
10 from that day from events that he witnessed or
11 didn't witness.

12 Well, let's look at his statement that he
13 gave. And you'll have it back there with you.
14 Because, as Ms. Simpson told you just a minute ago,
15 the Defendant's written statement is an exception
16 as to what you can consider. And the courts
17 recognize that that is important.

18 Because in his statement, what does he tell
19 you? Remember? I couldn't remember -- this was
20 his testimony. Because, once again, Brett Parker
21 had to take the stand because he can talk his way
22 out of anything. In his version, let's talk about
23 what details he was able to give.

24 Earlier in the week I talked to Bryan
25 Capnerhurst, who works for me on the side. I owed

1 him some money. I think I owed him \$5,000 for the
2 work he had done with regard to the NCAA
3 Tournament. Details? It goes on.

4 I have a federal gambling stamp -- legitimize
5 yourself -- and I do some telephone sports betting.
6 Bryan takes calls for me when there is a full day
7 of sporting events, like college football or the
8 NCAA basketball tournament that just took place. I
9 was on a cruise when the tournament ended, so I had
10 not had a chance to pay him yet. I spoke to Bryan
11 this morning three times about meeting me at my
12 home. Those calls were made from my cellphone.

13 And we will get back to the cellphone, what is
14 on it and what is not.

15 I stopped by Firehouse Subs in Irmo to pick up
16 lunch for me and my wife. My wife Tammy is a
17 pharmaceutical rep and was off today. I got home
18 around 11:45.

19 And remember all of those people they brought
20 up here to talk about what he did this morning? It
21 is very important to his story that whatever he was
22 doing that morning appears normal, even though he
23 never worked on another Friday that anyone could
24 remember, but on this Friday -- but it is very
25 important that he bring in people that say, oh, he

1 looked normal, he acted normal. That is part of
2 the whole plan.

3 She had been shopping at Office Max or Office
4 Depot, I'm not sure which. We ate lunch at the
5 kitchen bar area. We then went upstairs to my
6 office. Tammy got on the phone with the doctor's
7 office she had an appointment with.

8 He messed that up.

9 While downstairs I had to go to the bathroom.
10 I had left the garage door up for Bryan because he
11 normally just comes in. He even has the code to
12 the garage door if I'm not there. I would trust
13 him with anything. I was in the downstairs
14 bathroom by the hallway when I heard Bryan come in
15 the kitchen door. He called out my name. I yelled
16 for him to go on upstairs. I told him Tammy was up
17 there. I finished using the bathroom.

18 And, again, details? What does he omit? He
19 says he is in the bathroom. He implies he is in
20 the bathroom for a period of time prior to this all
21 occurring, and that is how he ended up down there.
22 He doesn't talk about how he looked out the blinds
23 looking for him. He doesn't talk about how he then
24 went out the garage door looking for him. He
25 doesn't talk about -- now he talks about some

1 screwdriver he put up because he fixed a door.

2 This is the first time we have ever heard that.

3 All these little details, yet he is able to
4 give an entire recitation about the type of betting
5 he does, the type of football, sports events, the
6 NCAA Tournament. And it goes on.

7 He even goes into how he picked up the
8 magazines and took them downstairs. Those were all
9 things that worked for him.

10 I was getting ready to open the -- I finished
11 using the bathroom. I was getting ready to open
12 the door and I heard shots. I have no idea of how
13 many. I took off running upstairs. When I got to
14 the top of the stairs Bryan was on top of the
15 stairs pointing a gun at me. He was right outside
16 the office door. He said something like, I want
17 the fucking money out of the safe.

18 And those are his words not mine.

19 He held the gun on me. He walked me in the
20 room over the garage. The safe is bolted to the
21 floor. It was concealed by a headboard and a
22 blanket. I kept asking Bryan why he was doing
23 this. He just kept saying, Just give me the
24 fucking money. I moved the headboard aside. My
25 pistol was on top of the safe. It is a Judge.

1 The pistol -- and, again, according to his
2 counsel, he wasn't in his right mind -- was lying
3 on top of a blanket. Bryan was standing behind me
4 in the closet. I knelt down and grabbed my pistol.
5 I turned as quick as I could and I shot him. I'm
6 not sure how many times I fired, three or four. I
7 had to actually jump over Bryan and run back to my
8 wife. I went into the office and went to my wife.
9 She was making a noise.

10 Later referred to it as gurgling. Signs of
11 life.

12 I checked her pulse in her neck. I asked her
13 if she could hear me. I didn't get a response. I
14 ran downstairs to get the phone.

15 Even though he had one in his pocket and two
16 on the desk next to where she lay gurgling.

17 I was in hysterics as evidenced by the video.
18 I went back upstairs and checked on Bryan because
19 the dispatcher asked me if he was alive. I put my
20 finger under his nose to see if I could tell if he
21 was breathing. I ran downstairs because I was
22 looking for the cops. I was told by the dispatcher
23 to put the gun down. I think I put it on the rug
24 by the front door. I stayed on the phone. During
25 this time I went back inside and checked on both of

1 them again. Tammy wasn't making a noise when I
2 went back to her. I then went back outside.

3 Look at the video.

4 They handcuffed me, EMS.

5 Then he goes in the whole explanation about
6 how he gives him the gun the month before. Got it
7 from his uncle. PTSD?

8 And it goes further. Why did you keep your
9 other gun in the safe?

10 It was a good place to hide in case something
11 ever happened.

12 Then he makes his -- preacher is involved. He
13 recommended it.

14 Then, in all of this, he has just supposedly
15 killed someone who was trying to kill him, who had
16 just murdered his wife, but, luckily, even in his
17 unbelievable state, Brett Parker was able to come
18 up with motive.

19 Do you have any idea why Bryan would need the
20 money?

21 Yes, sir. I know a few years back his wife
22 got them into money trouble. She wasn't paying the
23 bills, that kind of thing. He said she had done it
24 again recently. Then his daughter is in Governor's
25 School. You know, that can be expensive, because

1 that can run about \$4,000 a year for, you know,
2 stuff for that.

3 Then they go back through all the
4 communications, what he owes, and down to the
5 figures he says he owes him, 13 or \$14,000, which
6 we know isn't true. How much he was supposed to
7 pay him that day, on Monday. He was tired of
8 living off credit cards. Again, over and over.
9 And read the statement. It goes on and on. In
10 which he is able to, in his state of grief and
11 panic and PTSD, recount over and over to the
12 police -- and it is in here again about Bryan's
13 debt, Bryan's motive, Bryan's problems, Bryan's
14 wife.

15 Well, what did he not tell you in that first
16 statement on April 13th? And there are a number of
17 inconsistencies that Major Smith went over with
18 y'all. Y'all remember them. I don't need to bring
19 them up. And, again, it is not just one
20 inconsistency we are focused on here. That does
21 not make anyone guilty of murder. That does not
22 make Brett Parker guilty of murder. It is the lie
23 after lie after lie. It is the inconsistencies.
24 It is the evidence that overwhelmingly convicts
25 him.

1 What omission? That the meeting was
2 originally at 2:00 o'clock. He left that out, even
3 though he had all those other details. He left out
4 that he looked out the blinds. He left out that he
5 went into the garage and now says he put a
6 screwdriver up. This is the first time that ever
7 came up. He left out that he looked out the garage
8 door driveway. He left out that he put up the seat
9 in the bathroom. That was a little bit of a
10 problem, not a major one. And, again, in and of
11 itself, nothing. But everything starts adding up.
12 And we haven't even talked about the forensic
13 evidence yet.

14 Left out that he told him to bring a bag.
15 Left out the fact that when he went and checked on
16 him twice, this man who supposedly just killed his
17 wife and tried to kill him, that he doesn't even
18 knock the gun out of his hand? That he feels
19 comfortable enough at that point?

20 He is saying, I went to check to see if he was
21 alive, and he doesn't knock the gun out of his
22 hand? And let's get one thing straight. He is
23 very careful to keep these two scenes pristine
24 because they are staged. He doesn't touch Tammy
25 and move her. He wants her right there. And he

1 doesn't touch Bryan and move him.

2 The only time he touches Bryan is to wrap his
3 hand around the gun, which he put there.

4 And what is he incorrect about? Tammy was on
5 the phone with the doctor's office that day. They
6 confronted them because they had to get this
7 information. He denies the prior suicide attempt
8 because that doesn't make him look good. They
9 asked him for the combination to the safe. The one
10 he gives them doesn't work.

11 They ask him how much money is in the safe.
12 He says \$20,000. Actually, it is fake money. It
13 is dummy money. It is \$383.

14 They talked to him about paying Capnerhurst
15 the \$5000. He says it will come from the \$4,511 in
16 his pocket plus the money in the safe. He simply
17 never thought they would follow up. Or even if
18 they looked in the safe, didn't it look like it was
19 \$20,000 like he just said? That is what he set it
20 up to look like.

21 He didn't even have the money on him in his
22 house. You now know -- I take that back. Last
23 week he did come in here and say there was \$8,000,
24 which has never been mentioned before.

25 The time period. Ten minutes. Be it 9

1 minutes, be it 10 minutes, be it 11 minutes.
2 Calculate it. It is on the video. From the 9-1-1
3 call to the time he drove up, it is a good ten
4 minutes.

5 He was incorrect about the amount he owed
6 Capnerhurst. He was incorrect about his marriage
7 being good. And when they asked him that day, you
8 remember the follow-up question, and you listened
9 to Major Smith, were you involved in any way with
10 anyone else?

11 No. My wife saw some text messages from
12 Natasha around Christmas, but they were just
13 flirtatious.

14 No mention of Lindsay Mullins. No mention of
15 Dana Allpress. The only mention of Natasha is with
16 flirty text messages.

17 They asked him questions. Why wouldn't you
18 give the gun case with the gun and the ammo clip?

19 And remember about the ammo clip? Why would
20 Capnerhurst bring an empty magazine or gun clip,
21 whatever you want to call it -- I'm not good with
22 those terms -- to this murder/robbery? Because,
23 according to Brett Parker, he immediately enters
24 the house so his intent had to be to kill everyone
25 in there. Wouldn't you at least load the magazine

1 as your backup? Because remember it took him seven
2 shots, according to him -- actually it took him
3 seven shots -- to take out Tammy. He only had one
4 left.

5 Does that even make sense for this maniacal
6 robber/murderer Bryan Capnerhurst, couldn't even be
7 prepared enough, because he had the ammo with him,
8 to load it into a magazine so that he could quickly
9 put it in if he needed it.

10 Another small point. Why go downstairs to get
11 the phone when there were two in the office. Did
12 he not want to use the phone in the office because
13 that might expose his betting situation a little
14 bit more, the fact that he was a bookie?

15 He said he got rid of that gun and gave it to
16 Bryan Capnerhurst because it was just too
17 dangerous. Yet, by his own admission, he kept this
18 gun (indicating) in an unlocked attic area on the
19 same floor where his son slept and played every day
20 without any type of safety in place, even though
21 there was one that could be put in place --
22 remember the key was in the box? -- yet he was
23 concerned about the safety of his children.

24 The loaded Judge on the safe in an unlocked
25 room which was filled with Halloween decorations,

1 you will see from the pictures, in an attic area
2 where his five-year-old son and 14-year-old
3 daughter had access.

4 But there is more. Details?

5 He is able to give the events of that morning.
6 He is able to talk over and over about
7 Capnerhurst's financial problems. He is able to go
8 into Cindy's prior record and how he knew that.
9 The cost of the Governor's School. The perfect
10 fall guy.

11 As long as he threw it out there, the police
12 would never look any further.

13 But what he didn't know about at that point
14 and what -- and remember the distance testing?
15 Terri Gleason came in here. She did a distance
16 testing. She talked a little about the gunpowder
17 versus the gunshot residue. And what he didn't
18 know then was what the distance testing would do.
19 And, remember, the distance testing is not even
20 completed until December, later that year.

21 The fingerprint comparison, whoop. If the
22 ammo had been put in the bag and carried to
23 different places and jostled around -- you heard
24 about fingerprint evidence. It is fragile. Easily
25 smudged. It is easily wiped out. But in this

1 case, when he placed the ammo, because it hadn't
2 been put in the bag, it hadn't been taken to
3 different places, it had been sitting there in his
4 house. His fingerprint was still on it. That is
5 okay, he can explain that. Would the fingerprint
6 still be intact? Would it still be useable?

7 At that point when he gave his statement, they
8 hadn't done the video review. He didn't know that
9 he was seen looking out the blind. He didn't know
10 that when he put his head out the garage door that
11 it would show.

12 At that point the gunshot residue kits weren't
13 done. The gunshot residue on the hand -- and as
14 much as they get up here and say it -- and you
15 remember the testimony. John Roberts, Ila Simmons.
16 Unequivocally, the gunshot residue on Capnerhurst's
17 hand was most consistent -- he drew the picture,
18 she talked about the water pistol -- by far most
19 consistent, and as much as they try to say this is
20 not the truth, you remember, ladies and gentlemen,
21 that is all we ask, is consistent with having been
22 on the receiving end of a shot, one close-up and
23 personal, like two to three feet. That is a lot of
24 gunshot residue. Just like was on his hand.

25 The gunpowder analysis wasn't done yet that

1 showed Bryan Capnerhurst didn't have any of the
2 gunshot residue that should have been -- the
3 gunpowder -- excuse me -- from Terri Gleason -- had
4 he been shooting at the victim that day. Because
5 he didn't have a chance, even by his own scenario,
6 to go out and dust off his hands. He didn't have a
7 chance to wash his hands, if he did that, to get
8 rid of any evidence. The only person there has
9 been any talk about that is Brett Parker.

10 The autopsy results. The final shots. And
11 this is significant. To the head. He didn't have
12 any of those results.

13 The gambling debt. Remember when he got up
14 here on the stand just three days ago and started
15 talking about, well, they were going to find out
16 about that.

17 They spoke to Lanny Gunter that summer and
18 found out about the first 100. It wasn't until
19 October of that year that Lanny Gunter finally came
20 clean that the second account was for a total of
21 \$177,000.

22 His credit report. In one -- just one credit
23 card, if you just look at one of them, Brett
24 Parker's debt just on this one card, the CitiCard,
25 alone outdoes Bryan Capnerhurst's whole motive in

1 this case. And that doesn't include all these
2 other numbers. And it doesn't include the
3 \$177,000, the \$20,000 he owed Capnerhurst.

4 When he gave this statement, what he didn't
5 know was that they were going to find out about the
6 affairs: Lindsay, Dana, everybody. Tammy's
7 infidelity. The life insurance, 868. 703 of that
8 up front, and then there was a double indemnity.
9 He gets it up to 868. The 401(k) plan. The
10 retirement account. And you have all those
11 documents. We put them in evidence so you could
12 see them. The text messages. He thought he had
13 gotten rid of those.

14 Capnerhurst. And this is key. Brett Parker
15 had no idea that Jack and Capnerhurst were having
16 conversations, because both of them had their
17 suspicions. Capnerhurst didn't have just
18 suspicions, he had seen where Brett had been
19 gambling.

20 Phone calls to Jack's house. If you were
21 going to believe that this Defendant is the victim
22 and that Capnerhurst is the murderer, you have to
23 believe that he was stupid enough to call up not
24 only James Morgan, not only Jim Headley, not only
25 his wife, not only Alvin Kelly, but the Defendant's

1 own father and say, I'm going to meet him. That
2 doesn't even make sense.

3 Just, ladies and gentlemen, yet another piece
4 of evidence that points to what really happened in
5 this case.

6 He didn't know that his girlfriend was going
7 to come in here and tell you that she remembers him
8 pointing to the desk where he usually kept the
9 Judge, which would make sense. It is right there
10 in that drawer, the drawer that would have a lock
11 on it that they could actually lock.

12 Do you think Tammy Parker would let that gun
13 stay on top of the safe while her five-year-old ran
14 around the house? Would any mother? Or should any
15 father?

16 The gun was kept in the office. You can even
17 look at -- there are pictures in there. Look at
18 the drawer. There is a void where the gun would
19 actually fit.

20 And who else knew the gun was in the office?

21 **B.P. |**

22 The phone call, 12:33. He didn't have any of
23 that. That is what he didn't know.

24 Let's talk about the forensic evidence. And
25 I'll keep moving. Sergeant Stan Richards

1 processed. He was up here in front of y'all for
2 two days. There was a lot of evidence collected.
3 He told you what he did. He did it methodically.
4 He did it correctly. As much as they may try to
5 say the police didn't do their job, ladies and
6 gentlemen, unfortunately for Brett Parker, they
7 did.

8 He talked to you about trajectory. Where the
9 shell casings were seen there at the scene.

10 You heard from Trevor Holt. He assisted. You
11 heard from Harold Bouknight. He assisted. He did
12 the actual scanning thing that was shown to you
13 that can show -- go back and get distances, which
14 proved significant in this case. That ten feet
15 from the bottom of Capnerhurst's shoes to the edge
16 of the safe.

17 And when we say the edge of the safe, the safe
18 actually comes down -- and look at the pictures --
19 it faces where the eaves come down, so actually the
20 Defendant would have been in front of the safe like
21 this (indicating) when he pulled the gun and went
22 like that (indicating). So he is even further than
23 the ten feet, although his arm would have extended
24 within a foot. Think about the distances.

25 You heard from Lieutenant Anna Elsey. From

1 Kristen Polis, who attended the autopsy. You heard
2 about chain evidence, because we can't bring
3 evidence before you without proving that it wasn't
4 tampered or altered in any way. That is why we had
5 to ask those series of questions.

6 You heard from John Barron. And what did he
7 tell you about the DNA? That what he found on the
8 strap or the handle belonged to Bryan Capnerhurst,
9 as you would see.

10 And look at where that bag was found in the
11 attic. Because there are pictures of the bag
12 before they moved it where it was found in the
13 attic area because you can tell from the flooring,
14 because it is not hardwood flooring, it is the
15 actual plywood. And you can see right there.

16 And what happened? And, ladies and gentlemen,
17 I submit, when he walked in there, Brett Parker got
18 him in there, and at that point Cap thinks
19 something is wrong. He puts down the bag. Or does
20 he tell him to put down the bag to come get the
21 money?

22 And just out of just sheer physics, how is he
23 supposedly holding a gun on him with the left hand
24 and then dialing the phone at the same time? That
25 doesn't even make -- that is not physically.

1 possible, unless he is reaching around trying to do
2 this (indicating) while he is holding the only gun
3 on him.

4 And who is he calling while he is committing
5 his murder/armed robbery? Just another piece of
6 the puzzle.

7 There was no DNA from anyone on the zipper.
8 And it goes back to that T-shirt, remember, in the
9 closet. They said that they didn't connect it when
10 he is sitting there ridiculing the police for doing
11 such a sloppy job, because he has total disdain for
12 them. At that point did he use it to undo the
13 zipper so he could place his stuff in the bag, the
14 stuff he thought he needed? Or did it just not
15 leave it there? And even if it did, he would just
16 come back and say, well, yeah, that bag was there
17 in the house all the time, I touched it before.

18 Trish Odom, the print match. They don't even
19 address that. They don't talk about that. Nobody
20 said anything about that. That is because, what do
21 you say? It shouldn't be there and it is. Just
22 like if he picked up the ammunition and placed it
23 in the bag before he zipped it back up.

24 John Roberts, Ila Simmons from SLED. What did
25 they tell you? And their specialty is gunshot

1 residue. That is what they do. They do the
2 testing. They don't just travel around the country
3 and testify about other people's results. They do
4 the testing.

5 And what did they tell you? And does it make
6 sense that most of the gunshot residue comes out of
7 the barrel of the gun. Therefore, the high amount
8 found on Capnerhurst's hand is most consistent with
9 him having been on the receiving end, and I submit
10 of a closer-in-range -- two to three feet --
11 gunshot, which is exactly what happened. And that
12 is important.

13 They also said that Tammy Parker had gunshot
14 residue on her hands, which is consistent with her
15 having been in the room or the area when she got
16 shot. And nobody is alleging Tammy shot anybody.

17 And then the amount on Brett's hands would be
18 consistent with him having fired both guns, one
19 gun, whatever, in between the two. Did he do
20 things to get rid of some of the gunshot residue on
21 his hands? We don't have to prove that. All we
22 have to prove in this case, ladies and gentlemen,
23 is that it didn't happen the way Brett Parker said
24 it did, and that the only viable alternative is
25 what happened.

1 But what is really significant, or what is
2 somewhat significant is after the police have
3 reviewed that video over and over, they see the
4 blind. And then they do their job, unfortunately
5 for him. They go back. They get a separate search
6 warrant. Lawful entry. And they go back. And
7 they find the blinds. And they test them. And
8 guess what? As much as their expert tried to say
9 they didn't test controlled, they did. You heard
10 about that. They did it right.

11 And what did they find? Round lead particles
12 from the two sets of blinds where it shouldn't be.
13 Gunshot residue just doesn't travel on these
14 mysterious airways that we heard about. In fact,
15 the studies show that it only remains in the air
16 for a small amount of time. I think the testimony
17 was -- and you remember the testimony -- a minute
18 or so. And it is never found outside the room,
19 much less down the stairs and across the house.
20 And you'll have the diagrams of how the house was
21 set up.

22 Again -- and there was absolutely no
23 evidence -- and I submit they would have brought it
24 if they had it -- that anyone else went and touched
25 those blinds. It doesn't even make sense, much

1 less, it would have to be someone else that had
2 either handled a gun that had been fired recently
3 or had fired a gun themselves or been the victim or
4 around a gun that was fired.

5 Just another corroborating evidence. And I
6 think the reason they keep harping on it is because
7 it is so damaging. That alone proves -- just that
8 one piece of evidence -- and I'm not asking you to
9 rely on one piece -- the gunshot residue on the
10 blinds alone, coupled with that video, which he
11 later had to admit, even though he tried to say he
12 was upstairs looking out the blinds, that alone
13 proves that Tammy Parker was dead before Bryan
14 Capnerhurst ever got there. And that is why they
15 keep harping on it. Just that evidence.

16 But we don't ask you to rely on that alone.
17 Let's keep going. Terri Gleason. Firearms. And
18 what was she able to tell you? She was able to
19 tell you a lot of things. The distances.
20 Remember? In order to give the Defendant the
21 benefit, she put her range from two to five feet.
22 She said most consistent with three to four feet
23 where Bryan Capnerhurst was.

24 And I submit, ladies and gentlemen, look at
25 that. It is 10 feet from the bottom of

1 Capnerhurst's feet to the edge of the safe. Not
2 further where he would -- this Defendant at one
3 time estimated the distance himself, 10 to 15 feet.

4 No matter what, at no point and no scenario
5 does he ever say that he walked up to this
6 Defendant[sic] after having shot him several times
7 and then stood over him and shot.

8 Oops. Yes, he did. He told his friend and
9 his co-worker. And I'll get back to that.

10 Does that fit what he told the police? Does
11 that fit his self-defense scenario? No.

12 Executing someone point-blank as you stand
13 over them and shooting them in the face ensures one
14 thing -- that he is the only one that comes out of
15 this alive.

16 And that was the second thing he had to make
17 sure happened after he killed Tammy and once
18 Capnerhurst showed up, he just had to make sure
19 that there was no way he could survive.

20 But it goes on. What else was she able to
21 tell you? She was able to tell you that she can
22 actually look for the presence of gunpowder versus
23 gunshot residue. She said gunshot residue is a
24 microscopic thing, things they look for at SLED.
25 She doesn't have that training. What she could say

1 was she looked for certain types of residue that
2 she would have expected to find on Bryan
3 Capnerhurst's hand.

4 And in this case you have got two firearms.
5 The Judge, those round pellets -- lead -- excuse
6 me -- balls, whatever they are, and this would be
7 consistent with the 9-millimeter. Bryan
8 Capnerhurst had none of this on his hand. Neither
9 did the Defendant. But the Defendant was the only
10 one that had the opportunity to get anything off of
11 his hands after this happened.

12 What else was she able to tell you that was
13 significant at the scene about how Bryan
14 Capnerhurst was shot? Remember? They objected to
15 some of this so we had to cut out some of it. This
16 lead fragment near his head on the ground,
17 consistent with someone having stood at some angle
18 at least and shot downwards. More significantly,
19 remember this, which is right here (indicating)?
20 You can see it in the upper portion. Right here
21 (indicating) near his head. Consistent with
22 projectile penetrating on a downward angle. Not
23 having been shot from across the room. Consistent
24 with the last shot --

25 MR. FEDOR: Objection, Your Honor. The record

1 doesn't show that at all.

2 THE COURT: What was it?

3 MS. CAMPBELL: I was showing the exhibit. I
4 don't know what his objection was, Your Honor.

5 THE COURT: He said it is not in evidence.

6 MS. CAMPBELL: This is in evidence.

7 THE COURT: No, I think he is saying what
8 you --

9 MR. FEDOR: It doesn't show -- reflect that in
10 the record at all.

11 MS. CAMPBELL: I will tell them to listen to
12 the witness.

13 MR. FEDOR: And on time, Your Honor.

14 MS. CAMPBELL: I'm sorry. I apologize.

15 THE COURT: All right. Objection is
16 overruled.

17 MS. CAMPBELL: You remember what the testimony
18 was of all of these experts.

19 You heard from Britt Dove from SLED, the
20 computer -- he was able to verify the Hal account
21 actually was used on Brett's computer, something he
22 never, ever admitted to police.

23 And then you heard from Ila Simmons who came
24 back. She is a supervisor at SLED. She reviewed
25 John Roberts' findings. And after his Defense

1 attorney[sic] testified, she went through what she
2 saw.

3 You also heard from personnel from the
4 Coroner's Office, from EMT's that responded that
5 day, treated Brett, who was acting like he was
6 having a hyper -- I don't know what he was doing.
7 Anyway, they treated him. He didn't require any
8 treatment. He didn't go anywhere. They took the
9 leads off of him.

10 Coroner Gary Watts, what was he able to tell
11 you? Number One, they keep going back to these
12 death certificates, the exact moment. Again, they
13 estimate the time of death in the time period. It
14 is issued some three days or some six days after
15 death. It is an estimate. Nobody can be precise.
16 A pathologist told you that. So that is totally
17 misleading on the part of the Defense.

18 Deputy Coroner Jane Powell, she removed the
19 cellphone from the left pocket. Yes. Did Trevor
20 Holt think it came from the right pocket at one
21 point? Right. He deferred, as he told you, to
22 what Jane Powell found. She was on the left side.
23 And you have actually got a photograph, or at least
24 part of one, where you can see just -- and it is
25 just barely you can see it. It is kind of squared

1 off, you know how a phone is kind of like that
2 (indicating) in the pocket on the left side.

3 Dr. Bradley Marcus. And what was Dr. Marcus
4 able to tell you? And they talked about how the --
5 there was a question about how the lunch was
6 partially digested and that couldn't be consistent
7 with what happened.

8 Well, there is no dispute that Tammy ate lunch
9 and within minutes was killed. And if there had
10 been anything that they could have proven about
11 that fact, I submit it would be before you if that
12 had not been consistent with what his findings are.

13 What was Dr. Marcus able to tell you about the
14 crime scene and how this occurred?

15 Oh, let me back up for a minute. On Terri
16 Gleason, all the shots from Tammy were at a
17 distance of three and a half feet or greater. She
18 had to say that based on the type of clothing she
19 had, remember?

20 Dr. Marcus. He told you, first with Tammy,
21 the series of shots, how she would have been
22 running. And it is amazing because he reviewed the
23 records, he reviewed the distance findings, he
24 reviewed all of this, and he was able to determine
25 that, coupled with Terri Gleason's reenactment of

1 the scene based on the shell casings, remember?
2 The first shots were right there in the doorway or
3 out in that hallway, remember? Because they come
4 back and slightly to the right? And so the shell
5 casings are right there outside the office door in
6 the big room, on the wooden floor.

7 Then the person moved inside the room, because
8 there are two shell casings over right here
9 (indicating). And then the defining shot would
10 have been consistent with the final head shot
11 because, as he told you, there is a contusion to
12 her head and that the shot that got her in the
13 pelvis would have probably dropped her. As she is
14 going down she probably sustained that last shot.

15 And, again, what is significant in this case?
16 Because for his plan to work, it is absolutely
17 necessary that both these people are dead. And one
18 way to ensure that -- shots to the head.

19 The final shot in both of these cases, as
20 testified to, and it is undisputed, were to the
21 head of Tammy Parker and to the head of Bryan
22 Capnerhurst.

23 What else did Dr. Marcus tell you? He told
24 you how at one point Capnerhurst was shot from a
25 distance and at one point his foot was even up in

1 the air because there is a through-and-through in
2 his foot as he was going down. And it wasn't that
3 he was blown back, it is just that he fell down as
4 he was backing up, as he was trying to get away
5 from his friend who had promised him the money.

6 Dr. Marcus.

7 And then the Defense got up here and talked to
8 you about cadaveric spasm. And he says it is a
9 grip that comes on. Remember he had a Wikipedia
10 thing he read? I'm not disparaging Wikipedia, but
11 for medical things. And this is somehow a grip
12 that the Defendant -- I mean, that the victim in
13 this case, Bryan Capnerhurst, would have had this
14 death grip. That is what they called it, a death
15 grip.

16 Well, if that had been so, the testimony is
17 that the victim, Bryan Capnerhurst, didn't die
18 right away. Neither did Tammy Parker. It would
19 have taken a period of time. Be it seconds or
20 minutes. They bled out. So the whole thing is the
21 time that he was actually shot, could he have held
22 onto this, because he wouldn't be dead yet. And
23 rigor, at least as far as I know, doesn't set in
24 until you are dead.

25 So it is just another misleading thing.

1 Because the series of shots, coupled with, and what
2 is most important, which they didn't talk about, is
3 this huge hole, the size of a golf ball, in his
4 left hand. Regardless of what muscles are there.
5 They were all blown away. His arm is broken. At
6 that moment he wouldn't have been able to grip
7 anything. As he is going through the air. Even
8 without that, I submit, ladies and gentlemen, based
9 on the number of shots and the impact, he couldn't
10 have held onto it. But it could be placed there
11 once he is down and once he knows he's gone.

12 And, remember, at the morgue the next day he
13 is still in full rigor, because at that point it
14 had set in.

15 The last shot to the head, to the face, which
16 is totally and completely supported by the physical
17 evidence.

18 MR. WHITLARK: Your Honor, it is getting
19 repetitive now. She is saying things she just said
20 ten minutes ago. And we are an hour and a half
21 into this.

22 THE COURT: All right. The objection is
23 overruled.

24 MS. CAMPBELL: Thank you, Your Honor.
25 The debt. You will have the boards.

1 The lay witnesses.

2 Dr. Theresa Mills Floyd. Doctor appointment.
3 Tammy was supposed to be there at 2:00. She never
4 called. She went to the funeral. She thought it
5 was odd. And this, again, was one of the key
6 things, because the only thing Brett said to her
7 was nothing about Tammy, but the only information,
8 wanted to know if he could come see her to get help
9 because his face had gotten so red from all the
10 crying.

11 The next witness. Lindsay Mullins. They had
12 sex in [REDACTED]'s bedroom. She is the one that told
13 you the information about how he patted the desk
14 and said, I have a gun there, in the office area.
15 That is where the gun oil was found. Text messages
16 that a.m. planning another rendezvous the next
17 week. Is that the kind of stimulus he needed to go
18 through with it? He had bigger and better things
19 to do than to mess with his wife.

20 Natasha Nadkarni. Text messages at Christmas.
21 Tammy found them. She was upset. Voicemails
22 afterwards. And we don't get into this until they
23 open the door on this stuff. You owe me an
24 explanation.

25 What did the Defendant say to her? The

1 evidence does not match my story. That is what the
2 police said. That is what he told her. The
3 forensic evidence, or the evidence, does not match
4 my story.

5 Betty Ann Webb. And I submit, ladies and
6 gentlemen, I beg you, judge Betty Ann Webb, judge
7 Jackie Warren. Do they have a reason to come in
8 here and make up any of this? They didn't go meet
9 with the police. The police didn't talk them into
10 changing their story. They believed Brett. They
11 believed Brett. But he is the one -- because he
12 can't help himself, he has to talk about it.

13 He has the shot under the arm, that he picked
14 it up, remember? The safe would have been right
15 here. He picked it up. Shot under his arm. And
16 he didn't realize at that point that that wouldn't
17 work because he was actually running to the roof
18 because of the eave coming down. But that is how
19 he described it to them. And they believed him.

20 Remember Jackie's daughter even commented that
21 he was acting like a maverick, or something. I may
22 have said that wrong.

23 But then when they go back to the house,
24 because he wants to show them -- because, again, he
25 can't help himself -- he shows them a completely

1 different version. And at that moment, the only
2 reason he changes his story is because he is
3 telling yet a lie.

4 The T-shirt. The police didn't collect it.
5 Disdain for the police.

6 Jerry Carswell believed Brett. Remember? He
7 came before you and he talked to you about how
8 Brett did know about the life insurance. How he
9 remembered one time he and Tammy had laughed back
10 and forth. And Tammy said she was worth around
11 \$750,000, and he remembered that because it was
12 about the same amount as the house was worth.

13 He remembered that Capnerhurst -- there was
14 some inference at the beginning of this trial that
15 he parked his car in a manner in order to make a
16 quick getaway -- he always parked his car there,
17 and at least on one prior occasion had left the
18 keys in it.

19 John Lucas gave the gun to Jack and Linda,
20 which was then passed on to Brett.

21 James Morgan. He remembers he had several
22 conversations with his friend. Bring a bag.

23 12:30. Tammy will be there.

24 And, remember, this is important, because Cap
25 is anxious, he is worried. He is talking about,

1 will you call 9-1-1. He is telling his wife to
2 check up on him. But once he found out Tammy was
3 there, he felt better. There was a walk-away plan.
4 He had talked to Jack, calls, the argument starts.

5 You heard from other witnesses. Cindy
6 Capnerhurst. She talked about how much money was
7 owed. That Tammy was going to be there. That they
8 changed the time from 2:00 o'clock to sometime
9 around lunchtime. That he wanted him to bring a
10 bag for money. They even had the discussion about
11 whether it would be small bills, remember? She
12 admitted to the embezzlement, talked about what her
13 lawyer did.

14 Heyward Barnes. Talked to him about his
15 budget. He had a plan in place, regardless of
16 whether he got paid, that he could pay back the
17 credit card debt. He had already paid it down
18 \$5,000. Capnerhurst was afraid of guns. He told
19 you the story about shooting the turtles in the
20 pond. I think there were some ducks involved.
21 That he was the perfect fall guy.

22 Liz Myers. She had never known Capnerhurst to
23 have guns. That she found the amounts he was owed
24 on that pad of paper and turned it over to police.

25 You heard from Jim Headley. He was his

1 co-worker. Punctual. Non-confrontational. That
2 he always had the gym bag. That that morning he
3 was told to take it for money. That he spoke that
4 a.m. and that he was relieved because Tammy was
5 going to be there.

6 Alvin Kelly, his co-worker, his friend.
7 Punctual. Non-confrontational. That he always had
8 that gym bag.

9 Then he talked to Lanny Gunter. Lanny Gunter.
10 What did he tell you? He ran a sporting -- he was
11 a bookie too. He was Brett's bookie, which is now
12 undisputed.

13 That over time that Brett would make online
14 gambling. That he was running up a bunch of money
15 when he opened a second account. That he was into
16 him for \$101,000 under Brett's account. That he
17 was into him for \$76,000 under a fictitious
18 account, which he and Harry, shortly before this,
19 had figured out was fictitious, that it really was
20 Brett, which was correct. That he was expecting
21 him to make a \$50,000 payment that week.

22 Harry Benenhaley. His second in command.
23 Again, the same amount. That his payment --
24 remember the payment plan? Brett had been out of
25 town the week before on a cruise and didn't have to

1 pay any money then, but the next week they were
2 pushing him on money.

3 And regardless of what all these people say, I
4 think when you bet with people you are expected to
5 pay.

6 The payment was originally set up for that
7 Wednesday. Brett put it off. It was supposed to
8 be that Friday morning. Brett put it off. It was
9 going to be that Friday p.m. Guess what? Brett
10 doesn't have to make it. Never made another
11 payment.

12 Britt Jordan, his friend. Never thought he
13 would come forward. April 12th, the day before
14 this happened, the night before, he calls up Britt
15 and tells him that he needs to get a \$5,000 loan, a
16 friend of his needs this money, that if he lends
17 him the money he'll make the payments back over
18 seven months and he'll get \$7,000 back.

19 Ben Staples, the CPA. Helped him with the
20 finances and the taxes. He is the one that looked
21 out for these children. Not Brett Parker. He is
22 the one that wanted to make sure that no matter
23 what Brett had done or not done --

24 MR. FEDOR: Objection, Your Honor. That is
25 not in the record. She is arguing outside of the

1 record. Objection.

2 THE COURT: The objection is overruled.

3 MS. CAMPBELL: Thank you, Your Honor.

4 He is the one that set up the probate. He is
5 the one that set up the meeting with Sojourner for
6 the kids.

7 And in a recorded phone call, Brett called
8 him, talks to him about changing his testimony and
9 saying it was Brett's idea.

10 Sandy Morgan. And this was just typical.
11 Monday after at work, he is out there cleaning up
12 his desk. Tammy murdered on Friday. He is there
13 Monday morning cleaning out his desk. I submit,
14 with papers, with cards, with whatever.

15 She said he never worked on a Friday. But she
16 found that legal pad where he is outlining who did
17 what.

18 And the bottom line here, ladies and
19 gentlemen, is Brett Parker couldn't afford a
20 divorce, because Tammy was the breadwinner. As
21 much as they say he wouldn't kill her for that, he
22 wasn't the big breadwinner, other than the betting,
23 and he bet it all away.

24 Al Muncey. And this speaks volumes. Remember
25 that morning 4/13 he is there at the office

1 flashing his wad that he had just gotten the night
2 before. He said it was from betting proceeds, but
3 it was really the money he got from Britt the night
4 before.

5 Told him -- and think about it -- later, weeks
6 later, after this happened -- he is flashing money.
7 Manly bragging, yes, I stood over Capnerhurst and I
8 shot him in the face. He couldn't help himself.
9 Never worked on Friday.

10 Oppressive prosecution or overwhelming
11 evidence?

12 Let's talk about their witnesses.

13 Brad Spehl. Worked at MetLife. An old friend
14 of his. But Brad hadn't seen him except maybe once
15 in passing since 2008. Had no contact.

16 They said that Brad was trying to get him to
17 do something about insurance on Tammy at some time
18 prior to this. Brad Spehl testified that they had
19 had no contact since 2008. He doesn't know why on
20 March the 28th of 2012 that Brett would put his
21 phone number in under the name Brad/MetLife. This
22 is from the person that supposedly didn't know
23 Tammy's insurance was at MetLife. Yet two weeks
24 before this he uploads his friend, Brad Spehl, who
25 is the manager there, phone number into his thing.

1 He is the one, even though it didn't come out on
2 direct, that suggested money for the kids.

3 And Brett said, yeah, maybe I'll give them
4 \$100,000 each at that point.

5 He is also the one that said at a later time
6 Brett came back to him, or called back, I can't
7 remember which, y'all remember, and said, Do you
8 think they will pay me anything? I need money for
9 the funeral.

10 David Sojourner. Ben Staples was the one that
11 came up with the idea for the money to the
12 children. The Defendant had to think about it
13 overnight. Remember he left the office? Brett
14 then came back and said the lawyer thought it was
15 good, it takes motive off the table.

16 Fred Green. Met the Defendant that a.m. He
17 was a nice man.

18 Carol Haines saw the Defendant that morning.
19 Later told, don't hold whatever is going on with me
20 against the company.

21 Sheri Armstrong. Saw the Defendant that
22 morning. This is all at the wheelchair. A week
23 later told, don't hold this against the company.

24 And Wendy Combs-Kiser. We can't put up
25 witnesses just from subpoenaing someone. They

1 called her. Once they call a witness, we have the
2 right to go into fully as to what their
3 relationship is.

4 And what came out from Wendy Combs-Kiser? She
5 doesn't care for the police. May and June, end of
6 May, early June, we fought over that, whenever. At
7 the Great Wolf Lodge. She met Brett Parker.

8 If you give them till June the 1st, six weeks
9 after his wife is murdered. By July the 4th, one
10 month later, they are meeting at the beach with his
11 family, or whatever. You remember.

12 That they had a friendship, and now she loves
13 the Defendant and he loves her.

14 Grieving widower?

15 B.P. is proof that Brett Parker will
16 do anything for his own benefit. Fourteen years
17 old. It is a heartbreaker. They brought her in
18 here, put her up, knowing that we were then going
19 to be able to bring out the fact that there were
20 conversations with she and her father about how she
21 needed to change her testimony. There were
22 conversations where Jack Parker said, We need to
23 get B.P. to change her story. That speaks
24 volumes about this family.

25 Richard Ernest. He agreed with Terri Gleason.

1 Made it even closer. Tries to explain the GSR
2 with this whole thing. He didn't even know that
3 there were two different units. Remember his first
4 explanation was the air conditioning unit? There
5 are at least two units. They are on separate
6 floors.

7 Robert Bowers. He is a nice man.

8 Brett Parker. As of Friday of last week, he
9 is still trying to talk his way out of this one.
10 His own version is impossible by any version of the
11 forensic evidence. Take any one piece, but when
12 you take it all together, it is impossible. The
13 police did their job.

14 As I was coming in today, I was thinking
15 about, you know, what does a murderer look like?
16 For that matter, what does an armed robber, a child
17 molester, or a rapist look like? And,
18 unfortunately, we know from our everyday
19 experiences that it can be a next-door neighbor, a
20 high school coach, a young party girl, a priest.
21 It can be any of those people.

22 Brett Parker thinks because he doesn't look
23 like what he thinks a murderer should look like,
24 because he lives in a nice house, and he drove some
25 nice cars, and he had a nice life, be it all -- be

1 it illegal, he thinks he is above the law. And his
2 sense of entitlement and his disdain for law and
3 order has become very apparent over the last three
4 weeks in this case.

5 The State has asked of you just to know that
6 he is not above the law. That he drinks from the
7 same cup of justice as any other Defendant that
8 comes into this courtroom, in this courthouse, in
9 this county. And he is held accountable the same
10 way as any other Defendant, no matter how he may
11 look down on them, that comes in this court accused
12 of a crime.

13 Because once the State has put forth -- and I
14 submit, ladies and gentlemen, overwhelming
15 evidence, he is just as accountable, no matter who
16 his daddy is, no matter how much he tries to talk
17 his way out of it, as any other Defendant.

18 Back on April the 13th Brett Parker, his back
19 was up against the wall. The debts are
20 overwhelming. The adultery was intoxicating. He
21 was tired of his wife, he told his friends. She
22 bugged him.

23 He came up with a scheme, a plan, that he saw
24 as his only way out. He already had problems years
25 before. \$100,000 in debt. They say 88. I think

1 Ben said there was \$16,000 additional. Whatever.
2 Because he couldn't afford a divorce. He liked his
3 lifestyle. He would lose it all.

4 And all he had to do is set it up and make
5 sure that Tammy and Bryan didn't survive. He just
6 had to get Bryan there, and he had to make sure
7 that his story was the only one that came out of
8 there.

9 And so he gambled. And he bet on the fact
10 that if just told the police a story, like they had
11 in the past, they would accept it at face value.

12 And he bet on the fact that the Sheriff's
13 Department would never challenge his version of
14 events.

15 And he bet on the fact that they would never
16 find out about his gambling, or his affairs, or his
17 debt, or his excessive borrowing.

18 And he bet on the fact that, even if they
19 found out about all of that, even if they did some
20 police work, he could just talk his way out of it.

21 And he bet on the fact that even if they were
22 suspicious, that is all it could be, suspicion,
23 innuendo. There would be no solid forensic
24 evidence.

25 And he bet on the fact that even if he got

1 kind of questioned on it, that his daddy would come
2 to his aid.

3 And he bet on the fact when things weren't
4 even looking so good, that if he just got to the
5 sheriff he could talk his way out of it, like he
6 did over and over. If the sheriff would just
7 decide, if it was the sheriff's decision.

8 And he bet on the fact that even if he was
9 arrested, there wasn't a Grand Jury that would
10 indict him.

11 And he bet on the fact that even if he went to
12 trial, his lawyers would just muddy up the water,
13 confuse the jury.

14 And he bet on the fact that if he just got in
15 court and said enough bad things about even his own
16 wife or Capnerhurst, Capnerhurst wife's, the jury
17 wouldn't hold him responsible.

18 And he bet on the fact that if he just kind of
19 threw his own daughter in there, the sympathy would
20 be overwhelming.

21 And he bet on the fact that the jurors would
22 just be too dumb to understand the forensic
23 evidence, the inconsistencies, the overwhelming
24 evidence.

25 And then he finally bet on the fact that if he

1 just testified himself, he could talk his way out
2 of it.

3 He bet wrong.

4 All the State asks is that you take the
5 forensic evidence and you take all his lies and all
6 of his debts and all of his motives, and you hold
7 him responsible.

8 This case is cold, and it is heinous, and it
9 as calculated as any murder that has ever come in
10 this courthouse.

11 To murder the mother of your two children and
12 to blame your best friend because you wanted to
13 keep having the lifestyle, it doesn't get any
14 worse. And it speaks volumes about Brett Parker's
15 character.

16 And perhaps Jack Parker said it best when he
17 said -- found out that he had stolen some of his
18 clients -- and he said to his child: If you betray
19 me, who else will you betray?

20 Tammy Parker laid on that floor, the life
21 running out of her, as her blood pooled around her
22 head. And, according to Brett Parker, he couldn't
23 risk messing up the crime scene he just staged. He
24 went over to her and he checked her pulse. Not a
25 drop of blood on him, remember? And he said,

1 Tammy, you okay?

2 I submit, ladies and gentlemen, strangers in
3 tragedies -- Boston Marathon, the Twin Towers --
4 have shown more compassion, more concern, more
5 care, and more love towards strangers than Brett
6 Parker did as his wife bled out.

7 MR. FEDOR: Objection, Your Honor. This is
8 entirely outside of the record and shouldn't be
9 allowed.

10 THE COURT: The objection is overruled.

11 MS. CAMPBELL: Than Brett Parker showed to the
12 wife and mother of his children.

13 But, after all, at that point all she was to
14 him was money in the bank.

15 All we ask is that you look at all the
16 evidence and hold him responsible for what he did,
17 the choices he made, and find him guilty for what
18 he did.

19 Thank you.

20 MR. FEDOR: Your Honor, we would like to
21 discuss a matter of law outside the presence of the
22 jury.

23 THE COURT: All right. Ladies and gentlemen
24 of the jury, I am going to send you -- you all
25 probably would like a short break. And I'm

1 prepared to give you the charge on the law. It
2 will -- the charge will probably take about 20
3 minutes, 20 to 30 minutes. So I am going to give
4 you all a short break and stretch your legs.

5 All right. Thank you.

6 (WHEREUPON, the jury retires to the jury
7 room at 3:47 p.m.)

8 MR. FEDOR: Your Honor, first of all, we were
9 told by this Court on the limitation we had for
10 time. She has spoken for an hour and a half.

11 THE COURT: I didn't give any limitation. I
12 said I trust that --

13 MR. FEDOR: Okay, whatever you said.

14 THE COURT: Use good time.

15 MR. FEDOR: Secondly, this argument was
16 entirely biased and going off on things that are
17 not in the record.

18 And, thirdly, Your Honor stopped me from
19 cross-examining or rather from discussing the
20 cross-examination of Dr. Marcus, which we really
21 wanted to get into. And we weren't allowed to do
22 so. Yet, they could talk completely about him
23 going up and shooting him in the head, which is not
24 set forth in any fact from this record.

25 I wanted to get into the cross-examination of

1 him that Mr. Whitlark proved -- proved without any
2 doubt -- that the guy didn't know his left hand
3 from his right hand. And I just think it is
4 biased, and we object to the arguments.

5 THE COURT: All right. And I don't -- she
6 made an objection. I think her objections were
7 your comments regarding the amount of time. I
8 think your comments were that he was looking at
9 life, or his life was on the line.

10 MR. FEDOR: Well, regardless, I was stopped.

11 THE COURT: And I think you did get into -- I
12 mean, I can have the court reporter look it back
13 up, but I'm sure Mr. Whitlark went into that in his
14 closing regarding Dr. Marcus's testimony in his
15 closing and addressed the cross-examination of
16 Dr. Marcus and Dr. Marcus not being able to
17 identify the muscle, and whatever Wikipedia called
18 it, I don't remember the name of the diagnosis.

19 MR. WHITLARK: Cadaveric rigidity, Your Honor.

20 THE COURT: Yes, that. So I think that you
21 all were able to get into that.

22 The only objections that I sustained I believe
23 for her were the three times that you attempted to
24 talk about potential sentence or his life being on
25 the line, and those are the ones that I believe

1 were sustained.

2 MR. FEDOR: Your Honor, I took your sustaining
3 of the objection to state to me I couldn't continue
4 explaining my position on Dr. Marcus as a result of
5 Mr. Whitlark's --

6 THE COURT: But I brought y'all up here and I
7 told y'all when we were at the bench conference
8 that you couldn't get into the discussion regarding
9 life -- him looking at life and this being his --
10 because you, Mr. Fedor, I know you know that the
11 sentence -- if he is to be found guilty, of course,
12 that will be up to the jurors to decide, but they
13 don't get into any sentencing aspect.

14 MR. FEDOR: I know that, Your Honor.

15 THE COURT: And so that is definitely off
16 limits in the courtroom. And there is probably 100
17 cases out there that date back 100 years or more
18 that say that you cannot. So --

19 MR. FEDOR: I'm not arguing with Your Honor on
20 that at all.

21 THE COURT: So that is the issue that I
22 sustained regarding her objection. But, I think
23 Mr. Whitlark was able to discuss in his closing
24 Dr. Marcus. And I understand these are arguments,
25 they don't agree with everything that you all said,

1 and y'all don't agree with what they said, and I
2 think that is why we call them arguments. But I
3 will instruct the jury that they must consider the
4 evidence.

5 And I think I have already told them that the
6 arguments, starting from opening statements, were
7 just the lawyer's view of it, and that it is not
8 evidence.

9 But I think your objection is preserved for
10 the record.

11 MR. FEDOR: Thank you, Your Honor.

12 MR. WHITLARK: Your Honor, may we go to the
13 restroom before the jury charge?

14 THE COURT: As long as y'all will be back in
15 five minutes.

16 (WHEREUPON, a break was taken.)

17 THE COURT: I think Mr. Fedor has -- his
18 objection is preserved for the record.

19 As to the alternate, we discussed this
20 earlier, Rule 47 of South Carolina Rules of
21 Criminal Procedure -- Civil Procedure says that the
22 alternate jurors shall be discharged after the jury
23 retires to consider the verdict.

24 Of course, the federal rules say that the
25 retention of alternate jurors after the jury

1 retires -- that the Court can allow retention of
2 alternate jurors after the jurors retire to
3 deliberate.

4 And then the Statute 14-7-1340 says that
5 alternates are to be discharged upon submission of
6 the case to a jury.

7 If you all -- however -- I don't know how long
8 it will take them to deliberate. There is a
9 possibility we may go into tomorrow or the next
10 day. I know the practice has been with some of the
11 judges on the bench to hold the alternates and keep
12 them in a separate room and tell them not to
13 deliberate.

14 I don't know what happens if something
15 happens. I mean, I know that is kind of half and
16 half probably. Some do that. Others dismiss them
17 all, especially when you've had a three-week trial.
18 But if you all can agree to hold them. I don't
19 think we need to hold all four of them, but maybe
20 hold two of them. I can make arrangements to put
21 them in a different room.

22 MR. WHITLARK: Your Honor, may I please the
23 Court, Your Honor?

24 THE COURT: Yes, sir.

25 MR. WHITLARK: Your Honor, I think to be on

1 the safe side, I think we better adhere to the
2 provisions of Rule 47. I don't see -- I think we
3 ought to just cut them loose. I understand what
4 the concerns of the Court are, but we didn't object
5 and have no objection to you making the inquiry
6 that you were going to make, but I think in order
7 to -- I don't know. I think we better stay within
8 the rules of South Carolina Criminal Procedure. I
9 have no problem with what the Court is going to say
10 to them, but just to be on the safe side, Your
11 Honor.

12 THE COURT: All right. Well, I won't release
13 them. I'll have them put the alternates -- after I
14 finish the charge, we'll send them all back, and
15 then before we take the evidence back and begin
16 their deliberations, I'll have you pull them.

17 Any position from the State regarding that?

18 MS. CAMPBELL: No, Your Honor, whatever you
19 think is appropriate.

20 MR. WHITLARK: Your Honor, may we approach the
21 bench about a matter we discussed with the Court?

22 (WHEREUPON, a bench conference was held
23 in the presence of the jury but out of
24 the hearing of the jury.)

25 MR. WHITLARK: Thank you, Your Honor.

1 THE COURT: All right. Are you ready to bring
2 them in?

3 MR. WHITLARK: The Defense is ready, Your
4 Honor.

5 THE COURT: All right, you can bring them in.
6 (WHEREUPON, the jury came into open
7 court at 4:04 p.m.)

8 THE BAILIFF: The jury is seated, Your Honor.

9 JURY CHARGE

10 THE COURT: All right, ladies and gentlemen of
11 the jury, you have heard all of the evidence, the
12 argument of the parties. It is now my
13 responsibility to charge you as to the law in this
14 case.

15 I remind you that during this trial you and I
16 have certain duties to perform.

17 As the trial judge it is my responsibility to
18 preside over the trial of this case, and I also
19 have the duty to rule on the the admissibility of
20 evidence offered during this trial.

21 You are to consider only the competent
22 evidence before you. If there was any testimony
23 ordered stricken from the record in this case
24 during this trial, you must disregard that
25 testimony. You are to consider only the testimony

1 which has been presented from the witness stand,
2 any exhibits which have been made a part of the
3 record in this case, and any stipulations of
4 counsel.

5 I have the additional duty to charge you the
6 law applicable to this case. As the presiding
7 judge, I am the sole judge of the law of this case.
8 And it is your duty as jurors to accept and apply
9 the law as I now state it to you.

10 If you already have any idea as to what the
11 law is or what the law ought to be, and it does not
12 agree with what I now tell you the law is, you must
13 abandon this idea, because you are sworn to accept
14 the law and apply the law exactly as I state it to
15 you.

16 In every case tried in this court before a
17 jury, the jury becomes the sole and exclusive judge
18 of the facts in a case.

19 A trial judge cannot intimate, state, comment
20 on, or make any statement to a trial jury about the
21 facts in a case.

22 Since you, the jury, are the sole judges of
23 the facts in this case, you are not to infer from
24 what I have said during the progress of this trial
25 in ruling upon the admissibility of evidence, or

1 otherwise, or anything that I say now during the
2 course of this instruction to you, that I have any
3 opinion about the facts in this case. The law does
4 not allow me to have an opinion about the facts in
5 this case. This is a matter solely for you, the
6 jury, to determine.

7 As jurors it is your duty to determine the
8 effect, value, weight, and truth of the evidence
9 presented during this trial.

10 Ladies and gentlemen of the jury, there are
11 two types of evidence which are generally presented
12 during a trial: Direct evidence and circumstantial
13 evidence.

14 Direct evidence is the testimony of a person
15 who claims to have actual knowledge of a fact, such
16 as an eyewitness. It is evidence which immediately
17 establishes the main fact to be proved.

18 Circumstantial evidence is proof of a chain of
19 facts and circumstances indicating the existence of
20 a fact. It is evidence which immediately
21 establishes collateral facts from which the main
22 fact may be inferred. Circumstantial evidence is
23 based on inference and not on personal knowledge or
24 observation.

25 The law makes absolutely no distinction

1 between the weight or value to be given to either
2 direct or circumstantial evidence, nor is a greater
3 degree of certainty required of circumstantial
4 evidence than of direct evidence. You should weigh
5 all of the evidence in the case.

6 After weighing all of the evidence, if you are
7 not convinced of the guilt of the Defendant beyond
8 a reasonable doubt, you must find the Defendant not
9 guilty.

10 The indictments in this case charge the
11 Defendant with two counts of murder. I remind you
12 that the fact that the Defendant was arrested,
13 charged, and indicted in this case is not evidence
14 in this case and cannot be considered by you as
15 evidence of guilt in this case, nor does it create
16 any presumption or inference of guilt.

17 This document simply is the formal written
18 instrument which contains the charges made against
19 the Defendant. It is the formal document by which
20 this case is brought into court.

21 The Defendant has pled not guilty to these
22 indictments, and that plea puts the burden on the
23 State to prove the Defendant guilty.

24 A person charged with committing a criminal
25 offense in South Carolina is never required to

1 prove himself innocent.

2 I charge you that it is an important rule of
3 the law that the Defendant in a criminal trial, no
4 matter what the seriousness of the charge may be,
5 will always be presumed to be innocent of the crime
6 for which the indictment was issued unless guilt
7 has been proven by evidence satisfying you of that
8 guilt beyond a reasonable doubt.

9 This presumption of innocence does not end
10 when you begin your deliberations, but it
11 accompanies the Defendant throughout the trial,
12 until you reach a verdict of guilt based on
13 evidence satisfying you of that guilt beyond a
14 reasonable doubt.

15 The presumption of innocence is like a robe of
16 righteousness placed about the shoulders of the
17 Defendant, which remains with the Defendant until
18 it has been stripped from the Defendant by evidence
19 satisfying you of the Defendant's guilt beyond a
20 reasonable doubt.

21 The presumption of innocence is not mere legal
22 theory. It is not just a legal phrase. It is a
23 substantial right to which every Defendant is
24 entitled unless you, the jury, are satisfied from
25 the evidence of the Defendant's guilt beyond a

1 reasonable doubt.

2 What is reasonable doubt? What is a
3 reasonable doubt in the law? A reasonable doubt is
4 the kind of doubt that would cause a reasonable
5 person to hesitate to act. The State has the
6 burden of proving the Defendant guilty beyond a
7 reasonable doubt.

8 Some of you may have served as jurors in civil
9 cases where you were told that it is only necessary
10 to prove that a fact is more likely true than not
11 true, such as by the greater weight or
12 preponderance of the evidence.

13 In criminal cases, the State's proof must be
14 more powerful than that. It must be beyond a
15 reasonable doubt.

16 Proof beyond a reasonable doubt is proof that
17 leaves you firmly convinced of the Defendant's
18 guilt.

19 There are very few things in this world that
20 we know with absolute certainty. And in criminal
21 cases the law does not require proof that overcomes
22 every possible doubt.

23 If, based on your consideration of the
24 evidence, you are firmly convinced that the
25 Defendant is guilty of the crime charged, you must

1 find the Defendant guilty.

2 If, on the other hand, you think there is a
3 real possibility that the Defendant is not guilty,
4 you must give the Defendant the benefit of the
5 doubt and find him not guilty.

6 Necessarily, you must determine the
7 credibility of all witnesses who have testified in
8 this case.

9 Credibility simply means believability. It
10 becomes your duty as jurors to analyze and to
11 evaluate the evidence and determine which evidence
12 convinces you of its truth.

13 In determining the believability of witnesses
14 who have testified in this case, you may believe
15 one witness over several witnesses, or several
16 witnesses over one witness.

17 You may believe a part of this testimony of a
18 witness, and reject the remaining part of the
19 testimony of that same witness.

20 You may believe the testimony of a witness in
21 its entirety, or reject the testimony of the
22 witness in its entirety.

23 You may consider whether any witness has
24 exhibited to you any interest, bias, prejudice, or
25 other motive in this case.

1 You may also consider the appearance and
2 manner of a witness while on the witness stand.

3 Next we will talk about expert witnesses.
4 Normally a person cannot give opinion testimony.
5 Normally when a person testifies, they must testify
6 as to what they either saw, heard, or sensed by
7 smell, or something of that nature. However, there
8 is an exception when someone is qualified because
9 of education or experience. They are permitted to
10 give their opinion in certain areas if the Court
11 qualifies them that way.

12 That does not mean that you must accept the
13 opinion, but it is evidence for you to use in any
14 way you see fit and give it the weight and
15 credibility you believe is appropriate.

16 There has been evidence presented that
17 witnesses have made prior statements which are not
18 consistent with the witness's present testimony.

19 You may use this evidence to decide whether to
20 believe the witness. You may also use evidence of
21 the earlier contradictory statements to determine
22 the truth of those statements. It is up to you to
23 decide whether to believe the earlier statement or
24 the testimony given at trial.

25 If a witness is shown to have knowingly

1 testified untruthfully concerning any material
2 matter, you may consider this in determining
3 whether to trust a witness's testimony as to the
4 other matters.

5 You may reject all testimony of that witness,
6 or give all or part of the testimony the weight you
7 think it deserves.

8 A statement alleged to have been made by the
9 Defendant has been admitted into evidence in this
10 case.

11 While the Court has determined that the
12 statement is admissible, I instruct you that you
13 make the ultimate decision of whether or not the
14 Defendant made the statement.

15 If the Defendant did make the statement, you
16 must determine whether the statement was made by
17 the Defendant voluntarily and of his own free will.

18 This means that the statement was not caused
19 by pressure, force, fear, threat, coercion, or
20 intimidation, or by hope or a promise of leniency
21 or reward of any kind.

22 In determining whether the statement was
23 voluntary, you should consider both the
24 characteristics of the Defendant and the details of
25 the questioning.

1 Some of the factors that you must consider
2 are: One, the age of the Defendant; the
3 Defendant's education or lack of education; the
4 Defendant's mental ability or capacity; the
5 Defendants IQ or intelligence; the Defendant's
6 background and environment; the place and length of
7 the detention; the nature of the questioning; and
8 the advice or lack thereof to the Defendant of his
9 constitutional rights, including, but not limited
10 to, the right to remain silent, that any statement
11 could be used against him in a court of law, the
12 right to have a lawyer present, that if he could
13 not afford a lawyer, a lawyer would be appointed to
14 represent him without any cost, and that he could
15 stop making a statement at any time.

16 You must carefully consider all of the
17 surrounding circumstances before you give any
18 weight to any alleged statement.

19 The State has the burden of proving beyond a
20 reasonable doubt that the alleged statement was
21 voluntary. If you determine it was, you may give
22 the statement any further consideration that you
23 deem proper.

24 You must decide what weight, if any, should be
25 given to the alleged statement. If you determine

1 the alleged statement was not the free and
2 voluntary statement of the Defendant, you should
3 not consider the statement at all.

4 In order to establish criminal liability,
5 criminal intent is required. For example, the
6 mental state required to be proven by the State for
7 a particular crime might be: Purpose, intent,
8 knowledge, recklessness, or criminal negligence.

9 Criminal intent must be proven by the State
10 beyond a reasonable doubt. Criminal intent is
11 always a matter that must be determined by the jury
12 from the circumstances surrounding the situation.
13 There is no way to prove intent to a mathematical
14 certainty. There is no way medical science can
15 dissect a person's brain and determine what the
16 person had in mind, so the law says that criminal
17 intent may be inferred by the circumstances shown
18 to have existed.

19 This is how you make a determination of
20 whether or not the element requiring intent was
21 present. It is not necessary to establish intent
22 by direct and positive evidence, but intent may be
23 established by inference in the same way as any
24 other facts, by taking into consideration the acts
25 of the parties and all the facts and circumstances

1 of the case.

2 Criminal intent is a mental state, a conscious
3 wrongdoing. It is up to you to determine what the
4 Defendant intended to do based on the circumstances
5 shown to have existed.

6 Criminal intent can arise from action or a
7 failure to act. It may arise from negligence,
8 recklessness, or an indifference to duty or to the
9 consequences that is considered by the law to be
10 the equivalent of criminal intent.

11 The Defendant in this case is charged with two
12 counts of murder. The State must prove beyond a
13 reasonable doubt that the Defendant killed another
14 person with malice aforethought.

15 Malice is hatred, ill-will, or hostility
16 towards another person. It is the intentional
17 doing of a wrongful act without just cause or
18 excuse and with an intent to inflict an injury or
19 under circumstances that the law would infer an
20 evil intent.

21 Malice aforethought does not require that the
22 malice exist for any particular time before the act
23 was committed, but malice must exist in the mind of
24 the Defendant just before and at the time the act
25 is committed. Therefore, there must be a

1 combination of the previous evil intent and the
2 act.

3 Malice aforethought may be express or
4 inferred. These terms, express and inferred, do
5 not mean different kinds of malice, but merely the
6 manner in which malice may be shown to exist. That
7 is, either by direct evidence or by inference from
8 the facts and circumstances which are proved.

9 Express malice is shown when a person speaks
10 words which express hatred or ill-will for another
11 or when the person prepared beforehand to do the
12 act which was later accomplished. For example,
13 lying in wait for a person, or any other act of
14 preparation going to show that the deed was within
15 the Defendant's mind would be express malice.

16 Malice may be inferred from conduct showing a
17 total disregard for human life.

18 The Defendant in this case has raised a
19 defense of self-defense. Self-defense is a
20 complete defense and if it is established you must
21 find the Defendant not guilty.

22 The State has the burden of disproving
23 self-defense by proof beyond a reasonable doubt.

24 If you have a reasonable doubt of the
25 Defendant's guilt after considering all the

1 evidence, including the evidence of self-defense,
2 then you must find the Defendant not guilty.

3 On the other hand, if you do not have a
4 reasonable doubt of the Defendant's guilt after
5 considering all the evidence, including the
6 evidence of self-defense, then you must find the
7 Defendant guilty.

8 The following elements are required to
9 establish self-defense.

10 First, the Defendant must be without fault.
11 The Defendant must be without fault in bringing on
12 the difficulty.

13 If the Defendant's conduct was the type which
14 was reasonably calculated to and did provoke a
15 deadly assault, the Defendant would be at fault in
16 bringing on the difficulty and would not be
17 entitled to an acquittal based on self-defense.

18 Second, is imminent danger. The second
19 element of self-defense is that the Defendant was
20 actually in imminent danger of death or serious
21 bodily injury or that the Defendant actually
22 believed he was in imminent danger of death or
23 serious bodily injury.

24 If the Defendant was actually in imminent
25 danger, it must be shown that the circumstances

1 would have warranted a person of ordinary firmness
2 and courage to strike the fatal blow to prevent
3 death or serious bodily injury.

4 If the Defendant believed he was in imminent
5 danger of death or serious bodily injury, it must
6 be shown that a reasonably prudent person of
7 ordinary firmness and courage would have had the
8 same belief under the same circumstances.

9 In deciding whether the Defendant actually was
10 or believed he was in imminent danger of death or
11 serious bodily injury, you should consider all the
12 facts and circumstances surrounding the crime,
13 including the physical condition and
14 characteristics of the Defendant and the victim.

15 Next, you must consider the degree of force.
16 A person cannot be required to make an exact
17 calculation as to the degree or amount of force
18 which may be needed to avoid death or serious
19 bodily injury.

20 Therefore, in self-defense the Defendant has
21 the right to use the force needed to avoid death or
22 serious bodily harm.

23 The force used in self-defense does not have
24 to be limited to the degree or amount of force used
25 by the victim. The Defendant has the right to use

1 so much force as appears to be necessary for
2 complete self-protection in which a person of
3 ordinary reason and firmness would have believed to
4 be needed to prevent death or serious bodily harm.

5 If a Defendant is justified in defending
6 himself or others in firing the first shot, then
7 the Defendant is also justified in continuing to
8 shoot until it is apparent that the danger of death
9 or serious bodily injury has completely ended.

10 The Defense has also raised the defense of
11 habitation. If the Defendant or a member of the
12 Defendant's household is attacked in the
13 Defendant's own home, the Defendant may use the
14 force which appears to be needed to protect himself
15 or his household from death or serious bodily
16 injury.

17 If a trespasser refuses to leave the home when
18 asked to leave, the Defendant may use the necessary
19 force to eject the trespasser.

20 If, in the effort to eject the trespasser, the
21 life or safety of the Defendant or a member of the
22 household is jeopardized, the Defendant may take
23 the life of the trespasser.

24 The kind and degree of force which are
25 justified depend on the conduct of the trespasser.

1 If a person entered the dwelling at the
2 invitation of a member of the household, the person
3 becomes a trespasser if the person refuses to leave
4 when asked.

5 The State and the Defendant are entitled to
6 the individual opinion of each juror on the issues
7 of fact in this case. It is the duty of each of
8 you to consider and weigh all of the evidence in
9 this case and from such evidence to determine, if
10 you can, the question of the guilt or innocence of
11 the Defendant.

12 There is nothing peculiarly different in the
13 way a jury should consider the evidence in a
14 criminal case from that in which all reasonable
15 persons treat any question, depending upon evidence
16 presented to them.

17 You are expected to use your good sense,
18 consider the evidence in the case for only those
19 purposes for which it has been admitted, and give
20 it a reasonable and fair construction in the light
21 of your common knowledge of the natural tendencies
22 and inclinations of human beings.

23 If the accused be proved guilty beyond a
24 reasonable doubt, say so. If not so proved guilty,
25 say so.

1 Ladies and gentlemen of the jury, your verdict
2 in this case will be one of two forms.

3 If, from the evidence and the law, you find
4 the Defendant is not guilty, you will circle not
5 guilty on the verdict form that I will provide you.
6 And the foreman will sign his name.

7 If, on the other hand, you find the Defendant
8 is guilty based upon the evidence and the law which
9 you have heard, you will circle guilty on the
10 verdict form. And the foreman will sign his name
11 and date the verdict form.

12 Your verdict must be unanimous. It must be
13 guilty or not guilty. The law requires that a jury
14 verdict be unanimous, which means that all the
15 jurors must agree.

16 The only two forms of the verdict are: Guilty
17 or not guilty.

18 Mr. Foreman, once the jury reaches a verdict
19 of not guilty or guilty, circle the verdict on the
20 face of the verdict form and sign under the verdict
21 to signify what you have circled is the verdict of
22 all the jurors.

23 Then you will notify us that you have reached
24 a verdict by knocking on the door.

25 As a juror in this case, once again, you are

1 the sole and exclusive judges of the facts.

2 As soon as I dismiss you, you will begin your
3 deliberations. If for any reason you are unable to
4 follow the Court's instructions or the law as I
5 have just explained it to you, please notify me or
6 a member of the court staff following this charge.

7 Once again, ladies and gentlemen of the jury,
8 I am going to send you back, but you cannot begin
9 your deliberations until you have received all of
10 the evidence -- and when I say evidence, everything
11 that was entered into the record you will receive
12 back into the jury room. Once you receive that and
13 you receive instructions from the bailiff, you can
14 then begin your deliberations.

15 You will also receive what I have in my hand.
16 It is the verdict form. And it states:

17 The State of South Carolina, County of
18 Richland, State v. Brett Parker, In the Court of
19 General Sessions of the Fifth Judicial Circuit,
20 Indictment Numbers 2012-GS-40-4379 and 4380.

21 And it says, Mr. Foreman, please circle the
22 appropriate verdict below and follow the
23 accompanying instructions carefully.

24 And it says:

25 One, as to the charge of murder of Tammy

1 Parker: We, the jury, unanimously find the
2 Defendant -- and there is a place on there for
3 guilty and there is a place on there for not
4 guilty.

5 Two, as to the charge of the murder of Bryan
6 Capnerhurst: We, the jury, unanimously find the
7 Defendant guilty or not guilty.

8 Then you will stop and end your deliberations.

9 Mr. Foreman, you will sign at the bottom of
10 the verdict form and date it.

11 You will knock on the door and indicate to the
12 bailiff that you have reached a verdict. Then we
13 will receive you back into the courtroom to hear
14 your -- or to receive your verdict.

15 THE FOREMAN: Thank you, Your Honor.

16 THE COURT: All right. But you cannot begin
17 deliberating until you receive the instructions
18 from the bailiff and all of the evidence and the
19 verdict form. At that point in time you may begin
20 deliberating.

21 I am going to send you all back and see if
22 there is any matters of law that I need to put on
23 the record with the lawyers. And then we should be
24 with you shortly.

25 It is going to take a second to get -- I think

1 there is 500 or 600 exhibits, so it is going to
2 take a second to get those back there to you.

3 All right. Thank you.

4 THE FOREMAN: Thank you, Your Honor.

5 THE COURT: And for my alternates, you can go
6 ahead and go back, and then I'll have further
7 instructions for you in a second.

8 (WHEREUPON, the jury retires to the jury
9 room at 4:30 p.m.)

10 THE COURT: All right, anything from the
11 State?

12 MS. CAMPBELL: No, ma'am.

13 THE COURT: Any objections or exceptions to
14 the verdict form or the charge? I did not charge
15 the other request I think from the State.

16 MS. CAMPBELL: That's fine.

17 THE COURT: All right.

18 MR. WHITLARK: May it please the Court, Your
19 Honor?

20 THE COURT: Yes, sir.

21 MR. WHITLARK: Just the request to charge
22 Number 1, The State v. Edwards.

23 THE COURT: Yes, sir.

24 MR. WHITLARK: I take exception. Thank you,
25 Your Honor.

1. THE COURT: All right. Thank you.

2. All right, y'all -- it is going to take a
3. second. Take a look at the evidence. I need to
4. pull -- I'll leave them back there, the alternates.
5. We need to pull the alternates. I'm going to
6. instruct them -- I'll let them know they can hang
7. around, but I'm going to instruct them not to
8. discuss the case with anyone until the jury is done
9. deliberating. And then after that they will have
10. the same instruction as everybody else, they can
11. talk to whoever they would like to talk to.

12. All right.

13. MS. WALKER: Thank you, Your Honor.

14. MR. WHITLARK: Stand at ease, Your Honor?

15. THE COURT: Yes, sir.

16. (Pause.)

17. (WHEREUPON, the jury was instructed to
18. begin deliberations at 5:18 p.m.)

19. (WHEREUPON, at 6:30 p.m. the following
20. occurred.)

21. THE COURT: This will be marked as Court
22. Exhibit Number 8.

23. (WHEREUPON, Court's Exhibit No. 8 was
24. marked for identification only.)

25. THE COURT: The jurors would like to see

1 statements from Lieutenant Odom and Officer Ryan.

2 There are none.

3 MS. CAMPBELL: There are none.

4 THE COURT: Well, they are not entered into
5 evidence.

6 MS. CAMPBELL: None entered in evidence.

7 THE COURT: I can tell them that they haven't
8 been entered into evidence or --

9 MR. WHITLARK: If I may, Your Honor? The jury
10 may have a mistake in what they are asking for.
11 They may want -- it is the testimony of the
12 officers they may be wanting. Since no statements
13 of theirs were actually -- I don't even think we
14 referenced them, that I recall. I don't know.

15 MS. CAMPBELL: Well, I mean, they aren't
16 admissible, so we couldn't put them in.

17 MR. WHITLARK: Right. But I don't think -- I
18 think there may have been -- it may be a question
19 about their testimony that is in evidence that they
20 heard.

21 THE COURT: Well, what I will ask them -- I'll
22 bring them back in and tell them that there are no
23 statements that are in evidence for them to
24 consider. If they would like to hear the
25 testimony -- now Debbie has looked it back up, I'm

1 not sure how long it is -- if they'd like to hear
2 the testimony, that we will just play it, you know,
3 that we will play all of the testimony.

4 MS. CAMPBELL: Not of the whole trial?

5 THE COURT: No. Even though we have gotten
6 that question before: Can we hear everybody's
7 testimony?

8 Okay, you can bring them in.

9 (WHEREUPON, the jury came into open
10 court at 6:32 p.m.)

11 THE BAILIFF: The jury is seated, Your Honor.

12 THE COURT: All right, ladies and gentlemen of
13 the jury, I have a note from you all. It is marked
14 Court's Exhibit Number 8.

15 And the question is: The jurors would like to
16 see the statements from Lieutenant Odom and Officer
17 Ryan.

18 And the answer to that is that: Those
19 statements are not entered into evidence, and so
20 therefore they are not for your consideration.
21 However, you all heard them testify, and that is
22 the record, and we can play back testimony if you
23 would like to hear the testimony played back.

24 THE FOREMAN: Okay.

25 THE COURT: All right.

1 (Pause.)

2 THE COURT: All right. And it is just going
3 to take the court reporter a minute.

4 Hold on. Mr. Foreman, you do want to hear
5 the testimony?

6 THE FOREMAN: Yes, Your Honor.

7 THE COURT: Both officers?

8 THE FOREMAN: Yes, Your Honor.

9 (WHEREUPON, the testimony of Joseph Ryan
10 was played back for the jury.)

11 (WHEREUPON, during the redirect
12 examination the following occurred.)

13 THE FOREMAN: Your Honor, we don't need
14 to listen to anymore.

15 THE COURT: Are you ready to stop?

16 THE FOREMAN: Yes.

17 THE COURT: You all had asked for the other
18 witness. You don't want to hear him?

19 THE FOREMAN: Disregard, Your Honor.

20 THE COURT: All right. All right, well, you
21 may continue your deliberations.

22 (WHEREUPON, the jury retires to the jury
23 room at 7:07 p.m.)

24 THE COURT: All right. They said that was
25 enough.

1 MS. WALKER: Thank you, Judge.

2 THE COURT: All right, I'm going to -- I'll
3 give y'all a heads-up. It is 7:00 o'clock. I'm
4 going to probably see if they want me to -- I'll
5 ask the question, if they think we need to order
6 dinner.

7 MS. CAMPBELL: Okay.

8 THE COURT: And if we do, we have to do it
9 because it takes some time to get here.

10 And if there is anyone -- did you get phone
11 numbers -- and, of course, she can't call everyone.
12 Y'all have your people covered.

13 MR. WHITLARK: She can call me.

14 THE COURT: And she can call Meghan.

15 MS. WALKER: Yes, ma'am. My telephone is the
16 best number.

17 THE COURT: Okay. And then I know there are
18 members of the press that are here too, and if they
19 want to give the number to my law clerk, she can
20 call any time that we have a question or if we get
21 a verdict.

22 All right, we'll be at ease until they come
23 back.

24 (Pause.)

25 THE COURT: It is my understanding from the

1 bailiffs that the jury has reached a verdict.

2 All right, anything before I bring them in?

3 MS. CAMPBELL: No, ma'am.

4 THE COURT: Anything from the Defense?

5 MR. WHITLARK: Nothing from the Defense.

6 THE COURT: All right, you may bring them in.

7 (WHEREUPON, the jury came into open

8 court at 7:37 p.m.)

9 THE BAILIFF: The jury is seated, Your Honor.

10 THE COURT: And before we receive the verdict
11 from the jury, I am going to ask that, for those of
12 you who are seated in the audience, that there is
13 not to be any outburst. And you all need to remain
14 seated until I dismiss the jury.

15 All right.

16 VERDICT

17 THE COURT: Mr. Foreman, it is my
18 understanding that the jury has reached a verdict?

19 THE FOREMAN: Yes, we have, Your Honor.

20 THE COURT: All right. And would you pass
21 that to the bailiff?

22 (Complies.)

23 THE COURT: Thank you.

24 (Court views verdict form.)

25 THE COURT: All right. And I am going to ask

1 the clerk to publish the verdict.

2 THE CLERK: The State of South Carolina,
3 County of Richland, In the Case of The State v.
4 Brett Parker, Indictment Numbers 2012-GS-40-4379
5 and 2012-GS-40-4380.

6 As to the charge of the murder of Tammy
7 Parker, We, the jury, unanimously find the
8 Defendant: Guilty.

9 As to the charge of the murder of Bryan
10 Capnerhurst, We, the jury, unanimously find the
11 Defendant: Guilty.

12 Signed by the Foreperson, Number 35, on May
13 28th, 2013.

14 Mr. Foreman, is this the verdict of the entire
15 jury.

16 THE FOREMAN: Yes, it is.

17 THE COURT: All right. Anything else from the
18 State?

19 MS. CAMPBELL: No, Your Honor.

20 THE COURT: Anything from the Defense? Do you
21 want me to poll them?

22 MR. WHITLARK: Yes, poll the jury, please,
23 Your Honor.

24 THE CLERK: Ladies and gentlemen of the jury,
25 I am going to ask you two questions relating to

1 your verdict. Please answer yes or no when I call
2 your juror number.

3 Number 35, was this your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 THE JUROR: Yes.

7 THE CLERK: Number 48, was this your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Is it still your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Number 111, was this your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Is it still your correct?

14 THE JUROR: Yes.

15 THE CLERK: Number 268, was this your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Number 55, was this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Number 170, was this your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 THE JUROR: Yes.
2 THE CLERK: Number 8, was this your verdict?
3 THE JUROR: Yes.
4 THE CLERK: Is it still your verdict?
5 THE JUROR: Yes.
6 THE CLERK: Number 303, was this your verdict?
7 THE JUROR: Yes.
8 THE CLERK: Is it still your verdict?
9 THE JUROR: Yes.
10 THE CLERK: 124, was this your verdict?
11 THE JUROR: Yes.
12 THE CLERK: Is it still your verdict?
13 THE JUROR: Yes.
14 THE CLERK: 13, was this your verdict?
15 THE JUROR: Yes.
16 THE CLERK: Is it still your verdict?
17 THE JUROR: Yes.
18 THE CLERK: 11, was this your verdict?
19 THE JUROR: Yes.
20 THE CLERK: Is it still your verdict?
21 THE JUROR: Yes.
22 THE CLERK: 169, was this your verdict?
23 THE JUROR: Yes.
24 THE CLERK: Is it still your verdict?
25 THE JUROR: Yes.

1 THE CLERK: Your Honor, the jury has been
2 polled.

3 THE COURT: All right, ladies and gentlemen of
4 the jury, I would like to thank you all for your
5 service here this week. I say this week, this
6 month, this last three or four weeks.

7 I know that it has been a great sacrifice to
8 you and your families to have you here, and I just
9 want you to know that we do appreciate your service
10 here this week, your attentiveness to this case.

11 And I am going to release you. I believe the
12 clerk does have some information for you. She also
13 has your checks, of course.

14 And you all, at this point, I have told you
15 every other night that you can't talk about the
16 case, but now you can. You are free to talk to
17 anyone who you choose to talk to regarding the
18 case. If you do not want to talk about the case,
19 you do not have to talk about the case. Just let
20 them know, if anyone approaches you, you do not
21 wish to talk about it.

22 The deputies will escort you to your cars. If
23 you'd like to -- and actually I will have you go
24 back in the back. I have some final remarks for
25 you there.

1 All right. Thank you all so much.

2 THE JURY: Thank you, Your Honor.

3 THE BAILIFF: Everyone remain seated until the
4 jury leaves, please.

5 (WHEREUPON, the jury was excused at 7:42 p.m.)

6 THE COURT: All right, I am going to speak to
7 the jurors briefly for about five minutes, and then
8 I'll be right back.

9 (WHEREUPON, a break was taken.)

10 THE COURT: I did not ask, do you want to
11 renew all your motions?

12 MR. WHITLARK: Yes, Your Honor.

13 Your Honor, at this time we would ask for the
14 judge to give us a verdict of not guilty on both
15 counts.

16 THE COURT: All right. And you are renewing
17 your motions from earlier?

18 MR. WHITLARK: Yes, Your Honor.

19 THE COURT: Your directed verdict motion?

20 MR. WHITLARK: Yes, that's right, Your Honor.
21 We renew the directed verdict motions on the same
22 grounds, and if I need to specify those I will for
23 the record.

24 THE COURT: I think you have put it on the
25 record before, but that is up to you.

1 MR. WHITLARK: Thank you, Your Honor.

2 THE COURT: All right. Yes, ma'am? Any
3 response? He is renewing his motions.

4 MS. CAMPBELL: No, Your Honor. We would just
5 ask you to abide by your earlier rulings.

6 THE COURT: All right. For purposes of the
7 record, the motions are renewed. I will -- yes,
8 sir?

9 MR. WHITLARK: I'm sorry, Your Honor, sorry to
10 interrupt you. I do want to put down there that
11 we do want to renew our circumstantial evidence
12 motion pursuant to The State v. Edwards. That is
13 talking about a 1989 -- that is 379 S.E.2d 888.
14 Just to specify that one in particular, Your Honor.

15 THE COURT: Yes, sir.

16 MR. WHITLARK: Thank you, Your Honor.

17 THE COURT: Yes? Any response?

18 MS. CAMPBELL: No, ma'am.

19 THE COURT: All right. As to the motion,
20 circumstantial evidence motion, your objection to
21 me not charging that Request to Charge by the
22 Defense, the Court, I find that -- I think it is
23 State v. Cherry pretty much overturns that, and for
24 that reason -- I think the language that was given
25 in the jury charge is an accurate statement of the

1 law today. Therefore, I will deny the motion for a
2 directed verdict for all of the reasons that I
3 stated earlier at the end of the State's case, at
4 the end of the Defense case, but your motion is
5 preserved for the record.

6 MR. WHITLARK: Thank you, Your Honor.
7 Permission to approach the bench?

8 THE COURT: Yes, sir.
9 (WHEREUPON, a bench conference was held
10 in the presence of the jury but out of
11 the hearing of the jury.)

12 THE COURT: All right. Yes, ma'am?

13 MS. CAMPBELL: Your Honor, at this time --
14 should we go to sentencing?

15 THE COURT: Let me see you all.
16 (WHEREUPON, a bench conference was held
17 in the presence of the jury but out of
18 the hearing of the jury.)

19 THE COURT: We'll take about a five minute
20 break.

21 MS. CAMPBELL: Thank you, Your Honor.
22 (WHEREUPON, a break was taken.)

23 THE COURT: Yes, ma'am?

24 MS. CAMPBELL: May it please the Court, Your
25 Honor? At this point I think we would proceed to

1 sentencing, although Mr. Whitlark --

2 THE COURT: I think Mr. Fedor is going to
3 handle it.

4 MS. CAMPBELL: Your Honor, at this time the
5 State would ask as far as the victim impact, we do
6 have a representative from each family that would
7 like to briefly address the Court at the
8 appropriate time.

9 THE COURT: All right. I'll be glad to hear
10 from them.

11 MR. FEDOR: Your Honor, can't we do this
12 tomorrow morning? It is already 8:30.

13 THE COURT: Let me see y'all one second.
14 (WHEREUPON, a bench conference was held
15 in the presence of the jury but out of
16 the hearing of the jury.)

17 THE COURT: You may be seated. All right,
18 yes, ma'am?

19 MS. CAMPBELL: At this time we would ask that
20 you hear from representatives of the victim's
21 family.

22 THE COURT: Yes, ma'am?

23 MS. CAMPBELL: Your Honor, this is Heyward
24 Barnes. He is present today, present with his
25 mother, Cindy Capnerhurst, who was the wife of the

1 victim, Bryan Capnerhurst, and his other daughter,
2 Liz Myers.

3 MR. BARNES: Your Honor, we just want to say
4 thank you for this time. And my name is Heyward
5 Barnes, again, Bryan's stepson. My mother, Cindy,
6 and my sister over there Liz. **H.C.**, Bryan's
7 daughter, could not be here -- shouldn't be here --
8 but we just want to say, on behalf of our family,
9 we feel that these are two victims in this crime,
10 and there should be two separate sentences. They
11 should not be concurrent. He should do time for
12 what he has committed to, this crime, this horrible
13 crime that he has put our family through for the
14 past 13 months and going forward more. It doesn't
15 end today. It is a going to be a hard battle for
16 all of us. And we would just ask that it not be
17 concurrent.

18 Thank you.

19 THE COURT: All right. Thank you. Thank you.

20 MS. CAMPBELL: Your Honor, this is Jerry
21 Carswell and Tammy's family.

22 THE COURT: All right. Yes, sir?

23 MR. CARSWELL: Well, it is not a good day for
24 any one of us. Very unhappy. But I lost a
25 daughter that nobody or nothing will ever replace.

1 And no matter how sorry somebody is for whatever
2 they done, I mean, they took her away from me.

3 And I agree that I think his sentence should
4 be no parole, how much ever the maximum is. He
5 gave me two beautiful grandchildren, which I love
6 very, very much, but he took my daughter, that we
7 all love very, very much too, and we don't have
8 anymore.

9 And that is basically all I've got to say.

10 THE COURT: All right. Thank you, sir.

11 Is there anyone else who wants to say
12 anything?

13 MS. CAMPBELL: Your Honor, also seated in the
14 back area are friends and family. Did you want to
15 say anything, Kim?

16 MS. SMITH: I just want to say that I feel the
17 same, because that was my sister, my only sister.
18 And I love my niece and nephew, but our lives will
19 never be the same as well as everybody here. Our
20 lives will never be the same. I feel like I need
21 to do this for my sister because --

22 THE COURT: Ma'am, can I get your name for the
23 record? Your name for the record?

24 MS. SMITH: Kimberly Smith.

25 THE COURT: Thank you.

1 MS. CAMPBELL: Your Honor, that is the victim,
2 Tammy Parker's, sister.

3 MS. CARSWELL: I'm Libby Carswell. I'm
4 Tammy's mom. I loved her very much. So did
5 everybody else. I loved Brett. He was like a son
6 to me. And his family. But he took away somebody
7 that was very special to us. If he didn't love
8 her, there was other people that did. He didn't
9 have to kill her. That is what I want to say.

10 Thank you.

11 THE COURT: Thank you.

12 MS. CAMPBELL: Your Honor, I think that is all
13 that we would have.

14 You are fully aware of the last three and a
15 half weeks of the facts of this case.

16 Your Honor, just because of the cold,
17 premeditated nature of this crime, we do feel like
18 that the maximum penalty would be appropriate in
19 this case.

20 Thank you, Your Honor.

21 THE COURT: All right. Yes, sir,
22 Mr. Whitlark, Mr. Fedor?

23 MR. WHITLARK: May it please the Court, Your
24 Honor?

25 THE COURT: Yes, sir.

1 MR. WHITLARK: Your Honor, based on the
2 outcome of this case, and also the nature of this
3 case, we ask the Court to keep in mind that, you
4 know, a punishment without end and to the maximum a
5 lot of times is nothing but that. And I would ask
6 the Court in its wisdom to give the right sentence
7 in this case.

8 THE COURT: Thank you.

9 MR. WHITLARK: Thank you.

10 THE COURT: All right. Mr. Fedor?

11 MR. FEDOR: Your Honor, this case will
12 probably go on for a while. I still believe in my
13 heart that Brett Parker is innocent. I can't
14 understand the jury verdict, but I am always of the
15 mindset to accept what they say, and we'll just
16 have to go on from here. But I don't believe the
17 young man should be punished to the end of his
18 life. We ask you to use your wisdom in that.

19 THE COURT: Thank you, sir.

20 All right. Anything else from the State?

21 MS. CAMPBELL: No, Your Honor.

22 THE COURT: All right. I would like to offer
23 my sincere condolences to the families of Tammy
24 Parker and Bryan Capnerhurst. I know that it has
25 been a long 13 months for all involved. And I know

1 that the last three weeks have been extremely
2 difficult for all of you and all that are involved.

3 President Eisenhower said: Peace and justice
4 are two sides of the same coin. I hope and pray
5 that each of you is able to derive some sort of
6 peace from what has taken place in this courtroom
7 the last several weeks.

8 Once again, I am sorry for your loss. I know
9 that it has been a tough three and a half weeks
10 here in this courtroom.

11 Thank you.

12 Mr. Fedor, Mr. Whitlark, have your client
13 stand.

14 MR. WHITLARK: I'm sorry, Your Honor?

15 THE COURT: Have your client stand.

16 MR. WHITLARK: Come on up.

17 (Defendant complies.)

18 THE COURT: Anything else from the State
19 before sentencing?

20 MS. CAMPBELL: No, Your Honor.

21 THE COURT: Anything else from the Defense?

22 MR. WHITLARK: Nothing from the Defense, Your
23 Honor.

24 SENTENCE

25 THE COURT: All right. On Indictments

1 2012-GS-40-4380 and 4379, The State of South
2 Carolina, County of Richland, The State v. Brett
3 Davis Parker, two counts of murder, sir, you will
4 be sentenced to the State Department of Corrections
5 for a determinative sentence of life on 4380; and on
6 4379 you will be sentenced to the State Department
7 of Corrections for a determinative sentence of life
8 in prison without parole. The sentences will run
9 consecutive to each other.

10 Sir, I wish you -- I hope that during this
11 time you will have an opportunity to reflect on
12 everything that has occurred here over the last
13 three weeks and over the last 13 months.

14 Your attorneys will explain to you your right
15 to appeal. You have ten days to appeal the
16 sentence of the Court. And your attorneys can
17 explain that to you further.

18 All right. Thank you.

19 MR. WHITLARK: Thank you, Your Honor.

20 THE COURT: Court is adjourned.

21 (WHEREUPON, the proceedings concluded at
22 8:39 p.m.)
23
24
25

(END OF TRANSCRIPT)

RECEIVED

MAY 13, 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

DeAndrea G. Benjamin, Circuit Court Judge

Case Nos. 2012GS1040032 and 2012GS1040033

The State, ... Respondent,

v.

Brett D. Parker, ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

Respectfully submitted,



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May 6, 2015