

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED  
JUL 24 2017  
S.C. SUPREME COURT

Appeal from Greenville County

Honorable John C. Hayes, Circuit Court Judge

WALLACE EUGENE EVATT, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002281

APPENDIX

ROBERT M. DUDEK  
Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

JUSTIN J. HUNTER  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

## INDEX

|                                                                          |     |
|--------------------------------------------------------------------------|-----|
| INDEX .....                                                              | i   |
| TRIAL TRANSCRIPT (dated July 16, 2012) .....                             | 1   |
| APPLICATION FOR POST-CONVICTION RELIEF .....                             | 399 |
| RETURN .....                                                             | 409 |
| AMENDMENTS TO POST-CONVICTION RELIEF APPLICATIONS .....                  | 413 |
| POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated October 26, 2016) ..... | 417 |
| ORDER .....                                                              | 446 |
| INDICTMENT .....                                                         | 451 |
| SENTENCING SHEET .....                                                   | 453 |

|                         |   |                             |
|-------------------------|---|-----------------------------|
| STATE OF SOUTH CAROLINA | ) | COURT OF GENERAL SESSIONS   |
|                         | : |                             |
| COUNTY OF GREENVILLE    | ) | THIRTEENTH JUDICIAL CIRCUIT |

|                         |   |                      |
|-------------------------|---|----------------------|
| STATE OF SOUTH CAROLINA | ) |                      |
|                         | : |                      |
| PLAINTIFF,              | ) |                      |
|                         | : |                      |
| VERSUS                  | ) | TRANSCRIPT OF RECORD |
|                         | : |                      |
| WALLACE E. EVATT, JR.,  | ) | 2009-GS-23-09628     |
|                         | : |                      |
| DEFENDANT.              | ) |                      |

VOLUME I  
JULY 16, 2012

B E F O R E:

THE HONORABLE VICTOR C. PYLE, JR., JUDGE, AND A JURY

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

FOR THE STATE:  
KIMBERLY HOWARD, ESQ., ASSISTANT SOLICITOR  
KATRYNA SALISBURY, ESQ., ASSISTANT SOLICITOR

FOR THE DEFENSE:  
DOROTHY MANIGAULT, ESQ.

PHYLLIS BARRETT, COURT REPORTER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**INDEX**

**JULY 16, 2012 – JACKSON V. DENNO HEARING**

**DALLAS GLADSON**

DIRECT EXAMINATION BY MS. HOWARD – PAGE 21

CROSS EXAMINATION BY MS. MANIGAULT - PAGE 23

**SHANE REECE**

DIRECT EXAMINATION BY MS. HOWARD – PAGE 24

CROSS EXAMINATION BY MS. MANIGAULT – PAGE 26

**JOHN WHITE**

DIRECT EXAMINATION BY MS. HOWARD – PAGE 28

CROSS EXAMINATION BY MS. MANIGAULT – PAGE 30

**TRACY KING**

DIRECT EXAMINATION BY MS. SALISBURY – PAGE 32

CROSS EXAMINATION BY MS. MANIGAULT – PAGE 35

**ERIC WHALEY**

DIRECT EXAMINATION BY MS. HOWARD – PAGE 39

NO CROSS EXAMINATION

**WALLACE EVATT**

DIRECT EXAMINATION BY MS. MANIGAULT – PAGE 46-48

NO CROSS EXAMINATION



**WITNESSES FOR STATE**

**STEVEN BEACHAM**

DIRECT EXAMINATION BY MS. SALISBURY – PAGE 55

CROSS EXAMINATION BY MS. MANIGAULT – PAGE 62

**JERRY BURGESS**

DIRECT EXAMINATION BY MS. SALISBURY – PAGE 65

CROSS EXAMINATION BY MS. MANIGAULT – PAGE 72

**CYNTHIA McNEELY**

DIRECT EXAMINATION BY MS. HOWARD – PAGE 75

CROSS EXAMINATION BY MS. MANIGAULT – PAGE 80

**LAURA JOHNSON**

DIRECT EXAMINATION BY MS. HOWARD – PAGE 82

NO CROSS EXAMINATION

**ROGER DOBBS**

DIRECT EXAMINATION BY MS. HOWARD – PAGE 84

CROSS EXAMINATION BY MS. MANIGAULT – PAGE 88

**TABITHA DARBY**

DIRECT EXAMINATION BY MS. HOWARD – PAGE 90-91

NO CROSS EXAMINATION

1                                   **JULY 17, 2012 – WITNESSES FOR STATE**

2    **RENEE BEAUFORD**

3    DIRECT EXAMINATION BY MS. SALISBURY – PAGE 97

4    NO CROSS EXAMINATION

5    **DALLAS GLADSON**

6    DIRECT EXAMINATION BY MS. HOWARD – PAGE 99

7    CROSS EXAMINATION BY MS. MANIGAULT – PAGE 106

8    **SHANE REECE**

9    DIRECT EXAMINATION BY MS. HOWARD- PAGE 111

10   CROSS EXAMINATION BY MS. MANIGAULT – PAGE 113

11   **JOHN WHITE**

12   DIRECT EXAMINATION BY MS. HOWARD – PAGE 115

13   CROSS EXAMINATION BY MS. MANIGAULT – PAGE 117

14   **RON BROWN**

15   DIRECT EXAMINATION BY MS. SALISBURY – PAGE 119

16   CROSS EXAMINATION BY MS. MANIGAULT – PAGE 142

17   **APRIL DIETZ**

18   DIRECT EXAMINATION BY MS. SALISBURY – PAGE 149

19   CROSS EXAMINATION BY MS. MANIGAULT – PAGE 154

20   **JONATHAN DERBY**

21   DIRECT EXAMINATION BY MS. SALISBURY – PAGE 155

22   VOIR DIRE BY MS. MANIGAULT – PAGE 156

23   RESUME DIRECT EXAMINATION BY MS. SALISBURY – PAGE 157

24   CROSS EXAMINATION BY MS. MANIGAULT – PAGE 161

25   RE-DIRECT EXAMINATION BY MS. SALISBURY – PAGE 162

**WITNESSES FOR STATE**

**TYLER BUCHOLTZ**

DIRECT EXAMINATION BY MS. SALISBURY – PAGE 164

**DARWIN SHAW**

DIRECT EXAMINATION BY MS. SALISBURY – PAGE 171

CROSS EXAMINATION BY MS. MANIGAULT – PAGE 201

RE-DIRECT EXAMINATION BY MS. SALISBURY – PAGE 210

**KARA BENNICK**

DIRECT EXAMINATION BY MS. HOWARD – PAGE 212

CROSS EXAMINATION BY MS. MANIGAULT – PAGE 216

## TABITHA FRICKS

DIRECT EXAMINATION BY MS. HOWARD – PAGE 218

CROSS EXAMINATION BY MS. MANIGAULT – PAGE 220

## ISRAEL FLOUNDERS

DIRECT EXAMINATION BY MS. HOWARD – PAGE 220

CROSS EXAMINATION BY MS. MANIGAULT – PAGE 223

**VALERIE POWELL**

DIRECT EXAMINATION BY MS. HOWARD – PAGE 225

## NO CROSS EXAMINATION

**SHARON CRAVER**

DIRECT EXAMINATION BY MS. HOWARD – PAGE 226

CROSS EXAMINATION BY MS. MANIGAULT – PAGE 227

**WAYNE CAMPBELL**

DIRECT EXAMINATION BY MS. HOWARD – PAGE 228

CROSS EXAMINATION BY MS. MANIGAULT – PAGE 230

- 1     **CHRIS HAMMETT**
- 2     DIRECT EXAMINATION BY MS. HOWARD – PAGE 231
- 3     NO CROSS EXAMINATION
- 4     **JOE WHITMIRE**
- 5     DIRECT EXAMINATION BY MS. HOWARD – PAGE 232
- 6     CROSS EXAMINATION BY MS. MANIGAULT – PAGE 234
- 7     **NICKI PERRY HUGHES**
- 8     DIRECT EXAMINATION BY MS. HOWARD – PAGE 234
- 9     CROSS EXAMINATION BY MS. MANIGAULT – PAGE 238
- 10    **PATRICIA CROOKS**
- 11    DIRECT EXAMINATION BY MS. HOWARD – PAGE 239
- 12    NO CROSS EXAMINATION
- 13    **SERENA KINARD**
- 14    DIRECT EXAMINATION BY MS. HOWARD – PAGE 243
- 15    CROSS EXAMINATION BY MS. MANIGAULT – PAGE 244
- 16    **JOHN ROBERTS**
- 17    DIRECT EXAMINATION BY MS. HOWARD – PAGE 245
- 18    CROSS EXAMINATION BY MS. MANIGAULT – PAGE 251
- 19    RE-DIRECT EXAMINATION BY MS. HOWARD – PAGE 254
- 20    RE-CROSS EXAMINATION BY MS. MANIGAULT – PAGE 255
- 21
- 22
- 23
- 24
- 25

1                                   **JULY 18, 2012 – WITNESSES FOR STATE**

2   **DORIS YARBOROUGH**

3   DIRECT EXAMINATION BY MS. HOWARD – PAGE 257

4   NO CROSS EXAMINATION

5   **VERONA GIBSON**

6   DIRECT EXAMINATION BY MS. HOWARD – PAGE 259

7   CROSS EXAMINATION BY MS. MANIGAULT – PAGE 264

8   **LINDSAY THOMPSON**

9   DIRECT EXAMINATION BY MS. HOWARD – PAGE 265

10   CROSS EXAMINATION BY MS. MANIGAULT – PAGE 274

11   **STEPHANIE STANLEY**

12   DIRECT EXAMINATION BY MS. HOWARD – PAGE 276

13   CROSS EXAMINATION BY MS. MANIGAULT – PAGE 281

14   **TONY SEGARS**

15   DIRECT EXAMINATION BY MS. HOWARD – PAGE 282

16   CROSS EXAMINATION BY MS. MANIGAULT – PAGE 283

17   **JAMES ARMSTRONG**

18   DIRECT EXAMINATION BY MS. SALISBURY – PAGE 285

19   CROSS EXAMINATION BY MS. MANIGAULT – PAGE 294

20   **MICHAEL SAYLORS**

21   DIRECT EXAMINATION BY MS. SALISBURY – PAGE 296

22   CROSS EXAMINATION BY MS. MANIGAULT – PAGE 300

23   **CINDY ROJAS**

24   DIRECT EXAMINATION BY MS. SALISBURY – PAGE 301

25   NO CROSS EXAMINATION

1                                   **WITNESSES FOR STATE**

2    **DAVID GROSS**

3    DIRECT EXAMINATION BY MS. SALISBURY – PAGE 304

4    CROSS EXAMINATION BY MS. MANIGAULT – PAGE 306

5    **TRACY KING**

6    DIRECT EXAMINATION BY MS. SALISBURY – PAGE 307

7    CROSS EXAMINATION BY MS. MANIGAULT – PAGE 314

8    **ERIC WHALEY**

9    DIRECT EXAMINATION BY MS. HOWARD – PAGE 316

10   CROSS EXAMINATION BY MS. MANIGAULT – PAGE 335

11   RE-DIRECT EXAMINATION BY MS. HOWARD – PAGE 346

12   **MICHAEL WARD**

13   DIRECT EXAMINATION BY MS. HOWARD – PAGE 347

14   CROSS EXAMINATION BY MS. MANIGAULT – PAGE 361-366

15   **COURT EXAMINATION OF DEFENDANT - PAGE 367-369**

16

17                                   **END STATE'S CASE**

18                                   **NO DEFENSE'S CASE PRESENTED**

19                                   **JULY 19, 2012**

20   **CHARGE TO JURY – PAGE 387**

21

22   **VERDICT – PAGE 393**

23

24

25

| <b>EXHIBITS</b> |            |                    |            |            |
|-----------------|------------|--------------------|------------|------------|
|                 | <b>NO.</b> | <b>DESCRIPTION</b> | <b>ID.</b> | <b>EV.</b> |
| 1               |            |                    |            |            |
| 2               |            |                    |            |            |
| 3               | S-01       | Photo              | 58         | 59         |
| 4               | S-02       | Photo              | 60         | 61         |
| 5               | S-03       | Photo              | 66         |            |
| 6               | S-04       | Photo              | 71         | 71         |
| 7               | S-05       | Compact Disk       | 83         | 83         |
| 8               | S-06       | Photo              | 86         | 87         |
| 9               | S-07       | GSR Kit            | 121        | 126        |
| 10              | S-08       | Photo              | 121        | 126        |
| 11              | S-09       | Gun                | 126        | 127        |
| 12              | S-10       | Holster            | 126        | 127        |
| 13              | S-11       | Photo              | 128        | 128        |
| 14              | S-12       | Photo              | 128        | 128        |
| 15              | S-13       | Photo              | 130        | 131        |
| 16              | S-14       | Photo              | 121        | 126        |
| 17              | S-15       | Diagram            | 132        | 132        |
| 18              | S-16       | Photo              | 135        | 135        |
| 19              | S-17       | GSR Bags           | 165        | 167        |
| 20              | S-18       | Photo              | 138        | 139        |
| 21              | S-19       | Photo              | 138        | 139        |
| 22              | S-20       | Photo              | 138        | 139        |
| 23              | S-21       | Photo              | 138        | 139        |
| 24              | S-22       | Photo              | 138        | 139        |
| 25              | S-23       | Photo              | 138        | 139        |

|    |            |                       |            |            |
|----|------------|-----------------------|------------|------------|
| 1  |            | <b>EXHIBITS</b>       |            |            |
| 2  | <b>NO.</b> | <b>DESCRIPTION</b>    | <b>ID.</b> | <b>EV.</b> |
| 3  | S-24       | Compact Disk          | 151        | 152        |
| 4  | S-25       | Diagram               | 172        | 173        |
| 5  | S-26       | Photo                 | 156        | 156        |
| 6  | S-27       | Shirt                 | 157        | 261        |
| 7  | S-28       | Pants                 | 157        | 261        |
| 8  | S-29       | GSR                   | 165        | 261        |
| 9  | S-30       | Photo                 | 173        | 174        |
| 10 | S-31       | Photo                 | 175        | 175        |
| 11 | S-32       | Projectile            | 176        | 290        |
| 12 | S-33       | Photo                 | 177        | 177        |
| 13 | S-34       | Piece of Ceiling Tile | 180        |            |
| 14 | S-35       | Photo                 | 179        | 179        |
| 15 | S-36       | Photo                 | 182        | 185        |
| 16 | S-37       | Diagram               | 191        | 192        |
| 17 | S-38       | Piece of Carpet       | 189        | 189        |
| 18 | S-39       | Photo                 | 199        | 200        |
| 19 | S-40       | Photo                 | 199        | 200        |
| 20 | C-01       | Note from jury        | 392        |            |
| 21 |            |                       |            |            |
| 22 |            |                       |            |            |
| 23 |            |                       |            |            |
| 24 |            |                       |            |            |
| 25 |            |                       |            |            |



**JULY 16, 2012 – COURT IN SESSION**

The Court: Ladies and gentlemen, at this time we will select a jury in the case of the State against Wallace Eugene Evatt, Jr. Mr. Evatt, would you stand up and turn around and face the jury panel for me, please, both sides?

(whereupon Defendant stands)

Thank you. You may be seated now. Mr. Evatt is indicted for murder. The indictment alleges that on or about May 17, 2009, he unlawfully and with malice aforethought killed Karen Rojas, R-o-j-a-s, by shooting her with a weapon, and that she died as a proximate result thereof.

I'm going to read out to you at this time a rather lengthy list of witnesses in this case. They may not all testify, but they are potential witnesses. So, if you will give me your attention.

Eric Whaley, Dallas Gladson, Shane Reece, John White, Michael Rainey, Joseph Whitmire, Chris Hammett, Tracy King, Wayne Campbell, Michael Brown, all of whom are now or formerly with the Greenville County Sheriff's Office.

James Armstrong, Ron Brown, April Dietz, Jonathan Derby, Ron Lendway, Tyler Bucholtz, Dar Shaw, Michael Peterson, Aubrey Tomlin, Dr. Michael Ward, Tabitha Darby, Roger Dobbs, Steven Beacham, Jerry Burgess, Rhonda Burgess, John Hitt, Cynthia McNeely, Raymond McNeely.

And then, SLED agents, John Roberts, Patricia Crooks, Nicki Perry Hughes, Sheree Brown, Doris Yarborough, Amy Stephens, Gail Heath, Selena Kinard, Stephanie Stanley, Verona Gibson, Lindsey Thompson, Lisa Wannaman, and Sharon Craver.

Sally Gross, David Gross, Laura Johnson, Anderson County Sheriff's Office, Tony Segars, Kara Bennick, Tabitha Frick, and Valerie Powell, Israel Flounders, Renee Beauford, Azmi Labib, Nevin Labib, Michael Saylor, Brandon Saylor, Cindy Rojas, Tia Taylor.

1 Susan Davis, Rhonda Babb, Rae Duncan, 5. Cynthia Guicherit, G-u-i-c-h-e-r-i-t, J. Derby,  
2 Don Girndt, G-i-r-n-d-t, Dr. Ronald Ostrowski, Wallace E. Evatt, Sr., that's Evatt, Senior;  
3 William Pressley, Wallace E. Evatt, Jr., and Randy Carswell.

4 Now, I will inquire at this time if any member of the jury panel is related by blood or  
5 marriage, or connected by employment to the defendant or to any potential witnesses in the  
6 case. Are you aware of any bias or are you prejudiced with respect to the Defendant or the  
7 State or to the subject matter, that being an alleged murder? Or do you know of any reason  
8 why you cannot give this State and this Defendant a fair and impartial trial based upon the  
9 testimony and evidence that will be presented? If so, please stand.

10 (whereupon a juror stands)

11 Yes sir, your name?

12 Juror: My name is Gene Ownbey. The Michael Ward that you're referring to, is he  
13 with the Coroner's Office?

14 The Court: Well, actually, he's the medical examiner.

15 Juror: I do know him. I got to church with him. He's a friend of mine. I don't know  
16 if that matters.

17 The Court: Would that fact in any way interfere with your ability to be a fair and  
18 impartial juror in the case?

19 Juror: No sir.

20 The Court: Thank you, sir. Now, do I have any member of the jury panel who has any  
21 connection, family or business, social or otherwise, with Walter Wilkins, the Solicitor, or any  
22 member of his staff, including Kimberly Howard and Katrina Salisbury? Or with law  
23 enforcement, whether it be federal, state, county or municipal? If so, please stand and give  
24 me your name.

25 (no response)

1 Dorothy Manigault represents the defendant. Do I have any clients now or formerly  
2 of Ms. Manigault? If so, please stand and give me your name.

3 (no response)

4 Do I have anyone who has or has any member of their family who has been the  
5 victim of a violent crime? If so, would you please stand and give me your name?

6 (no response)

7 Any other questions, counsel?

8 Ms. Howard: Nothing from the State, Your Honor.

9 Ms. Manigault: Nothing from the defense, Your Honor.

10 The Court: All right. Strikes are five for the state, ten for the defense. Ladies and  
11 gentlemen, I'll ask when your name is called, please come forward to the podium up front,  
12 turn around, face counsel, and await further instructions. Thank you.

13 Ms. Howard: Your Honor, may we approach?

14 The Court: Sure.

15 (whereupon a bench conference took place)

16 Clerk of Court: Number 49, Donald Cone. What says the State?

17 Ms. Howard: Please present Mr. Cone.

18 Clerk of Court: What says the Defendant?

19 Ms. Manigault: Please swear Mr. Cone.

20 Clerk of Court: Mr. Cone, please take your seat in the jury box. 204, Rachel  
21 Rountree. What says the State?

22 Ms. Howard: Please present Ms. Rountree.

23 Clerk of Court: What says the Defendant?

24 Ms. Manigault: Please excuse Ms. Rountree.

1 Clerk of Court: Ms. Rountree, you may be seated. You have been excused from this  
2 case. Number 72, Christina Duvall. What says the State?

3 Ms. Howard: Please present Ms. Duvall.

4 Clerk of Court: What says the Defendant?

5 Ms. Manigault: Please excuse Ms. Duvall.

6 Clerk of Court: Ms. Duvall, you may be seated. You have been excused from this  
7 case. Number 114, Dean Hotsinpillar. What says the State?

8 Ms. Howard: Please present the juror.

9 Clerk of Court: What says the Defendant?

10 Ms. Manigault: Please swear the juror.

11 Clerk of Court: Mr. Hotsinpillar, you may be seated in the jury box. Number 56,  
12 Anna Cruse. What says the State?

13 Ms. Howard: Please present Ms. Cruse.

14 Clerk of Court: What says the defendant?

15 Ms. Manigault: Please excuse Ms. Cruse.

16 Clerk of Court: Ms. Cruse, you may be seated. You have been excused from this  
17 case. Number 218, Judy Speer. What says the State?

18 Ms. Howard: Please present Ms. Speer.

19 Clerk of Court: What says the Defendant?

20 Ms. Manigault: Please swear Ms. Speer.

21 Clerk of Court: Ms. Speer, if you will please take a seat in the jury box. Number  
22 113, Tracy Hooker. What says the State?

23 Ms. Howard: Please excuse Ms. Hooker.

24 Clerk of Court: Ms. Hooker, you may be seated. You have been excused from this  
25 case. Number 29, Bret Boulware. What says the State?

1 Ms. Howard: Please present Mr. Boulware.

2 Clerk of Court: What says the Defendant?

3 Ms. Manigault: Please swear Mr. Boulware?

4 Clerk of Court: You may be seated in the jury box. Number 128, Thomas Johnson.  
5 What says the State?

6 Ms. Howard: Please excuse Mr. Johnson.

7 Clerk of Court: Mr. Johnson, you may be seated. You have been excused from this  
8 case. Number 178, Randal Moore. What says the State?

9 Ms. Howard: Please excuse Mr. Moore.

10 Clerk of Court: Mr. Moore, you may be seated. You have been excused from this  
11 case. Number 185, Gene Ownbey. What says the State?

12 Ms. Howard: Please present Mr. Ownbey.

13 Clerk of Court: What says the Defendant?

14 Ms. Manigault: Please excuse Mr. Ownbey.

15 Clerk of Court: Mr. Ownbey, you may be seated. You have been excused from this  
16 case. Number 64, Kathy Davis. What says the State?

17 Ms. Howard: Please present Ms. Davis.

18 Clerk of Court: What says the Defendant?

19 Ms. Manigault: Please excuse Ms. Davis.

20 Clerk of Court: Ms. Davis, you may be seated. You have been excused from this  
21 case. Number 75, Adrienne Evans. What says the State?

22 Ms. Howard: Please present Ms. Evans.

23 Clerk of Court: What says the Defendant?

24 Ms. Manigault: Please swear Ms. Evans.

1 Clerk of Court: Take a seat in the jury box, Ms. Evans. Number 39, Caitlin Byrd.

2 What says the State?

3 Ms. Howard: Please present Ms. Byrd.

4 Clerk of Court: What says the Defendant?

5 Ms. Manigault: Please excuse Ms. Byrd.

6 Clerk of Court: Ms. Byrd, you may be seated. You have been excused from this

7 case. Number 210, Rebekah Shealy. What says the State?

8 Ms. Howard: Please present Ms. Shealy?

9 Clerk of Court: What says the Defendant?

10 Ms. Manigault: Please excuse Ms. Shealy.

11 Clerk of Court: Ms. Shealy, you may be seated. You have been excused from this

12 case. Number 246, Wanda Williams. What says the State?

13 Ms. Howard: Please present Ms. Williams.

14 Clerk of Court: What says the Defendant?

15 Ms. Manigault: Please swear Ms. Williams.

16 Clerk of Court: Please take a seat in the jury box, Ms. Williams. Number 18, Linda

17 Bennett. What says the State?

18 Ms. Howard: Please excuse Ms. Bennett.

19 Clerk of Court: Ms. Bennett, you may be seated. You have been excused from this

20 case. Number 193, Christoher Praktish. What says the State?

21 Ms. Howard: Please present Mr. Praktish.

22 Clerk of Court: What says the Defendant?

23 Ms. Manigault: Please swear Mr. Praktish.

24 Clerk of Court: Have a seat in the jury box. Number 125, Brenda Johnson. What

25 says the State?

1 Ms. Howard: Please present Ms. Johnson.

2 Clerk of Court: What says the Defendant?

3 Ms. Manigault: Please swear Ms. Johnson.

4 Clerk of Court: Ms. Johnson, have a seat in the jury box. Number 235, Michael  
5 Vickers. What says the State?

6 Ms. Howard: Please present Mr. Vickers.

7 Clerk of Court: What says the Defendant?

8 Ms. Manigault: Please swear Mr. Vickers.

9 Clerk of Court: Have a seat in the jury box, please. Number 36, Jeffrey Bullock.  
10 What says the State?

11 Ms. Howard: Please present Mr. Bullock.

12 Clerk of Court: What says the Defendant?

13 Ms. Manigault: Please excuse Mr. Bullock.

14 Clerk of Court: Mr. Bullock, you may be seated. You have been excused from this  
15 case. Number 249, Lynn Wolfe. What says the State?

16 Ms. Howard: Please present Ms. Wolfe.

17 Clerk of Court: What says the Defendant?

18 Ms. Manigault: Please swear Ms. Wolfe.

19 Clerk of Court: Ms. Wolfe, take a seat in the jury box. Number 148, Virginia  
20 Larson. What says the State?

21 Ms. Howard: Please present Ms. Larson.

22 Clerk of Court: What says the Defendant?

23 Ms. Manigault: Please excuse Ms. Larson.

24 Clerk of Court: Ms. Larson, you may be seated. You have been excused from this  
25 case. Number 80, Roy Fogleman. What says the State?

1 Ms. Howard: Please present Mr. Fogleman.

2 Clerk of Court: What says the Defendant?

3 Ms. Manigault: Please excuse Mr. Fogleman.

4 Clerk of Court: Mr. Fogleman, you may be seated. You have been excused from this  
5 case. Number 98, Tony Hall. What says the State?

6 Ms. Howard: Please excuse Mr. Hall.

7 Clerk of Court: Mr. Hall, you may be seated. You have been excused from this  
8 case. Number 196, Nancy Quinn. What says the State?

9 Ms. Howard: Please present Ms. Quinn.

10 Clerk of Court: What says the Defendant?

11 Ms. Manigault: Please swear Ms. Quinn.

12 Clerk of Court: Ms. Quinn, have a seat in the jury box. Number 145, Ronda  
13 Lancaster. What says the State?

14 Ms. Howard: Please present Ms. Lancaster.

15 Clerk of Court: What says the Defendant?

16 Mr. Manigault: Please swear Ms. Lancaster.

17 Clerk of Court: Ms. Lancaster, take your seat in the jury box.

18 The Court: Mr. Boulware, please take the first seat. I'm appointing you as foreman  
19 of this jury. Thank you, sir.

20 One alternate, one for the State and two for the Defense.

21 Clerk of Court: Number 180, Carolina Munoz. What says the State?

22 Ms. Howard: Please excuse Ms. Munoz.

23 Clerk of Court: Ms. Munoz, you may be seated. You have been excused from this  
24 case. Number 86, Anne Gallagher. What says the State?

25 Ms. Howard: Please present Ms. Gallagher.



1 Clerk of Court: What says the Defendant?

2 Ms. Manigault: Please excuse Ms. Gallagher.

3 Clerk of Court: Ms. Gallagher, you may be seated. You have been excused from this  
4 case. Number 46, Ashley Clark. What says the State?

5 Ms. Howard: Please present Ms. Clark.

6 Clerk of Court: What says the Defendant?

7 Ms. Manigault: Please swear Ms. Clark.

8 Clerk of Court: Have a seat in the jury box, Ms. Clark.

9 The Court: Counsel, approach.

10 (whereupon a bench conference occurred)

11 Ladies and gentlemen of the jury who were not selected, I'm going to excuse you for  
12 the rest of the day. And what I'm going to ask you to do is after 6:00 p.m. today, call that  
13 number that you were given this morning, and they will let you know what time to report  
14 back. You are free for the rest of the day. Thank you very much.

15 (whereupon the remainder of the jury pool exited the courtroom)

16 The Court: Madam Clerk, please swear the jury.

17 (whereupon the selected jury were placed under oath)

18 The Court: Ladies and gentlemen, now there are some pre-trial matters that I need to  
19 take up with counsel before we start this trial. They do not concern you. And so, I'm going  
20 to excuse you for lunch, and we'll start the testimony this afternoon. I'll ask you to report to  
21 your jury room, at 3:00 p.m. this afternoon.

22 Now, before letting you go, I need to read to you at this time an Order issued by Jean  
23 Toal, who is the Chief Justice of our Supreme Court concerning your duty and responsibility  
24 as a juror on this case. If you will please give me your attention.

1           “The use of personal communication devices has continued to increase dramatically.  
2   Accordingly, I find it necessary to supplement my order of August 25, 2000 related to the use  
3   of pagers, cell phones, and other personal communication devices in courtrooms to include  
4   the following direction to the court: The court shall instruct jurors selected to serve on the  
5   jury that until their jury service is concluded they shall not (a) discuss the case with others,  
6   including other jurors except as otherwise authorized by the court. (b) Read or listen to any  
7   news reports about the case. (c) Use a computer, cellular phone or other electronic device  
8   with communication capabilities while in attendance at trial or during deliberations. These  
9   devices may be used during lunch break but may not be used to obtain or disclose  
10   information prohibited in subsection D. And D reads: Use a computer, cellular phone or  
11   other electronic device with communication capabilities or any other method to obtain or  
12   disclose information about the case when they’re not in court. Information about the case  
13   includes but is not limited to the following: Information about a party, witness, attorney or  
14   court official; news accounts about the case; information collected from juror research from  
15   any type of testimony offered by any witness, nor information collected by any type of juror  
16   research or any other topic the juror might think would be helpful in deciding the case.  
17   Notice of the contents of this order shall be given to jurors.”

18           Now, ladies and gentlemen, during the lunch recess, please keep your badges on. I  
19   ask that you do that so that everyone will know that you are a juror on the case and it would  
20   be highly improper for them to talk about or discuss this case in your presence. So, please  
21   keep your badges on.

22           Now, I’ll ask that you be back in your jury room by 3:00 this afternoon. Thank you.

23           (whereupon the jury exits the courtroom)

24           Ms. Howard: Your Honor, the State is ready for the Jackson v. Denno motion.

25           The Court: All right.

1 Ms. Howard: The State calls officer Dallas Gladson.

2 **DALLAS GLADSON**, duly sworn, testified as

3 follows:

4 Clerk of Court: Please state your name for the record.

5 A Dallas Gladson.

6 Clerk of Court: Thank you. You may be seated.

7 **DIRECT EXAMINATION BY MS. HOWARD:**

8 Q Sergeant Gladson, if you could state your name for the record, please.

9 A Dallas Keith Gladson.

10 Q Where do you work?

11 A Greenville County Sheriff's Office.

12 Q How long have you been there?

13 A Eleven years.

14 Q What's your position with the Greenville County Sheriff's Office?

15 A Right now I'm Sergeant of Uniformed Patrol.

16 Q On May 13, 2009, did you respond to in  
17 reference to a shooting?

18 A Yes ma'am.

19 Q When you arrived what occurred?

20 A When I arrived on the scene and exited my patrol car I was met by the  
21 defendant.

22 Q The defendant being Wallace Evatt?

23 A Yes ma'am.

24 Q Who else was present at the time?

1 A At that time I had a trainee with me by the name of Bill Shaw. There were  
2 other parties on the scene. This was a fishing pond, on a lake and there were people  
3 on the lake fishing.

4 Q You said you were met by the defendant. Where did he meet you?

5 A He met me as I was walking up to the location.

6 Q Did he tell you anything at that time?

7 A He said that she was inside and she had been, saying that she had been, was  
8 talking about killing herself and needed to talk to her mom.

9 Q She being the victim in this case, Karen Rojas?

10 A Yes ma'am.

11 Q Did he tell you anything else about that?

12 A Just that he had turned around and she had the gun in her hand and it was in  
13 her mouth and she pulled the trigger, and that was it. Then he left the location, didn't  
14 touch anything, didn't touch the weapon or anything like that. And he didn't call  
15 because he didn't have any phone or any way to call.

16 Q Did you notice what his appearance was like?

17 A He wasn't visibly upset, if that's what you mean. He wasn't crying, or appear  
18 to be nervous or visibly upset or anything.

19 Q And he told you that he didn't have a cell phone?

20 A That's correct.

21 Q Did he tell you anything else?

22 A He said he called from a friend's house.

23 Q Did you take down all this information?

24 A No ma'am. I wasn't sure who he was. My focus was going to the actual  
25 incident location to check on the victim.

1 Q How long would you say this encounter lasted?

2 A A couple of minutes.

3 Ms. Howard: I have nothing further.

4 The Court: Ms. Manigault.

5 **CROSS EXAMINATION BY MS. MANIGAULT:**

6 Q You said you had a trainee with you?

7 A Yes ma'am.

8 Q Was the trainee present while Wallace Evatt was giving you this information?

9 A Yes ma'am, he was standing right next to me.

10 Q Was Cynthia McNeely-- Did you see anybody else with Wallace Evatt?

11 A I mean, there were other people at the lake, and I wasn't familiar with that  
12 specific location. So, I didn't know anybody personally. If she was there, I mean, I  
13 don't know who she is. I couldn't identify her to you right now.

14 Q And when Wallace Evatt was talking to you, giving you this information, you  
15 did not ask him any questions. Is that correct?

16 A Yes ma'am.

17 Q And he voluntarily gave you this information?

18 A Yes ma'am.

19 Q Did you arrive at the trailer-- Is this a trailer area you're talking about?

20 A Yes ma'am, it's a park.

21 Q Did you arrive there before he did or you arrived after Wallace Evatt?

22 A I believe he was already there.

23 Q Okay.

24 A Because as soon as I exited my patrol car and started walking towards the  
25 mobile home, that's when I was approached.

1 Q So, you did not see what kind of vehicle he got out of if he did get out of a  
2 vehicle?

3 A That's correct.

4 Q What time was your response?

5 A The time I arrived on the scene I believe was 13:58, which would be 1:58.

6 Q P.M.?

7 A Yes ma'am.

8 Q Thank you.

9 The Court: Thank you. You may step down.

10 Ms. Howard: Your Honor, in regards to those statements made to Sergeant  
11 Gladson, that's the only witness the State intends to call.

12 The Court: What's your objection, if any, Ms. Manigault?

13 Ms. Manigault: Your Honor, we don't have an objection. The officer  
14 testified that the statements were voluntarily given to him without questioning my  
15 client.

16 The Court: All right. It's allowed in without objection.

17 Ms. Howard: Thank you, Your Honor. At this time the State would call  
18 Deputy Shane Reece to the stand.

19 **SHANE REECE**, duly sworn, testified as follows:

20 Clerk of Court: Please state your name for the record.

21 A Shane Reece.

22 Clerk of Court: Thank you. You may be seated.

23 **DIRECT EXAMINATION BY MS. HOWARD:**

24 Q Deputy Reece, where do you work?

25 A For the Greenville County Sheriff's Office.

- 1 Q What is your position with the Sheriff's Office?
- 2 A Uniformed patrol deputy.
- 3 Q How long have you been with the Sheriff's Office?
- 4 A Four years.
- 5 Q Were you working on the date of May 17, 2009?
- 6 A Yes ma'am.
- 7 Q Did you respond to ?
- 8 A Yes ma'am.
- 9 Q In reference to a shooting?
- 10 A Yes ma'am.
- 11 Q What was doing on when you arrived at the scene?
- 12 A I arrived on the scene after Sergeant Gladson and Deputy White. Upon my
- 13 arrival I observed people standing in the yard outside the trailer.
- 14 Q What was your role at the scene?
- 15 A My role was to assist Sergeant Gladson in obtaining witness information.
- 16 Q How did you go about doing that?
- 17 A I spoke with someone who said they observed, or said they heard a gunshot. I
- 18 also spoke with Mr. Evatt and the McNeelys.
- 19 Q When you spoke with Mr. Evatt at that time, was he under arrest?
- 20 A No, he was not.
- 21 Q Did you speak with him like you did with these other witnesses?
- 22 A Yes.
- 23 Q Where did you talk with Mr. Evatt?
- 24 A It took place outside the residence.
- 25 Q Was there anyone else present?

1 A Other deputies who were working in the area.

2 Q When you spoke with Mr. Evatt, what did he tell you?

3 A He stated to me that he and Ms. Rojas had been drinking. At some point in  
4 the day she had taken a shower and wrapped herself in a robe. And that she left, I  
5 guess, the bathroom area and walked into the living room and stated to him while he  
6 had his back to her that she needed to call her mother, that she wished to kill herself.  
7 He stated he turned around and observed her having a pistol in her mouth, observed  
8 her pull the trigger and she fell to the ground. He then fled the scene to call to get  
9 help. He said he had no minutes on his cell phone. He said he fled to the McNeelys  
10 residence at in Anderson County.

11 Q How long would you say that conversation lasted?

12 A Just a couple minutes.

13 Q After that conversation did you speak with him again?

14 A No, I did not.

15 Ms. Howard: No further questions.

16 The Court: Ms. Manigault.

17 **CROSS EXAMINATION BY MS. MANIGAULT:**

18 Q Officer Reece, did you ask Wallace Evatt any questions in response to the  
19 information he was giving you?

20 A I asked him what occurred.

21 Q You asked him what occurred?

22 A Yes ma'am.

23 Q Did you inquire about his relationship or his position at the trailer or at the site  
24 while he was there?

25 A I asked him where he was.



- 1 Q Why was he there at that trailer?
- 2 A No, I did not.
- 3 Q So, the only question you asked him was what happened?
- 4 A Yes ma'am.
- 5 Q Did you ask him anything else after he started giving you information?
- 6 A No ma'am.
- 7 Q Did you ever read him his Miranda waiver?
- 8 A No ma'am.
- 9 Q Any particular reason you didn't?
- 10 A At the time he was a witness. I was getting a witness' statement, so it wasn't
- 11 necessary to give him Miranda.
- 12 Q Did he at any point tell you that he was inside the trailer when the gun was
- 13 fired?
- 14 A Yes ma'am. He did state he was inside the trailer when the gun was fired.
- 15 He turned around, observed that she had a pistol in her mouth, observed her pull the
- 16 trigger and fall to the ground.
- 17 Q When he provided you with that information, did you ask him any questions
- 18 after that?
- 19 A No ma'am.
- 20 Q Did your conversation end after he told you that?
- 21 A Yes ma'am. After he stated that he left the scene to go to the McNeely's to
- 22 call 911, that was the end of the conversation.
- 23 Q Did you ask him how long it took him to get to the McNeely's?
- 24 A I did not.
- 25 Q Did you ask him anything about a cell phone?

1 A No ma'am.

2 Q When you arrived he was not in a car? Was he in a car?

3 A I believe he was standing outside the car and the house.

4 Q Thank you.

5 The Court: You may step down. Any objection to that testimony, Ms.

6 Manigault?

7 Ms. Manigault: Your Honor, we would have an objection because he stated  
8 that he asked-- He recalled specifically asking what happened, asking Mr. Evatt what  
9 happened and he may have asked him something else. We think that he should have  
10 advised him before asking him any questions, any further questions about the incident  
11 or anything else that happened.

12 The Court: He was not in custody at that time, and his statements were  
13 voluntary. And of course, Miranda was not applicable to voluntary statements, so  
14 that one will be admitted.

15 Ms. Manigault: Thank you, Your Honor.

16 Ms. Howard: Your Honor. The State calls Deputy John White.

17 **JOHN WHITE**, duly sworn, testified as follows:

18 Clerk of Court: Please state your name for the record.

19 A John White.

20 Clerk of Court: Thank you. You may be seated.

21 **DIRECT EXAMINATION BY MS. HOWARD:**

22 Q Deputy White, you work for the Greenville County Sheriff's Office?

23 A Yes ma'am.

24 Q How long have you been there?

25 A About 25 years.

- 1 Q Were you working on May 17, 2009?
- 2 A I was.
- 3 Q Did you respond to ?
- 4 A Yes, I did.
- 5 Q Tell me what you saw when you first arrived on the scene.
- 6 A When I arrived on the scene, EMS was already there and Mr. Evatt.
- 7 Q Did he approach you or did you approach him?
- 8 A It was kind of mutual. It was outside the residence.
- 9 Q Did he tell you anything when you were outside with him?
- 10 A He stated that his girlfriend had shot herself with a .38 and was dead on the
- 11 floor inside the residence.
- 12 Q While on the scene, what were your responsibilities?
- 13 A I obtained his information as well as the information of Ray McNeely, and
- 14 asked him to stay during the investigation.
- 15 Q Was he under arrest at that time?
- 16 A No ma'am.
- 17 Q After you got his information, did he tell you anything else?
- 18 A Yes ma'am. He said that his girlfriend came out of the bathroom wearing a
- 19 robe. She told him that she needed to call her mother and that she was thinking about
- 20 killing herself. He said that she turned around, put the revolver in her mouth, looked
- 21 into his eyes and pulled the trigger.
- 22 Q Did he say anything about whether or not he touched the gun?
- 23 A No ma'am.
- 24 Q Was there any further statement?

1 A He stated that she fell to the floor. He did not touch the body or the gun. He  
2 ran of the residence and took her car to his friend's house to call 911.

3 Q Were you asking him for this information or was it voluntarily given?

4 A All that was voluntary. He was just telling me what he said happened.

5 Q How long did you stay outside the trailer?

6 A It was a good while, twenty , thirty minutes.

7 Q Did you have any further involvement with him?

8 A I transported him to the law enforcement center to meet with Investigator  
9 King.

10 Q Was he under arrest at that time?

11 A No ma'am.

12 Q Why was he taken to the law enforcement center?

13 A Investigator King wanted to get his side of what transpired there.

14 Q Did you ask him any questions on the ride to the law enforcement center?

15 A No ma'am, he was talking freely.

16 Q What was he saying?

17 A He was just going over the story, saying over and over again that she walked  
18 out and shot herself.

19 Q And that was not in response to any questioning, it was all voluntary?

20 A Yes ma'am.

21 Q No further questions.

22 The Court: Ms. Manigault.

23 **CROSS EXAMINATION BY MS. MANIGAULT:**

24 Q Deputy White, you said that it was a period of twenty to thirty minutes that  
25 you were outside with Mr. Evatt?

- 1 A Yes ma'am.
- 2 Q Was he ever seated in your car?
- 3 A It started to rain and I asked him to take a seat.
- 4 Q You advised him?
- 5 A Ma'am?
- 6 Q You advised him to get in your car?
- 7 A I suggested to him to get in the car as it was raining.
- 8 Q Was he free to leave, to get out of your car and leave at any point?
- 9 A Yes ma'am. I had his information. He wasn't under arrest.
- 10 Q You said that he voluntarily told you that his girlfriend was inside and shot
- 11 herself?
- 12 A Yes ma'am.
- 13 Q Did you ask him any questions in response to the information he gave you?
- 14 A No ma'am.
- 15 Q You didn't ask him any questions?
- 16 A I didn't ask him any questions.
- 17 Q And you transported him?
- 18 A Yes ma'am.
- 19 Q Thank you.
- 20 The Court: You may step down. Ms. Manigault, any objection to that statement?
- 21 Ms. Manigault: No objection to the statement.
- 22 The Court: It will be admitted.
- 23 Ms. Salisbury: Your Honor, the State calls Investigator King.
- 24
- 25

2 Clerk of Court: Please state your name for the record.

4 Clerk of Court: Thank you. You may be seated.

6 Q Investigator, where do you work?

8 Q In what capacity?

10 Q How long have you worked in that capacity?

12 Q In May of 2009 did you have the occasion to assist in the investigation of a  
13 death on May 17?

15 Q Could you describe your role in that investigation?

19 Q What was your understanding of the purpose of your interview with the  
20 defendant?

24 Q Was it your understanding or was there any question about whether the  
25 defendant was under arrest?

1 A No. I was advised he was not under arrest at that point in time. He was  
2 present during the event and he was basically interviewed as a witness.

3 Q Once the defendant arrived at the law enforcement center, did he indicate to  
4 you that he was willing to give a written statement?

5 A He did.

6 Q What did you recall about interviewing the defendant at that time?

7 A It was in my office in the basement.

8 Q Was the defendant under arrest?

9 A He was not.

10 Q Was it your understanding that he would be free to leave at any time he  
11 wanted to terminate his interview with you?

12 A Absolutely.

13 Q Before speaking with him did you read him his Miranda rights?

14 A No.

15 Q Why?

16 A Again, he was not in handcuffs, he was not in custody and he was being  
17 interviewed at that point in time as a witness.

18 Q Investigator King, I'm going to show you what's been marked as a Court's  
19 Exhibit. Do you recognize that document?

20 A I do.

21 Q What is it?

22 A This is the statement that I obtained from the defendant, Mr. Evatt.

23 Q How do you recognize it?

24 A It's got my name at the top and it's also got my signature.

1 Q At any point during your interview did the defendant indicate to you that he  
2 wanted to stop speaking with you and terminate that interview?

3 A He did not.

4 Q Have you ever had the occasion to deal with individuals who were under the  
5 influence of alcohol or any other substances?

6 A On several occasions, yes.

7 Q During the course of your interview, did it appear to you that this defendant  
8 was impaired by any substance that would affect his ability to understand what was  
9 going on?

10 A Absolutely not.

11 Q Did he appear to understand the questions that you posed to him?

12 A He did.

13 Q Was his speech clear and coherent?

14 A It was.

15 Q Did you verify that he could read and write?

16 A I did.

17 Q Did the defendant ultimately give you a written statement or did you reduce  
18 into writing what he shared with you?

19 A I reduced it to writing what he shared with me in the form of this statement.

20 Q Did you type it for him?

21 A I did.

22 Q Is your signature on Court's Exhibit One?

23 A It is.

24 Q Is the defendant's signature on Court's Exhibit One?

25 A It is.



1 Q Did you give him an opportunity to review that statement after you prepared it  
2 for him?

3 A I did.

4 Q Did he make any corrections or modifications?

5 A He did. Actually, I had actually mistyped the time of the alleged victim's,  
6 when she got off of work, and he made a correction on that and initialed it.

7 Q Did he indicate to you that he wanted to make any corrections in the context  
8 of that statement?

9 A He did not.

10 Q To the best of your knowledge, did the defendant freely and voluntarily  
11 provide you with that statement?

12 A He did.

13 Q Please answer any questions Ms. Manigault may have for you.

14 **CROSS EXAMINATION BY MS. MANIGAULT:**

15 Q Court's Exhibit Number One, the statement is dated 5/17/2009?

16 A That's correct.

17 Q You refer to him as a defendant, you took the defendant's statement. Are you  
18 saying he was a defendant? Was he in custody or was he just a witness?

19 A He was just a witness. As we sit here today, he's a defendant.

20 Q So, when you talked to him on May 17, he was a witness?

21 A That's correct.

22 Q The form of the statement that you used, is this the regular witness statement?

23 A That is a form that I use.

24 Q That's a form that you use?

25 A Yes ma'am.

- 1 Q Is it also used when a person's in custody?
- 2 A That's correct.
- 3 Q How long did you talk with Mr. Wallace Evatt on May 17, 2009?
- 4 A I would say it was at least an hour or two, a couple of hours.
- 5 Q A couple of hours?
- 6 A Yes ma'am.
- 7 Q During that couple of hours, was Mr. Evatt free to leave at any time?
- 8 A Absolutely.
- 9 Q Did he ever leave your side at any time?
- 10 A We walked outside, took breaks; smoke breaks, bathroom breaks. He got a
- 11 soda. So, we moved freely within the building.
- 12 Q And this was over a period of about two-plus hours?
- 13 A Yes ma'am.
- 14 Q Before you reduced this statement to writing, did you record it?
- 15 A No ma'am.
- 16 Q You did not record it?
- 17 A No ma'am.
- 18 Q Did Mr. Evatt have a rap sheet?
- 19 A At that time, I don't think he did. However, we-- I don't recall. I don't think
- 20 so.
- 21 Q So, did you read this statement back to him or did he read it?
- 22 A He read it.
- 23 Q He read it?
- 24 A Yes ma'am.
- 25 Q In the process of giving this statement to you, did you ask him questions?

1 A I did, yes.

2 Q And you asked him several questions. Is that correct?

3 A Yes ma'am.

4 Q Did you at any point tell him that you did not believe what he was saying,  
5 what he accounted to you?

6 A No ma'am.

7 Q So you took down verbally what he said, reduced it to writing, and then he  
8 signed it?

9 A That's correct.

10 Q Do you know how far along in your receiving the statement from him, was it  
11 an hour or an hour and a half, before you reduced it to writing?

12 A That would have been the last thing I did.

13 Q The last thing you did?

14 A Yes ma'am.

15 Q And you said that his speech was coherent?

16 A Yes ma'am.

17 Q Did he tell you that he was drinking that day?

18 A He told me that they had been drinking earlier, yes.

19 Q Did he tell you that he and Karen Rojas was drinking?

20 A Yes.

21 Q Did you ask him how much he had to drink?

22 A I may have, but the fact that his speech wasn't slurred, he didn't have the  
23 obvious appearance of being intoxicated, I don't think so.

24 Q Investigator King, what was Wallace Evatt's appearance to you during this  
25 hour of questioning?

1     A             He was coherent. I'd say he had a button shirt, I believe short-sleeved. Fairly  
2             neat appearance, didn't look like he was unkempt at the time. I noticed his hands  
3             were clean.

4     Q             What was his behavior?

5     A             Jumping back and forth as far as recalling the events as they occurred.

6     Q             Did he appear to be upset, under duress?

7     A             No, he appeared anxious.

8     Q             Anxious?

9     A             Yes ma'am.

10    Q             Thank you.

11             The Court: You may step down. Any objection to this witness?

12             Ms. Manigault: Your Honor, I have an objection to this one. I understand  
13             what the Court ruled earlier. Mr. Evatt was in the law enforcement center basement  
14             office with Investigator King for over two hours giving this alleged written statement.

15             I understand that Investigator King has testified that he was not under arrest.  
16             However, I do believe, viewing the circumstances and the situation in its entirety,  
17             that Mr. Evatt was not free to leave. He was confined in a small space, at the law  
18             enforcement center in an office for more than two hours taking a statement.

19             A lot of questions were asked which may have led the interview more toward  
20             an interrogation or badgering. And we ask the court to exclude his statement. We  
21             believe that Mr. Evatt should have been advised of his rights over that two-hour time  
22             period, to fully understand.

23             Nobody testified that Mr. Evatt was told that he could leave. He said that he  
24             at his side at the time they took breaks, cigarette breaks. We ask the court to exclude  
25             this statement.

6 Let's take a recess for lunch and everybody be back at 1:15.

7 (Whereupon court was in recess for lunch)

9 Ms. Howard: The State calls Investigator Eric Whaley to the stand.

11 Clerk of Court: Please state your name for the record.

13 Clerk of Court: Thank you. You may be seated.

15 Q Investigator Whaley, where do you work?

17 Q How long have you worked there?

19 Q What is your position in the Sheriff's Office?

21 Q Were you assigned to this case?

23 Q Did you respond on May 17, 2009 for the incident involving this case?

25 Q Did you speak with the defendant at that time at the scene?

- 1     A             Briefly, yes.
- 2     Q             At that time, was he under arrest?
- 3     A             No, he was not.
- 4     Q             Did you approach and ask him some questions?
- 5     A             Yes.
- 6     Q             What was the purpose of that?
- 7     A             Since I was investigating a death, he was there and he was a witness. I
- 8             approached him just to find out who he was, what he saw, any actions he might have
- 9             taken just as I asked all the persons on the scene, the EMS, the other deputies and that
- 10            sort of thing.
- 11    Q             Did he tell you what had happened?
- 12    A             He said that she had shot herself, and I explained to him that one of the, that
- 13             the process of the investigation and him being a witness during that, one of the things
- 14             I asked him if we could take what we call gunshot residue, and that would actually be
- 15             completed by forensics and not myself. But I explained that to him so he could get it
- 16             from me instead of a stranger coming up to him with forensics stuff, so we had
- 17             already communicated. I asked him if we could that and he said yes. And he said,
- 18             voluntarily, yes, check my hands.
- 19    Q             And he told you that you could check his hands?
- 20    A             That's correct.
- 21    Q             Did you get a statement from him on the scene?
- 22    A             No, not so much. I just wanted to introduce myself to him, explained to him
- 23             what was going on, that we got a search warrant for his house, that we wanted to test
- 24             his hands, that he wasn't under arrest. And that we wanted to ask him some

1           questions what had gone on prior to our arrival, if he would go down to the law  
2           enforcement center voluntarily, and he said yes.

3       Q           Were you present for the interview or a portion of the interview with  
4           Investigator King?

5       A           After the scene was processed, Mr. Evatt was already at the law enforcement  
6           center with Mr. King, I did go down and I did speak with Mr. Evatt there.

7       Q           I'm going to show you what's been marked as Court's Exhibit Number Two,  
8           and tell me if you recognize that item.

9       A           Yes.

10      Q           What is that item?

11      A           This is CD that contains the interview of Wallace Evatt, dated 5/17/2009.

12      Q           This was taken during the interview?

13      A           Yes.

14      Q           Did you have an opportunity to preview this prior to coming to court?

15      A           Yes.

16      Q           Has that CD been altered in any way?

17      A           No.

18      Q           Tell me a little bit about the interview that's on this CD. Was it done prior to  
19           Investigator King or afterwards?

20      A           It would have been afterwards. I used my issued digital recorder, which I use  
21           on crime scenes, during interviews, with suspects, witnesses, that sort of thing. I  
22           explained to him that it would record our interview and then it would later be  
23           transcribed.

24      Q           Can you tell us how long your interview lasted?

25      A           Not very long. Honestly, I couldn't-- To give a ball park, about an hour.

1 Q Through this whole time was he allowed to have smoke breaks and bathroom  
2 breaks, whatever he needed?

3 A That's correct. I made sure that he understood that he was not under arrest  
4 and he was free to go.

5 Q Did you give him Miranda?

6 A No.

7 Q So, is this a continuation from Investigator King's interview?

8 A Yes. Since I was at the scene, I had some questions I wanted to ask. Of  
9 course, Investigator King wasn't there, and he may not have had privy to things that I  
10 did.

11 Ms. Howard: Your Honor, we have Court's Exhibit Number Two, an audio  
12 interview. We would like to play it.

13 The Court: All right. Go ahead.

14 (whereupon Court's Exhibit Number Two was played for the court)

15 (end of playing of Court's Exhibit Number Two)

16 The Court: Is that it?

17 Ms. Howard: Yes, Your Honor. There are a few more questions that I need  
18 to ask Investigator Whaley.

19 Q Investigator Whaley, after this interview with the defendant on 5/17, did you  
20 speak with him again?

21 A Yes.

22 Q When was that?

23 A The date he was arrested.

24 Q Was that May 22?

25 A Yes..



- 1 Q So, about five days later?
- 2 A Yes.
- 3 Q So, when you spoke with him at that time was he in handcuffs?
- 4 A He was brought to the law enforcement center in handcuffs, under arrest.
- 5 Q When you spoke with him was he read Miranda?
- 6 A Yes.
- 7 Q Who read him Miranda?
- 8 A I did.
- 9 Q Did you read that from a form or recite it from memory?
- 10 A From a form.
- 11 Q Was he provided a copy of the form?
- 12 A To review, but not to keep.
- 13 Q Did he read the form?
- 14 A Yes.
- 15 Q I'm going to show you what's been marked as Court's Exhibit Number Three.
- 16 Do you recognize that form?
- 17 A That is a copy of the Miranda Rights that I gave him and he signed.
- 18 Q Is that your signature on the form?
- 19 A Yes.
- 20 Q And this was your second interview?
- 21 A Yes.
- 22 Q Is that form there the regular form which is read to all defendants and the one
- 23 that you signed?
- 24 A Yes.
- 25 Q Did he indicate that he understood his Miranda Rights?

- 1 A Yes, he did.
- 2 Q Could you read those for us?
- 3 A Sure. It says: "Before we ask any questions you must understand your rights.
- 4 You have the right to remain silent. Anything you say you can be used against you in
- 5 court. You have the right to talk to a lawyer for advice before we ask any questions
- 6 and have him with you during questioning. If you have no money to pay a lawyer's
- 7 fee, the court will appoint one to represent you at no cost if you wish. If you decide
- 8 to answer questions now without a lawyer present, you still have the right to stop
- 9 answering at any time. You also have the right to stop answering at any time you
- 10 need to talk to a lawyer."
- 11 Q And you said it was clear to you that he understood his Miranda warning?
- 12 A He did.
- 13 Q Did he indicate to you what he wanted to do?
- 14 A He wished to talk to me.
- 15 Q Did he give you a statement at this point?
- 16 A He did.
- 17 Q Was it a written statement?
- 18 A Recorded.
- 19 Q So, what was his condition when he gave the statement?
- 20 A He appeared to be okay. He was calm, he was cooperative.
- 21 Q Did you threaten or coerce him in any manner?
- 22 A No ma'am.
- 23 Q Did he ask for any water or to take a break?
- 24 A No.
- 25 Q How long would you say this statement took?

1 A Less than ten minutes.

2 Q I'm show you what's been marked as Court's Exhibit Number Four and ask  
3 that you take a look at that. What is that item?

4 A That item is a CD marked "Second interview, dated 5/22/2009, Wallace E.  
5 Evatt, Jr."

6 Q Have you had a chance to review that CD prior to court today?

7 A Yes.

8 Q Has that CD been altered in any way since May 22, 2009?

9 A No.

10 Ms. Howard: Your Honor, this audio recording is a tape of the next interview.

11 The Court: I want to make sure I understand he was advised of his rights?

12 Ms. Howard: Yes sir.

13 The Court: Is that correct?

14 Ms. Howard: Yes sir.

15 The Court: And after being advised of his rights, he freely and voluntarily  
16 gave his statement?

17 Ms. Howard: Yes sir.

18 The Court: Ms. Manigault, any question about that?

19 Ms. Manigault: Yes, Your Honor. He was brought from the hospital where  
20 he had spent four days on medication in the mental, psychiatric ward. He had  
21 checked himself in. They picked him up at the hospital and took him to the jail for  
22 questioning.

23 The Court: Are you questioning whether or not he was properly advised of  
24 his rights and that he waived them?

1 Ms. Manigault: I'm questioning whether he, it was an informed waiver,  
2 because in reviewing the---

3 The Court: I understand. Does he wish to take the stand to test the validity of  
4 this second statement?

5 Ms. Manigault: Yes sir.

6 The Court: All right. This is solely for the purpose of verifying the  
7 voluntariness of the second statement.

8 Ms. Manigault: Yes sir.

9 The Court: All right, come around.

10 **WALLACE EUGENE EVATT, JR.,** duly sworn, testified as  
11 follows:

12 Clerk of Court: Please state your name for the record.

13 A Wallace Eugene Evatt, Jr.

14 Clerk of Court: Thank you. You may be seated.

15 **DIRECT EXAMINATION BY MS. MANIGAULT:**

16 Q Mr. Evatt, were you arrested on May 22 of 2009?

17 A Yes.

18 Q Where were you arrested?

19 A At the mental part of Greenville Memorial Hospital, where I had been over  
20 there five days on three different kinds of medicine.

21 Q Were you medicated-- Were you being released that day?

22 A Yes ma'am, I was.

23 Q Did you receive medication that day?

24 A Yes ma'am, I did.

25 Q Do you know what type of medication you had received?

1 A I know some of it was called Geodyne (sic) and I can't recall what other stuff  
2 was-- I was shot, so I don't know. I was given shots.

3 Q Now, why were you in-- Why did you go to the mental health?

4 A Well, when they released me, my nerves got so bad I was shaking all over  
5 uncontrollably. I went to Easley Baptist Hospital and they sedated me and gave me  
6 some prescriptions. The very next day I was shaking so bad I couldn't even-- I was  
7 in bad shape, you know. So, I decided to go over to Memorial because Easley Baptist  
8 don't have a psychiatric part, and talk to the doctors over there and see what could be  
9 done. And the nurse, she immediately give me a shot and put me into the room.

10 Q So, you stayed at the psychiatric ward of Greenville Hospital for four or five  
11 days?

12 A Yes ma'am.

13 Q And then they released you on May 22, 2009?

14 A Yes ma'am.

15 Q And after you were released, you were immediately arrested on hospital  
16 property?

17 A Yes ma'am.

18 Q Were you still on medication at that time?

19 A Yes, I was.

20 Q Did you recognize the reason that you were being arrested?

21 A Well, yeah, I guess. I knowed why I was arrested for.

22 Q Did they tell you why you were arrested?

23 A I asked them was I under arrest.

24 Q And they said?

25 A Yes, handcuffed me and brought me to the law enforcement center.

1 Q Now, Court's Exhibit Number Three, they said your rights and the waiver of  
2 rights. Did you sign that?

3 A Yes, I did.

4 Q Did you know what you were doing when you signed it?

5 A My mind was so bad, I had thought about this over and over, and it was just  
6 blurry to me, so blurry.

7 Q Were you still on medication?

8 A Yes ma'am, I was.

9 Q Were you alert when they were talking to you? I mean, did you know your  
10 surroundings?

11 A Yeah, I think so.

12 Q Were you alert?

13 A I was feeling wobbly.

14 Q Feeling wobbly, was that because of the medication?

15 A Yes.

16 Q Do you have any idea how long they talked with you?

17 A It wasn't long because when I finally got back to the LEC, I asked to see a  
18 lawyer. That's when it all stopped.

19 Ms. Manigault: Answer any questions the State might have.

20 The Court: Ms. Howard?

21 Ms. Howard: No questions, Your Honor.

22 The Court: Thank you, you may step down. Upon listening to the testimony,  
23 I find that he was properly advised of his constitutional rights under Miranda; that  
24 they properly advised him of his rights; he freely and voluntarily gave a statement. I  
25 find that his mental condition from taking medication was no such as to render him

1           unable to understand. I find under the totality of the circumstances that this interview  
2           was not the result of any coercion, and under the circumstances was freely and  
3           voluntarily given, and it will be admitted.

4           Ms. Howard: Thank you, Your Honor.

5           Ms. Manigault: Your Honor, I have one clarification. The Court ruled on the  
6           5/17/09 statement by Investigator Whaley and Investigator King, that the first part  
7           would be admissible. I ask the Court to instruct the State to provide the first part of  
8           the statement on a separate disk so we can see what he's talking about in the first part.

9           The Court: I'm going to allow all the first part up until the first break and  
10          nothing else.

11          Ms. Howard: Your Honor, when Ms. Manigault goes back to her office, I will  
12          get that disk to her.

13          The Court: All right.

14          Ms. Manigault: Your Honor, with that said, I want to reserve my right to  
15          make an objection at the appropriate time.

16          The Court: All right.

17          Ms. Howard: Your Honor, we will redact the parts not allowed.

18          Ms. Manigault: Your Honor, I have a question about the redacted parts. Are  
19          they gonna provide us a copy of the redacted disk?

20          The Court: Surely they can do that.

21          Ms. Howard: Yes, Your Honor.

22          The Court: All right.

23          Ms. Howard: Your Honor, as to the evidence from the state, we have several  
24          witnesses that involved in the chain and we are hoping that some of these witnesses  
25          can be stipulated to, as we have a number of witnesses.

1           The Court: Have you discussed that with Ms. Manigault?

2           Ms. Howard: Ms. Manigault and I did discuss this.

3           Ms. Manigault: Your Honor, we talked about this briefly. She's gonna give  
4 me the witnesses that are involved in the chain so that I can verify that before and  
5 after.

6           The Court: Do you have a sheet showing the list?

7           Ms. Howard: She has the information. I can give her the breakdown. We do  
8 have a witness that we aren't sure about, who recently had a knee replacement.

9           The Court: All right. Ms. Manigault.

10          Ms. Manigault: We did have an issue about that earlier, Your Honor, and I  
11 just want a chance to review that person and the others to make sure they're okay. I  
12 don't think there's a problem, but I need to go over those sheets, which I can do when  
13 we're on break.

14          The Court: Is that something you can do?

15          Ms. Howard: Yes sir, we can do it over the next break.

16          Ms. Manigault: I can go over it before in the morning.

17          The Court: Are you ready to make opening statements?

18          Ms. Howard: The State is ready.

19          Ms. Manigault: We're ready, Your Honor.

20          The Court: We have a juror matter we need to take up. There's a juror,  
21 number 19, who told the bailiff during the lunch break that she now resides in Easley.  
22 She, nevertheless, still owns a residence here and gets her mail in Greenville County.  
23 I'll have to bring her in, so she can tell us where she lives, in Greenville County or  
24 Pickens County. Bring in Brenda Johnson, juror number 19.  
25 (whereupon juror 19 was brought before the court)



1           The Court: Ms. Johnson, I understand that you have moved to Pickens  
2           County, but you still own property in Greenville and you get your mail here. Do you  
3           consider yourself to be a resident of Greenville County, where you get your mail, or  
4           do you consider yourself to be a resident of Pickens County?

5           Juror: I'm really both.

6           The Court: Both. All right. I'll have to excuse you from jury duty. Please  
7           report downstairs and tell the juror coordinator that I have released you. Thank you.

8           (whereupon juror was excused)

9           We'll replace that juror with the alternate.

10          Ms. Manigault: Your Honor, before we bring the jury in, I move to sequester  
11          the witnesses.

12          The Court: Yes ma'am, we'll sequester all witnesses on both sides.

13          Ms. Howard: Your Honor, the victim's family who are not going to testify,  
14          they'll be allowed to stay in the courtroom?

15          The Court: Yes ma'am.

16          Ms. Manigault: Your Honor, I am taking Wallace Evatt, Sr., off my witness  
17          list.

18          The Court: Okay.

19          (whereupon the jury entered the courtroom)

20          Ladies and gentlemen, juror number 19 has been excused because she is not a  
21          resident of Greenville County. So, Ashley Clark is now officially a juror.

22          Brief opening statement, Solicitor.

23          Ms. Salisbury: Thank you, Your Honor. May it please the court. Good  
24          afternoon, ladies and gentlemen. We were introduced earlier today. My name is

1       Katryna Salisbury. My co-counsel, Kimberly Howard, we prosecute criminal cases  
2       here in Greenville County. As the State, we have the burden to prove our case to you.

3               Ladies and gentlemen, this is a case about domestic violence at its most  
4       volatile, its most aggressive and its most extreme. On Sunday afternoon, May 17,  
5       2009, Karen Rojas and her then-boyfriend, the defendant, Wallace Eugene Evatt,  
6       were at Karen's home in Piedmont. We don't know what set it off, but what we do  
7       know and what the evidence will show during the course of this trial is that an  
8       argument escalated between the two and Karen Rojas was shot in her home.

9               The evidence through the course of this trial that you will hear will show that  
10       immediately after that shot, the defendant took off out of the home and fled in  
11       Karen's car. You will testimony that he drove miles away to his friends' home in  
12       Anderson, where those friends ultimately convinced him to call 911.

13              Now, as you have heard from the judge, the defendant is charged with murder.  
14       To prove that the defendant is guilty the State must prove two things: that Karen  
15       Rojas died as a result of the defendant's actions that afternoon, and the defendant  
16       acted with malice. Now, the judge will explain to you at the end of the trial what that  
17       means; it means ill-will, meanness.

18              You will hear testimony from several witness. First you will hear from people  
19       who were on the scene that day, who were nearby. Those people will testify about  
20       what they saw and what they heard before and after Karen was shot. After that you  
21       will hear testimony from the first officers on the scene who will testify about what  
22       they do to respond to a shooting like this and how the investigation gets started.

23              You'll also hear from the forensic technicians who came and collected  
24       evidence and processed that evidence. They'll testify about what they did to collect  
25       evidence and what they did to analyze it. As part of that testimony about the

1 evidence collected in this case, you're going to hear from several expert witnesses.  
2 You'll hear testimony about DNA, gunshot residue, and ballistics analysis. And as  
3 part of that evidence, you're gonna hear from some folks who will testify about that  
4 evidence was preserved, how it was transferred, cared for. That testimony is to help  
5 you the jury feel confident that the testing and analysis done on that evidence is  
6 accurate. Their testimony is to help you feel certain that from the time the evidence  
7 was collected until it was tested and presented to you here in court that it was  
8 properly cared for.

9 Now, you will hear testimony from the primary investigator on this case,  
10 Investigator Eric Whaley. Investigator Whaley will testify about how he got involved  
11 in this investigation and about what he did, his findings, and how he came to make  
12 the decision to arrest the defendant.

13 Finally, you'll hear from Doctor Ward, who is one of our medical examiners  
14 here in Greenville County. Doctor Ward will testify about his findings at the autopsy  
15 and how he determined that Karen was killed on that Sunday.

16 Now, ladies and gentlemen, the evidence in this case at times will be very  
17 complicated and there will be a lot of it during the trial. But we the State appreciate  
18 your attention and we know as you pay attention to the witnesses and the evidence,  
19 we feel confident that at the end of this trial you will return a verdict that the  
20 defendant, Wallace Eugene Evatt, is guilty of the murder of Karen Rojas. Thank you.

21 The Court: Ms. Manigault.

22 Ms. Manigault: May it please the court. Ladies and gentlemen, I'm Dorothy  
23 Manigault, an attorney here in Greenville County representing Wallace Evatt. Now,  
24 there is one point of fact that is agreed upon: there was a death. There was a death.  
25 The disagreement is how did the death occur. The State is going to offer you,

1 according to Ms. Salisbury, the information that led to the defendant being charged  
2 with murder. The other side of the story is a possible suicide.

3 Now, an individual comes to court with the presumption of innocence, and it's  
4 referred to as a cloak, a robe of innocence, righteousness, the biblical saying, a cloak  
5 of righteousness. So, a person comes to court with a presumption of innocence. That  
6 presumption remains with the individual the entire way through the trial. The court  
7 will charge you the law to apply to the facts as you've heard them. You'll go back to  
8 deliberate. And only if and when in the deliberations you decide that well, this  
9 charge doesn't make sense, or maybe the facts bear it out. But we submit to you that  
10 the facts will not bear out a murder by Wallace Evatt. We submit to you that facts  
11 will bear out a suicide by Karen Rojas.

12 The burden of proof is on the state of South Carolina, the Solicitor's Office of  
13 Greenville County, Thirteenth Judicial Circuit, to bring evidence in to convince you  
14 beyond a reasonable doubt of what they're saying. And we submit to you that that  
15 evidence will not convince you beyond a reasonable doubt; that there are lots of  
16 reasonable doubts in the case.

17 They'll talk about the medical examiner and the autopsy reports, his records.  
18 They'll talk about DNA collection. They'll talk about gunshot residue collection. All  
19 of that will come for your review and for you to decide what evidence is missing.  
20 What evidence is missing. Where is there a doubt. Where are there several doubts in  
21 this case that would lead you to conclude that Wallace Evatt is not guilty as charged.

22 So, yes, we have one agreed upon fact, that there has been a death. But we  
23 ask you on behalf of Mr. Evatt to listen very closely to the evidence that you hear,  
24 listen to the evidence that is not presented, what happens to it. Listen to everything so  
25 that you can be able to weigh this information that is presented to you. And we

1 submit to you that after you are charged by Judge Pyle that you will conclude a  
2 verdict of not guilty for Wallace Evatt. Thank you.

3 The Court: First witness.

4 Ms. Salisbury: The State calls Steven Beacham.

5 **STEVEN BEACHAM**, duly sworn, testified as  
6 follows:

7 Clerk of Court: Please state your name for the record.

8 A Steven Beacham

9 Clerk of Court: Thank you. You may be seated.

10 **DIRECT EXAMINATION BY MS. SALISBURY:**

11 Q Good afternoon, Mr. Beacham.

12 A Good afternoon.

13 Q Where do you live?

14 A (inaudible)

15 Q Are you familiar with the Pond off ?

16 A Yes ma'am. I usually go up there about three or four times during the week  
17 because my wife works and I fish during the day while she's working.

18 Q Do you remember being there on Sunday afternoon, May 17, of 2009?

19 A Yes ma'am.

20 Q How do you remember being there?

21 A I was fishing with my little boy, up there with my little boy , up there at  
22 , talking to Jerry and Rhonda and them and then we heard the  
23 gunshot.

24 Q Who are Jerry and Rhonda?

25 A Jerry and Rhonda are the owners of pond.

1 Q What do you recall about that Sunday afternoon? Let's begin at the  
2 beginning. When do you remember getting to ?  
3

4 A I got there, it wasn't real early, but it was around lunch time, somewhere in  
5 there, so I got my little boy something to eat. We had just left. We was up there at  
6 the little bait shop, talking to them. Then I seen that guy and Ms. Rojas come in, and  
7 they waved and I waved back. They had a few little words out on the back porch.  
8 They went in the house.

9 Q Let me stop you right there. Let's be real specific about this. You said you  
10 got to the pond about lunch time. What did you do when you got there?

11 A When we got there, I went in and got bait. I got some food and stuff for my  
12 little boy. I didn't want him messing with them worms and stuff before he ate. So, I  
13 went ahead and got food and stuff and ate. Then we went down to the pond. That's  
14 when they pulled up and we waved at them and we went on down to the pond.

15 Q Do you remember what kind of car they arrived in?

16 A It was a little, small sedan.

17 Q Do you remember what color it was?

18 A I think it was red.

19 Q Do you know Karen Rojas?

20 A No.

21 Q You said you waved at her.

22 A Yeah, she waved at us every time we'd go down to the fishing pond. She  
23 waved at us. She always would throw her hand up. I don't know her except for  
24 where she worked at, Classic Pizza. I'd go up there and get pizza.

25 Q But y'all were friendly, she waved at you?

- 1 A Yeah, she waved at me, I waved back.
- 2 Q Did you recognize the guy she was with?
- 3 A No, I'd never seen him before.
- 4 Q Would you recognize him in court today?
- 5 A Yes ma'am.
- 6 Q Can you point him out for the jury?
- 7 A He's sitting right over there.
- 8 Q Is the defendant the person who was with Ms. Rojas that day?
- 9 A Yes ma'am.
- 10 Q You said they waved to you. Then what happened?
- 11 A They had a couple of words outside of the house. You could tell it was harsh
- 12 words because she got mad and he did, too, and then they went in the house.
- 13 Q What did you do after that?
- 14 A I turned around, and got the rest of our bait and me and my son went down to
- 15 the pond.
- 16 Q Now, how far away is the place from where you waved back at Karen to walk
- 17 down to the pond?
- 18 A From where, from the, her house?
- 19 Q From where you were standing when she waved to you until you walked
- 20 down to the pond?
- 21 A From about here to the back door there. It wasn't that far.
- 22 Q Now, once you walked down there with your little boy, how long did y'all
- 23 stay at the pond?
- 24 A We wasn't down there probably-- We was down there maybe twenty, twenty-
- 25 five minutes, something like that. We got down there and he was eating and

1 everything , and got situated, and then we was sitting in the boat fishing, and that's  
2 when we heard the gunshot. And then about two to three minutes later he came  
3 running out, got in the car and left real fast, like that. That's when I told Jerry that  
4 maybe somebody ought to go check on her or something. Then Jerry asked me what  
5 was going on and I told him, I said I heard a gunshot, you need to go up there and he  
6 went up there. Then after that, that's when the police and everybody started showing  
7 up.

8 Q Now, when you heard the gunshot what did you do? Did you stay there at the  
9 pond?

10 A No, I grabbed my son up and held him while I was figuring out where the  
11 gunshot was coming from. Then we walked up there and I told Jerry what was going  
12 on, I just heard a gunshot, and he needed to check on it.

13 Q Now you stated that you saw the defendant run out of the house.

14 A Yeah.

15 Q I'm going to show you a photograph that's marked State's Exhibit One. I  
16 want you to take a look at this photograph and tell me if you recognize what's  
17 depicted in that picture.

18 A Yes ma'am. That's the front of the house, and he come out right here at the  
19 back. He came out of the back side of that house where the back door was. There  
20 was stairs at the back door.

21 Q Is this an accurate depiction of Karen's house?

22 A Yes ma'am.

23 Ms. Salisbury: Your Honor, I'm going to put it up as State's---

24 The Court: Just a minute. Is there any objection to the photograph, Ms.  
25 Manigault?



1 Ms. Manigault: None, Your Honor.

2 The Court: All right. It's in evidence.

3 (whereupon State's Exhibit Number One was admitted into evidence without  
4 objection)

5 Q Now, Mr. Beacham, if you would, I've got this photograph on the screen.

6 Now, you were just about to tell us about what you saw, that after you heard this  
7 gunshot, you grabbed your boy and headed back to tell Mr. Burgess what was doing  
8 on.

9 A Yes ma'am.

10 Q Would you point out on this photograph, and I'll give you this pointer to help.

11 A Yes ma'am.

12 Q Could you use that pointer and show us where the red car was parked?

13 A It was parked right here in this driveway.

14 Q How did the defendant and Karen enter the trailer?

15 A Through the back door.

16 Q From where this photograph was taken about how much further away is the  
17 pond?

18 A The pond is about, maybe... You got this one road here, and you got another  
19 small road right here, and then the pond's right there. Probably about, maybe a half a  
20 football field.

21 Q Is it shown in this picture where you were standing when Karen waved at  
22 you?

23 A No ma'am.

24 Q I was over here and the bait shop, there's a bait shop right here. It's a little,  
25 wooden building that's directly right beside this trailer. And that's right there at her

1 driveway. So, that's where -- I mean, that's how she seen me, because when they  
2 pulled in and they got out of the car and they was standing on the porch. And I  
3 waved at her and she waved to us. They went up on the back porch and I was  
4 standing right inside the bait shop door, standing there, and I seen them start having  
5 words and they went inside.

6 Q Now, what did you do-- After the shot, you say you saw the defendant run  
7 out of the house?

8 A Yes ma'am.

9 Q What did---

10 A He came out of the back door, came down, jumped in the car. He backed out  
11 and he drove out of the trailer park.

12 Q Did he say anything to anybody?

13 A No ma'am.

14 Q Now, I want to show you another photograph that's been marked as State's  
15 Exhibit Two.

16 (photo shown to defense counsel)

17 The Court: Any objection?

18 Ms. Manigault: Your Honor, may we approach?

19 The Court: Sure.

20 (whereupon a bench conference took place)

21 Q Mr. Beacham, take a look at State's Exhibit Number Two and tell me if you  
22 recognized what's depicted in that picture?

23 A Yes ma'am. It's the bait shop, the pond, the trailers.

24 Q Is that an accurate depiction of that area?

25 A Yes ma'am.

1 Q Is that how it looked in May of 2009?

2 A Yes ma'am.

3 Ms. Salisbury: Your Honor, I offer State's Exhibit Two at this time.

4 The Court: All right. It's in over objection.

5 (whereupon State's Exhibit Number Two was admitted into evidence over objection)

6 Q Mr. Beacham, I've got this photograph up so everyone can see it. I want you  
7 to take another look at this photograph. Using that pointer again, can you show the  
8 jury all those places are that we're talking about, the bait shop, the fishing pond, the  
9 trailers. Do you see those on there?

10 A (using laser pointer) This is the fishing pond right here. Right here is where  
11 we standing at, right on the edge of the fishing pond. The fishing pond's actually all  
12 the way up to right there, to the tree line there. And this is the trailer. Right here is  
13 the bait shop. Right here is where they was standing, and they had a little porch that  
14 come out and went around.

15 Q Now, how is it that the defendant would have driven out of the neighborhood  
16 once he left the trailer?

17 A This road right there, that goes straight out to the highway.

18 Q And where were you standing at the time that happened, when he drove out of  
19 the ---

20 A When he drove out, right here.

21 Q Okay. Did you ever go inside the trailer that day?

22 A No.

23 Q What did you do after all this commotion was going on. After you saw the  
24 defendant drive away, what did you?

1     A               I told Jerry that he needed to go and check on her or whatever. And Jerry was  
2                    about to do that and then the police started showing up. And me and my son was  
3                    standing at the bait shop. I didn't want to have my son around ambulances or nothing  
4                    like that. So, I kept him there and we stayed away and then I called him mama to  
5                    come straight there and pick him up.

6     Q               How long do you think you stayed there?

7     A               A few hours.

8     Q               Did you talk to the investigator officers that day?

9     A               Yes ma'am.

10    Q               Did you give them a written statement about what you saw?

11    A               Yes ma'am.

12    Q               How long do you think you were standing there until the police and  
13                    ambulance and everybody else started to arrive?

14    A               They was there maybe fifteen, twenty-five minutes-- Fifteen to twenty-five  
15                    minutes at the max before everybody was there, the ambulance and all the marked  
16                    and unmarked cars was there.

17                    Ms. Salisbury: No further questions of this witness, Your Honor.

18                    The Court: Ms. Manigault.

19    **CROSS EXAMINATION BY MS. MANIGAULT:**

20    Q               This fishing pond, State's Exhibit Number Two, which is an aerial shot, are  
21                    you saying that you were standing at the bait shop across from the trailer?

22    A               Yes ma'am.

23    Q               How long did you stay there after you saw Karen Rojas and Wallace Evatt go  
24                    in?

- 1 A I was there maybe a minute or two after they walked in, and then I walked  
2 right back down.
- 3 Q When you walked back down where?
- 4 A Down to the pond.
- 5 Q So, where were you when you heard a gunshot?
- 6 A I was down there at the pond.
- 7 Q At the pond?
- 8 A Yeah.
- 9 Q And when you said that you heard the gunshot, and you grabbed your son and  
10 you went to Jerry, where was Jerry?
- 11 A Jerry was in the bait shop.
- 12 Q In the bait shop?
- 13 A Yes ma'am.
- 14 Q Did Jerry go up to the trailer by himself?
- 15 A No ma'am. I wasn't really paying much attention to that. I was standing over  
16 there to the side watching everybody because everybody was kinda going crazy at  
17 that time.
- 18 Q So, you didn't see Jerry go into the trailer?
- 19 A No ma'am.
- 20 Q But you say you didn't go into the trailer?
- 21 A No ma'am.
- 22 Q Now you said that Karen and the man you saw with her had a few, little words  
23 on the back porch. Right?
- 24 A Yes ma'am.
- 25 Q Could you hear what the man said?

- 1 A No ma'am.
- 2 Q Could you hear what Karen said?
- 3 A No ma'am.
- 4 Q Was it loud?
- 5 A No, they was just up in each other's face and you could tell by their angry
- 6 looks.
- 7 Q Are you sure it was angry looks and not just up in each other's face for other
- 8 reasons?
- 9 A I thought it made him mad because she waved at me.
- 10 Q That's what you thought?
- 11 A Yeah.
- 12 Q But you said she waved at you all the time?
- 13 A Yeah.
- 14 Q How long had you known Karen?
- 15 A I haven't known her.
- 16 Q You haven't known her?
- 17 A No ma'am.
- 18 Q How many times did you see her over there?
- 19 A About two or three times.
- 20 Q Was that in a two-week period, a month period, a six-month period?
- 21 A A two-month period.
- 22 Q A two-month period?
- 23 A Yeah.
- 24 Q I believe you testified that you'd never seen the man before?
- 25 A No.

1 Ms. Manigault: Thank you.

2 The Court: Thank you. You may step down.

3 Ms. Salisbury: The State calls Jerry Burgess.

4

5 **JERRY BURGESS**, duly sworn, testified as follows:

6 Clerk of Court: Please state your name for the record.

7 A Jerry Burgess.

8 Clerk of Court: Thank you. You may be seated.

9 **DIRECT EXAMINATION BY MS. SALISBURY:**

10 Q Mr. Burgess, where do you work?

11 A I am the owner of Fishing Pond down in Piedmont.

12 Q Do you also live there?

13 A Yes ma'am.

14 Q How long have you lived there?

15 A I'm 61 today, so about fourteen years.

16 Q So, how long have been the property manager of that area?

17 A Around 1992, '93

18 Q So, you would have been the primary manager back in May of 2009?

19 A Yes ma'am.

20 Q What are you duties as a property manager?

21 A Well, I keep the grass cut. I do the maintenance on the trailers. I'm the  
22 manager of all the trailers.

23 Q Do you also have a shop, sort of a convenience-type shop out on that  
24 property?

25 A It's a bait and tackle shop.

- 1 Q Who mans that operation?
- 2 A Myself, my niece, and sometimes my grandson.
- 3 Q I'd like to show you what's been marked as State's Exhibit Three. I'd like for
- 4 you to take a look at that exhibit and tell me if you recognize what's depicted in that
- 5 exhibit.
- 6 A (pause to examine exhibit) It's a little bit confusing.
- 7 Q Well, that's okay. We'll take a look at State's Exhibit Two. Is that one
- 8 familiar to you?
- 9 A Yes ma'am.
- 10 Q We'll work from that one. I'm going to put this back up. I'm going to hand
- 11 you this pointer and ask you to point things out for the jury. Can you point out and
- 12 show the jury where the bait and tackle shop is?
- 13 A Right here.
- 14 Q Is it that structure right there?
- 15 A Yes ma'am.
- 16 Q Now, you mentioned that you're the manager of all the trailers out there. Do
- 17 you remember which trailer was being leased by Karen Rojas?
- 18 A Yes ma'am, this one right here.
- 19 Q Now, how far away in real feet or yards is that tackle shop from that trailer?
- 20 A It's a little bit further from the picture, but a lot closer than it appears right
- 21 here. It's about forty, forty-five feet. I'm not sure.
- 22 Q All right, sir. Now, this neighborhood, is it isolated? I mean, is it out in the
- 23 middle of nowhere?
- 24 A It's a community, other trailer parks, a lot of traffic out on
- 25 Q Are there homes nearby?



1 A Yes ma'am, all around.

2 Q Are there gas stations nearby?

3 A Yes ma'am. There's one about a mile away.

4 Q Let's talk about Karen Rojas' trailer specifically. How long had she been  
5 renting that trailer?

6 A She moved in in March. I don't know the exact date.

7 Q How often did you interact with her? Did you ever speak to her?

8 A About every day. I'd see her out, grilling out. I'd see her coming in from  
9 work about every day.

10 Q Did you ever see the defendant at her trailer?

11 A Yes, I did.

12 Q How long would he be there?

13 A Well, in the beginning, he wasn't there, but then he started coming around,  
14 and then I guess, it was about every other day.

15 Q Did you ever speak with him?

16 A He come and introduced himself one day.

17 Q In the days leading up to what happened out there on May 17, do you  
18 remember specifically interacting with Karen those days?

19 A In the days before but not on that day. I had just got back from church before  
20 it happened.

21 Q Do you remember what she was like in just those immediate days before this  
22 incident? What was her attitude towards her life?

23 A Well, she seemed to be troubled.

24 Ms. Manigault: Excuse me, Your Honor. I can't hear the witness.

25 The Court: Speak up, please, sir.

- 1 A She wasn't friendly then. She seemed to be troubled.
- 2 Ms. Manigault: Your Honor, I object to any conclusionary statements.
- 3 The Court: Overruled.
- 4 Q Let's talk about that Sunday afternoon. Do you remember how long you'd
- 5 been at the pond before this commotion started. How long had you been back?
- 6 A About thirty minutes. I had started vacuuming the store with the vacuum
- 7 cleaner. I was trying to get everything cleaned up.
- 8 Q Do you remember how many people were at the pond that day, in the shop,
- 9 fishing, just around the area?
- 10 A Well, around the store, they was probably several people, seven or eight
- 11 people, I'm not sure.
- 12 Q Were you there outside when Karen and the defendant arrived at her trailer
- 13 that afternoon?
- 14 A No, I was inside the shop.
- 15 Q Did you ever hear a gunshot?
- 16 A No, I didn't.
- 17 Q What do you remember happening while you were inside the shop?
- 18 A They told me it was a gunshot, so I went out to see what was going on.
- 19 Nobody didn't seem to-- They didn't want to go over there. So, it was just me and
- 20 another guy.
- 21 Q How long was it before the ambulance actually arrived?
- 22 A It wasn't very long. The Rescue Squad is just right down the street, so they
- 23 may have called the Rescue Squad.
- 24 Q What were you doing when they got there?
- 25 A Waiting to see if they needed my help.

- 1 Q Were you standing outside?
- 2 A Yes ma'am.
- 3 Q Do you remember what the weather was like that day?
- 4 A It was raining.
- 5 Q Was it heavy rain, just drizzling?
- 6 A Drizzling.
- 7 Q Did you go inside that trailer before anybody got there?
- 8 A No ma'am.
- 9 Q Who was with you when you went inside?
- 10 A Rescue Squad.
- 11 Q Do you remember how many people that was?
- 12 A Two.
- 13 Q And what happened? Did you unlock the door and let them in? How did that
- 14 work?
- 15 A I unlocked the door for them.
- 16 Q Tell us what happened next.
- 17 A I unlocked the door. I don't know if it was already locked or not, but I did put
- 18 the key in and turned it. So, it could have been unlocked ready. But I took them in
- 19 and immediately the guy from the Rescue Squad backed us out because he recognized
- 20 what had happened.
- 21 Q Did you see Karen's body in the trailer?
- 22 A Yes, I did.
- 23 Q Did you ever get close to it?
- 24 A No ma'am.
- 25 Q Did you ever touch it?

1 A No ma'am.

2 Q Did you touch anything inside the trailer?

3 A No ma'am. The guy from the Rescue Squad said back out, just go back, don't  
4 touch nothing.

5 Q Are you certain that you never handled any items or anything inside that  
6 trailer?

7 A I'm positive.

8 Q I'm going to show you what's been---

9 Ms. Manigault: Your Honor, may we approach, please?

10 The Court: Sure.

11 (whereupon a bench conference took place)

12 Ladies and gentlemen, I'm going to ask you to go to your jury room while I  
13 take up a matter of law.

14 (whereupon the jury exited the courtroom)

15 Ms. Manigault, do you have an objection to this photograph?

16 Ms. Manigault: Yes, Your Honor. This photograph shows Karen Rojas' body  
17 on the floor of the trailer, and we are objecting on the grounds that it would tend to  
18 inflame the jury.

19 The Court: Your objection is overruled.

20 Ms. Manigault: And while the jury's out, the State has offered in State's  
21 Exhibit Two and Three, I believe. We did not receive a copy of the aerial shot in the  
22 discovery material. We ask the court to order them to provide any photos they have  
23 that they have not given us.

24 The Court: Solicitor?

1 Ms. Salisbury: Your Honor, I submit for the record that it's my opinion that  
2 those photographs were provided to defense counsel, but since they're not-- They're  
3 aerial photographs retrieved from the county's west side, they're not photos taken by  
4 forensic investigators; everything else is.

5 The Court: I understand that. What she's saying is you have not turned  
6 everything over to her.

7 Ms. Salisbury: Yes, Your Honor. There's---

8 The Court: So, she's got everything you're going to introduce into evidence?

9 Ms. Salisbury: Yes sir.

10 The Court: All right. Bring the jury back in.

11 (whereupon the jury entered the courtroom)

12 Q Mr. Burgess, I'm going to show you State's Exhibit Four. Do you recognize  
13 what's depicted in that image?

14 A Yes ma'am.

15 Q Is that an accurate depiction of what you saw when you entered the trailer on  
16 May 17?

17 A Yes ma'am.

18 Ms. Salisbury: Your Honor, the State offers Exhibit Four into evidence.

19 The Court: Subject to objection, put it in.

20 Ms. Manigault: Thank you, Your Honor.

21 (whereupon State's Exhibit Number Four was admitted into evidence over objection)

22 Q Mr. Burgess, do you remember talking to the police that day at the scene?

23 A I remember, yes.

24 Q Do you remember giving them a statement?

25 A Yes ma'am.

1 Q Did they ever come talk to you again, or did you have any further involvement  
2 in the investigation?

3 A Yes ma'am.

4 Q What happened when they spoke to you after May 17?

5 A Well, the investigator did come talk to me a couple of times after that about  
6 the situation.

7 Q Did you give him any other statements other than the one you signed that day  
8 on the scene? I mean, written statements?

9 A Yes, I did.

10 Q Thank you, sir. Please answer any questions Ms. Manigault has for you.

11 The Court: Ms. Manigault.

12 Ms. Manigault: Thank you, Your Honor.

13 **CROSS EXAMINATION BY MS. MANIGAULT:**

14 Q Mr. Burgess, you said Karen Rojas leased that trailer from you in March of  
15 2009?

16 A Yes ma'am.

17 Q Was she the only person on the lease?

18 A Yes ma'am.

19 Q So, by May, she had been there two months?

20 A Yes ma'am.

21 Q You said you saw Wallace Evatt several times, a couple of times, one time?

22 A There toward the end, yes, I seen him several times.

23 Q I didn't hear you.

24 A There toward the end I did see him a good many times.

- 1 Q Do you know whether this was over a one-week period, a two-week period, a  
2 one-month period?
- 3 A I'd say the last two or three weeks.
- 4 Q Two or three weeks?
- 5 A That's my guess.
- 6 Q Do you know Steve Beacham?
- 7 A Yes, I do.
- 8 Q Was he at your bait shop on May 17, 2009?
- 9 A Yes ma'am.
- 10 Q I believe you testified that you did not hear a gun shot. Is that right?
- 11 A No ma'am, I didn't.
- 12 Q Did you say the bait shop is what distance from the trailer, did you say thirty  
13 to twenty-five feet?
- 14 A About that. It's not very far.
- 15 Q And there's a driveway in between. Right?
- 16 A Right.
- 17 Q One driveway or two?
- 18 A One driveway.
- 19 Q How far would you say that your bait shop is from the edge of the lake where  
20 the people fish?
- 21 A Probably fifty feet.
- 22 Q Fifty feet?
- 23 A Because you walk down ten or twelve feet to the pond.
- 24 Q So, it's fifty feet plus ten, or fifty feet total?
- 25 A I'm gone guess a total of fifty feet.

- 1 Q Total?
- 2 A I guess.
- 3 Q That's fine. Did you hear any talking coming from the trailer while you were
- 4 in your bait shop?
- 5 A No, I was vacuuming.
- 6 Q You were vacuuming?
- 7 A Yes ma'am.
- 8 Q How long does it take you to vacuum?
- 9 A A couple of minutes.
- 10 Q Did Steve Beacham come to you to tell you he heard a gunshot?
- 11 A I think it was-- I'm not sure who told me.
- 12 Q But somebody told you?
- 13 A Yes ma'am.
- 14 Q And after they told you, did you go into the trailer?
- 15 A No ma'am.
- 16 Q Did anybody else go into the trailer?
- 17 A No ma'am.
- 18 Q And you have testified to the court today that you didn't touch or move
- 19 anything in the trailer when you went in?
- 20 A Yes ma'am.
- 21 Q Were you the only person that accommodated the Rescue Squad into the
- 22 trailer?
- 23 A Yes ma'am.
- 24 Q Thank you.
- 25 The Court: Thank you. Step down.



1 Ms. Salisbury: The State calls Ms. Cynthia McNeely.

2

3 **CYNTHIA McNEELY**, duly sworn, testified as  
4 follows:

5 Clerk of Court: Please state your name for the record.

6 A Cynthia McNeely

7 Clerk of Court: Thank you. You may be seated.

8 **DIRECT EXAMINATION BY MS. SALISBURY:**

9 Q Mrs. McNeely, where do you live?

10 A , Piedmont.

11 Q Is that in Greenville County or Anderson County?

12 A Anderson County.

13 Q How long have you lived there?

14 A Fifteen years.

15 Q Do you work?

16 A I'm disabled.

17 Q Do you know Karen Rojas?

18 A Yes, I do.

19 Q How long did you know her before her death?

20 A Six months.

21 Q What was your relationship with her like? Well, first, how did you meet her?

22 A Through Gene.

23 Q How often did you see her?

24 A Maybe once every two weeks or so.

25 Q How would you describe your relationship with her?

- 1 A She was my friend.
- 2 Q Were the two of you close?
- 3 A Not real close, but, yeah, we did get together because, you know, she was my
- 4 friend.
- 5 Q Do you remember when you saw her in the days leading up to her death on
- 6 May 17, 2009?
- 7 A The day before.
- 8 Q The Saturday before?
- 9 A Uh-huh. She come and picked up Gene at my house.
- 10 Q Do you remember about what time that was?
- 11 A I went to see my son, and when I got back home, he was there, and probably
- 12 about a half hour to an hour later, then Karen come in.
- 13 Q Was it real late? Was it still light outside?
- 14 A It was about 11:00, 11:30.
- 15 Q Did you talk to her that night?
- 16 A Yeah, we talked about my son's wedding, looking at his pictures and his
- 17 birthday dinner coming up, and everything was fine.
- 18 Q Do you remember discussing with her future plans?
- 19 A Yeah, we was supposed to have a birthday dinner for my son the following
- 20 Friday and I invited her to come, her and Gene to come.
- 21 Q What was her attitude like that day? What was she like?
- 22 A She was fine.
- 23 Q Did she seem any different from any other time you interacted with her?
- 24 A No.
- 25 Q Do you remember what time they left? Did they leave together?

- 1 A Yes.
- 2 Q Do you remember about what time it was?
- 3 A It was late. I can't remember exactly what time it was.
- 4 Q Well, how long do you think they stayed at your house. You say Karen got
- 5 there about 11:00, 11:30. How long do you think they stayed?
- 6 A A couple of hours. I don't really remember.
- 7 Q So, would it have been the early morning hours by the time they left?
- 8 A I'd say 2:30, somewhere in that area. I'm not real sure of the time.
- 9 Q Do you remember talking to Karen ever again?
- 10 A After that she called me, I think, early Sunday morning and told me her boss
- 11 man was gonna let her off to come to Mitchell's birthday dinner. I mean, it was, like,
- 12 eight, nine o'clock in the morning.
- 13 Q Do you know where she was living at the time?
- 14 A In , off in a trailer.
- 15 Q Have you ever been up there?
- 16 A No.
- 17 Q Now, fast forward a little bit to Sunday. What were you doing Sunday around
- 18 lunch time?
- 19 A We was fixing to sit down and watch a race.
- 20 Q What do you remember happening that day?
- 21 A Gene come to the door and I heard my husband say, Gene, Gene, what's
- 22 wrong, man; what's wrong, man, what's going on? And I heard him say, I can't
- 23 believe it, man, she shot herself. And Ray said, did you call 911? Gene went, no,
- 24 man, I come straight here.
- 25 Q Do you remember what time he would have arrived at your house?

- 1 A All I know it was right before the race was fixing to start.
- 2 Q Do you remember what he was wearing that day?
- 3 A No.
- 4 Q When he said he---
- 5 A We made him call 911.
- 6 Q Did he use your phone?
- 7 A Yes.
- 8 Q Your cell phone?
- 9 A No, my home phone.
- 10 Q Home phone, okay.
- 11 A And then I changed out of my house cleaning clothes and we took him back to
- 12 the trailer.
- 13 Q Do you remember how long he was on the line with 911 from your home?
- 14 A It wasn't long; it was, like, two to four minutes.
- 15 Q So, after he finish that call, what did you do?
- 16 A Come on, let's go, I'm taking you back.
- 17 Q Whose car did you take back?
- 18 A Mine.
- 19 Q What kind of car is that?
- 20 A My Ford Explorer.
- 21 Q What color is it?
- 22 A Black.
- 23 Q What happened to the car that he had driven over to your house?
- 24 A It was still in the yard.

1 Q Do you remember how long it took you to get from your house back to  
2 Karen's trailer?

3 A It was anywhere from fifteen to twenty minutes because I drive the speed  
4 limit.

5 Q Now, what did you see when you got back to the trailer?

6 A I didn't go in. We didn't get out.

7 Q What did you see on the scene when you got there?

8 A EMS was there and a couple of cop cars. There was a bunch of people that  
9 was fishing.

10 Q Do you remember talking the police that day?

11 A Just a little bit.

12 Q Did you ever go inside the trailer while you were there?

13 A No.

14 Q How long did you stay on the scene?

15 A It seemed like it was forever. They told us to come to Greenville.

16 Q Where did you go?

17 A We had to come to the sheriff's office and give testimony.

18 Q To give a statement?

19 A Yes.

20 Q Did you give a written statement to the police?

21 A Yes.

22 Q Did you have any further involvement in the investigation after that day?

23 A No.

24 Q Thank you. Please answer any questions for Ms. Manigault.

25 The Court: Ms. Manigault

1     **CROSS EXAMINATION BY MS. MANIGAULT:**

2     Q             Mrs. McNeely, you said that it took you about fifteen to twenty minutes to get  
3             from your house back to the trailer where Wallace and Karen lived?

4     A             Uh-huh, right.

5     Q             And that's because you drove the speed limit?

6     A             Right.

7     Q             And you testified that when Karen was at your house you were looking at  
8             your son's wedding pictures?

9     A             Uh-huh.

10    Q             And then you were talking about your son's upcoming birthday dinner?

11    A             Right.

12    Q             And you invited her to that?

13    A             Her and Gene.

14    Q             And you said that it appeared to you that her attitude was fine or okay?

15    A             Yes.

16    Q             And they left your house about 2:00 or 2:30 a.m.?

17    A             I think so.

18    Q             And you recalled to talking to her the next day around 8:00 or 9:00 a.m.?

19    A             Like I say, I'm not sure on the time on that, but she called me the next  
20             morning and said she would be able to come.

21    Q             How long have you know Wallace Evatt? You call him Gene?

22    A             I met him in 1980.

23    Q             Was he a friend of yours or your husband's at that time?

24    A             Well, both our friend.

25    Q             Did he come to your house a lot?

- 1 A Not a whole lot.
- 2 Q Did he visit you with Karen at your house?
- 3 A Oh, yes.
- 4 Q How many times would you say that they came over to your house?
- 5 A Four, six, maybe eight.
- 6 Q And that was with Karen?
- 7 A Well, he came by himself (sic) and he came with her.
- 8 Q Have you ever helped Gene, Wallace Evatt, through any other traumatic
- 9 experiences in life?
- 10 A Yes.
- 11 Q What kind of experiences were they?
- 12 A When his mother got killed in a car wreck, he come running to our house. I
- 13 consoled him. When his sister died he told us about his sister and I consoled him.
- 14 And then this.
- 15 Q But you said he came running to your house?
- 16 A He came to our house every time he had any traumatic thing happen.
- 17 Q And you said your husband asked him, did you call 911?
- 18 A And he said, no, I didn't.
- 19 Q Did Gene ever go to the hospital after May 17?
- 20 Ms. Salisbury: Objection, Your Honor.
- 21 The Court: Ms. Manigault, are you going any further with this witness?
- 22 Ms. Manigault: I have one more question. Can we approach?
- 23 The Court: Sure.
- 24 (whereupon a bench conference took place)
- 25 Q After May 17, did you see Gene again?

1 A He was staying with us.

2 Q How long did he stay with you?

3 A About two days.

4 Q Thank you.

5 The Court: Thank you. Step down.

6 Ms. Howad: May we approach, Your Honor?

7 The Court: Yes ma'am.

8 (whereupon a bench conference took place)

9 LAURA JOHNSON, duly sworn, testified as follows:

10 Clerk of Court: Please state your name for the record.

11 A Laura Johnson.

12 Clerk of Court: Thank you. You may be seated.

13 **DIRECT EXAMINATION BY MS. HOWARD:**

14 Q Please tell the jury where you work.

15 A Anderson County Sheriff's Office.

16 Q How long have you worked there?

17 A Twenty-three years.

18 Q What are your duties and responsibilities?

19 A I run the 911 center for the Anderson County Sheriff's Office.

20 Q Does the Anderson County Sheriff's Office keep recordings of 911 calls that  
21 come in?

22 A Yes ma'am.

23 Q How is that kept?

24 A We have a system that stores them on disks which are kept in a vault in the  
25 Sheriff's Department.



1 Q Are all calls that come into 911 in Anderson County stored there?

2 A Yes ma'am.

3 Q Can anyone gain access to manipulate those recordings or tamper with them in  
4 any way?

5 A No ma'am.

6 Q I'm going to show you what's been marked as State's Exhibit Five and ask  
7 you if you recognize what's inside that envelope?

8 A Yes ma'am, it's one of our disks.

9 Q Did you retrieve that recording at the request of the investigators over here in  
10 Greenville?

11 A Yes ma'am.

12 Q Is that a recording from May 17 of 2009?

13 A Yes ma'am, it is.

14 Q Is it an accurate copy of that 911 call as stored by the Anderson County  
15 Sheriff's Office?

16 A Yes, it is.

17 Ms. Howard: Your Honor, at this time I offer State's Exhibit Five.

18 The Court: Any objection?

19 Ms. Manigault: No, Your Honor.

20 The Court: Without objection, it's in.

21 (whereupon State's Exhibit Number Five was admitted into evidence without  
22 objection)

23 Ms. Howard: At this time, Your Honor, I'd like to publish it for the jury.

24 The Court: Go ahead.

25 (whereupon State's Exhibit Number Five was played for the jury)

1 Ms. Howard: Nothing further for this witness, Your Honor.

2 The Court: Cross examination.

3 Ms. Manigault: No questions, Your Honor.

4 The Court: Thank you. You may step down.

5 Ms. Howard: Your Honor, the State calls Roger Dobbs to the stand.

6 **ROGER DOBBS**, duly sworn, testified as follows:

7 Clerk of Court: Please state your name for the record.

8 A Roger Dobbs.

9 Clerk of Court: Thank you. You may be seated.

10 **DIRECT EXAMINATION BY MS. HOWARD:**

11 Q Mr. Dobbs, can you tell us who you work for?

12 A Greenville County EMS.

13 Q How long have you been with Greenville EMS?

14 A Just two weeks' shy of twenty years.

15 Q What's your position there?

16 A I am a paramedic.

17 Q Were you working on the afternoon of May 17, 2009?

18 A Yes, I was.

19 Q Did you respond to ?

20 A Yes, I did.

21 Q Where is that location?

22 A It's in the southern part of Greenville County, just south of the town of  
23 Piedmont.

24 Q Do you remember what time the call came in that you responded to?

1 A It was in the afternoon, but I don't have the exact time without looking at my  
2 report.

3 Q If I was to show you your report for the purpose of refreshing your memory,  
4 would you be able to tell us the time?

5 A Yes.

6 Q When you responded, who was with you?

7 A My partner, Tabitha Darby, was with me.

8 Q Typically, when EMS responds, it's two people?

9 A Yes, in an ambulance, yes.

10 Q I'm showing you your report so you can refresh your memory on the time you  
11 arrived. Tell us what time the call came in and what time you arrived.

12 A We received the call at 1:40 and we arrived on the scene at 1:54.

13 Q Who all was on the scene when you arrived?

14 A There were some people just around that general area of the fish camp, but we  
15 were actually met by the landlord asking what we were doing there. We were trying  
16 to gain access to one of the residences.

17 Q Was the defendant on the scene when you arrived?

18 A No.

19 Q What are your duties as an EMS?

20 A Generally we are there to check the life status of an individual. If it's a  
21 trauma-type situation, if it's a medical call, we're there to provide aid and assistance  
22 as necessary.

23 Q When you got to Karen Rojas' trailer, what did you do?

24 A Initially, we had to gain access through what I consider the back door, which  
25 is coming through the kitchen. When I came around the corner I was the first one to

1 enter the trailer. And as I came around the corner of the wall that was there, she was  
2 laying on the floor.

3 Q Did you notice anything else?

4 A No, other than just her, and there was a handgun, a pistol laying near where  
5 she was.

6 Q Who entered with you?

7 A My partner, Tabitha Darby, and then behind her was the landlord.

8 Q Did you hear music or the tv?

9 A Yeah, the tv or the stereo or something was on.

10 Q And who goes first to the body?

11 A My partner is a paramedic also, so we rotate who is up next, and this was my  
12 call. So, it was my responsibility to be first to the person and start care.

13 Q Did the landlord stay in there with y'all?

14 A He did briefly, but once we realized what the situation was, we asked him to  
15 leave.

16 Q I'm gong to show you what's been marked as State's Exhibit Number Six. Do  
17 you recognize that photo?

18 A Yes, I do.

19 Q Does that photo fairly and accurately represent what you saw when you  
20 walked into the trailer?

21 A Yes.

22 Q Can you tell us what that is a picture of?

23 A That is a picture of the victim that we assessed that day.

24 Ms. Manigault: Your Honor, we object.

25 The Court: Overruled.

1 Ms. Howard: Your Honor, at this time, we move State's Exhibit Number Six  
2 into evidence.

3 The Court: Admitted over Ms. Manigault's objection.

4 Ms. Manigault: Yes sir.

5 (wehreupo State's Exhibit Number Six was admitted into evidence over objection)

6 Q Upon seeing Karen Rojas' body, can you tell me what y'all did?

7 A I approached. There did not appear to be any movement. She did not appear  
8 to be breathing. So, with that information I brushed her with our cardiac monitor. It  
9 appeared that she was deceased. So, my next action was to establish that she was  
10 indeed dead and that there was no electrical activity in her heart.

11 Q Was she dead?

12 A Yes.

13 Q Did you administer the tests to verify that?

14 A Yes, I did.

15 Q Can you tell us how?

16 A The electrodes are placed at certain axes of the body. The electrodes are  
17 placed on the shoulders and on the legs. So, I would have had to remove the upper  
18 part of her housecoat to access the shoulders. The legs were exposed.

19 Q When you say remove, do you mean take off?

20 A No, just slightly moved away from her skin so I coiuld access her skion near  
21 her shoulders.

22 Q If you will look now at State's Number Six, there is a little patch on her legs.  
23 Is that the leads?

24 A Yes, that is the electrode that allows us to place the cardio monitor on a  
25 person.

1 Q When a person is deceased, do you use some type of trauma score?

2 A Yes. Her trauma score was actually zero.

3 Q What time were the leads placed on her body?

4 A May I refer to my report?

5 Q If you need to refresh your memory, yes.

6 A (pause to review report) It as at 14:01 or 2:01 p.m.

7 Q Did anyone else in the residence touch or move the body?

8 A No, not while I was there.

9 Q Did you touch any of the furnishings or anything else?

10 A No. Once it was established that there was no electrical activity, then I backed  
11 out of the sscene and secured the door.

12 Q Other than touching her legs and shoulders, did you touch any other part of  
13 her body?

14 A No.

15 Q How long were you inside with her?

16 A We were inside with her for just a couple of minutes and then we went outside  
17 to wait for law enforcement to arrive.

18 Q Thank you. Please answer any questions for Ms. Manigault.

19 The Court: Ms. Manigault.

20 **CROSS EXAMINATION BY MS. MANIGAULT:**

21 Q Mr. Dobbs, you said you had to place electrodes?

22 A Yes ma'am.

23 Q How many?

24 A Four.

25 Q Four?

- 1 A Yes ma'am.
- 2 Q And what were the spots again, the shoulders?
- 3 A The shoulders, the outer region of the shoulders, and on the legs.
- 4 Q So, one on the left and one on the right shoulder?
- 5 A Yes ma'am.
- 6 Q One on the leg?
- 7 A Left leg and right leg.
- 8 Q You testified you had to move the robe that was on Karen Rojas?
- 9 A Yes ma'am.
- 10 Q Could you demonstrate with your shirt collar how far you had to move it,  
11 using your own shirt?
- 12 A I don't recall, but slightly, you know, to lift up so I could put my hand  
13 underneath to get to the skin.
- 14 Q And you testified you were inside checking her about how long?
- 15 A Just a couple of minutes.
- 16 Q Just a couple of minutes?
- 17 A Yes ma'am.
- 18 Q And you testified you went to the back door?
- 19 A The door that accesses through the kitchen.
- 20 Q Okay.
- 21 A I call that the back door, but I'm not sure how a trailer is aligned with other  
22 structures. There really wasn't a front or a back. The door that we accessed was the  
23 one coming in through the kitchen.
- 24 Q I'm showing you State's Exhibit Number One and tell me if you recognize that  
25 photo?

1 A This appears to be the trailer, and I believe that we accaessed from the other  
2 side.

3 Q Could you hold it up for the jyry to see? So, the steps that are right there in  
4 the fornt, you didn't go through that door?

5 A No, that door was locked.

6 Q So, you went through the back?

7 A Around to the bck.

8 Q Thank you.

9 Ms. Manigault: Nothing further.

10 The Court: Thank you. You may step down.

11 Ms. Howard: Your Honor, the State calls Tabitha Darby to the stand.

12 **TABITHA DARBY**, duly sworn, testified as follows:

13 Clerk of Court: Please state your name for the record.

14 A Tabitha Darby.

15 Clerk of Court: Thank you. You may be seated.

16 **DIRECT EXAMINATION BY MS. HOWARD:**

17 Q Ms. Darby, can you tell us who you work for, please?

18 A Greenville County EMS.

19 Q How long have you been with Greenville County EMS?

20 A About fifteen years.

21 Q Were you working on the date, May 17, 2009?

22 A Yes.

23 Q Did you respond to on that day?

24 A Yes.

25 Q Was that in response to a 911 call?



1 A Yes.

2 Q Tell me what your role was on the scene.

3 A To assist Roger Dobbs.

4 Q Did you go into the residence with Mr. Dobbs?

5 A I did, initially.

6 Q Did you touch the body?

7 A No.

8 Q Was he the only one that touched the body?

9 A As far as I know.

10 Q How long were you inside the residence?

11 A We were in there for about four minutes.

12 Q Did you touch anything else in Ms. Rojas' residence?

13 A No.

14 Ms. Howard: No further questions.

15 The Court: Any questions, Ms. Manigault?

16 Ms. Manigault: No, Your Honor.

17 The Court: Thank you. You may step down.

18 Ms. Howard: May we approach, Your Honor?

19 The Court: Sure.

20 (wehrepon a bench confence took place)

21 Ladies and gentlemen, we've done all we can today on this case. We will  
22 pick back up in the morning at 9:00. When you leave, please keep in mind the admonitions I  
23 gave you earlier. Do not discuss this case with any of your fellow jurors or with anyone else.  
24 If anybody contacts you and tries to talk to you about this case, get their names and address  
25 and report that to me. I will take care of that matter when you come back in the morning.

1 With that, I will ask you to report back to the jury room at 9:00 in the morning. Pleaes be  
2 prompt. Thank you.

3 (whereupon the jury exited the courtroom)

4 See you all in the morning at 9:00.

5 Ms. Howard: Thank you, sir.

6 (whereupon court was adjourned at 4:30 p.m.)

7

8

9

10

11

12

13

14

15

16

**JULY 17, 2012 – COURT IN SESSION**

1

2

3

The Court: Tell me about your witnesses.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Ms. Howard: Your Honor, we discussed the possibility of stipulating witnesses and that is something that Ms. Manigault is not willing to do. There is one, a State's witness, and I am in contact with that witness. He will not be here with the other ones.

The Court: All right.

Ms. Manigault: Your Honor, in response to that, there is something I would like to put on the record. But in response to the statement she just made, the witness that I knew about before trial who had knee surgery, which I could relate to, could not come. The other witnesses I was not given a whole list of the names, just a couple. So, I did not have that information.

The other thing, Your Honor, that I need to put on the record is we did a sidebar yesterday and I did not put it on the record. So, I would like to put that on the record as well.

The Court: All right.

Ms. Howard: Your Honor, if I could in response to that, just so the record's clear. They had every list of every name we're gonna use. They had all of our discovery. Nothing has been withheld and I would like for the court to know that.

The Court: Okay. Ms. Manigault, what did you want to put on the record?

Ms. Manigault: Your Honor, on the sidebar yesterday, the Solicitor, Katryna, told the court that their first witness, Steven Beacham, after they had completed testimony-- She had just discovered-- After a couple of witnesses had testified, she had just discovered that Steven Beacham did have a criminal record. She stated to the court that it was not on the NCIC rap sheet, but she did discover after testimony that he did have a criminal conviction of use of vehicle without owner's consent. It is a 2009 conviction, with the possibility of a sentence of more than three years. That was not provided to the defense as a result of discovery.

1           Your Honor, we would tell the court that on August 24, 2011, we had a pre-trial meeting with  
2     the Solicitor's Office, provided them with a list of items that we had not received in discovery,  
3     which one was the rap sheets on all their witnesses. We requested those rap sheets again on August  
4     24. We filed our original discovery motion, Rule 5 and Brady, on June 3, 2009. We filed  
5     supplemental discovery, Rule 5 and Brady, February 27, 2012, and again on July 5, 2012, to ensure  
6     that we had everything they were going to use.

7           Your Honor, subsequently after that witness testified, or during that time, the State  
8     introduced three photos, State's Exhibits One, Two, and Three, which I objected to, and were  
9     admitted over my objection. These were the aerial shots of the area that we had not received in  
10    discovery. We objected on the grounds of prosecutorial misconduct and I provided the information  
11    to---

12           The Court: Well, how are you prejudiced by that?

13           Ms. Manigault: Sir?

14           The Court: How have you been prejudiced?

15           Ms. Manigault: How have I been prejudiced?

16           The Court: Yes ma'am.

17           Ms. Manigault: Your Honor, the prejudice comes when we are required to prepare the case  
18    and make sure the defendant's totally aware of what's going to come into court against him or be  
19    presented by the State. So, we are prejudiced, Your Honor.

20           Their own witnesses couldn't even recognize State's Exhibit Number Three. So, we are  
21    prejudiced because we have not had the opportunity to review the items to insure that these are  
22    accurate items of the area.

23           And then the Solicitor Katryna told the court that they had provided us with those aerial  
24    photos. When I last checked with my investigator who had gone through all of the photos. They  
25    were not in there. And then they tell the court that they pulled off the internet just for their own use.

1     However, that use is being presented in court as evidence in this case. And I believe that we are  
2     prejudiced because we have not been granted the full opportunity to view the items.

3             The Court: You may now respond, Solicitor.

4             Ms. Salisbury: Very briefly, Judge. With respect to Number One, State's Exhibit Number  
5     One, there was no objection by the defendant to that photograph, and that photograph is one that was  
6     included in the forensic information given to the defendant.

7             As you know, Judge, State's Exhibit Three was not admitted into evidence. It was never  
8     published to the jury. So, I take the position that that photograph is not at issue, too.

9     The only issue that we have is State's Exhibit Two, which is an aerial photograph of the area.

10            The State takes the position that while the image is available on the internet, it is not a  
11     photograph from the internet. It was prepared by the Greenville County Sheriff's Office mapping  
12     division and in the sense that it is a necessary piece of evidence, if it was not provided in discovery –  
13     it's my understanding it was – there is not articulable (sic) prejudice to the defense that an aerial  
14     photograph of the geographic area of the crime scene is somehow prejudicial in any meaningful way  
15     to the defendant.

16            And to address the-- There are a couple of issues that got jumbled. With respect to Mr.  
17     Beacham's criminal record and the discovery request, as the court's aware Rule 5 does not require  
18     the State to turn over the criminal history of any testifying witness until after that witness has  
19     testified. And the rule requires that the State prepare an NCIC, a rap sheet that is the record of arrest  
20     and prosecution of the defendant. And as I disclosed to the court yesterday, and as I maintain today,  
21     Mr. Beacham's rap sheet does not indicate a conviction for any offense to speak of. However, in  
22     more detailed inquiries by the investigator from the Solicitor's Office uncovered that conviction.  
23     Mr. Beacham is available should Ms. Manigault want to impeach him with that conviction. That  
24     was made available at our sidebar conference yesterday.

1           So, I don't know, again, if there was any meaningful prejudice because that witness is still  
2   available to be impeached. I think that hopefully solves that situation.

3           The Court: Your motion is denied. Are you ready to proceed, Solicitor?

4           Ms. Howard: Yes, Your Honor.

5           The Court: Bring in the jury.

6           Ms. Salisbury: Your Honor, actually-- I apologize. The victims have a conflict. And we  
7   do plan to call the victim's brother. Or we at least have him on our witness list as a potential witness  
8   for the State. He will not be testifying for the State. The victim's family has approached the State,  
9   upset. The victim's family is upset with not being able to be in the courtroom. I was wondering if  
10  there was some agreement we could come to where he could be present for the duration of the trial.  
11  If there are any witnesses that Ms. Manigault feels that he needs to step out for, the State would be  
12  more than willing to do that.

13          The Court: Ms. Manigault.

14          Ms. Manigault: Your Honor, I'd ask the court not to rescind the ruling that the witnesses be  
15  sequestered. I don't have the-- I need to be focused on the testimony of the witnesses and what's  
16  going on in the trial, and not keep up with the----

17          The Court: I'm sorry. I can't do that. Bring in the jury.

18          (whereupon the jury entered the courtroom)

19          Solicitor, call your next witness.

20          Ms. Salisbury: Your Honor, the State calls Renee Beauford.

21

22

23

24

25

1                                    **RENEE BEAUFORD**, duly sworn, testified as follows:

2                    Clerk of Court: Please state your name for the record.

3        A                    Renee Beauford.

4                    Clerk of Court: Thank you. You may be seated.

5        **DIRECT EXAMINATION BY MS. SALISBURY:**

6        Q                    Good morning, Ms. Beauford.

7        A                    Good morning.

8        Q                    Would you tell the jury where you work?

9        A                    Greenville County Sheriff's Office.

10       Q                    And what is your capacity at the Sheriff's Office?

11       A                    I do 911 research and training.

12       Q                    As part of that job, what are your responsibilities? What do you handle day to day?

13       A                    I handle any request that comes into our communications center. Pull any recordings  
14                    of phone calls, radio traffic, anything that has to do with our computer system where we  
15                    document the call. Any type of information that is stored, it's my job to go back and try to  
16                    retrieve that information for documentation purposes and investigation and complaints.

17       Q                    Were you working in that capacity in 2009?

18       A                    No, I was not. I was working actually on the floor of the dispatcher and was doing  
19                    call taking, dispatching and supervision of the 911.

20       Q                    Now as far as your capacity would you participate in a 911 call that came into the  
21                    Sheriff's Office?

22       A                    Yes, I would.

23       Q                    Even now, in your capacity as a supervisor at the Sheriff's Office, do you know  
24                    whether Greenville County Sheriff's Office keeps recordings of 911 calls in the ordinary  
25                    course of their business?

1 A Yes, we do.

2 Q Are all calls that come into the 911 center recorded?

3 A Yes, they are.

4 Q Does anybody at the Sheriff's department or elsewhere have the ability to implement  
5 the recordings or manipulate them in any way?

6 A No ma'am. They're recorded automatically and simultaneously on a digital system  
7 that we have in place.

8 Q Now, do you recall-- And I know that you participate in a lot of calls and you may  
9 not remember them all. But do you remember participating in a 911 call made on May 17,  
10 2009?

11 A Yes, I do.

12 Q I'd like for you to take a look at State's Exhibit 56. Are you familiar with that  
13 particular item?

14 A Yes, I am.

15 Q What's contained on that CD?

16 A The containment is a recording of a 911 call that was received in regards to case  
17 number 2009-79103, at

18 Q Did you participate as the call taker on that recording?

19 A Yes, I did.

20 Q To your knowledge, is it an accurate recording of the call that came into 911 on May  
21 17 of 2009?

22 A Yes ma'am.

23 Ms. Salisbury: Your Honor, at this time the State offers Exhibit 56 into evidence.

24 The Court: Any objection?

25 Ms. Manigault: No objection.



1 The Court: In without objection.

2 (Whereupon State's Exhibit Number 56 was admitted into evidence without objection)

3 Ms. Salisbury: With the court's permission I'd like to publish it to the jury, Your Honor.

4 The Court: Go right ahead.

5 (whereupon the recording contained in State's Exhibit Number 56 was played for the jury)

6 Q Thank you, Ms. Beauford. Please answer any questions Ms. Manigault may have for  
7 you.

8 The Court: Ms. Manigault?

9 Ms. Manigault: I don't have any questions, Your Honor.

10 The Court: Thank you. You may step down.

11 Ms. Howard: Your Honor, at this time the State calls Sergeant Dallas Gladson to the stand.

12 **DALLAS GLADSON**, duly sworn, testified as follows:

13 Clerk of Court: Please state your name for the record.

14 A Dallas Gladson.

15 Clerk of Court: Thank you. You may be seated.

16 **DIRECT EXAMINATION BY MS. HOWARD:**

17 Q Sergeant Gladson, where do you work?

18 A Greenville County Sheriff's Office.

19 Q How long have you been with the Greenville County Sheriff's Office?

20 A Eleven years.

21 Q What's your position now?

22 A Sergeant of uniformed patrol.

23 Q Was that your position in 2009?

24 A No ma'am. In 2009, I was a master deputy.

25 Q As a master deputy what were your duties?

1 A My duties are-- My primary duties are to train new people that come to the Sheriff's  
2 Department. They get hired, they go to the South Carolina Academy. Once they come out of  
3 the Academy, they come out to uniformed patrol and then participate in a fourteen-week field  
4 training program. And that's where I come in. That was my primary responsibility, to train  
5 new hires.

6 Q What has your training consisted of?

7 A Before coming to the Sheriff's Office, I graduated from high school and St. Andrews  
8 Presbyterian College and the University of North Carolina where I majored in business.  
9 Came down here and got hired with the sheriff's office. I'm one of the few with the sheriff's  
10 office certified to train new hires.

11 Q And do you have continuous educational training with the sheriff's office?

12 A The sheriff's office sends me to the program every year.

13 Q Were you working on the afternoon, or the day of May 17, 2009?

14 A Yes ma'am.

15 Q Do you recall what day of the week that was?

16 A It was a Sunday.

17 Q And that day were you called out to ?

18 A Yes ma'am.

19 Q Where is that located?

20 A It's located in Piedmont. At the Sheriff's office we have the broken down into ten  
21 different areas. This specific incident location is what we call Area Six and it encompasses  
22 from Augusta Road and Interstate 85, all the way down to the bottom part of Piedmont,  
23 where Main Street would be, Piedmont, in Anderson County.

24 Q Which county is this located in?

25 A This is in Greenville County.

1 Q What kind of call were you called out to?

2 A A gunshot.

3 Q Tell me about when you arrived on the scene what occurred. Were you the first  
4 officer to arrive?

5 A I was the first law enforcement officer to arrive. When I arrived EMS was already on  
6 the scene. This is a fishing lake where you have to pay to fish at the lake. So, there were  
7 other people. The lake was open. There were other people out there fishing.

8 Q Did you have someone with you?

9 A I did have. I had a trainee, Bill Shaw, with me.

10 Q Do you have any idea about what time it was when you arrived at the scene?

11 A It was about 13:58, somewhere right in that area.

12 Q So, close to 2:00?

13 A Yes ma'am.

14 Q When you arrived, was the defendant there?

15 A He was. He met me as I got out of the patrol car.

16 Q When you say he, are you referring to the defendant in this case, Wallace Evatt?

17 A Yes ma'am.

18 Q Could you just point to him?

19 A (pointing to defense counsel table) He's sitting there in the white shirt.

20 Q As the first responding officer, tell me what your responsibilities are.

21 A In this particular incident my first responsibility to locate the victim. EMS was  
22 already on the scene, so it was just a matter of locating which trailer they were in. when I get  
23 there I don't know who anybody is or anything like that. So, my focus is on locating the  
24 actual residence where the victim is.

25 Q And were you able to do that?

1 A I did.

2 Q So, when you first got there did you speak with the defendant?

3 A He did. He approached me. When I got there I don't know who anybody is. I don't  
4 know who it is that called. I don't know what they look like. I've never had any encounters,  
5 you know, with this area before. So, as I'm walking trying to locate the trailer where the  
6 victim is, is when he approached me.

7 Q And did this occur outside?

8 A It did.

9 Q When he approached you---

10 Ms. Manigault: Excuse me, Your Honor. May I interrupt for just a minute? May I  
11 approach?

12 The Court: Sure.

13 (whereupon a bench conference took place)

14 Q Sergeant Gladson, when the defendant approached you, did he say anything to you?

15 A He just said that they were inside, he and the alleged victim were inside. And she had  
16 been contemplating suicide and that she needed to call her mother.

17 Q And the victim being Karen Rojas?

18 A Yes.

19 Q So, he said he was inside with Ms. Rojas. Is that correct?

20 A Yes.

21 Q Did he say what had occurred inside?

22 A He said that she had been contemplating suicide and that she had told him she needed  
23 to call her mom. He had in fact turned to her. He turned around and saw that she had the  
24 gun in her mouth and that she pulled the trigger, and at that point collapsed.

25 Q Did he say whether he touched anything?

1 A He said he did not touch anything.

2 Q Did he tell you why he left?

3 A He didn't have any-- He didn't have a phone and went to make the 911 call.

4 Q Did he tell you where he made the 911 call?

5 A He told me just from a friend's house. I did not question him as to where the location  
6 was.

7 Q Tell me about his demeanor. How did he appear to you?

8 A He appeared to be somewhat calm. He wasn't visibly upset. He wasn't crying or  
9 anything like that.

10 Q So, after you spoke with him, how long did this conversation last?

11 A About a couple of minutes, just a couple of minutes.

12 Q What did you do after you spoke with him?

13 A I went inside to see if I could be of assistance to the victim.

14 Q Was EMS already inside?

15 A That's correct.

16 Q So, when you go inside to a crime scene and you, you're the first officer, tell us what  
17 your role is at that time.

18 A The first thing we want to do is secure the scene, you know. We want to put crime  
19 scene tape up. Go inside and make contact with the EMS and find out what from trauma  
20 support where the victim was and what her status was. When we get any type of assault  
21 victim, anything from a cut to a gunshot they offer up trauma support. Trauma support runs  
22 from twelve to zero; twelve being to non-life threatening at all and zero being death.

23 Q In this case, trauma support was what?

24 A Zero.

25 Q When you go inside the trailer, tell us what you see.

1 A I see Ms. Rojas laying on the floor. She was laying on her right side. Her left hand  
2 was extended above her head. That's pretty much it as far as her.

3 Q I'm going to show you what's been marked as State's Exhibit Number Four. If you  
4 would take a look at that picture and hand it back to me, please, after you've looked at it.

5 A Okay.

6 Q I'm going to put this up on the overhead. Officer Gladson, if you will take a look at  
7 that picture and tell me if that is the position of the body that you saw when you got inside  
8 the trailer?

9 A Yes ma'am.

10 Q Is there anything about this picture that is different from what you saw?

11 A No ma'am. That's how I remember it.

12 Q Sergeant Gladson, can you tell us anything else you observed in the trailer?

13 A There was a firearm on the floor near her feet. There was also a cigarette.

14 Throughout the living room area there were some hairpins. In the bathroom there was a  
15 telephone on the back of toilet. And it looked like the rail on the bathtub was, had sliding  
16 panels on it and those had been knocked off.

17 Q Tell about the telephone.

18 A It started ringing.

19 Q While you were in the bathroom?

20 A Yes ma'am.

21 Q Did you answer it?

22 A I did not.

23 Q So, did you collect any evidence?

24 A I personally did not.

25 Q Did you touch any furniture or anything on the floor near the victim?

- 1 A I did not.
- 2 Q You didn't move her body?
- 3 A No ma'am.
- 4 Q Now, you had a trainee with you. Correct?
- 5 A Correct.
- 6 Q Did the trainee come inside the trailer?
- 7 A He did.
- 8 Q Did he touch the body in any way?
- 9 A He didn't.
- 10 Q What was his role?
- 11 A His role basically was to observe. I had him putting out the crime scene tape,  
12 especially in the bathroom area. And basically to observe. He had only been a trainee for a  
13 short while. That's part of the training, when we take them to a scene and we tell them what  
14 to do and what not to do.
- 15 Q After you surveyed the scene, what did you do next?
- 16 A Notified the supervisor to respond, which is our protocol on something like this.  
17 They will in turn inform the CID, the investigators to come to that location.
- 18 Q Can you tell us what CID means?
- 19 A Criminal Investigation Division.
- 20 Q And they go out to the crime scene to conduct the investigation?
- 21 A That's correct.
- 22 Q Were you asked by your supervisor to do anything at this point?
- 23 A To begin the search warrant for that location.
- 24 Q How did you go about that?
- 25 A I then had my trainee, Bill Shaw, go and try to identify witnesses.

1 Q Tell us briefly about obtaining the search warrant. What's the reason for that?

2 A In a situation such as this, we had some information that the defendant had been  
3 staying there for a couple of weeks which would call into question whether he had  
4 established residency or not there at that location.

5 We did know that she was on the lease to establish her primary residence. Obviously,  
6 she was not able to get that done in that situation. So, we obtained a search warrant for the  
7 residence which would allow us to go in there and conduct our investigation.

8 Q So, you did that through the Sheriff's Office?

9 A Yes.

10 Q Did you have any further involvement after that?

11 A Just to help secure the scene and offer any assistance to the investigators that they  
12 requested.

13 Q Lieutenant Gladson, a couple more questions related to-- At the beginning of the  
14 testimony you talked about meeting the defendant. He specifically you that he turned  
15 around and faced her. Correct?

16 A That's correct.

17 Q He didn't tell you anything else about his position when he was with her?

18 A No ma'am.

19 Q Thank you very much.

20 The Court: Cross, Ms. Manigault.

21 Ms. Manigault: Thank you, Your Honor.

22 **CROSS EXAMINATION BY MS. MANIGAULT:**

23 Q Officer, your testimony was that when you entered the trailer you saw Karen Rojas  
24 lying on the floor?

25 A Yes ma'am.



1 Q You testified her hands were extended?

2 A Her one arm, yes ma'am.

3 Q How?

4 A Like this.

5 Q Above her?

6 A Yes ma'am, over and above her, yes ma'am.

7 Q So, on State's Exhibit Number Four, does that show an arm extended?

8 A It's extended, but it's more towards over her ear and out towards her chest area; it's  
9 not above her.

10 Q You can see that on that picture?

11 A Yes ma'am.

12 Q And this was exactly how you saw her?

13 A Yes ma'am.

14 Q Now, you said you went inside the trailer but EMS was already there?

15 A Yes ma'am.

16 Q And they were already inside the trailer?

17 A Yes ma'am.

18 Q Do you know if anybody else went inside the trailer with EMS?

19 A I do not know.

20 Q How long did it take you to respond to the trailer area once you received the call?

21 A I don't know the answer to that. I would have to look up the report that we maintain.  
22 So, when they dispatched the call I respond and I call 911 on the scene and get the  
23 information from the database. I don't know the entry protocol on something like this, when  
24 somebody is a gunshot victim. I do respond with lights and siren. So, my response would  
25 have been a little bit quicker than a normal response.

- 1 Q So, you responded with lights and siren, you said?
- 2 A Yes ma'am.
- 3 Q But you do know that you arrived about 1:58 p.m., or 13:58 hours?
- 4 A Yes ma'am.
- 5 Q Now, you said that Wallace Evatt-- When you got on the scene you don't anybody,  
6 so you don't even know who called. But when you got on the scene, he approached you?
- 7 A Yes ma'am.
- 8 Q And he started volunteering information to you?
- 9 A Yes ma'am.
- 10 Q Did you ask him any questions to follow up on that information?
- 11 A No ma'am.
- 12 Q So, you just received what he said?
- 13 A That's correct.
- 14 Q And you're telling the court that he volunteered that his girlfriend had put a gun in her  
15 mouth and shot herself?
- 16 A Yes ma'am.
- 17 Q And do you specifically him saying-- Or do you remember him saying that he turned  
18 around to face her?
- 19 A Correct.
- 20 Q Or was it the other way around?
- 21 A No, he turned around to face her. His back was to her initially.
- 22 Q And you said you did a search warrant. How many search warrants were you  
23 responsible for doing?
- 24 A I did a search warrant that day.
- 25 Q Did you do any additional search warrants in the investigation of this case?

1 A No ma'am.

2 Q And you said your conversation with Wallace Evatt was not long?

3 A Yes ma'am.

4 Q Were you present inside the trailer when EMS was attending to Karen Rojas?

5 A Yes ma'am.

6 Q Did you see them move her body?

7 A I did not.

8 Q You did not?

9 A No ma'am.

10 Q Did you see them attach any electro probes to her or anything like that to attempt to  
11 revive her?

12 A I don't remember if they did or not.

13 Q You testified that you came in the trailer and you saw a firearm near her feet?

14 A Correct.

15 Q And your trainee was in your sight the entire time?

16 A Yes.

17 Q And you said you had received information that Wallace Evatt may have lived in the  
18 trailer for a couple of weeks?

19 A Yes.

20 Q Thank you.

21 The Court: You may step down. Next witness.

22 Ms. Howard: The State calls Deputy Shane Reece.

23 **SHANE REECE**, duly sworn, testified as follows:

24 Clerk of Court: Please state your name for the record.

25 A Shane Reece.

1 Clerk of Court: Thank you. You may be seated.

2 **DIRECT EXAMINATION BY MS. HOWARD:**

3 Q Deputy Reece, who do work for?

4 A Greenville County Sheriff's Office.

5 Q What's your position with the Sheriff's Office?

6 A Uniformed Patrol Deputy.

7 Q What are your duties as a Uniformed Patrol Deputy?

8 A Answer calls for service, respond to 911 calls.

9 Q How long have you been with the Sheriff's Office?

10 A For four years.

11 Q Were you working on May 17, 2009?

12 A Yes ma'am.

13 Q Did you respond to a call at on that day?

14 A Yes ma'am.

15 Q Why did you respond?

16 A We received a call in response to a possible suicide at that residence.

17 Q Where did you get that information?

18 A That's what the 911 dispatcher advised, stating they had received a call from a

19 Wallace Evatt that Ms. Rojas had shot herself.

20 Q When you got to the scene what was going on at that time?

21 A I arrived shortly after Sergeant Gladson and Deputy White. I observed EMS going  
22 into the trailer.

23 Q At the scene, what was your role?

24 A My role was to basically gather witness information and their recollection as to what  
25 occurred.

1 Q How did you go about doing that?

2 A I spoke with a witness, Mr. Beacham. I also spoke with Mr. Evatt, who had placed  
3 the call. And I briefly spoke with the McNeelys.

4 Q When you spoke with the defendant at the scene was he under arrest at that time?

5 A No, he was not.

6 Q Do you see the defendant in the courtroom today?

7 A Yes, I do.

8 Q Could you point him out to the jury, please?

9 A (witness points to defendant)

10 Q And the man you pointed to is who?

11 A Mr. Wallace Evatt.

12 Q Where did you speak with Mr. Evatt?

13 A Outside the trailer where the incident occurred.

14 Q Who else was present?

15 A Some other witnesses, I believe.

16 Q Can you tell us what the defendant told you that day?

17 A The defendant said that he and Ms. Rojas had been drinking during the course of the  
18 day. At the end of the day she took a shower. When she got out of the shower, she entered  
19 the living room, he had his back to her, and she stated that she needed to call her mother, that  
20 she was going to kill herself. Mr. Evatt stated that he turned around and that Ms. Rojas had a  
21 pistol in her mouth, at which time she pulled the trigger and fell to the ground. Mr. Evatt  
22 said he had no minutes on his cell phone to call 911. So, he exited the house and went to the  
23 McNeelys and called 911 from there.

24 Q Were you able to determine where the McNeelys live?

25 A It's , which is located in Anderson County.

1 Q So, after you spoke with him what did you do?

2 A I obtained the necessary information from the landlord, a Mr. Burgess, who was in  
3 charge of the trailer park and provided that to the Coroner on the scene at that time.

4 Q Did you go inside the trailer?

5 A Yes, I went inside the trailer to survey the scene.

6 Q I'm going to show you what's been admitted as State's Number Four. I'm going to  
7 put this up where you can see it.

8 (whereupon overhead projector was used to display exhibit)

9 If you will take a look at that picture and tell me a little bit about that picture. Is that  
10 the position that Ms. Rojas' body was in when you entered the trailer?

11 A Yes, that's the exact position that I found the body in when I entered the trailer.

12 Q What else did you notice in the trailer?

13 A When I entered the residence I observed a female identified as Ms. Rojas laying in the  
14 floor. I observed beer bottles in the room. There were four above her head. And I observed  
15 a cell phone that was on the table.

16 Q When you were inside the trailer, did you touch or move the body in any way?

17 A No ma'am, I did not.

18 Q Did you touch or move any-- Did you see anyone else touch or move Ms. Rojas'  
19 body?

20 A No ma'am.

21 Q Did you collect any evidence from inside the trailer?

22 A No ma'am.

23 Q Did you touch the furniture or furnishings or anything else in the trailer?

24 A No ma'am, I did not.

1 Q And just to go back to your testimony, when you spoke to the defendant, he stated to  
2 you that he had his back to her and he turned around. Was that your testimony?

3 A Yes ma'am. Mr. Evatt stated to me that she entered the living room; she said she  
4 needed to call her mother because she was thinking about killing herself. And that his back  
5 was to her and when she stated that, he turned around and saw her with the pistol in her  
6 mouth and pull the trigger and fall to the ground.

7 Q Did you have any other involvement in this case?

8 A Other than getting the necessary information from the landlord, no ma'am, I had no  
9 further involvement.

10 Q Thank you.

11 Ms. Howard: No further questions.

12 The Court: Ms. Manigault.

13 **CROSS EXAMINATION BY MS. MANIGAULT:**

14 Q How long would you say your conversation was with Wallace Evatt?

15 A Just a few minutes.

16 Q Just a few minutes. And you said that was outside?

17 A Yes ma'am.

18 Q When you arrived, were EMS already on the scene?

19 A Yes ma'am.

20 Q And when you went in the trailer, who was in the trailer besides you?

21 A I believe Sergeant Gladson, and myself and another deputy was present.

22 Q So, the three of you were in there at that time?

23 A I believe so.

24 Q So, EMS had already exited the trailer when you went in?

25 A Yes ma'am.

1 Q I believe you said you spoke to Mr. Beacham?

2 A Yes ma'am.

3 Q And Mr. McNeely?

4 A Yes ma'am.

5 Q You spoke to both the McNeelys, husband and wife, or just one?

6 A I spoke to them together.

7 Q Did you ask Mr. Evatt any questions in response to the information he had given you?

8 A No ma'am, I did not.

9 Q And you said when you responded to the call you information was it was a suicide  
10 call?

11 A Yes ma'am. I believe the call originally came out from Mr. Evatt and he said his  
12 girlfriend had shot herself.

13 Q Did you ask him anything about a cell phone or anything like that?

14 A No ma'am.

15 Q When you talked to Mr. Burgess, the landlord, where was he located?

16 A I believe he was at the store.

17 Q Is that adjacent to the trailer in any way?

18 A It's very close, across the road.

19 Q When you went inside the trailer, did you make any observation of the closeness of  
20 the area of the trailer, if you surveyed the inside?

21 A I went inside and I observed the space.

22 Q Thank you.

23 The Court: Step down.

24 Ms. Howard: Your Honor, the state calls Deputy John White to the stand.

25



1

2

3

**JOHN WHITE**, duly sworn, testified as follows:

4

Clerk of Court: Please state your name for the record.

5 A

John White.

6

Clerk of Court: Thank you. You may be seated.

7

**DIRECT EXAMINATION BY MS. HOWARD:**

8 Q

Deputy White, where do you work?

9 A

Greenville County Sheriff's Office.

10 Q

What's your position?

11 A

I'm a Deputy II in the patrol division.

12 Q

How long have you been with the Greenville County Sheriff's Office?

13 A

A little over five years.

14 Q

Were you working May 17, 2009?

15 A

I was.

16 Q

Did you respond to that day?

17 A

Yes ma'am.

18 Q

Tell me what occurred when you responded.

19 A

When I arrived on the scene, Sergeant Gladson, who is a master deputy was already

20

there. EMS was already there. I met the defendant and Mr. and Mrs. Ray McNeely outside

21

the residence.

22 Q

Did you speak with them at that time, the McNeelys and the Defendant?

23 A

Yes ma'am.

24 Q

Do you see the defendant in court today?

25 A

Yes ma'am, he sitting there in the white shirt.

1 Q What did he tell you?

2 A He said his girlfriend had shot herself in the mouth with a .38 revolver and was laying  
3 dead inside the trailer.

4 Q And that's what he told you when you first met him?

5 A Yes ma'am.

6 Q What were your responsibilities at the scene?

7 A I gathered information from him and from Mr. McNeely, and during the investigation  
8 I stayed with the defendant.

9 Q Was he under arrest at that time?

10 A No ma'am.

11 Q Did he speak to you further during that time?

12 A Yes ma'am. He said that he was inside the residence and his girlfriend came out of  
13 the bathroom dressed in a robe. She stated to him that she needed to call her mother because  
14 she was thinking about killing herself. He stated that she turned around, stuck a .38 revolver  
15 in her mouth, looked him in the eyes and pulled the trigger and collapsed to the floor.

16 Q Did he say anything about what he did in response to that?

17 A He said that he never touched the body or the gun and he ran out of the residence and  
18 jumped in her car and drove to his friends' house to call 911.

19 Q About how long were you outside with him, outside of the residence where the body  
20 of the victim was laying?

21 A It was probably about twenty or thirty minutes.

22 Q Did you go inside Ms. Rojas' trailer?

23 A No, I did not.

24 Q Did you have any further involvement with the case?

1 A I stayed with him until we ended up taking him down to the law enforcement center  
2 to speak with Investigator King. I transported him there in the front seat of my patrol car.

3 Q Was he under arrest at that time?

4 A No ma'am.

5 Q Did he voluntarily go with you?

6 A Yes ma'am.

7 Q How did he act in the car ride?

8 A During the ride he was just going over the scenario, over and over and over until we  
9 got there, saying she walked out and bam, shot herself; just kept saying that over and over.

10 Q Were you asking him questions?

11 A No ma'am.

12 Q Did you have any involvement later?

13 A I was with Investigator King during the initial part of the interview when he was  
14 giving his initial information, and I was relieved by master deputy Gladson.

15 Q To back up to the first part of your testimony, when you first talked to him he told  
16 you that Ms. Rojas walked in and she turned around?

17 A That's what he told me.

18 Q Tell us again what else he told you.

19 A He said that she walked out of the bathroom, dressed in a robe, said that she needed to  
20 talk to her mother, that she was thinking about killing herself. She turned around, placed the  
21 gun in her mouth, pulled the trigger and fell to the floor dead.

22 Q Thank you.

23 The Court: Ms. Manigault.

24 Ms. Manigault: Thank you, Your Honor.

25 **CROSS EXAMINATION BY MS. MANIGAULT:**

- 1 Q Deputy White, you stated that you never went inside the trailer. Is that correct?
- 2 A I did not.
- 3 Q When you were out on the scene, were EMS there?
- 4 A Yes, they were exiting the trailer and I was pulling up.
- 5 Q You say that you talked with Mr. Ray McNeely?
- 6 A Yes ma'am, I did.
- 7 Q And you found out he was a friend of Wallace Evatt's?
- 8 A Yes. Apparently, he went to the McNeelys' house to use the phone to call 911.
- 9 Q You said that Mr. Evatt stayed outside with you. How long did y'all stay outside?
- 10 A About twenty to thirty minutes.
- 11 Q Was he talking to you at that point or was he quiet?
- 12 A He was quiet, really didn't say too much.
- 13 Q He went with you to the law enforcement center, you said?
- 14 A Yes ma'am.
- 15 Q That was voluntary for him?
- 16 A Yes ma'am.
- 17 Q Now, during the ride, how long was the ride from the trailer area to the law
- 18 enforcement center?
- 19 A I guess thirty-five, forty minutes.
- 20 Q And you said during the ride he kept going over and over what he said had happened?
- 21 A Yes ma'am.
- 22 Q So, he was just telling you the same thing over and over?
- 23 A Yes ma'am. There was no other conversation.
- 24 Q And you didn't ask him questions regarding what he said?
- 25 A No ma'am.

1 Q Thank you.

2 The Court: Thank you. Step down.

3 Ms. Howard: Your Honor, may we approach concerning the next witness?

4 The Court: Yes ma'am.

5 (whereupon a bench conference took place)

6 We'll be in recess.

7 (whereupon the jury exited the courtroom)

8 **COURT IN SESSION**

9 The Court: Bring in the jury.

10 (whereupon the jury entered the courtroom)

11 Ms. Salisbury: Your Honor, the State calls Ron Brown.

12 **RON BROWN**, duly sworn, testified as follows:

13 Clerk of Court: Please state your name for the record.

14 A Ron Brown.

15 Clerk of Court: Thank you. You may be seated

16 **DIRECT EXAMINATION BY MS. SALISBURY:**

17 Q Good morning, Mr. Brown.

18 A Good morning.

19 Q Where do you work?

20 A I work at Sam's Club.

21 Q How long have you been working at Sam's Club?

22 A Since I left Forensics.

23 Q When did you start working for Forensics?

24 A I started with Forensics in April of 2007.

25 Q How long were you with Forensics?

1 A April of 2010.

2 Q How long was that?

3 A About three years.

4 Q What were your duties and responsibilities at Forensics?

5 A Forensic technician. My duties were to respond to scenes that we were requested at  
6 and to document, collect, photograph, or video any evidence there at the scene; process it  
7 back at the office, complete the report; and/or offer evidence in court.

8 Q What sort of education and training did you go through to prepare you to practice as a  
9 forensic technician?

10 A I graduated from South Carolina State University. I finished the Criminal Justice  
11 Academy. Prior to Forensics I was a probation agent for several years. Then I went with  
12 Forensics and worked with my superiors there and learned to process scenes, crime scenes,  
13 homicides, et cetera.

14 Q Tell us a little bit about how you as a Forensic tech would learn about a scene. How  
15 would you go about collecting or processing evidence?

16 A From the training. You're paired with either a seasoned technician or a supervisor  
17 and you observe what they do. You take part of the evidence gathering at the scene. You're  
18 trained on what to notice, what to look for, the way the scene is actually laid out, the events  
19 leading up to the scene. You talk to the deputies at the scene or the coroner. You gather the  
20 evidence as well as anything that you've learned in the office about how to go about doing  
21 that.

22 Q Do you remember being called out or being assigned to go to the scene on  
23 in May of 2009?

24 A Yes ma'am.

25 Q Would you tell the jury what you saw when you got there?

1     A             When I arrived at the scene I was advised by Deputy Segars that there was, this was  
2             in response to a shooting, a death at that location. Upon my arrival he advised that the victim  
3             was inside the residence, that the boyfriend had been inside the residence at the time of the  
4             incident.

5             Initially, when I saw the defendant, we, I secured pictures of him, of the attire in  
6             which he was dressed, conducted a gunshot residue test on his hands, the palms and the tops  
7             of his hands.

8     Q             Did you do that before you ever went inside the trailer?

9     A             Yes ma'am. Prior to entering the trailer that was the first thing that I did.

10    Q             Just for the jury's information, who is Deputy Segars?

11    A             Deputy Gladson. I apologize.

12    Q             Okay.

13    A             Deputy Gladson at the time advised me at the time I arrived.

14    Q             So, you spoke with him so as to get the lay of the land?

15    A             Yes ma'am.

16    Q             And one of the first things you did was to interact with the defendant?

17    A             Yes ma'am.

18    Q             Do you recognize the defendant here in the courtroom today?

19    A             Yes ma'am.

20    Q             Is Mr. Evatt the person that you photographed and tested?

21    A             Yes ma'am.

22    Q             I'm showing you what's been marked as State's Exhibit 7. Do you recognize that  
23             package?

24    A             Yes ma'am.

25    Q             How do you recognize this?

1 A That's my handwriting.

2 Q Can you tell me what that is?

3 A Yes ma'am. This is a GSR, gunshot residue test that I performed on the defendant at  
4 the scene.

5 Q Tell the jury a little bit about what a gunshot residue test is. How does it work? What  
6 do you do to perform it?

7 A The test I conducted, when you open it up, there is a sticky side on the interior part.  
8 What we do is we daub the inside on the suspect's hand to check for gunshot residue. We  
9 use separate canisters, one for the top of the left hand, one for the interior of the left hand,  
10 and vice-versa for the other hand. Then the items are sealed into the box, the form is filled  
11 out, and it is taken to the property and evidence department.

12 Q Did you seal up that test kit after you performed it on the defendant?

13 A Yes ma'am.

14 Q Where did you physically take it?

15 A I brought it back to the office and then it was transported to the property and evidence  
16 division at the law enforcement center.

17 Q So, is it tested in your office ever?

18 A No ma'am. Once it is sealed and signed with my name, we never open it again. It's  
19 taken directly to the property and evidence and it is stored there.

20 Q So, did you ever see State's Exhibit 7 before today since the time you sealed it and  
21 dropped it off at property and evidence?

22 A No, not since I dropped it off at property and evidence.

23 Q After you conducted that gunshot residue test on the defendant's hands, what did you  
24 do next?

25 A I took pictures of the defendant.



1 Q What was the purpose of that?

2 A To document the defendant's attire, what he was wearing, his aspect from top to  
3 bottom prior to doing anything else.

4 Q What did you do next?

5 A After taking pictures of the defendant it began, we were doing an inspection as far as  
6 his clothing. It began to rain very heavily at that time. So, it was decided that he would be  
7 transported to the law enforcement center where at that time they would inspect his clothing.

8 Q Did you go to the law enforcement center or did you stay on the scene?

9 A I stayed on the scene.

10 Q What did you do on the scene?

11 A I secured pictures, photographs of the outside of the residence prior to entering. Then  
12 I entered the residence.

13 Q What did you see immediately upon entering the residence?

14 A Upon entering the residence, as you walk into the residence I saw the victim in the  
15 living room, laying with her head towards the back of the residence. And there was a  
16 revolver and several other items at her feet below it.

17 Q I'm going to show you a photograph, State's Number 4. Is this what you saw when  
18 you entered the trailer?

19 A Yes ma'am.

20 Q What did you do once inside?

21 A I began-- I did an initial walk through the residence to just take a quick overview of  
22 the area, of the different rooms and the bedroom. And then I began to document the scene  
23 itself by photographing.

24 Q Were you the person who took this photograph, State's Number 4?

25 A Yes ma'am.

1 Q What did you notice inside the house?

2 A Inside I noticed, as I said, the victim---

3 The Court: You're describing the scene and you should be referring to the alleged  
4 victim.

5 A Yes sir. The alleged victim, I noticed her laying on the floor in the position that she  
6 was currently in with the revolver where it is, and there was a cigarette directly beneath her  
7 foot.

8 Q Could you tell if that cigarette had been burned at all?

9 A As I recall, I believe it had been burned, partially smoked.

10 Q Before you took any pictures, did you touch anything inside the house?

11 A No ma'am.

12 Q Did you touch Ms. Rojas' body?

13 A No ma'am. Other than touching the front door of the residence when I entered,  
14 nothing is generally touched until we start documenting with pictures and video. Then we go  
15 into the actual handling of items.

16 Q When you were walking through the residence did you notice any cell phones?

17 A Yes ma'am. There were a couple of cell phones in the residence. There was one, I  
18 recall, that was on the coffee table, the table right there along the large couch, beside the  
19 victim.

20 Q I need you to use this pointer to show the jury what you're talking about.

21 A Yes ma'am. Right there, there was a cell phone.

22 Q Did you notice another cell phone in the house?

23 A Yes ma'am. I believe there was another one in the back of the bedroom. If you  
24 notice right here where the victim's head is pointing, back there is the master bedroom with  
25 adjoining bathroom.

1 Q Once you had taken these photographs and made your initial observations about the  
2 scene, is that when you start the collection of evidence?

3 A Generally, with death investigations you approach it at a different pace than your  
4 average call, whether it's a burglary or what have you. You make sure that you have  
5 everything together. You document it with photograph and video as much as you can in  
6 every angle that you can possibly think of at that time prior to physically handling  
7 everything. Because once you start handling items, it's been handled, and so, therefore, you  
8 can't say, well, I just discovered that, let me take a picture of it, after the fact.

9 Q Do you do things like conduct measurements of the scene?

10 A Yes ma'am. Measurements of the scene, where the alleged victim was, the walls, the  
11 room, the position of the alleged victim's body.

12 Q Mr. Brown, I want to show you State's Exhibits 8 and 14, and I'm going to ask you if  
13 you recognize what's depicted in those images.

14 A Yes ma'am. Those are two of the cell phones that were in the residence upon my  
15 entry.

16 Q Did you take those photographs?

17 A Yes ma'am.

18 Q Are they an accurate representation of the phones as they appeared when you were  
19 inside the home that day?

20 A Yes ma'am.

21 Ms. Salisbury: Your Honor, the State offers Exhibit 8 and 14.

22 The Court: Any objection?

23 Ms. Manigault: No objection, Your Honor

24 The Court: They're in.

1 (whereupon State's Exhibits Numbers 8 and 14 were admitted into evidence without  
2 objection)

3 Ms. Salisbury: With the court's permission I will publish these for the jury.

4 The Court: All right.

5 Q Mr. Brown, this is State's 8 and this is a photo of a cell phone. Do you remember  
6 which photo this one was?

7 A No ma'am, not unless I can find my recorded list which I use when I process the area  
8 in which I found these items and the items numbers that's attached to it. One was in the  
9 living room and the other I believe was in the bedroom.

10 Q This is State's Exhibit 14, but nonetheless, is this the other phone that you  
11 photographed inside the residence---

12 A Yes ma'am

13 Q ---before you began collecting evidence?

14 A Yes ma'am.

15 Q After you measure the scene, take the pictures, all of that is done before you begin  
16 work on the scene collecting evidence?

17 A Yes ma'am.

18 Q And that's when you start collecting evidence?

19 A Yes ma'am.

20 Q Mr. Brown, I'm going to show you State's Exhibits 9 and 10.

21 Ms. Salisbury: Your Honor, one of these exhibits is a firearm and we've verified that  
22 it's been secured and cannot be operated.

23 Q Do you recognize those items?

24 A Yes ma'am.

25 Q Are those the items that you collected from the residence?

1 A Yes ma'am.

2 Q How do you know?

3 A The firearm is recognized on my report matching the serial number. And the empty  
4 casings and the live casings were in the cylinder of the firearm.

5 Q I'm going to show you a copy of your report that goes along with those items so that  
6 you can verify whether that gun is in fact the same gun that you collected from the scene.

7 A Yes ma'am, it is. RB-1 is a black in color, side holster, and RB-2 is the Charter 2000,  
8 undercover .38 special, silver.

9 Q Is the serial number you recorded and the serial number found on the gun that you  
10 processed that day the same serial number on State's Exhibit Number 9?

11 A Yes ma'am.

12 Ms. Salisbury: Your Honor, at this time the State would offer Exhibits Numbers 9  
13 and 10.

14 The Court: Any objection, Ms. Manigault?

15 Ms. Manigault: No objection, Your Honor.

16 The Court: Without objection, it's in evidence.

17 (whereupon State's Exhibits Numbers 9 and 10 were admitted into evidence without  
18 objection)

19 Q With regard to the handgun specifically, what is the analysis that you do as part of  
20 collecting something like a firearm?

21 A Generally, there are several things that can be done. Generally, with firearms they are  
22 photographed, they are documented prior to being handled. And then once they're handled,  
23 if it's determined it's a revolver, we mark it on the cylinder of the revolver to show exactly  
24 what it's last resting position was, prior to opening it. Once we open it we inspect the rounds

1 that are in it, whether they are live or whether they are casings. Serial numbers are  
2 documented as well as the head stamp that's on the ammunition.

3 Q I'm going to show you State's Exhibits 11 and 12. Do you recognize what's depicted  
4 in those photos?

5 A Those photographs are of the revolver that was recovered at the scene.

6 Q Are those photographs accurate depictions of the weapon as they appeared on the  
7 scene that day?

8 A Yes ma'am. One picture is of the weapon as it was resting. The second picture is of  
9 the weapon once the cylinder has been opened.

10 Ms. Salisbury: Your Honor, at this time the State offers Exhibits 11 and 12.

11 The Court: Ms. Manigault, any objection?

12 Ms. Manigault: No objection, Your Honor

13 The Court: Without objection.

14 (whereupon State's Exhibits Numbers 11 and 12 were admitted into evidence without  
15 objection)

16 Ms. Salisbury: With the court's permission I will publish to the jury.

17 The Court: All right.

18 Q Mr. Brown, I'll show you State's Exhibit 12. Is this photograph the picture of the  
19 firearm before you picked up and inspected it? Is this how it appeared as it rested?

20 A Yes ma'am.

21 Q Did you notice when you examined the firearm whether it had any blood on it?

22 A Upon initially looking at it, we gave it a once-over and did not see any areas of blood  
23 on the weapon itself.

24 Q If it had had blood on it, what would have been the next step of your process?

1 A It would have been documented. We would have collected it as to blood for later  
2 processing at the office.

3 Q Now, let's take a look at State's Exhibit 11. What are we seeing in this photograph?

4 A What you're seeing is my partner who was at the scene with me, opening the revolver  
5 to show the rounds that are actually within the cylinder.

6 Q As someone who routinely works with firearms as far as evidence collection, what  
7 did you notice about the inside of the chamber?

8 A That it had one spent round and then I believe several other live rounds, as shown on  
9 the diagram that's attached to my report.

10 Q Would you like to review that report?

11 A Yes ma'am.

12 (pause to review report)

13 Q After reviewing your report, what do you note about the inside, how many rounds did  
14 you find?

15 A It was a five-shot revolver. We had one fired round and three rounds that were still  
16 live in the cylinder.

17 Q How were you able to tell the difference between something that's live rounds as  
18 opposed to a shot that's been fired?

19 A Well, with a revolver, you'll see the indentation from the strike on the hammer, except  
20 in automatic weapons which are ejected. And with the remaining ones, they're still intact  
21 and they haven't been tampered with.

22 Q Now, Mr. Brown, is it part of your practice, or was it the practice when you were  
23 working with Forensics to photograph all areas of a scene?

24 A Yes ma'am.

1 Q Are you advised before you enter an area in which evidence is to be collected, exactly  
2 what you're looking for, or is it your rule to just collect whatever may be significant?

3 A Our rule is once you arrive on a scene to determine what's important, what needs to  
4 be documented, pay special attention to, collect. And we generally are advised by an  
5 investigator at the scene or a deputy at the scene on generally what we have at the scene  
6 when we arrive.

7 Q Now, immediately around Ms. Rojas' body there appeared to be a couple of items of  
8 furniture. Did you photograph those items?

9 A Yes ma'am.

10 Q Did you notice anything of significance with respect to each of those pieces of  
11 furniture?

12 A Well, within the living room area there was a long couch on one side of the residence;  
13 the table that had the cell phone on top of it. And on the other side there was a smaller couch  
14 above the, on the other side.

15 Q I'm showing you what's been marked as State's Exhibit 13. Do you recognize what's  
16 depicted in that photograph?

17 A Yes ma'am.

18 Q What is in that photograph?

19 A I believe that is a photograph of the love seat with a pillow and a blanket on it.

20 Q Did you note anything particular about that love seat?

21 A On that love seat there was an area of, suspected blood on the cushions. If I recall it  
22 is, was on the left side.

23 Q Is it visible in State's Exhibit 13?

24 A It is. You can make it out on the cushion.



1 Q Is that an accurate depiction of the love seat as you saw it when you were there at the  
2 scene that day?

3 A Yes ma'am.

4 Ms. Salisbury: Your Honor, at this time the State offers Exhibit 13.

5 The Court: Any objection?

6 Ms. Manigault: None, Your Honor.

7 (whereupon State's Exhibit Number 13 was admitted into evidence without objection)

8 Ms. Salisbury: And with the court's permission, I'd like to publish it for the jury.

9 The Court: All right.

10 Q Mr. Brown, if you would, while I'm putting this up for the jury, would you go over  
11 what you were discussing with the suspected blood, or whatever materials you were  
12 photographing?

13 A Yes ma'am. This is a photograph of the love seat that was on the opposite of the  
14 alleged victim. There was a cushion here, a blanket on that side. And right here in this area  
15 was the area of suspected blood that we discovered.

16 Q Now, when you took these photographs had you touched anything about these  
17 furnishings or this furniture?

18 A No ma'am. Again, nothing was touched until after it was documented.

19 Q We talked earlier about the collection of evidence before photographs are taken,  
20 anything is touched, that you take measurements of the scene. Why do you do that?

21 A Because after measurements area secured and the area is documented with  
22 photographs and video, and everything else is done, once we return to the office, one of the  
23 things we do is we create a diagram of the scene as it appeared with the measurements that  
24 we collected. We get a general scale of the room, the position of the alleged victim's body,  
25 and any other items of relevance.

1 Q Do you recall whether you prepared a diagram from the measurements that you took  
2 on the scene that day?

3 A Yes ma'am.

4 Q I'd like to show you State's Exhibit 15 and ask you if you recognize this item?

5 A Yes ma'am, I do.

6 Q How do you recognize it?

7 A It is the diagram that I completed based on measurements that ii took at the scene.

8 Ms. Salisbury: Your Honor, the State would offer Exhibit 15.

9 The Court: Any objection?

10 Ms. Manigault: No objection, Your Honor.

11 The Court: It's in without objection.

12 (whereupon State's Exhibit 15 was admitted into evidence without objection)

13 Q Mr. Brown, with respect to State's 15, could you tell the jury the circumstances that  
14 we were just discussing about the items that you saw, the items that you collected, and the  
15 photographs?

16 A Yes ma'am. This is a diagram-- Once the photographs are taken, we take  
17 measurements of the room. We take it from the length of it and the width of it, as well as the  
18 interior of the residence. We also measure from two points within the room. The alleged  
19 victim's position, we take a measure from one corner to the victim, to the alleged victim's  
20 head . And then again we also go to the alleged victim's hip as well. What this does is  
21 allows us to position the body exactly in the room that we just created with the program on  
22 the diagram.

23 Q Would you tell the jury where's the love seat that we were just viewing in State's  
24 Exhibit 13?

1 A This is the love seat that was on the opposite of the victim. This is the longer couch.  
2 What you see right here is the coffee table with the cell phone that was on top of it.

3 Q In an incident that involves a shooting, do you attempt to look for the bullet, the  
4 projectile?

5 A Yes ma'am.

6 Q Did you look for the bullet in this case?

7 A I did. Myself, along with Investigator Whaley, my partner, we searched the  
8 residence. At the time we were unable to find a projectile.

9 Q Would you have been looking for something like a casing?

10 A No ma'am. We would be looking for,-- Again, with revolvers you're looking for a  
11 projectile. With automatic weapons you're looking for a casing, if you find one, as well as a  
12 projectile.

13 Q Would this revolver have ejected a casing?

14 A No ma'am.

15 Q Now, once that evidence is collected that you believe was of significance, how do you  
16 begin preparing to have Ms. Rojas' body removed from the scene?

17 A After all the measurements were taken, the pictures, everything else is documented,  
18 then we would begin the task of actually examining the alleged victim. We start at the top or  
19 at the bottom and we work our way up to see if there is anything that we initially didn't  
20 document with our photographs. We check-- If the alleged victim was wearing any clothing  
21 we examine the pockets. We examine the area where the alleged victim was shot at. We  
22 examine that. We secure-- We take photographs of that area. And then we will begin to  
23 move the victim to see if there's anything significant underneath the victim or on the victim's  
24 side, such as where the alleged victim was found.

1 Q At this point is it your understanding that you as the Forensic technician in this  
2 capacity are the first person to physically move the body?

3 A Yes ma'am. Generally, it's-- At this scene it was myself along with my partner, with  
4 the coroner. We were all there when we began to move the victim, the alleged victim  
5 around.

6 Q Who was in the home with you the entire time that you were photographing, evidence  
7 collecting and taking measurements of the scene?

8 A If I recall correctly, it was myself. I believe Investigator Whaley was there as well.  
9 And I believe when we initially-- I believe a deputy was there as well when we were looking  
10 for the projectile, as I recall.

11 Q During that entire time before these pictures were secured, did any of those  
12 individuals move Ms. Rojas' body?

13 A No ma'am. Before we began looking for the projectile the alleged victim had already  
14 been moved and removed from the residence. So, she wasn't actually there when we were  
15 looking for the projectile.

16 Q Before these photographs that we've seen were taken, did anyone move Ms. Rojas'  
17 body?

18 A No ma'am.

19 Q One final thing. Are you familiar with the process of bagging the hands---

20 A Yes ma'am.

21 Q ---of an alleged victim?

22 A The process is when you have an investigation into someone's death we generally  
23 secure photographs of the alleged victim's hands. We examine them and then they are  
24 bagged. We bag it with a paper bag and with tape. We initial where we actually put the tape

1 at. This is done to secure any evidence that may be on the victim's hands, the alleged  
2 victim's hands, or underneath the alleged victim's fingernails.

3 Q Taking a look at State's Exhibit 16, I'll ask you if you recognize what's depicted in  
4 that photograph?

5 A Yes ma'am.

6 Q What is in that photograph?

7 A That is the alleged victim's hands.

8 Q When was that photograph taken?

9 A That photograph was taken as photographs were being secured of the residence in  
10 which the alleged victim lived.

11 Q Would this photograph have been taken before Ms. Rojas' body was moved?

12 A Yes ma'am.

13 Q Is it an accurate depiction of Ms. Rojas' hands as you observed it that day?

14 A Yes ma'am.

15 Ms. Salisbury: Your Honor, the State would offer Exhibit 16.

16 The Court: Any objection?

17 Ms. Manigault: No objection, Your Honor.

18 The Court: It's in without objection.

19 (whereupon State's Exhibit 16 was admitted into evidence without objection)

20 Q Did you note, based on your observation of Ms. Rojas' body whether there was any  
21 blood on Ms. Rojas' hands?

22 A Not that I could visually see at the time.

23 Q If there had been blood on Ms. Rojas' hands would you have made, taken any  
24 additional measures?

1       A               Yes ma'am. It would have been documented. It would have been documented prior  
2       to the photograph was taken and when the hands were bagged.

3               Ms. Salisbury: Your Honor, may we approach?

4               The Court: Sure.

5       (whereupon a bench conference took place)

6               Ladies and gentlemen, I'll ask you to go to your jury room at this time.

7       (whereupon the jury exited the courtroom)

8               Ms. Manigault, have you seen the photograph she's referring to?

9               Ms. Manigault: Yes, Your Honor. I specifically have objection to State's Exhibits  
10       18, 19 and 20. I'm not concerned about 21, which shows the neck with a possible blood area.

11              The Court: so, you object to three?

12              Ms. Manigault: Yes sir. I object to 18, which shows the head on the floor; 19, which  
13       shows the head on the floor, with the arm extended; and 20, which shows the head on the  
14       floor with blood.

15              The Court: What's your objection?

16              Ms. Manigault: Your Honor, especially to number 18 and number 20, it's showing  
17       extensive blood spots from the victim's, which is suspected blood coming out of the victim's  
18       mouth. And it has-- It can be very arousing or to draw passion from the jury. I don't  
19       suspect that they have a particular reason. I think this is too much.

20              The Court: All right. And what is the relevance by the State with the photographs,  
21       Solicitor?

22              Ms. Salisbury: Well, Judge, as you know, throughout the presentation of the case we  
23       have had extensive discussions about whether Ms. Rojas' body was moved, whether anyone  
24       touched Ms. Rojas' body. And it is ultimately the State's contention that the evidence that is  
25       depicted in these photographs is decidedly inculpatory to the extent that it will be the State's

1 argument that someone-- And none of these officers have testified that they had any  
2 involvement in touching Ms. Rojas' body. Someone moved that body. And it would be the  
3 State's position that the defendant is responsible for having moved the body.

4 State's 20, Your Honor, in particular, I can appreciate that it is extremely graphic.  
5 However, I skillfully selected which photographs so as to not improperly upset the jury. If  
6 Your Honor would like to look, you can look at it. State's Exhibit 20 in particular shows a  
7 very large smear of blood on Ms. Rojas' face. And that's significant based on the testimony  
8 that the jury will hear about how the victim fell; how an injury like this would appear. And it  
9 will be the State's argument there is no other explanation for this, the evidence is blood  
10 could have come in this form on Ms. Rojas' face without someone having touched the body.

11 The Court: Ms. Manigault, I certain think the probative value outweighs any  
12 prejudice to your client. I believe that is a necessary element for the State. So, I'll have to  
13 overrule your objection.

14 Ms. Manigault: You said the probative value? I didn't hear it.

15 The Court: Outweighs any prejudicial effect.

16 Ms. Salisbury: And Your Honor, my argument would be the same with respect to  
17 every other photograph. They are substantially less graphic, but each of them shows the  
18 suspected blood.

19 The Court: I agree.

20 Ms. Salisbury: Thank you, Judge.

21 The Court: Bring the jury in.

22 (whereupon the jury entered the courtroom)

23 Q Mr. Brown, I'm going to show you State's Exhibit 17. I'd like you to take a look at  
24 this exhibit and tell me whether you recognize what's that package.

25 A Yes ma'am. It states that those are bags from the victim's hands.

1 Q Is that your handwriting on State's Exhibit 17?

2 A No ma'am. They had already been opened. I believe the bags were collected at the  
3 autopsy.

4 Q But are you the technician that actually put the bags on Ms. Rojas?

5 A At the scene, yes ma'am.

6 Q Are those bags part of your test kit?

7 A Yes ma'am. We carry large and small paper bags to fit the size of the hands.

8 Q Are they ever recycled?

9 A No ma'am.

10 Q Were these clean bags you used?

11 A Yes ma'am.

12 Q Now, I'd like you to take a look at State's Exhibits 18, 19, 20, 21, 22, and 23. Take a  
13 few seconds to take a look at those.

14 A (pause to review exhibits)

15 Q Do you recognize what's depicted in each of those photographs?

16 A Yes ma'am.

17 Q Did you take those photographs?

18 A Yes ma'am.

19 Q Did you take those photographs as part of the collection and analysis process at the  
20 scene?

21 A Yes ma'am.

22 Q Are those accurate depictions of Ms. Rojas' body at the scene that day?

23 A Yes ma'am.

24 Ms. Salisbury: Your Honor, the State offers Exhibits 18, 19, 20, 21, 22, and 23 into  
25 evidence.



1 The Court: Ms. Manigault, subject to your objection.

2 Ms. Manigault: Yes sir.

3 Ms. Salisbury: Your Honor, the State would offer Exhibit 15.

4 The Court: Any objection?

5 Ms. Manigault: No objection, Your Honor.

6 The Court: It's in without objection.

7 (whereupon State's Exhibits 18, 19, 20, 21, 22, and 23 was admitted into evidence over  
8 objection)

9 Ms. Salisbury: With the court's permission, I'd like to publish to the jury.

10 The Court: Go ahead.

11 Q Mr. Brown, I'd like for you to take a look at State's Exhibit 19. Is this photograph  
12 one that you secured before Ms. Rojas' body was moved?

13 A Yes ma'am.

14 Q Had anything been done to the scene at the time this photograph was taken? Had any  
15 processing happened at the scene?

16 A Other than the collection of photographs and videos, no ma'am.

17 Q Let's take a look at State's Exhibit 22. What exactly is depicted in this photograph?

18 A This is a picture of, you see a picture of the alleged victim's palm of her hand, with  
19 the palm up and an area with blood on the lower part of the victim's clothing, which was a  
20 robe.

21 Q Did you end up collecting this item of evidence?

22 A Yes ma'am.

23 Q Okay.

24 A Whoa, no ma'am. Everything that the victim was wearing was taken to the coroner's  
25 office.

1 Q Did you perform an analysis on this item of clothing?

2 A No ma'am.

3 Q Let's take a look at Stat's Exhibit 18. Can you describe for the jury what's depicted  
4 in this photograph?

5 A Yes ma'am. That's a photograph of the back of the alleged victim's head.

6 Q Again, was this photograph taken before anyone touched Ms. Rojas' body?

7 A Yes ma'am.

8 Q Did you do anything to manipulate Ms. Rojas' body before you took this photograph?

9 A No ma'am.

10 Q Finally, one more, State's exhibit 23, from a little bit different perspective. Would  
11 you describe for the jury this picture?

12 A Yes ma'am. This is the rear master bedroom in the trailer. From that area you see the  
13 alleged victim's body in the background.

14 Q Was this photograph taken before anything was moved or any movement of Ms.  
15 Rojas' body had taken place?

16 A Yes ma'am.

17 Q Now, that's a little bit graphic, but would you please describe to the jury what they're  
18 looking at in State's Exhibit Number 20?

19 A That's a photograph of the victim's face, with an area of suspected blood coming  
20 from the nose and mouth area.

21 Q At the time this photograph was taken had anyone touched, moved, or manipulated  
22 Ms. Rojas' body?

23 A No ma'am.

24 Q Now, as it was discussed, it was necessary in the processing of the scene for you to  
25 ultimately move Ms. Rojas' body?

1 A Yes ma'am.

2 Q And did you also photograph after you moved Ms. Rojas' body?

3 A Yes ma'am.

4 Q I'm showing you State's Exhibit 21. What are we looking at in this photograph?

5 A This is after the alleged victim was rolled from her side onto her back. And the  
6 picture's an area of her neck.

7 Q Now, let me talk to you in a little bit more detail about how Ms. Rojas' body was  
8 moved. Who physically rotated Ms. Rojas' body?

9 A I did. Generally, it's done by more than one individual. And she was just rotated  
10 from her resting position onto her back.

11 Q Do you recall whether you specifically assumed it in that process?

12 A I would have to refer to my notes to say that.

13 Q Well, generally speaking, how in this situation an alleged victim's body moved? Is it  
14 customary to use, so to speak, a specific location of someone's body to make that rotation?

15 A Yes ma'am. It just depends on the layout of the area, where the individual's body and  
16 how to determine to move the individual to transport them out of the area.

17 Q Now, let me be a little more specific. Is it customary or part of your practice to ever  
18 move an alleged victim by grabbing their face?

19 A No ma'am.

20 Q Do you recall whether that was the method by which Ms. Rojas' body was moved?

21 A No ma'am.

22 Q You don't recall or you don't know?

23 A I don't recall.

24 Q Now, just to wrap up. You mentioned that a lot of evidence is packaged for analysis.  
25 Can you tell the jury, did you conduct any of those analyses yourself?

1 A No ma'am. Again, there were several technicians involved in evidence collection at  
2 the scene. And then the evidence went to one of my sergeants as well as my departmental  
3 head, which would be Technician Dietz as well as Investigator Whaley.

4 Q And after you collected evidence from a scene do you have any other role in the  
5 processing or collection or analysis of any evidence after that day on the scene?

6 A After that day on the scene, some items I did package, which was split between  
7 myself and my partner.

8 Q Let me put it this way: After everything was submitted to be stored or analyzed, did  
9 you have any other role in the testing or analysis of it?

10 A No ma'am.

11 Q Thank you. Please answer any questions for Ms. Manigault.

12 The Court: Ms. Manigault.

13 Ms. Manigault: Thank you, Your Honor.

14 **CROSS EXAMINATION BY MS. MANIGAULT:**

15 Q Mr. Brown, you were given a copy of your report?

16 A Yes ma'am.

17 Q You earlier described to the court and the jury that the revolver, State's Exhibit  
18 Number 9, was a five-shot revolver. Is that right?

19 A As I recall, yes ma'am.

20 Q Do you need to refresh? Do you have your notes?

21 A Not in front of me, no ma'am.

22 Q This is a copy of your report that was provided to me. If you will look at that for me,  
23 please?

24 A Yes ma'am. (pause to review report)

25 Q So, is the revolver a five-shot revolver?

- 1 A According to my notes, yes ma'am.
- 2 Q And you testified earlier that there were three live rounds with the head stamps going
- 3 back.
- 4 A Yes ma'am.
- 5 Q And there was one spent round?
- 6 A Yes ma'am.
- 7 Q So, that leaves one empty round?
- 8 A Yes ma'am.
- 9 Q So, did you have an explanation in your report about that?
- 10 A No ma'am. On the diagram you'll see that there is a space that's checked for not
- 11 fired and there's a space that's checked for empty.
- 12 Q So, that three live would have been not fired?
- 13 A Yes ma'am.
- 14 Q And the one spent would have been the one that was fired?
- 15 A Yes ma'am.
- 16 Q And then the one without anything in it would have been marked as empty?
- 17 A Yes ma'am.
- 18 Q And you said that you checked with others to try to find a projectile?
- 19 A Yes ma'am.
- 20 Q And on May 17 you found nothing?
- 21 A No ma'am. In our initial overview of the area, we did not located a projectile.
- 22 Q Does your report show what time you arrived at the trailer to start your investigation?
- 23 A Yes ma'am.
- 24 Q What time?

1 A I received a call at 2:05. I was in route at 2:10. I arrived at 2:40. I cleared the scene,  
2 on the report it marks clear, which means we're done at the scene and we've actually swept  
3 it, at 7:13. And I arrived back at our office at 7:33.

4 Q So, when you arrived at the trailer area was there someone already inside the trailer?

5 A Not that I recall.

6 Q So, when you arrived at the trailer, nobody was in the trailer?

7 A No ma'am.

8 Q Everybody was outside?

9 A Yes ma'am.

10 Q So, you would not have been present when any other individual went inside the  
11 trailer?

12 A No ma'am.

13 Q So, you cannot testify what they did if they went inside the trailer?

14 A I cannot testify to that, no ma'am.

15 Q So, you're testifying that there was no movement of the body when you got in the  
16 trailer?

17 A Yes ma'am.

18 Q Now, as far as anything EMS, or anybody else, a witness or an officer did, you cannot  
19 testify---

20 A No ma'am.

21 Q ---whether they moved her?

22 A No ma'am.

23 Q Did you at any time on that day collect any specimens from the gun itself, from the  
24 holster. The gun is State's Exhibit Number 9, and the holster is State's Number 10. Did you,  
25 yourself, collect any specimens or anything from those items to be tested?

1 A No ma'am. Other than the casings at the scene, generally firearms, sometimes they're  
2 unloaded at the scene and secured. But, no ma'am, nothing was collected other than the  
3 items that were there.

4 Q And before -- When you touched State's Exhibit Number 9, which is the gun, did  
5 you have on gloves?

6 A Yes ma'am.

7 Q And when you collected your other items you had on gloves?

8 A Yes ma'am.

9 Q And anybody who assisted you had on gloves?

10 A Yes ma'am.

11 Q When you were searching for the projectile, tell me what areas you looked in?

12 A We were looking on the floor, itself; on the couch, the love seat, the walls behind the  
13 alleged victim, throughout the room. We looked everywhere.

14 Q And you checked the ceiling in the front area?

15 A As I recall, yes ma'am.

16 Q Do you recall whether you checked the ceiling in the kitchen or the bathroom area?

17 A As I recall, yes ma'am.

18 Q You testified when you arrived at the scene that you made contact with Wallace  
19 Evatt?

20 A Yes ma'am.

21 Q And you were the person that did what you referred to as a GSR kit?

22 A Yes ma'am, gunshot residue.

23 Q And you were the person who tested his hands for gunshot residue?

24 A Yes ma'am.

25 Q And you did that outside or inside?

1 A Outside.

2 Q Was he standing in the rain or was he in the car?

3 A He was in the vehicle when I arrived and then he was taken out of the vehicle and  
4 then I began securing photographs and conducting the gunshot residue.

5 Q And when you completed testing his hands, did you secure those kits at that time?

6 A Yes ma'am. At the scene, they're secured, they're sealed up. The kits are designed  
7 to where you close it, you clip it closed and you seal it with tape.

8 Q And this is State's Exhibit Number 7?

9 A Yes ma'am.

10 Q This is the one you testified to earlier?

11 A Yes ma'am.

12 Q So, you sealed it after you tested Mr. Wallace's hands?

13 A Yes ma'am.

14 Q And did you place it another kind of container?

15 A It's generally placed in a bag and either secured on myself or within the vehicle.

16 Q But you have no specific recollection whether you kept it?

17 A As I recall, I sealed it and placed it within my camera bag.

18 Q Did you have any conversation with Mr. Wallace himself other than collecting the  
19 kit?

20 A Not really. I mean, there was not much that was said. He happened to utter  
21 something as I was collecting the GSR, and I just continued collecting.

22 Q Of his clothing?

23 A Yes ma'am.

24 Q His shirt, pants?

25 A Yes ma'am.



1 Q Plus hands?

2 A Yes ma'am.

3 Q Particularly, when you entered the trailer-- On State's Exhibit Number 4, is that how  
4 you saw the inside of the trailer when you first entered?

5 A Yes ma'am.

6 Q And on State's Exhibit Number 15, the drawing, was that done while the body was  
7 positioned still on the floor?

8 A No, the drawing was done after we went back to the office.

9 Q But you took the measurements while the body was still on the floor?

10 A Yes ma'am.

11 Q Do you recall, does State's Exhibit Number 15 show the distance between the two  
12 couches?

13 A The distance between, from the large couch to the love seat?

14 Q Yes.

15 A I don't seem to have that measurement on here.

16 Q And the measurements you do have on State's Number 15 depicts what?

17 A Those measurements depict from the corner of one side of the living room to the  
18 alleged victim's head from the other side of the living room to the alleged victim's head, and  
19 then back into the living room from the bedroom.

20 Q You testified that you were the person that bagged Karen Rojas' hands---

21 A As I recall.

22 Q ---as she lay there on the floor or after you had moved her?

23 A That was after. Generally, what we do is after the hands are bagged and they're in  
24 their position that we can get to them or after the alleged victim is initially turned over. It  
25 basically depends on the exactly the position.

1 Q So, in State's Exhibit Number 4, you can almost see the left hand, the back, the entire  
2 arm?

3 A Yes ma'am.

4 Q So, you cannot see the right arm?

5 A No ma'am.

6 Q Was he body lying on her right arm?

7 A As it appears, yes ma'am.

8 Q So, you would have to move her or flip her over---

9 A In order to bag that hand, yes ma'am.

10 Q You said you were only responsible or charged with duties at that time as a technician  
11 to collect, documents, mark and place the items in property and evidence?

12 A Yes ma'am.

13 Q Then on State's Exhibit Number 13, that is a photo that you described as the love  
14 seat?

15 A Yes ma'am.

16 Q And you described on that photo there was an area that appeared to be suspected  
17 blood?

18 A Yes ma'am.

19 Q But you, yourself, did not test that area that day?

20 A Not that I recall.

21 Q Thank you.

22 Ms. Manigault: I have no further questions, Your Honor.

23 The Court: Any redirect?

24 Ms. Salisbury: No redirect, Your Honor.

25 The Court: Thank you. step down.

1 Ms. Salisbury: Your Honor, the State calls April Dietz.

2 APRIL DIETZ, duly sworn, testified as follows:

3 Clerk of Court: Please state your name for the record.

4 A April Dietz.

5 Clerk of Court: Thank you. Take your seat.

6 **DIRECT EXAMINATION BY MS. SALISBURY:**

7 Q Ms. Dietz, where do you work?

8 A I'm currently employed as an optician at Southern Eye Care.

9 Q How long have you been working there?

10 A About four months.

11 Q Where did you work before that?

12 A I was employed as a law enforcement officer with the Greenville County Forensic  
13 Division.

14 Q Where were you employed in May of 2009?

15 A I was employed at the Greenville County Forensic Division from 2005 to 2010.

16 Q What was your capacity at the Forensic Division?

17 A I was a Forensic evidence technician.

18 Q We've heard a little bit from Mr. Brown about the training that you receive in order to  
19 become a forensics technician. Did you have any specialized training about how to perform  
20 the functions of a Forensic technician?

21 A I was trained as a police officer for Greenville County. When I went into that line of  
22 work I got on the job training for Forensics.

23 Q Do you remember your involvement in the incident which is the subject of this trial  
24 on May 17, 2009?

25 A Yes.

1 Q How do you recall becoming involved?

2 A Officer Brown took the initial call to respond to a death investigation. I believe I was  
3 still in the office at that point in time. Approximately forty-five minutes later he called me  
4 and explained that were some possible issues at the scene, that they needed another  
5 technician to come out, which is a protocol. Also, he did not take the division's video  
6 camera with him which is not something that we take initially. So, I took the video camera  
7 and responded. I got there approximately an hour after he contacted me.

8 Q What did you see when you got to the scene? Who was still there? What was  
9 happening?

10 A I remember it was a rainy day. I remember the crime scene tape around the outside  
11 exterior of the trailer, outside of the stairs, cordoned off. Investigator Whaley was on the  
12 scene. Of course, Officer Brown. The Coroner was there, Tony Segars. That's who I recall  
13 seeing when I came in the door.

14 Q I'd like you to take a look at State's Exhibit 4. Can you tell the jury whether that's an  
15 accurate depiction of what you saw when you went in the trailer?

16 A Yes.

17 Q I'd also like you to take a look at State's Exhibit 23, and I'll ask you the same  
18 question, is that an accurate depiction of another portion of the home?

19 A Yes, it is.

20 Q Now, when you arrive on a scene like that, what's one of the first things you do?  
21 How do you begin playing your role as a Forensics technician?

22 A When I got to the scene, the officers were in the house, it was raining at the time. I  
23 went in and spoke with them to find out exactly what I was there for. I mean, I know I had to  
24 bring the video camera out. They said they needed my help as there were some questions  
25 about what took place there, which was the normal protocol, like I said, to call another

1 Forensic unit out to assist the one which on the scene, which is what I was. And at that  
2 point, Officer Brown was taking photographs and after a little while I began videotaping. So  
3 that would have been initially what I did, was videotape.

4 Q I'm going to show you what's been marked as State's Exhibit 24 and ask you if you  
5 recognize that item?

6 A It appears to be a CD, DVD of the video that was taken at the scene.

7 Q Have you had a chance to review that video?

8 A Yes, I have.

9 Q Is it an accurate recording of what you prepared on the scene that day?

10 A Yes.

11 Q Have there been any changes made to this videotaped recording?

12 A No.

13 Q What kind of video camera were you actually using out there on the scene?

14 A Actually, this is transferred to a DVD, and it comes in on an eight millimeter cassette  
15 that fits into the video camera. It's just a small video camera that we carry.

16 Q So, even though it is a DVD copy it is nonetheless accurate?

17 A It is.

18 Ms. Salisbury: Your Honor, the State offers Exhibit 24.

19 The Court: Any objection?

20 Ms. Manigault: No objection.

21 The Court: It's in without objection.

22 (whereupon State's Exhibit Number 24 was admitted into evidence without objection)

23 Ms. Salisbury: With the court's permission, I'd like to go ahead and play it for the  
24 jury.

25 The Court: Sure.

1 (whereupon State's Exhibit 24 was played for the jury)

2 Q Did you secure that video before the evidence in the house was collected, processed,  
3 moved in any way?

4 A As you saw on the video, the last scene, it shows the minutes that were still remaining  
5 on the cell phone inside the residence, and the other items. I did not remove those items and  
6 lay them out. Anything that was done prior to that was before anything was collected.

7 Q Other than videotaping the scene, what did you do to assist in processing the scene  
8 that day?

9 A After securing the video and after Technician Brown had gotten the photographs  
10 done, I helped him collect the items for evidence. Also, to secure the weapon that was  
11 there, which I did mark for him, collected that at that time. Searched for the projectile at that  
12 time. Assisting him at the scene, that what I was called there to do and that's what I did at  
13 the scene.

14 Q Did you have any role in the actual analysis or testing of any of the items that were  
15 collected?

16 A Once the items are collected, they're bagged and Officer Brown collected those. I did  
17 do some latent processing on items at the office after we returned there.

18 Q Exactly what does that mean, latent processing?

19 A Latent processing is the application of fingerprint dust, a powder to items to see if  
20 they retained any prints that cannot be seen by the naked eye, which is latent prints. The  
21 items that I assisted in collecting were suitable for that process and that's what I did.

22 Q Do you recall which items you collected for the purpose of that fingerprint  
23 processing?

24 A I do, but can I read them from my report?

25 Q If your report will refresh your recollection, you may.

1 A It will, in detail it will, yes. Two separate items were submitted by Officer Brown.

2 The first item, RB-4, contained the items that were all together in the floor in the master  
3 bedroom. They were so close together that we collected them as one item, even though there  
4 were several items. Those items go RB-4, A through F.

5 Q What are those items?

6 A We have the beer bottles that were collected. We had the unopened beer bottles that  
7 were still in a container, the cardboard container. We had a lighter. We had cigarette packs  
8 that were there. The other items that latent processing was conducted on was a cigarette pack  
9 that was also in the master bedroom but it was a little bit farther away from those items. It  
10 was kind of on its own and therefore, we made it a separate item collected for evidence.

11 Q And are those items the ones that are depicted in State's Exhibit 23?

12 A Yes.

13 Q Those beer bottles and cigarette packs?

14 A Yes.

15 Q Now, do you actually do any of the fingerprint identification?

16 A No.

17 Q Other than assisting in the collection of those items for evidence did you have any  
18 other role in the investigation?

19 A In this investigation I did not.

20 Q Did you do anything else to help assist in this investigation?

21 A Other than what I've testified to concerning these items, no.

22 Q Thank you. Please answer any questions Ms. Manigault has.

23 The Court: Ms. Manigault.

24 Ms. Manigault: Thank you, Your Honor.

25

1     **CROSS EXAMINATION BY MS. MANIGAULT:**

2     Q             Ms. Dietz, the items you just listed are they all of the items that you tested latent  
3             prints, for fingerprints?

4     A             Those were the only items that I tested.

5     Q             And you testified that the results would not have been collected by you?

6     A             When we lift the prints we forward those to our fingerprint latent division, and any  
7             comparison is made at that time in the latent division.

8     Q             Is that in-house in Greenville County or is that sent to SLED?

9     A             That's Greenville County.

10    Q             When you did the videotape inside the trailer, one of the things that you described  
11             was a purse on the table that you believed to Karen Rojas. In front of the purse was a brown  
12             paper bag with some dollar bills on top of it, and looks like some sort of writing. Did you  
13             place those items like that?

14    A             I did not place those items there. I remember seeing them there, but I did not take  
15             anything out of Ms. Rojas' purse.

16    Q             So, someone took them out and placed them like that for you to video?

17    A             They were there, yes.

18    Q             Other than collecting, videoing and assisting, did you touch or move any other items  
19             in the trailer before you did the video?

20    A             I did not.

21    Q             Thank you.

22             The Court: Thank you. You may step down. Take the jury out for a recess.

23             (whereupon the jury exited the courtroom)

24             We'll take a short recess.

25             (whereupon court was in recess)



1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5

A

3

4

A

6

## 7

8 Q

9 A

10

11 Q

12 A

13 Q

14 A

15 Q

16

18 A

19

20 Q

21 A

22 Q

23 A

24 Q

25 A

1 Q What did you do in this case?

2 A I responded to the law enforcement center at the request of Investigator Whaley to  
3 document and collect an individual's clothing and photograph it as well.

4 Q Did you photograph it there at the law enforcement center?

5 A That's correct.

6 Q What was the purpose of that?

7 A Just to document any of the items, the clothing that he had on.

8 Q I'm going to show you State's Exhibit 26. While that may not be the photograph that  
9 you took does that represent an accurate representation of how the defendant appeared the  
10 day that you took those pictures?

11 A Yes ma'am.

12 Ms. Salisbury: Your Honor, the State offers Exhibit 26 in evidence.

13 The Court: Any objection, Ms. Manigault?

14 Ms. Manigault: May I ask him a couple of questions, Your Honor?

15 The Court: Sure.

16 **VOID DIRE BY MS. MANIGAULT:**

17 Q Do you recognize the background of that picture?

18 A No ma'am.

19 Q Are you testifying to the clothing that Mr. Wallace Evatt has on in that picture?

20 A Yes.

21 Ms. Manigault: Thank you.

22 The Court: Any objection?

23 Ms. Manigault: None, Your Honor.

24 The Court: It's in.

25 (whereupon State's Exhibit Number 26 was admitted into evidence without objection)

1     **RESUME DIRECT EXAMINATION BY MS. SALISBURY:**

2     Q             As part of that process of photographing the defendant, did you notice anything in  
3             your observation that day?

4     A             I observed the shirt and pants. There were stains on the front and back. The front of  
5             the shirt and pants appeared to have suspected blood. And the pants and the back of the shirt  
6             had a dark brown circle.

7     Q             Did you notice anything specifically about the defendant's pants?

8     A             Yes. He did have abrasions on his pants.

9     Q             Are those depicted in State's Exhibit 26?

10    A             Yes, in the right corner.

11    Q             Now, in addition to taking a photograph of what the defendant was wearing that day,  
12             did you also collect the actual clothing items from the law enforcement center that day?

13    A             Yes, I did.

14    Q             I'm showing you State's Exhibits 27 and 28. And while, these are still packaged, I'm  
15             going to ask you if you recognize these items?

16    A             Yes. State's 27 being a brown bag that's filled out on the front with my handwriting.  
17             There is an item number for the item inside, my name, the deputy's name, the case number  
18             and the date and time.

19    Q             Once you collected that shirt from the defendant what did you do with it?

20    A             I bagged it at the law enforcement center and transferred it back to my office for  
21             further testing.

22    Q             Why was that further testing that's done at your office?

23    A             It's a more controlled area, better lighting, so I could see some things that I couldn't  
24             see on the items at the other location.

25    Q             Do you recall what specific further testing you did on State's Exhibit 27?

1 A Yes. I did a phenol saline test. I also tested blood. I did the front of the shirt and the  
2 front of the pants.

3 Q How does that work? What is a phenol saline test?

4 A There's three ingredients we use: alcohol, phenol saline agent, and peroxide. We use  
5 a cotton swab and find the area we believe to be suspected blood. We dip the swab in the  
6 ingredients and apply it to the area to test for hemoglobin, the presence of blood. If that is  
7 present in the swab it will turn pink for a positive reaction.

8 Q Now, generally speaking, if you get a positive reaction and it turns pink, showing the  
9 presence of hemoglobin, what do you do as part of your role in processing that item?

10 A If it's the only sample we have that swab will be kept and used for testing for  
11 probable DNA. In this case, there were larger areas that I did not take, but those areas were  
12 notated. Once the item was sent off to a lab to be further tested for DNA they would go there  
13 and test that.

14 Q Now, did you do specifically with State's Exhibit 27 after you conducted this  
15 presumptive test? Did you get a positive result?

16 A That's correct.

17 Q What did that positive result indicate to you?

18 A That the two areas of the bottom of the shirt contained suspected blood.

19 Q So, what did you do then with that shirt?

20 A After the test was conducted, it was packaged and turned into property and evidence.

21 Q Did you, yourself, put it into property and evidence?

22 A That's correct.

23 Q Now, let's talk specifically about State's Exhibit 28, which are the pants. I know you  
24 have testified that you conducted a presumptive test on both items. Did you get a positive  
25 result with the test you conducted on State' Exhibit 28?

1 A Yes.

2 Q What did you do with State's Exhibit 28?

3 A Same thing. There are actually two areas on here that I tested for suspected blood,  
4 one was the lower pants leg, which turned out negative. The other part of the pants came  
5 back positive. As with the shirt, that was repackaged and turned over to property and  
6 evidence.

7 Q What was your understanding of what would happen to the evidence after it was  
8 submitted to property and evidence?

9 A After I completed my test and returned those items to property and evidence, those  
10 results were then sent off to another lab at the request of the investigating officer from the  
11 Sheriff's Office.

12 Q With respect to both items, the shirt and the pants, after you initially submitted them  
13 to property and evidence to be further tested at another lab, did you interact with those items  
14 again?

15 A No, I did not.

16 Q I'm going to let you take a look at your report to see if it refreshes your memory. Just  
17 take a look at that.

18 A (pause to review report)

19 Q I could be unclear about how the items were handled, and I want to ask you to help  
20 the jury understand what happened to these two items, how the process evolved.

21 A These items were checked out and brought back to our office for processing.

22 Q Is it protocol for you to insure that when you transport these items that they remain  
23 sealed so that they cannot be contaminated or tampered with?

24 A Correct.

1 Q If you had retrieved those items from storage and they appeared to have been no  
2 longer sealed what would you have done?

3 A I would have advised the officer in charge of the case.

4 Q Would you ever have transported any items that were previously sealed and were now  
5 unsealed?

6 A No.

7 Q When you checked those items into the property and evidence storage room did you  
8 make sure they were sealed?

9 A Yes, I did.

10 Q Now, one final thing. When the defendant was brought back to the law enforcement  
11 center and you took photographs of the defendant, is that Mr. Evatt that you see in court  
12 here today?

13 A Yes ma'am.

14 Q Do you recall whether you secured a DNA sample from him?

15 A Yes, I did, using a bucal swab, swabbed the inside of his cheek, which was submitted  
16 for analysis.

17 Q And that was called what?

18 A A bucal swab.

19 Q A bucal swab. Okay. And you said the process is swabbing the inside of the cheek?

20 A Yes ma'am.

21 Q What do you do with that swab once you collected the specimen?

22 A It's put back into its own, little package, sealed and turned into property and  
23 evidence.

24 Q Do you or anybody in your forensic division do any analysis pertaining to those kinds  
25 of tests?

1 A No ma'am.

2 Q Thank you. Please answer any questions for Ms. Manigault.

3 The Court: Ms. Manigault.

4 Ms. Manigault: Thank you, Your Honor.

5 **CROSS EXAMINATION BY MS. MANIGAULT:**

6 Q Mr. Derby, do you have a copy of your report right there?

7 A Yes.

8 Q What items did you receive, collect when you were at the LEC? What items did you  
9 receive?

10 A The bucal swabs, individual's shirt, pants, black athletic shoes, boxers.

11 Q Boxers being underwear?

12 A Yes.

13 Q Were all of these items submitted for further testing in the lab?

14 A As I said earlier, we package them up and place them in property and evidence. It's  
15 up to the investigating officer to determine if they need to be sent off for further testing.

16 Q What was the last part of what you said?

17 A It's up to them to determine if they need further testing.

18 Q It's up to the investigating officer?

19 A Yes.

20 Q But you have testified that you, yourself, did test two areas on Mr. Wallace Evatt's  
21 shirt?

22 A That's correct.

23 Q And two areas on his pants?

24 A That's the correct.

1 Q And you testified that the suspected area on the bottom of his shirt was a positive  
2 result?

3 A That's correct.

4 Q You tested the pants and the test areas on the pants, one was positive for blood and  
5 one was negative?

6 A That's correct.

7 Q Did you test any other areas on the shirt or on the pants that you have not testified to  
8 today?

9 A No ma'am.

10 Q And when you finished your test you said you repackaged it and placed it back into  
11 property and evidence?

12 A That's correct.

13 Q Thank you.

14 The Court: Thank you. Step down.

15 Ms. Salisbury: Your Honor, if I could, very brief re-direct.

16 The Court: All right.

17 **RE-DIRECT EXAMINATION BY MS. SALISBURY:**

18 Q Mr. Derby, I'm going to show you State's Exhibit 43. Do you recognize what's  
19 depicted in that photograph?

20 A That's the shirt that I collected.

21 Q Is that the same blue shirt that the defendant was wearing the day you took it from  
22 him at the law enforcement center?

23 A Yes ma'am.

24 Q And is that the same shirt that you performed the phenol saline test on that same day,  
25 or in the days following?



1 A That's the same shirt I tested.

2 Q Is that a picture of the shirt that was collected from the defendant?

3 A Yes.

4 Ms. Salisbury: Your Honor, I offer State's 43 into evidence.

5 The Court: Any objection to the shirt?

6 Ms. Manigault: I'm gonna object, Your Honor. He said that he didn't mark the shirt,  
7 so I'm gonna object to this picture.

8 The Court: I overrule your objection. Put it in.

9 Ms. Salisbury: Thank you, Your Honor.

10 (whereupon State's Exhibit Number 63 was admitted into evidence over objection)

11 Ms. Salisbury: With the court's permission I'd like to publish this to the jury.

12 The Court: All right.

13 Q Mr. Derby, the reason I'm putting State's Exhibit 43 up here is so you can show the  
14 jury precisely what areas of the shirt you conducted the presumptive test on that day. Please  
15 use the pointer to do that.

16 A This area is the area I tested, and this one here. You can see the outline of where I  
17 tested.

18 Q So, is it your testimony that the presumptive phenol saline test that you did  
19 immediately after collecting the shirt was on just these two areas of the shirt?

20 A That's correct.

21 Ms. Salisbury: No further questions.

22 The Court: Any further questions, Ms. Manigault?

23 Ms. Manigault: None, Your Honor.

24 The Court: Thank you. You may step down.

25 Ms. Salisbury: The State calls Tyler Bucholtz.

1 TYLER BUCHOLTZ, duly sworn, testified as follows:

2 Clerk of Court: Please state your name for the record.

3 A Tyler Bucholtz.

4 Clerk of Court: Thank you. You may be seated.

5 **DIRECT EXAMINATION BY MS. SALISBURY:**

6 Q Mr. Bucholtz, where do you work?

7 A Greenville County Forensics.

8 Q How long have you been with Forensics?

9 A Since January of 2009.

10 Q What are your duties and responsibilities at Forensics?

11 A I'm currently a latent print examiner.

12 Q What was your capacity back in May of 2009?

13 A I was a Forensic Investigator, which at that time I would respond to crime scenes,  
14 document the scene and process it.

15 Q Do you recall responding to the scene of the incident about which we're in trial  
16 today?

17 A I responded to the autopsy.

18 Q What was your role at the autopsy?

19 A I first documented what I observed when I saw the victim; took photographs of her;  
20 and collected items from her person.

21 Q I'm going to show you State's Exhibit 17 and ask you if you recognize that item?

22 A That is Item A which was bags from Ms. Rojas' hands.

23 Q Did you collect those off her?

24 A Yes.

25 Q What did you do with those bags after you collected them there?

1 A They were packaged and placed in property and evidence.

2 Q Did you place them there?

3 A Yes.

4 Q Now, after you removed the bags from the hands, did you conduct any tests at that  
5 point?

6 A Yes. After reviewing them and after Doctor Ward observed the hands, I did a  
7 gunshot residue test kit. There's two parts to that, which is a standing electron microscope  
8 and we take daubers and daub the backs of both hands, and the palms of both hands. And  
9 then the second part is the atomic absorption where we take cotton swabs and swab the back  
10 and front of both hands.

11 Q So, in what order are those tests performed?

12 A The SEM is first, the daubers, and it doesn't matter which hand comes first. The  
13 daubers are used first to collect any large particles on the hands. And then the cotton swabs  
14 are used after that to collect any smaller particles.

15 Q And are these swabs unused?

16 A Everything comes in a sterile package.

17 Q Mr. Bucholtz, I'm going to show you State's Exhibit 29 and 42. Do you recognize  
18 those items?

19 A Yes.

20 Q How do you recognize them?

21 A I wrote the case numbers in my handwriting, the subject's name, and that was  
22 collected by myself, my unit number and my initials.

23 Q Now, after you performed the actual swabbing and collecting process what did you do  
24 with the materials that you used to perform those tests?

1 A It's placed back into the-- The swabs are placed back into a sealed container, and  
2 then the daubers are also placed back in the sealed containers, placed in here and taken to  
3 property and evidence.

4 Q Did you take and secure both of those little boxes?

5 A Yes.

6 Q What did you do with them after you secured them?

7 A They were placed into property and evidence.

8 Q Did your office or anybody in your office actually conduct an analysis on what was  
9 collected?

10 A No.

11 Q Now, did you perform a gunshot residue test anywhere on Ms. Rojas' hands?

12 A I did not.

13 Q Now, let's talk about what else was collected from Ms. Rojas. Do you remember  
14 what Ms. Rojas was wearing?

15 A I believe she was wearing a long shirt, and something over that, I'm not sure what  
16 that was.

17 Q Could it have been a robe or a bathrobe?

18 A Yes.

19 Q Do you remember collecting that item?

20 A Yes.

21 Q How do you handle an item like that when it's collected?

22 A In a case when it's this type of situation we wear gloves and remove the item, place it  
23 in a paper bag and the paper bag is then sealed up. If it's wet we take it to the office and put  
24 it in a drying chamber. Once it's dry, then it's repackaged and placed in property and  
25 evidence.

1 Q What is this drying chamber like? Is it a big room?

2 A It's a locked-- At the time it was a locked trailer outside the office.

3 Q And how long does a particular item dry remain in this area until you take it and  
4 package it?

5 A Until it dries, which varies, but usually a day or two.

6 Q Now, at the autopsy, did you collect any other items of evidence?

7 A Yes. We collected nose and hair samples from Ms. Rojas, as well as fingernail  
8 clippings.

9 Q What's the purpose of collecting those items?

10 A For DNA elimination or testing.

11 Q Did anybody at your forensic office perform that DNA analysis?

12 A No.

13 Q After the autopsy did you have any further involvement with collecting evidence in  
14 this case?

15 A No. Just placing the items collected in the drying chamber and transporting all the  
16 evidence to property and evidence.

17 Q Was every item you collected sealed when you transferred it to property and  
18 evidence?

19 A Yes.

20 Ms. Salisbury: Your Honor, I move State's Exhibit 17 into evidence.

21 The Court: Any objection, Ms. Manigault?

22 Ms. Manigault: No objection.

23 The Court: Without objection.

24 (whereupon State's Exhibit 17 was admitted into evidence without objection)

25 Q If you would, answer any questions Ms. Manigault has.

1 The Court: Cross examination.

2 Ms. Manigault: Thank you, Your Honor.

3 **CROSS EXAMINATION BY MS. MANIGAULT:**

4 Q You said you collected fingernail clippings from Karen Rojas?

5 A Yes.

6 Q Before or during the autopsy, or during that process?

7 A I did.

8 Q What did you do with the fingernail clippings that you collected from Karen Rojas?

9 A Those would have been placed in property and evidence. If I could look at my report  
10 I could refresh my memory.

11 (pause to review report)

12 Yes. I collected the fingernails from the left hand and the fingernails from the right  
13 hand.

14 Q And---

15 A As well, I rolled her fingerprints.

16 Q And when you placed-- You did not do a particular test on that; you collected it and  
17 bagged it and sealed it and placed it in property and evidence?

18 A Correct.

19 Q And it's not your decision as to whether it gets tested or not?

20 A No.

21 Q I believe I heard you say that you were wearing gloves?

22 A Yes. When I am collecting stuff which may be used for DNA, the gloves are changed  
23 each time. If I were to collect hairs I would use sanitary gloves; change the gloves to collect  
24 the fingernails; change the gloves to collect other items. Gloves are changed a lot during that  
25 type of collection.

1 Q Why is that?

2 A For the purposes of cross-contamination so that fingernail DNA, and the hair DNA,  
3 and the clothing DNA is not exposed to each other.

4 Q Before you collected from Ms. Rojas at the autopsy, you did not, did you know how  
5 the other technicians or the other people collected their information?

6 A No.

7 Q What date did you do the collection?

8 A On the 18<sup>th</sup> is when I arrived for the autopsy.

9 Q On the 18<sup>th</sup>?

10 A May 18.

11 Q What time was that?

12 A I got a call at 9:00, arrived at 9:10, and left the autopsy at 11:00.

13 Q And that's a.m.?

14 A Yes.

15 Q Now, could you explain the dauber, which you referred to as the SEM test, a little bit  
16 for me?

17 A Yes. It's basically like a cap on top of a bottle. Once you remove the cap, the back  
18 side of that cap is sticky. You daub that on that area and the sticky part of it collects up the  
19 particles, which I collected on the hands in that area. You place it back into the bottle and  
20 that's where it stays sealed until it's examined.

21 Q So, when you used the dauber, you used it on Ms. Rojas' left and right hand?

22 A Yes. The left back hand, right back hand, left palm, and right palm.

23 Q And you would have used the same dauber to do all that?

24 A No, it was four different ones.

25 Q Four different?

1 A One for each area, yes, as well as the other tests.

2 Q Then the same for the cotton swab. What did you refer to that as?

3 A Atomic absorption.

4 Q So there would have been four cotton swabs?

5 A Well, there's actually two each for each bottle, so eight cotton swabs.

6 Q Eight.

7 A So, two here, two here, two here, two here.

8 Q Okay. And you testified that you, yourself, removed the bags that were on Ms.

9 Rojas' hands and placed them in a sealed container and transported them to property and  
10 evidence?

11 A Yes.

12 Q Was anybody present when you did this?

13 A Sergeant Shaw was at the autopsy with me, as well as,-- I don't recall who else may  
14 have been.

15 Q Were they in a position to observe you removing the bags?

16 A Yes.

17 Q Thank you.

18 The Court: thank you. Step down

19 Ms. Salisbury: Your Honor, the State calls Sergeant Dar Shaw.

20

21

22

23

24

25



1                                   **DARWIN SHAW**, duly sworn, testified as follows:

2                   Clerk of Court: Please state your name for the record.

3       A                   Darwin Shaw

4                   Clerk of Court: Thank you. Have a seat.

5       **DIRECT EXAMINATION BY MS. SALISBURY:**

6       Q                   Sergeant, where do you work?

7       A                   Department of Public Safety, Greenville County Forensic Division

8       Q                   How long have you been with the Forensic Division?

9       A                   Thirteen and a half years.

10      Q                   What's your capacity at Forensics?

11      A                   Currently I'm a sergeant and a technician.

12      Q                   What was your capacity in May of 2009?

13      A                   Sergeant.

14      Q                   What do your duties entail as a sergeant in the forensics division?

15      A                   As a supervisor, I collect reports, I read over the other officers' reports to make sure  
16                   the context is accurate, make sure that the processing that they do at scenes is correct. I also  
17                   answer calls as well as the other technicians. Sometimes more major calls I will answer.

18      Q                   Do you remember becoming involved in the case that's the subject of this trial here  
19                   today?

20      A                   Yes, I do.

21      Q                   How did you get involved in this case?

22      A                   I was requested to go to an autopsy.

23      Q                   Did you ever go to the scene at the time the incident happened?

24      A                   Later on, the next day.

25      Q                   What did you do at the autopsy?

1     A             Basically, Technician Bucholtz did the preliminary findings, photographs, collecting  
2             any evidence. I stood by to make sure that he did things correctly, since he had just recently  
3             started. It was one of the first autopsies he attended. To make sure that he did the GSR  
4             properly and collected the appropriate piece of evidence.

5     Q             After the autopsy, what was your next role in the investigation in this case?

6     A             I was requested to respond to the incident location.

7     Q             For what purpose?

8     A             To try to find the projectile. At the autopsy no projectile was found, which led us to  
9             believe there should be a projectile at the trailer.

10    Q             When you went to the home who was with you?

11    A             I went out by myself at first and then with the investigators on the scene.

12    Q             Tell us a little bit about your observations when you showed up at the home.

13    A             As I went in, I went in through a side door. It was a trailer. And as I walked in there  
14             was a kitchen to the right. To my immediate left, a living room with a couch, a love seat.  
15             There was an area of suspected blood on the carpet in between the couch and love seat. And  
16             farther behind that was a bedroom.

17    Q             Sergeant, I'm going to show you State's Exhibit 25 and ask you if you recognize what  
18             that is?

19    A             I do.

20    Q             What is it?

21    A             It's a diagram of the trailer of the victim.

22    Q             Is it an accurate depiction of what Ms. Rojas' trailer looked like?

23    A             Yes.

24             Ms. Salisbury: Your Honor, the State offers Exhibit 25.

25             The Court: Any objection?

1 Ms. Manigault: No objection, Your Honor.

2 The Court: It's in.

3 (whereupon State's Exhibit Number 25 was admitted into evidence without objection)

4 Q Sergeant, in an effort to assist the jury in learning what you did there that day, if you  
5 could, there's a little laser pointer to your left, where did exactly did you enter the home?

6 A Through the door here. I come up the steps onto the porch and through this door.

7 Q By the time you got there what did the home look like?

8 A It looked like any other normal residence.

9 Q Let me a little more clear. Had the all evidence been collected? Was there anything  
10 remaining there in terms of evidence?

11 A On the original scene there was no visible evidence which I had seen the photographs,  
12 the weapon, the holster, that type of thing. So, I was primarily there to see if there was any  
13 other potential evidence that needed to be collected.

14 Q Where did you begin your search?

15 A Because of the area that's got the blood on the floor in this area, I started looking,  
16 trying to find where the projectile may have gone. As I was looking behind this love seat  
17 was a set of windows. In the wood frame between the two windows, I saw a hole that very  
18 well could have been, I believe could have been a projectile hole in the wood.

19 Q I'd like you to take a look at State's Exhibit 30 and ask you if you recognize what's  
20 depicted in that image.

21 A I do.

22 Q What's in that image?

23 A That's the photograph that I took of this hole that I had observed in that area behind  
24 the love seat.

25 Q Is that an accurate representation of what you saw that day?

1 A It is.

2 Ms. Salisbury: Your Honor, the State offers Exhibit 30.

3 The Court: Any objection?

4 Ms. Manigault: No objection, Your Honor.

5 The Court: It's in.

6 (whereupon State's Exhibit Number 30 was admitted into evidence without objection)

7 Q Sergeant, would you point out to the jury what we're discussing?

8 A There's a window to the left and a window to the right and in between is a wood  
9 frame. In this wood frame is this hole that looked-- And there's also a little area on this side.  
10 I was unsure what may have caused it. Because of the location and the diameter I wanted to  
11 see if there was where a projectile may have been.

12 Q How did you make that determination?

13 A One of the things that I wanted to try to determine, if it was in fact a projectile hole  
14 that was made, that went through Ms. Rojas, there may possibly be blood around that hole or  
15 somewhere on that frame. So, I did a phenol saline test which is a presumptive test for blood  
16 and swabbed inside the hole as well as around the hole to see if there was any signs of  
17 suspected blood. There was none. I got no positive results from that.

18 Q Were you able to determine whether that hole in that window frame were connected  
19 to the projectile that killed Ms. Rojas?

20 A I couldn't rule it out, but I just didn't feel at that time, because there was no-- If there  
21 might be other places I would need to look to try to find the projectile.

22 Q So, did you keep looking?

23 A I did.

24 Q What did you do?

1 A As I was scanning-- We normally use a flashlight to detect different areas. I looked  
2 from the side wall above the couch, which was on this side of the room. On the very top  
3 where you have acoustical tile like you have here there was a hole in the acoustical tile.

4 Q I'm show you State's Exhibit 31 and ask you if you recognize this photograph.

5 A I do.

6 Q What is that a photograph of?

7 A This is a hole that I found in the tile. Because I was not sure as to what may have  
8 caused the hole, I tried to search a little bit more. Took a trajectory line and kind of stuck it  
9 up through the hole and moved some insulation around, and then I seen daylight coming  
10 through the whole inside the tile.

11 Q Is what is depicted in State's Exhibit 31, an accurate depiction of the ceiling tile that  
12 you observed in Ms. Rojas' home?

13 A It is.

14 Ms. Salisbury: Your Honor, the State offers Exhibit 31.

15 The Court: Any objection?

16 Ms. Manigault: No objection, Your Honor.

17 The Court: It's in.

18 (whereupon State's Exhibit Number 31 was admitted into evidence without objection)

19 Q Would you describe what's depicted in State's Exhibit 31 as it relates to the ceiling  
20 tile?

21 A This is the hole that I observed in the ceiling tile. This is the paneling and the light  
22 below the paneling is the direction of the couch. There was insulation up in the ceiling of  
23 this trailer and when I tried to move it around I could see daylight coming through leaving it  
24 exposed to the outside.

1 Q Now, using State's Exhibit 25, could you show the jury where this ceiling tile with a  
2 hole in it is?

3 A It's above the couch, possibly, somewhere in this area above these windows, up in the  
4 ceiling above the couch.

5 Q Now, after you saw this daylight, what did you do to further that investigation?

6 A Once I saw the daylight I presumed that the projectile may have gone clear through  
7 the trailer and may have gone out to the roof or somewhere. So, I got a ladder and climbed  
8 up along the side of the trailer on the front of the trailer and looked at the roof to see if I  
9 could find where a projectile may have exited.

10 Q While you were up on the roof what did you do?

11 A I saw a, I guess I'd call it a protrusion. It was dented from inside out, the metal and  
12 there was a little crack in it. So, I took my pen and I laid my pen across the outside so I  
13 could photograph from ground level where that protrusion was at on the outside on the roof.  
14 I then checked on the inside and it was in a comparable area of where the hole in the ceiling  
15 was at. So, I believe that protrusion was made by the projectile.

16 Q So, what did you do to try to locate where this projectile may be?

17 A After I photographed the protrusion in the ceiling then I went back down and cut a  
18 piece of the ceiling tile out so I could get my hand in there to gain access. As I was moving  
19 insulation around and exposing that area I found a fired projectile in the insulation.

20 Q I'm going to show you State's Exhibit 32. Open that envelope and tell me if you  
21 recognize what's described there.

22 A I do.

23 Q How do you recognize it?

24 A It's in my handwriting and it is described as projectile from south wall in front of  
25 couch.

1 Q After you retrieved that projectile, what did you do with it?

2 A It went into a coin envelope and it was later sealed and put in property and evidence.

3 Q Did you seal it in that bag we see there?

4 A It was a small, manila envelope, a coin envelope that it was put in originally. I did  
5 put it into a large manila envelope and put all the information, case information on the  
6 outside of the manila envelope.

7 Q You were talking about cutting a piece of the ceiling tile. Before I get to that, I want  
8 you to take a look at State's Exhibit 33. Do you recognize what's depicted in that  
9 photograph?

10 A I do.

11 Q What is that a photograph of?

12 A That's a photograph of a laser beam. I had placed a trajectory rod that had a laser  
13 attachment on the end through the hole in the ceiling, trying to, after I found that protrusion  
14 in the metal and tried to line it up to try to determine the path the projectile would have taken.

15 Q Is that an accurate depiction of the laser that you placed there?

16 A Yes, it is.

17 Ms. Salisbury: Your Honor, the State offers Exhibit 33.

18 The Court: Any objection?

19 Ms. Manigault: No objection, Your Honor.

20 The Court: It's in.

21 (whereupon State's Exhibit Number 33 was admitted into evidence without objection)

22 Q In an effort to help the jury understand I'm going to put this on the screen to show  
23 them what it is that you did to help estimate the directionality of that projectile.

24 A Just as with this laser, if I point the laser at an area, that light's gonna go from the end  
25 of this pin to where the dot is at. So, my hope was to put the laser on the trajectory rod,

1 insert it into the hole so that two ends, with one end leading to the protrusion in the metal.

2 There is a plastic cone that goes on to help stay the trajectory rod. Put that in place and turn  
3 the laser on to see where the beam would shoot down to give me a possible projectile path.

4 Q Based on how that laser was predicting, did it seem consistent to you to correspond  
5 with the blood or the suspected blood on the carpet there?

6 A It was not in the same area where the suspected blood was at.

7 Q Was the path of that projectile, were you able to rule it out as having been the  
8 projectile that was responsible for Ms. Rojas' death?

9 A I believe that was responsible in that I had used the phenol saline test. I had also  
10 surrounded the area of the hole and got a positive result for suspected blood on the ceiling  
11 tile. So, I believe that to have been the projectile that had come through.

12 Q You were describing to the jury what you did after you got into the ceiling and to  
13 essentially locate the projectile you cut out this piece of ceiling tile. What did you do once  
14 you had access to that ceiling area?

15 A Basically, it was just a matter of getting in there trying to locate a projectile that I felt  
16 like was involved in the shooting of Ms. Rojas.

17 Q When you're describing this trajectory, the path of the projectile, do you determine  
18 and make those estimations before or after you removed that piece of ceiling tile?

19 A Originally it was before. Before I cut the piece out that's where the trajectory rod had  
20 been placed before that piece had been cut out. There was an estimation of maybe 26 to a 30  
21 degree angle of ascent which is because the projectile was found in the ceiling that says the  
22 projectile traveled from low to high. It kind of gave me an area as to-- It could fluctuate a  
23 little bit as far as the angle it went in, but the direction or path of it should have been in that  
24 same path.

25 Q I'd like to show you State's Exhibit 35 and ask you if you recognize that photograph?



1 A I do.

2 Q What's that a picture of?

3 A That is a picture of the trajectory rod in place with the laser attachment. It's just a  
4 different angle in which the photograph was taken.

5 Q Is that an accurate depiction of how you measured the trajectory of this projectile?

6 A It is.

7 Ms. Salisbury: Your Honor, the State offers Exhibit 35.

8 The Court: Any objection?

9 Ms. Manigault: No objection, Your Honor.

10 The Court: It's in.

11 (whereupon State's Exhibit Number 35 was admitted into evidence without objection)

12 Q Again, I'm going to put this on the screen so you can show the jury exactly how you  
13 determined the path of the projectile. What are we looking at in this picture?

14 A This is the window. The couch is right below it. Then there's the ceiling tile. I  
15 talked about the plastic cone. Because a projectile is always completely circular and the  
16 same diameter as the trajectory rod, there would be no fluctuation there because this would  
17 meet at an angle. The forms were elongated, so I used the plastic cone to center the  
18 trajectory rod into that hole so that would give a more honest estimation as to the path of the  
19 projectile.

20 Q What's on this end of that trajectory rod? Is that a little laser gadget?

21 A This is a laser. It is centered. It is screwed onto the end of the trajectory rod. The  
22 laser, again, as this laser would be, it comes out the end, it shoots a beam in the opposite  
23 direction.

24 Q What was the purpose of that laser? How did that help you understand the  
25 directionality of the projectile?

1 A What I'm looking to find out is possibly where Ms. Rojas would have been standing  
2 at the time the weapon was fired. That eliminates area like the kitchen. It eliminates  
3 different areas throughout the house. If I can determine that path that projectile took, if it  
4 goes from one, from point a to point b, does not strike an object that could throw it to a  
5 different angle, that pretty much tells you that's the path, and that's where the projectile  
6 would have been fired from, that same direct path.

7 Q I'm going to show you State's Exhibit 34. If you would open that envelope and tell  
8 me if you recognize what's inside.

9 A I do.

10 Q How do you recognize it?

11 A It has my initials, DSII. It says piece of ceiling tile from the area where the suspected  
12 projectile was found. It's in my handwriting.

13 Q What did you do with that ceiling tile once you removed it from Ms. Rojas' home?

14 A Originally it had been packaged to be put in P&E. It was later retrieved when we  
15 went back out to the scene to try to do some additional testing.

16 Q After you did that additional testing, did you again return it to property and evidence?

17 A Yes ma'am.

18 Q Does it appear that it's been tampered with in any way after you sealed it and  
19 submitted it?

20 A It has my initials. Somebody has opened it and it has been resealed. It does have my  
21 initials on it. It should not have been anybody other than the initials that are on there.

22 Q Now, that day, after you employed the trajectory rod and located the projectile, did  
23 you do anything else inside Ms. Rojas' home on that day?

24 A I don't believe so.

1 Q Jumping forward a little bit. Do you remember with respect to State's Exhibits 9 and  
2 10, examining those items?

3 A (no response)

4 Q If you'd like I can show you the property report that goes with those items.

5 A Let me just confirm the serial number.

6 (pause)

7 I believe this is the same weapon that I have tested.

8 Q Does your signature appear on that property report?

9 A It does.

10 Q What does it mean to you that your signature is on that report?

11 A That means that I retrieved this evidence for additional testing.

12 Q Can you tell the jury what additional testing you did with respect to these two items?

13 A Normally what we going to do as far as a weapon is concerned is we're going to try to  
14 swab for DNA. We normally swab the barrel, the trigger, and the grip, which will help give  
15 us an ID as to who has handled it, if there's DNA present, no matter whose it is on that  
16 weapon. We also fume it with superglue which is a process we use for trying to get  
17 fingerprints off a weapon. And those things were all done in this case.

18 Q Now, with respect to the holster, did you conduct any DNA swabbing of the holster?

19 A I did as well on the holster.

20 Q Does anybody in your office do analysis with respect to those swabs?

21 A No. Everything that we collect as far as potential evidence where there needs to be  
22 some type of additional testing that would lead to a lab, that's all requested by an officer, by  
23 an investigator. We have no lab to do that type of testing.

24 Q So, with respect to those items, 9 and 10, the gun and the holster, you performed  
25 DNA swabs?

1 A That's correct.

2 Q As well as this superglue fuming test for fingerprints?

3 A That's correct.

4 Q Again, with respect to the prints, did anybody in your office actually analyze the  
5 fingerprints or swabs?

6 A Other than our latent division and myself, no. I try to retrieve the DNA for testing as  
7 well as the fingerprints.

8 Q Now, is that handgun that you retrieved and tested the same one that was submitted  
9 back to property and evidence?

10 A Yes.

11 Q Let's talk about when you inside Ms. Rojas' home. Do you recall making a second  
12 trip out there?

13 A Yes.

14 Q Do you recall how much later that was?

15 A I believe it was two days later.

16 Q What was the purpose of that?

17 A To try to do some additional testing. I didn't know if there was any other evidence,  
18 but because of the situation with where Ms. Rojas', we believe she was standing, we wanted  
19 to clarify in our minds that we had done everything we could to ensure that this was  
20 investigated.

21 Q Sergeant, I want to show you State's Exhibit 36. I'd like you to take a look at this  
22 picture and tell me if you recognize what's in that photo?

23 A I do.

24 Q Of what is that a photograph?

1 A That is a photograph of the suspected blood on the carpet. It had been sprayed with  
2 LCD, which is a chemical that we spray upon areas of suspected blood. It actually turns it a  
3 purple color, violet color. What we try to do is try to find the large areas of suspected blood  
4 on the carpet. We wanted to find out if there was more and how far it expanded, if it was  
5 under the couch, and any other areas that we may not have seen in the prior processing.

6 Q How does this test work? Is it liquid, is it powder? What do you do to perform this  
7 LCD test?

8 A It's a clear liquid. It's a chemical that's made for this purpose, to bring up or  
9 enhance what may or may not be visible with the naked eye. It's a mist. You spray it and as  
10 soon as it comes in contact with blood it turns blue or a violet color, and that's the process  
11 that we use.

12 Q Now, we've already heard a little about phenol saline testing. How is this LCD  
13 testing different from phenol saline?

14 A Phenol saline is a presumptive test for blood where it's something that you see that  
15 you may say could this or could this not be blood. You can do a phenol saline test and the  
16 reaction to it says that the presumptive test and there may be additional testing to be done.  
17 But it turns the color that it's supposed to immediately.

18 The LCD, it originally was for trying to locate fingerprint blood, you know, for blood  
19 with fingerprints. And it also sometimes if somebody walks through blood, you don't see it  
20 because it's fading out slowly. If you spray LCD a lot of times that will enhance and bring  
21 up the footwear. So, the intent is to try to find other areas that are not visible, that may be  
22 smaller that would be detected by the LCD.

23 Q Why did you choose to use LCD instead of phenol saline to do this test?

24 A Trying to-- The large spots, you can do a phenol saline; that's a presumptive test.  
25 The LCD, what we try to do is see if there was additional areas that we could not see that

1 might be expanded out farther; in front of the couch, clear down into the living room, in  
2 different areas. And we wanted to try to find the outermost area where we saw any suspected  
3 blood.

4 Q Now, you mentioned that it turns a blue or a purple color. How long does it take to  
5 have a reaction, to show that reaction. We know with phenol saline, it shows that instant  
6 pink reaction. How long with the LCD?

7 A It's also immediate, an immediate reaction. The longer it sets, you do have sunlight,  
8 so that if you leave it on an object and it may turn the whole thing purple. So, it's gonna be  
9 an immediate reaction.

10 The Court: Solicitor, I think this would be a good time to stop for lunch.

11 Ms. Salisbury: Okay.

12 The Court: All right. We'll take a recess at this time. Lunch has arrived. Take the  
13 jury out.

14 (whereupon the jury exited the courtroom)

15 Let's try to start back at a quarter to two.

16 (whereupon court was in lunch recess)

17 **COURT IN SESSION**

18 The Court: Bring in the jury.

19 (whereupon the jury entered the courtroom)

20 Ms. Salisbury, you may resume.

21 Ms. Salisbury: thank you, Your Honor.

22 **RESUMPTION OF DIRECT EXAMINATION BY MS. SALISBURY:**

23 Q I believe when we left off we were talking about the carpet. Talking about the LCD  
24 test that was performed on the carpet to determine if there was presumptive blood. And I  
25 think what I was struggling to find there and sitting up here with you is State's Exhibit 36.

1 And to follow up about State's 36, could you tell the jury what is depicted in that image as it  
2 relates to this LCD testing?

3 A The discoloration of the carpet when it was sprayed with the LCD. Also a couple of  
4 pieces of tape were placed on, one on the couch and one at, like, a 45 degree angle away  
5 from the couch. Once we sprayed the LCD or sprayed on there, we tried to find the  
6 outermost area that we could find a possible blood. So, using the couch as a baseline as far  
7 as going in one direction and what we found, any drops that may have appeared on the floor,  
8 within certain boundaries, and any drops we found were found inside the pieces of tape.

9 Q And after you determined the boundaries of that area is that what this photograph  
10 depicted?

11 A That's correct.

12 Q Is that then an accurate depiction of the LCD results at the scene as well as the  
13 boundaries that you created for your observation there?

14 A Yes.

15 Ms. Salisbury: Your Honor, at this time we offer State's Exhibit Number 36.

16 The Court: Any objection?

17 Ms. Manigault: No objection, Your Honor.

18 (whereupon State's Exhibit Number 36 was admitted into evidence without objection)

19 Q Sergeant Shaw, what we are looking at now is State's Exhibit 25. And before I move  
20 the actual picture into evidence, can you identify with that laser pointer exactly this area of  
21 carpet that you sprayed and taped off the boundaries?

22 A We are looking at this area in front of the couch where the larger area of blood was  
23 found. It is an approximately four foot distance from the front of the loveseat to the front of  
24 the couch. We're talking basically from near this cushion where there is a larger area of  
25 blood over the piece of tape that is in front of the couch, and another piece of tape against,

1           trying to get the boundary of the outermost of any blood, from the larger amount to the  
2           smaller drops of blood that we found on the carpet.

3     Q           Now, let's look at Exhibit 36, which is the one you were just discussing a moment  
4           ago. And before we get started in that, this middle cushion from the couch has been  
5           removed. Is that something you did while you were inside the trailer that day?

6     A           Yes.

7     Q           And with respect to loveseat, is this bag something you brought inside or was that  
8           something that was inside the residence?

9     A           That should not have been in the photograph.

10    Q           Okay. So, you were just describing the boundaries on this. How, after spraying the  
11           LCD on the carpet did you create this boundary?

12    A           Again, we test pre-existing areas for suspected blood which are larger, a larger  
13           pattern. So, what I did was took the LCD and sprayed not only the top of this area, but  
14           continued to spray a mist across in this direction as well as across here to try to find any  
15           smaller areas of suspected blood. Once we found what were areas that were pretty much on  
16           the inside of this boundary, we took measuring tape and taped it to the floor basically  
17           showing what drops, blood drops that were too small to be depicted in the photographs. So,  
18           putting the tape also helped give an area to look at as far as saying that those drops were  
19           found in that area.

20    Q           Did you spray this LCD solution on that entire area of carpet that's between the couch  
21           on the front?

22    A           No. It was sprayed-- It was sprayed on various areas of the loveseat and the cloth,  
23           and we were looking for a reaction and that's as far as we could find within the tape.

24    Q           Was there any reaction from the LCD on any of the carpet between that angled  
25           boundary line on the loveseat?



1 A Not that I could find, no.

2 Q Did you spray the LCD solution on the loveseat?

3 A Later on I did, not at that particular time. But I did spray the LCD along the bottom  
4 part here, there on the base, along the cushion, on the arm rest. That was done as well as the  
5 back of the couch. Not necessarily the cushions. The cushions may have been moved at  
6 some point in time. The back of the couch and the loveseat, as well as the arm rest and along  
7 the base of the loveseat.

8 Q Did the LCD testing render any positive result anywhere on that loveseat?

9 A No, it didn't.

10 Q Real quickly, before we move to the couch, I want you to take a look at State's  
11 Exhibit Number 13. Mr. Whaley testified about his observations on this loveseat. And I  
12 wanted to ask you about whether you exhibited this same area of the loveseat when it was  
13 time for you to perform the testing inside the home.

14 Did you see this when you were inside for your second round of testing?

15 A It may have been. As far as the cushions and so on, my-- I don't know if something  
16 happened, like the day before. I don't know what actions were taken by the officers that  
17 worked ahead of me, if they actually had moved things. So, as far as that, I tape, when I get  
18 there, that's how I find it.

19 Q So, when you arrived, you observed this spot on the couch?

20 A Excuse me?

21 Q When you were at the home conducting your testing you observed on the couch -- I'm  
22 sorry -- the loveseat?

23 A You're talking this?

24 Q Yes sir.

1 A I believe I saw the photographs of it because I believe the report that said that he  
2 conducted a swab and so that may not have been there when I got there.

3 Q Okay. Nonetheless, when you performed the LCD analysis on the loveseat, was there  
4 any positive indication of the freshness of blood or any of the biological material on the front  
5 of that loveseat, or on the cushions or the arm rest that we just discussed?

6 A No, there were not.

7 Q Now, did you do the stain testing analysis with the LCD on the longer couch?

8 A No, I didn't.

9 Q Was there any-- When you were looking for a reaction and found very little, did you  
10 look to see if there could be any suspected blood on the couch?

11 A I did. I used my flashlight and the thing was because of the very minimal amount that  
12 was found on the ceiling tile. There were a couple of swabbed areas. There was nothing  
13 visible on the cushions. But again, I'm not sure if those cushions had been moved from the  
14 time the incident occurred until I got there.

15 Q Well, then, let's talk about this boundary area, this area in which the suspected blood  
16 is concentrated. I want you to take a look at-- Well, it may not be clear in that photograph.  
17 Looking in State's Exhibit 19. Have you seen this before?

18 A I have.

19 Q Did you observe this area of the carpet as it existed inside the trailer when you came  
20 back to do your testing?

21 A I did.

22 Q Were you able to determine whether all of the blood that is visibly apparent without  
23 being LCD testing, is of a similar quality?

24 A From what, from looking at what I have seen in this photograph I saw the majority  
25 with this photo as well as when I got there, there were areas like this that appeared to be

1        droppings. They were a very fine mist. You can't specifically get a pattern type off a carpet  
2        because it's so porous. But if there are larger quantities you're going to pick up larger areas  
3        of droppings saturated in the carpet. And you also have this, which would not be a pattern  
4        like a drop. It looked like to me like a swipe mark, something that has drug across that carpet  
5        to make this type of stain, not a blood drop.

8 A I recognize the handwriting as being mine to indicate it's a section of carpet cut out  
9 from the living room carpet at \_\_\_\_\_, Piedmont, South Carolina.

11 A Yes, I am.

13       A                   Yes, I did.

15           The Court: Any objection?

17           The Court: Without objection, it's in.

19 Q Sergeant, if you would unwrap that exhibit. I'm going to put State's Exhibit 25 back  
20 up. And if you could help the jury understand where this piece of carpet came from in the  
21 home.

1 Q Now, you mentioned that after you sprayed the LCD on the carpet, it reacts in a blue  
2 or violet manner. Is that what we're seeing on this carpet?

3 A Yes ma'am.

4 Q Now, it looks that there is a lot of reaction in this area outside of the taped boundary.  
5 Is that what it looked like when you wrapped up the carpet?

6 A No, over time, that's what happens. As you spray the LCD, areas that you've  
7 sprayed, after it sits, it can turn other areas to a bluish, violet color.

8 Q Was there any area outside of this angled boundary that exhibited a positive result  
9 when you performed the test back in May of 2009?

10 A No. That was the reason for putting the tape, was that the outermost barrier that could  
11 be found as far as any suspected blood.

12 Q Now, let's talk about this area that we were just looking at in State's Exhibit 19.  
13 Would you show the jury, and we'll hold it up if we need to, where that, the difference in, I  
14 guess what I want to say, is the caliber of blood spotting on this carpet is.

15 A We're looking at a saturation of blood in this area, as well as this area and in this area  
16 here. You can see this piece that comes out, that is consistent with what I said it being  
17 swiped. The blood being drug across in front of the area. Same thing in this area. That is  
18 what you see in the photo.

19 Q And this larger spot and the swipe that you just described, is that where Ms. Rojas'  
20 mouth was resting on the carpet?

21 A That's correct.

22 Q Now, after you came and actually performed your test and taped your measurements  
23 and cut this sample of carpet, what did you do then?

1 A We were trying, not recreate, but trying to answer in our mind any possibility of  
2 where Ms. Rojas may have been standing at the time of the shooting. So, we did some more,  
3 I guess you call it investigating techniques by using a mannequin, a mannequin head.

4 Being at the autopsy, I knew where the entrance was, as well as the exit. So, we were  
5 trying to reconstruct or trying to understand where the victim was at. I used a mannequin to  
6 try to give us a better understanding of where Ms. Rojas may have been at the time the  
7 shooting occurred.

8 Q Why was it so important to you to determine where Ms. Rojas was standing at the  
9 time the shot was fired?

10 A You're always trying to look at possibilities, for information that we get from  
11 investigators. We wanted to insure that we're looking in the right direction as far as is it  
12 possible where Ms. Rojas, her final position on the carpet, could that have happened from the  
13 projectile path, and the trajectory of the path. To say if Ms. Rojas was standing at that  
14 location, how did she get in the position that she was in.

15 Q What about the process? Did you and the Forensics Division prepared some  
16 simulations to help map out the possibilities of what happened on May 17?

17 A Yes.

18 Q I'm going to show you State's Exhibit 37. Do you recognize that item?

19 A I do.

20 Q What is that?

21 A This is a 3-D diagram, using the figures that were obtained from the trajectory as well  
22 as the carpet where it had been cut out, the location of the couch and the loveseat. And  
23 knowing the path the projectile took, the possibility of the location of Ms. Rojas at the time  
24 the weapon was fired.

25 Ms. Salisbury: Your Honor, I'd offer State's Exhibit 37.

1 The Court: Any objection?

2 Ms. Manigault: No objection, Your Honor.

3 The Court: It's in.

4 (Whereupon State's Exhibit Number 37 was admitted into evidence without objection)

5 Ms. Salisbury: With the court's permission, I'd like to publish it to the jury.

6 The Court: Yes ma'am.

7 Q Now, Sergeant, if you could, help the jury understand what we're looking at in this  
8 picture. I'll start this way: Does this diagram show the directionality of the projectile as you  
9 calculated it with that trajectory that we saw earlier with the laser?

10 A Yes. The path that-- In our estimation, that's the path the projectile would have  
11 traveled.

12 Q And does this diagram also show the outermost boundaries that we see here on State's  
13 Exhibit 38, where LCD show a positive result for the presence of blood on the carpet?

14 A It does. It's in yellow, but it comes along in front of the couch. Of course, so many  
15 programs don't allow you to put furniture in exact locations. But we do have the path here,  
16 as well as the front.

17 Q Now, it appears that there are two figures in the path of this bullet. Why are there two  
18 separate people plugged into that area?

19 A Trying to determine the possible location, because you're talking about an angle that  
20 is a descending angle. If that couch were not there, it would be hard to know where that was.  
21 At the autopsy, I was aware that Ms. Rojas had a gunshot to, inside the mouth and angled out  
22 the back of her neck. So, what we did was, using the trajectory, that if the projectile path is  
23 correct, if Ms. Rojas were back farther would be more in an upright position. The farther you  
24 get away from the projectile path-- As the projectile path traveled down it narrows this  
25 distance and goes down towards the floor.

1                   So, the farther out and farther away you get from the couch, the farther over it would  
2                   have to go until you are on your knees or clear out in this area. And due to finding the  
3                   suspected blood in this area we felt that unless you were standing on the couch, she would  
4                   have to be in close proximity to put her legs up against the back of the couch. Or, that's as  
5                   far forward as we felt she could be without being down and having to get down on her knees  
6                   for that shot to travel through and enter at the angle it did.

7    Q                So, does this diagram include all the factors, the directionality of the projectile, where  
8                   the presence of blood was present, as well as the necessary physical path of the projectile as  
9                   you were told by the investigators?

10   A               Yes, that would be correct.

11   Q                So, this factors in all those things when positioning possible physical location for Ms.  
12                   Rojas to have been standing?

13   A                That's right. We related that as far back as she could have been without being up on  
14                   the couch or probably out as far away from the couch for her to still be inside the marks, and  
15                   for her body position that she came to rest in.

16   Q                Now, I also see that you plugged an individual seated on the couch. Were you  
17                   provided information about where the defendant indicated he was located inside the  
18                   residence at the time of the shooting?

19   A                Yes, I was.

20   Q                And is that why you plugged in right there?

21   A                That's correct.

22   Q                Is that supposed to represent a picture of the defendant?

23   A                It is. Basically, you have a male or a female. That is just the gender that is put on  
24                   the---- So, not knowing weight, height and so on, and that was just easier to put a male  
25                   figure in that location.

1 Q Thank you, Sergeant. Now, let's switch gears again and talk about the defendant's  
2 clothes. And we'll start with State's Exhibit 27. If you will just open that and take a look.

3 A (opening State's Exhibit 27)

4 Q Do you recognize what's packaged inside that bag?

5 A I recognize the handwriting. It's identified by Jon Derby, one of our technicians. He  
6 is the one who originally put the items into this bag. There's an evidence sheet stapled on the  
7 front, my initials are the front, in which I had resealed it after inspecting the bag.

8 Q Why did you open the contents of that bag?

9 A So gunshot residue testing could be done on the shirt.

10 Q Let's talk about that gunshot residue testing. Let's talk about the first part of the  
11 analysis shown on State's Exhibit 27. And I'm showing you State's Exhibit 41 and 46. Do  
12 you recognize what's in this?

13 A Yes, I do.

14 Q What are those?

15 A Those are what are called daubers. When collecting gunshot residue, there are two  
16 possible to collect gunshot residue. One is to use daubers. The other is to the atomic  
17 absorption. This is-- A lot of times when you do a gunshot residue test you'll have the  
18 daubers as well as atomic absorption Q-tips in a container. We are provided with  
19 independent swabs for the daubers to allow us to conduct or to test for inanimate objects. So,  
20 I used the two daubers. One I labeled shirt on one side, put a dauber on one side. On the  
21 other half of the shirt, which used the second dauber.

22 Q I'm showing you State's Exhibit 43, to show the jury what we did here. Where on  
23 this shirt did you actually conduct the daubing?

24 A The photograph doesn't show the full area, but you can see it at the very top of the  
25 shirt where I used the dauber. I used the buttonholes to split the shirt in half. I did a dauber



1 on one half of the shirt along the chest area, the sleeves and down through the lower half of  
2 the shirt, on one dauber. And then on the other dauber, the shirt was labeled side one and  
3 side two, and did the dauber as well inside the shirt.

4 Q Again, did anybody at Forensics actually conduct any analysis with these daubers?

5 A No, they didn't.

6 Q What happens to these items once you finish collecting the evidence from the shirt?

7 A They were packaged, put into property and evidence.

8 Q What did you do next with respect to Exhibit 47?

9 A I sprayed the LCD on the shirt. There were a couple of areas that were already  
10 marked. Technician Derby had taken a pen and circled, put half-circles a couple of areas on  
11 the shirt. Those were the areas I believe that a phenol saline test was done. The area wasn't  
12 large enough where you could actually see what appeared to be there.

13 So, I took LCD and sprayed on the shirt. It's a clear liquid that is a presumptive test  
14 to pick up hemoglobin or blood and determine with a blue or violet color. And so, I sprayed  
15 the entire front of the shirt with the LCD.

16 Q After performing that presumptive test did the LCD on this item display a positive  
17 result for the possible presence of blood?

18 A It did.

19 Q And how did you identify those areas?

20 A Well, originally, I had taken pieces of tape and tried to tape off the area. Because of  
21 the liquid, I was having trouble with the tape sticking. So, at that point I identified the areas  
22 that reacted to the LCD, I took a permanent marked and circled those areas that were on the  
23 shirt.

24 Q And after you get the presumptive results from that test what do you do with the  
25 items?

1 A To identify these areas, they were photographed and allowed to drive and then it's  
2 put into property and evidence.

3 Q Now, I want you to take a look at some of these spots that area shown on State's  
4 Exhibit 43. You mentioned the areas that Mr. Derby are circled are different than the  
5 different from the areas that you circled. Correct?

6 A That's correct. This area on the left side of the shirt as well as this area of a volume  
7 of specks of blood over here, there should be some kind of mark around here, those are the  
8 two areas that Technician Derby had conducted tests on.

9 Q Now, based on your observation, was there a difference appearance to you between  
10 the character of those areas?

11 A It was. Once I sprayed the LCD on, these areas that reacted with the LCD, you  
12 couldn't see those. They're small enough in diameter that either in the fabric, that you just  
13 couldn't see them. Once the LCD was sprayed those areas became more prominent and more  
14 visible and marked with the permanent marker.

15 Q After you got these results, did you package that for further testing?

16 A That's correct.

17 Q And did you end up testing the shirt again?

18 A Yes, I did.

19 Q Tell us what happened.

20 A My understanding from the lab results that the shirt was sent to the lab. There were  
21 two areas that were tested. A large area, this area I believe was tested and possibly this area.  
22 The information that we received back was it had been, the DNA was actually an  
23 unidentified male. And because our interest was in these smaller patterns, the ones that were  
24 not visible, normally when you have a shooting that has occurred you will get a lot of blood.  
25 Some are large drops, some are very small, in a small mist and like a small pattern. And so,

1 because knowing that Ms. Rojas had a gunshot injury these were the patterns that we were  
2 interested in, that we wanted to have tested because we felt this would be more apt to be Ms.  
3 Rojas' blood and not projected from the shooting.

4 Q So, what did you do after learning that those areas had not been tested?

5 A A request was put back in to have additional testing done, not just on those areas, but  
6 on-- But the interest was in some of the smaller areas. And so, we requested it to be tested  
7 again for any DNA of Ms. Rojas.

8 Q Was it again sealed and packaged?

9 A Yes, it was.

10 Q Did you return it back to property and evidence so that it could be sent to wherever it  
11 needed to go for testing?

12 A Yes.

13 Q Now, let's move to State's Exhibit 28. Do you recognize what's in that package?

14 A I identify this package, again, something collected by Technician Derby. They are  
15 khaki pants, size 40, and a brown belt.

16 Q Did you perform any analysis on that item?

17 A I did. After I conducted a phenol saline test and LCD on the shirt, I then looked at the  
18 pants to do an examination on the pants as well.

19 Q Did the LCD testing reveal any possible presence of any blood on these pants?

20 A It did. I had some concerns because on the front of the pants I had found several blue  
21 areas that looked like paint, like it could have been paint. And because of the reaction of the  
22 LCD I wanted to eliminate any of those spots so it wouldn't get confused with the ones that  
23 reacted. So, I took a permanent marker and I put an x, and xed out all of those blue marks  
24 that were on the pants prior to the LCD testing.

1 Q And after get that presumptive positive result, did you package State's Exhibit 28 for  
2 the same testing that the shirt was getting?

3 A It was.

4 Q And it was sealed and initialed as you had done before?

5 A Yes, it was.

6 Q Sergeant, I want to show you State's Exhibits 39 and 49. Do you recognize what's  
7 depicted in those photographs?

8 A I do.

9 Q What's in those pictures?

10 A These are photographs I took off Ms. Rojas' robe that she was wearing at autopsy and  
11 what had been collected. I also sprayed LCD on a robe in order to find the areas of suspected  
12 blood that might be present.

13 Q Now, did you retrieve that item from property and evidence or-- I believe Mr.  
14 Bucholtz testified that he kept it in a drying room after the autopsy. Did you see it then and it  
15 was tested, or was it submitted to property and evidence and you took it out and tested it?

16 A I can't answer that. I can't recall which it was.

17 Q I'm going to show you this property and evidence report. Do you see your signature  
18 on that form?

19 A Yes, I do.

20 Q And what does it mean, that your signature's on that property and evidence form?

21 A That means that I either signed into property and evidence or I retrieved property and  
22 evidence some type of evidence.

23 Q Are you able to tell from that form whether you retrieved Ms. Rojas' robe from  
24 property and evidence to perform that additional testing?

1 A Yes. On May 20, 2009, the robe was pulled out with a nightshirt, the robe and  
2 nightshirt, signed out by myself and the purpose of that was for the examination.

3 Q What was your process of how you performed your analysis on the robe?

4 A I laid the robe out on butcher paper, examined it. There were some areas that I  
5 thought were larger areas of suspected blood transfer. The body was transferred to the  
6 morgue. My interest was to try to find any smaller blood patterns, or any small spatter in the  
7 areas of the sleeves, which I thought might be important. So, I sprayed LCD on the robe in  
8 order to get, see if there was any reaction from the spots on the robe.

9 Q And did that LCD test again give a positive result indicating the possible presence of  
10 blood on the robe?

11 A Yes, I did.

12 Q And do the pictures, State's Exhibits 39 and 49, indicate that LCD reaction?

13 A Yes, they do.

14 Q Are they an accurate photograph of what the LCD reaction looked like?

15 A Yes, they are.

16 Ms. Salisbury: Your Honor, the State offers Exhibits 39 and 40.

17 The Court: Any objection?

18 Ms. Manigault: No objection.

19 The Court: They're in.

20 (whereupon State's Exhibits Numbers 39 and 40 were entered into evidence without  
21 objection)

22 Q Sergeant, I'm going to put these on the large screen so the jury can see exactly what  
23 you did to test Ms. Rojas' robe. We'll start with Exhibit 39. What do you see in this  
24 photograph?

1 A You can see that there are small areas, blue areas, within the confines of the robe.  
2 And those areas reacted to the LCD in terms of blue and violet color.

3 Q Now, let's talk about State's Exhibit 40. Of which piece of the robe is this a  
4 photograph?

5 A It appears to be the left arm, the left sleeve of the robe.

6 Q Does this picture show the LCD reaction on the left sleeve of the robe?

7 A Yes, it does.

8 Q Can you show the jury where exactly it is?

9 A A small spot here, to a larger area here.

10 Q We've been talking about the various items that you tested. Is it common practice for  
11 you to wear gloves during the entire process?

12 A Yes, it is.

13 Q Let's go back to the handgun. We were talking about earlier the way you swabbed  
14 for DNA and also analyzed the prints. How is it that the testing for fingerprints actually  
15 happens? You talked about using Superglue. Tell us about that process.

16 A The Superglue is-- Basically we have a chamber and we use a light bulb, which is  
17 our heat source. Take a soda can, cut it in half, put it on top of the light bulb. Take the  
18 Superglue and pour it on top of the can, flooding the light. There's our heat source. Once  
19 the heat starts to pick the chemical which is found in Superglue starts to cause a vapor and  
20 envelops whatever you're trying to process. It picks up the acid and so on from your fingers.  
21 And it marks a fingerprint. If there's a fingerprint there it locks it in place and allows you an  
22 opportunity to either examine it under the camera that we might have, or to apply powders  
23 and try to lift fingerprints from the weapon.

24 Q That sounds like quite a science project. Is that normal procedure for the collection of  
25 fingerprints in the Forensics industry?

1 A It is. We use superglue a lot. I tried to-- To put it this way: If you can see a  
2 fingerprint and you go and try to lift it, you have once chance to get that print. Once it's  
3 done it's gone. If you lock that print in place it allows you several different areas to use it.  
4 Then you can photograph. If you're trying to collect it, that's your best chance of getting the  
5 fingerprint.

6 Q Now, does anyone in the Forensics industry actually compare fingerprints?

7 A In the latent division, yes. Crime scene, no. In our latent division, they're the ones  
8 who do the examinations on any fingerprints that we send them.

9 Q Would it be your responsibility or the technician's responsibility to determine  
10 whether fingerprints exist for the purpose of transferring forward to a written comparison?

11 A Yes, it is.

12 Q With respect specifically to State's Exhibit 9, the handgun, did you perform the  
13 superglue analysis to determine whether there were fingerprints on that handgun?

14 A The weapon, it was fumed and examined for any ridge detail, and further processed to  
15 determine any latents.

16 Q Did you discover any indicators of any fingerprint anywhere on that handgun?

17 A I found no ridge detail.

18 Q Thank you very much. If you would, answer any questions Ms. Manigault has for  
19 you.

20 The Court: Ms. Manigault.

21 **CROSS EXAMINATION BY MS. MANIGAULT:**

22 Q Did you say you found any latents on State's Exhibit 9, which is handgun. Are you  
23 saying any of those collections were latent or some other way they could be tested?

24 A Like fingerprints?

25 Q Yes sir.

1 A No.

2 Q Did you collect anything else off of State's Exhibit 9, any swabs or anything else?

3 A Yes, I did. I collected swabs from the barrel, from the trigger and from the grip.

4 Q Were you responsible for having it sent back to the lab or were you just responsible  
5 for putting the swabs in evidence?

6 A My job is to collect the evidence. Any additional testing would be done by the  
7 agency.

8 Q So, in the further tests of the handgun there was nothing else to be tested as far as  
9 fingerprints are concerned, so that the end of that test stopped with you?

10 A That's correct.

11 Q And you found no fingerprints?

12 A No ridge detail.

13 Q No ridge detail?

14 A That's right.

15 Q Now, you did-- Could you tell me what was the date you went up to view this carpet  
16 and/or cut it up?

17 A Originally, I believe it was on the twentieth that the testing was done. And the  
18 twenty-eighth is when the carpet was cut, I believe when the carpet was cut and re-treated,  
19 May 28.

20 Q Now, the first day you went to the trailer was, I believe you said was on May 19?

21 A 18<sup>th</sup>.

22 Q 18<sup>th</sup>. And you also attended the autopsy on May 18?

23 A That's correct.



1 Q When you went to the trailer on May 18, as you testified before, the area was clean  
2 and you were looking for – not clean-clean – was clear. But you were looking for a  
3 projectile and any other evidence that you thought may have not been found.

4 A That's correct.

5 Q So, on May 17, when Ms. Rojas' body was lying on the floor in the area between the  
6 two couches, you did not see that, did you?

7 A No, I did not.

8 Q But you did see photographs of that?

9 A I did.

10 Q Before you went to the trailer?

11 A Yes, I did.

12 Q You were not present when EMS offered her medical assistance, is that correct, on  
13 the 17<sup>th</sup>?

14 A That's correct.

15 Q So, you don't know what kind of movement EMS may have done to her body.

16 A That's correct.

17 Q Were you present when your technician bagged her hands?

18 A No, I was not.

19 Q So, you don't know what kind of movement your technician may have done?

20 A That's correct.

21 Q As far as the head or the shoulders?

22 A That's correct.

23 Q So the spots of blood on the carpet you don't know when they got there or how they  
24 got there?

25 A That's correct.

1 Q You say, though, -- As far as bagging the body, you weren't present when Ms.  
2 Rojas' body was placed in the body bag?

3 A That's correct.

4 Q And so, you don't know what kind of movement was done there, placing her body in  
5 the bag, positioning.

6 A That's correct.

7 Q On State's Exhibit Number 31, which shows the hole in the ceiling, and you said you  
8 recognized it, is that hole the size that it was when you first saw it, or is that the hole after  
9 you cut a little bit out of?

10 A That was the actual size of the hole.

11 Q On State's Exhibit Number 37, that is an imaging, or this is an imaging that you say  
12 you generated from a computer program?

13 A That's correct.

14 Q And I believe you testified that the program does not allow you to exactly position the  
15 furniture where it would have been measured at the trailer?

16 A You could put the exact measurements in, but on a 3-D diagram it may not reflect  
17 because it's on a ninety degree. So, it may look like things are off. The actual measurements  
18 are correct as far as the length of the couch, the distance between the two. Those would be  
19 correct.

20 Q I'm talking about the testimony you offered earlier. So, the positioning of the couch  
21 or the furniture may not be exact or isn't exact.

22 A The measurements are exact but what you see, because in this diagram it looks like  
23 the tape is outside from the couch, but it's not. It's up against the front of the couch. It's just  
24 the perception of the angle.

25 Q And on that exhibit, 37, it shows the trajectory line as marked in red?

- 1 A That's correct.
- 2 Q And that trajectory line assumes that the bullet traveled a straight path?
- 3 A That's correct.
- 4 Q If the bullet would have hit something, would it have ricocheted?
- 5 A If a solid object, it could very well, yes.
- 6 Q And so, this is your best guess or estimation through this programming of how the  
7 bullet path was?
- 8 A It had nothing to do with the program.
- 9 Q Okay.
- 10 A This was a physical measuring, putting the trajectory through the hole in the ceiling  
11 and affixing it to the hole, the protrusion in her mouth, following that line back. That was  
12 between a 26 and 30 degree angle of ascent and it does not deviate because when I cut the  
13 hole out from the ceiling, there was no ceiling joist, there was nothing that would prohibit it  
14 from following a straight line. It did not ricochet. It was a straight line from the protrusion  
15 in the mouth down through the ceiling tile and then down to the other TV in the room.
- 16 Q But again, that is so-- You've testified that you were at the autopsy and you observed  
17 that the gunshot was in Ms. Rojas' mouth and the access was at the back of her head.
- 18 A That's correct.
- 19 Q So, that is assuming that when it left her body that the trajectory path was straight?
- 20 A Being soft tissue, there would not be much---
- 21 Q Are you a medical examiner?
- 22 A No ma'am.
- 23 Q So, your trajectory-- My question is: Are you assuming that the trajectory path is  
24 straight?
- 25 A I am determining that the path was straight. That's my observation.

1 Q You testified that you collected some swabs from the holster itself, which is State's  
2 Exhibit Number 10. You collected swabs from the holster.

3 A Yes, I did.

4 Q Why did you collect that?

5 A To find out if (a) if there's any DNA present, not only on the weapon, but also on  
6 the holster, the location where the holster was at on the floor. It appeared that the weapon  
7 had been taken out and the holster had been thrown on the floor.

8 Q Now, did you superglue the holster also?

9 A No, I didn't.

10 Q The shirt that was tested, State's Exhibit Number 43, could you tell us when you did  
11 the test on that shirt, when you made those circles?

12 A It was shortly after the reaction, which would have been on the twentieth.

13 Q And could you tell me when the shirt was first sent for testing outside your  
14 department?

15 A No ma'am, I have no idea.

16 Q Could you tell me when the shirt was second sent for testing?

17 A I don't know.

18 Q But you testified earlier that you were interested in those circled marks, so it was sent  
19 for another testing.

20 A That's correct.

21 Q But you don't know how long between the first test and the second test?

22 A Two and a half to three years.

23 Q Two and a half to three years?

24 A From the first time it was tested, I believe until the second time to court, the second  
25 testing was done.

1 Q Now, you testified also that - I think you can probably see on this shirt - that when  
2 you sprayed the LCD liquid on an object of clothing or the carpet, that after a time period it  
3 will turn a violet or darker?

4 A That's correct.

5 Q So, after an item sits there for a while it doesn't mean that the darker spots were  
6 apparent the first time you sprayed it?

7 A That's right.

8 Q So, the darker spots that are apparent from the first test may not be suspected later?

9 A That's correct. It saturates.

10 Q I notice on the exhibit that you have there are some—Exhibit Number 43, there are  
11 some spots on the side of the shirt. What's that from?

12 A On the brown side of the paper?

13 Q Yes sir.

14 A That would be where the LCD was sprayed.

15 Q So, the spray---

16 A The spray bottle, sitting the bottle down after spraying it, there's the saturation from  
17 that.

18 Q So, it came after the shirt was sprayed?

19 A During the time it was sprayed.

20 Q I mean, during the time. So, you're saying that the wet spots are from the bottle, or  
21 from the spray itself?

22 A Yes.

23 Q Which one, from the bottle spraying it, or from sitting the bottle on it?

24 A Sitting the bottle down.

1 Q State's Exhibit 25, the rendering of the trailer itself, did you yourself don the  
2 measuring between the couch and the loveseat?

3 A Lieutenant Peterson was with me at the time.

4 Q State's Exhibit 15 is a drawing or a sketch. Did you determine what, how far apart  
5 the loveseat and the couch were from each other?

6 A Yes, it was measured at four feet.

7 Q Four feet?

8 A Yes.

9 Q So, the individual would have to be standing within that four-foot perimeter between  
10 that couch. Correct?

11 A Yes.

12 Q Ms. Rojas' body was in that area of four feet?

13 A That's correct.

14 Q And the rendering on your trajectory line photo shows a male sitting at the end of the  
15 couch. So, that would also have been within the that four feet. Is that correct?

16 A At the end of the couch. So, from the end of the couch is three foot. If you sitting on  
17 the couch you would be farther away than if you're standing. And from the foot of the  
18 couch, between the two couches, there's a base, which means the person sitting on the couch  
19 is farther back.

20 Q But their feet would be within the four-foot measurement?

21 A That's correct.

22 Q And you're saying the couch itself was three feet?

23 A I believe that's correct, yes.

24 Q And so your total measurement from wall to wall, according to that is seven feet or  
25 more?

1 A Something like that.

2 Q Is that on the diagram?

3 A Seven feet, yes.

4 Q On Exhibit 37, on that diagram, I know the three feet. What I'm asking you is did  
5 you measure it? What was the measurement from wall to wall or from couch to couch?

6 A The measurement is what is shown on the diagram.

7 Q When you did your trajectory line did you determine the height of Karen Rojas?

8 A Estimated, yes.

9 Q What did you estimate he height?

10 A Five-seven.

11 Q And your trajectory picture where the body, which I think is State's Exhibit 37-- At  
12 what point on the trajectory would have been five-seven?

13 A I can't answer to that. Depending upon if the person is standing straight up, which  
14 could not have been because of the angle the projectile went through. So, it's somewhere in  
15 that line. I did not measure from the floor up to where five foot seven was. You're going  
16 from the angle of the hand to allow that projectile to come back.

17 Q So, the line of the trajectory, the trajectory line, you did not measure from the line to  
18 the floor?

19 A That's correct.

20 Q And you did not measure from the line to the ceiling?

21 A That's correct.

22 Q And you did not measure any form of five feet three or five feet seven on the line?

23 A No, I did not.

24 Q Now, let's talk about the dauber collection.

25 A Sure.

1 Q Was that also done twice? Did another one of your technicians before you did it?

2 A On the shirt?

3 Q On the shirt.

4 A No.

5 Q So, the dauber was done only by you?

6 A That's right.

7 Q And what was the reason for that?

8 A To see if there would be any prints on the shirt.

9 Q And did you dauber the pants also?

10 A No, I didn't.

11 Ms. Manigault: Your Honor, I have no further questions.

12 The Court: Any re-direct?

13 Ms. Salisbury: Yes, Your Honor.

14 **RE-DIRECT EXAMINATION BY MS. SALISBURY:**

15 Q Sergeant Shaw, can you tell us the difference between how the phenol saline test is  
16 administered and the LCD is administered?

17 A Phenol saline, you take a Q-tip with distilled water if your suspected blood is dry, and  
18 you take a swab. Then there is a drop of alcohol-- Excuse me. A drop of phenol saline.  
19 And the very highest test is hydrogen peroxide. And you put the hydrogen peroxide on it and  
20 it immediately turns pink. That the positive reaction.

21 Q Is there any part of the phenol saline presumptive test that includes a spray onto the  
22 item?

23 A No. It's just the swabbing.



1 Q Referring specifically to State's Exhibit Number 43, the photograph of the  
2 defendant's shirt, are those places that are circled that you indicate you circled on that shirt,  
3 were those apparent immediately when you sprayed the LCD on the shirt?

4 A Yes, they were.

5 Q You mentioned when the shirt was re-opened for examination about the testing  
6 results, you looked at it a second time. Had the color and the temperature of the shirt  
7 changed over time?

8 A Yes, it had.

9 Q But were those spots that you circled on State's Exhibit 43 there the very first time  
10 that you sprayed the shirt?

11 A The spots were there. When I sprayed, the spots appeared. And in order to maintain  
12 the integrity of where those spots were, in case additional testing needed to be done, I used a  
13 permanent marker to mark around to show those spots that came up.

14 Q Now, Technician Derby has testified that he administered a phenol saline test with  
15 respect to two large spots on State's Exhibit 47, the shirt. Would that testing process with  
16 phenol saline in those isolated areas have illuminated or affected the spots that you ultimately  
17 circled when you sprayed LCD on the shirt?

18 A No.

19 Q And as part of your testing of the shirt and the pants, did you also test the defendant's  
20 socks and shoes?

21 A Yes, I did.

22 Q How did you test them?

23 A The same way. I sprayed them with LCD in an effort to try to find a positive reaction  
24 and there was none on either one.

25 Q Neither the socks nor the shoes indicated the presence of a positive reaction?

1 A That's correct.

2 Q Thank you, sir. I have no additional questions.

3 The Court: Thank you. You may step down. How are we doing time-wise, Solicitor?

4 Ms. Howard: Your Honor, we actually have about eleven witnesses that we do think we can  
5 fit in this afternoon. They should be short.

6 The Court: Okay.

7 Ms. Howard: We call Kara Bennick to the stand.

8 **KARA BENNICK**, duly sworn, testified as follows:

9 Clerk of Court: Please state your name for the record.

10 A Kara Bennick.

11 Clerk of Court: Thank you. You may be seated.

12 **DIRECT EXAMINATION BY MS. HOWARD:**

13 Q Ms. Bennick, can you tell us where you work?

14 A For the Greenville County Department of Public Safety in the Property and Evidence  
15 section.

16 Q What is your position there?

17 A Supervisor of the Property and Evidence department.

18 Q Can you explain to us a little bit about what Property and Evidence is? We've heard  
19 about that from a prior witness today. Explain to us what that area is and what it means.

20 A It's a secure holding location for all evidence or property items that would come in  
21 through the city or county of Greenville.

22 Q Is that a secure area?

23 A Yes ma'am.

24 Q And you're the supervisor?

25 A Yes.

1 Q How long have you been there?

2 A Since 2003.

3 Q What steps are taken to secure items that are brought to that department?

4 A We have several systems controlling that. That would be all key locks, swipe cards  
5 and a camera system as well that monitors everything 24/7.

6 Q How can you tell items have been tampered with? Are they marked in any way?

7 A It is a restricted area that only four full-time people have access to. Nobody else can  
8 get in or out of that area or have access.

9 Q When you're accepting an item into property and evidence, do they have to come in a  
10 certain way?

11 A Yes.

12 Q What is that?

13 A Everything that comes in has to be accompanied by a property and evidence report,  
14 logging in what it is, date and time received, and then we will proceed to sign it and the paper  
15 travels with the item.

16 Q Where is that paper?

17 A Attached to the item.

18 Q If it's an item, GSR or DNA or an item of that nature, would it come to you sealed?

19 A Yes ma'am.

20 Q If you or anyone else working in the property and evidence room receives an item  
21 that is not sealed, what do you do?

22 A It will be saved and the officer will be called back to correct it.

23 Q It will not be accepted?

24 A Yes ma'am.

25 Q Did you receive any evidence in the case that we're here for today?

1 A Yes ma'am.

2 Q I'm going to show you various items, State's Number 7, State's Number 27, 28, 29,  
3 42, 41, and 46. Would you take a look at that, please?

4 A (pause to review evidence)

5 Q I will also pass to you the accompanying property and evidence sheets.

6 A (pause to review items)

7 Q I want to ask you specifically about State's Number 7, Defendant's GSR test. Do you  
8 see that piece?

9 A There are two GSR tests on here.

10 Q It will be labeled as J-1 on the property receipt. Can you tell the jury who signed that  
11 in?

12 A Yes. Michelle Forrester was a clerk who works for the records department, and she  
13 used to work the after-hours shift. So, if evidence came in after hours and was not put in the  
14 drop box, it would have been accepted by her.

15 Q And you would have been her supervisor?

16 A Yes.

17 Q And she handled that piece of evidence?

18 A Yes, she did.

19 Q When was that accepted by her?

20 A On May 27, 2009 at 4:55 a.m.

21 Q What would have happened to that item?

22 A It would have been placed in a storage locker.

23 Q Describe that process for us.

1 A The system has been changed since then, but that time it was in the office. She would  
2 have access to the office area only. She would have access to the empty locker to place the  
3 item in the locker and then lock it so she could not regain entry.

4 Q Once that item was placed in the locker, what happened next?

5 A That item would have been retained in that storage locker until the next morning  
6 when the clerks would come in and we would take custody of them and get them out of that  
7 locker.

8 Q Who took custody of that item?

9 A Tabitha Fricks.

10 Q I'll hand up State's Number 27 to you. I'll also hand you State's Number 28. Did  
11 you come into contact with these items? They would be labeled as J-2 and J-3 on your  
12 property receipts?

13 A I did.

14 Q Where did you come into contact with them?

15 A I actually received them back from Sergeant Shaw after he conducted tests on them.

16 Q When was that?

17 A May 26, 2009 at 1:00 p.m.

18 Q What did you do with that item?

19 A I logged it back in and put it in its location.

20 Q Did it come to you unsealed?

21 A Yes.

22 Q How do you know that?

23 A I signed it in and sealed it.

24 Q I'll show you State's 29. It is a gunshot residue test on the victim in this case, Ms.  
25 Karen Rojas.

1 A (pause to review item)

2 Q Did you take possession of this item?

3 A I did not.

4 Q Could I get that back from you? I apologize. Ms. Bennick, if you will take State's  
5 Exhibit Number 46 and 41, which are shown as GS5 and GS6. Did you take possession of  
6 these items?

7 A I did.

8 Q Could you tell us when?

9 A I took them directly from Sergeant Shaw on May 26, 2009 at 1:00 p.m.

10 Q Were they secured when they came in?

11 A Yes ma'am.

12 Q And what did you do with the items?

13 A I signed for them and they were sealed and placed in storage.

14 Q When you took possession of these items did they appear to be tampered with in any  
15 way?

16 A No ma'am.

17 Q I have no further questions. Thank you.

18 The Court: Ms. Manigault.

19 **CROSS EXAMINATION BY MS. MANIGAULT:**

20 Q Were there other items that you took possession of with this case number that was not  
21 presented to you today?

22 A I couldn't tell you that without looking at the property and evidence log.

23 Q Do you recall whether you accepted a suspected blood swab at any time? I'll show  
24 you a copy of this.

25 A I haven't seen that before. Yes ma'am, I did.

1 Q Do you store or handle the items called shirt, khaki pants, boxers, black athletic  
2 shoes? I'll show you a copy of the property and evidence sheet. Did you have anything to  
3 do with those items?

4 A I accepted those items from Sergeant Shaw.

5 Q What day did you sign them back in?

6 A May 26, 2009.

7 Q I want to show you this. Is that your signature on that sheet?

8 A Yes, it is.

9 Q What is the date by that signature?

10 A May 26, 2009.

11 Q What were the items you accepted on this date, or handled?

12 A A through F.

13 Q What were they?

14 A Paper bags from the hands, beige-colored night shirt, one containing hair, one  
15 containing hair, and one containing nails from the right hand and one containing nails from  
16 the left hand.

17 Q Let me show you another property and evidence with your signature on that. Did you  
18 accept those items?

19 A Yes ma'am.

20 Q What's the date that you signed for them?

21 A March 18, 2010.

22 Q What was that item?

23 A (inaudible)\*

1 Q And you said that if any time an item left the property and evidence area, the property  
2 and evidence sheets that you hold in your hands traveled with that item. Is that correct? If  
3 they went to another lab?

4 A Yes, with exception of SLED. If they're signed out to SLED, they're signed out and  
5 the evidence is transferred to SLED and SLED picks up the chain of custody.

6 Q And SLED is State Law Enforcement Division of South Carolina?

7 A Yes ma'am.

8 Q Thank you.

9 The Court: Thank you. Step down.

10 Ms. Howard: Your Honor, at this time the State would call Tabitha Fricks.

11 **TABITHA FRICKS**, duly sworn, testified as follows:

12 Clerk of Court: Please state your name for the record.

13 A Tabitha Fricks.

14 Clerk of Court: Thank you. You may be seated.

15 **DIRECT EXAMINATION BY MS. HOWARD:**

16 Q Ms. Fricks, can you tell us who you work for?

17 A I work for the Greenville County Department of Public Safety in the division of  
18 Property and Evidence section.

19 Q How long have you worked there?

20 A Seven years.

21 Q Is Kara Bennick your supervisor?

22 A She is.

23 Q Did you receive and handle evidence in this case?

24 A Yes ma'am, I did.



1 Q I'm going to show you specifically what's been marked as State's Exhibit Number 50  
2 and State's Number 7. I'll also hand you up the property and evidence sheets.

3 A (pause to review items)

4 Q In regards to State's Number 7, the GSR test performed on the defendant, did you  
5 take possession of this item?

6 A Yes, I did.

7 Q When did you take possession of that item?

8 A On May 27, 2009 at 7:59 a.m.

9 Q What did you do with that item?

10 A I put this item into its storage location.

11 Q Did you handle this evidence in any way?

12 A No ma'am.

13 Q Did it come in sealed to you?

14 A Yes ma'am.

15 Q In regards to State's Number 50, the blood standard of the victim, did you come into  
16 possession of that?

17 A Yes, I did.

18 Q Can you tell us when?

19 A On October 14, 2010 at 2:00 in the afternoon.

20 Q And was that a secured sample?

21 A Yes, it was.

22 Q Did you tamper with that sample in any way?

23 A I did not.

24 Q What did you do with it?

25 A After I checked it in, I put it in its storage location.

1 Q Have you had any further involvement with this case other than that?

2 A No, I have not.

3 Q Thank you.

4 Ms. Howard: No further questions.

5 The Court: Ms. Manigault.

6 Ms. Manigault: May I see the property and evidence sheets?

7 The Court: Sure.

8 **CROSS EXAMINATION BY MS. MANIGAULT:**

9 Q Ms. Fricks, when did you receive the gunpowder residue kit?

10 A May 27, 2009.

11 Q When did you receive the sample of blood from Ms. Karen Rojas?

12 A October 14, 2010.

13 Q Thank you.

14 The Court: You may step down.

15 Ms. Howard: The State calls Israel Flounders to the stand.

16 **ISRAEL FLOUNDERS**, duly sworn, testified as  
17 follows:

18 Clerk of Court: Please state your name for the record.

19 A Israel Flounders.

20 Clerk of Court: Thank you. You may be seated.

21 **DIRECT EXAMINATION BY MS. HOWARD:**

22 Q Mr. Flounders, can you tell us where you work?

23 A I work for the Greenville County Sheriff's Office. I worked in P&E for one and a  
24 half years from February, 2009 to August, 2010.

25 Q What was your position with the Greenville County Sheriff's Office?

1 A I was a clerk in property and evidence.

2 Q This particular case, did you receive or take possession of some items?

3 A Yes ma'am, I did.

4 Q I'm going to show you what's been marked as State's Number 27, identified as the  
5 Defendant's shirt in this case. And I will also show you the property and evidence sheet.

6 Did you take possession of this item?

7 A Yes ma'am, I did.

8 Q In what capacity?

9 A Officially as a clerk in P&E for the county.

10 Q What did you do with that item when it came into your possession?

11 A I checked it in and placed the package in the storage area.

12 Q What date did you receive that item?

13 A May 18, 2009 at 8:12.

14 Q Who did you receive it from?

15 A From temporary storage.

16 Q When you received that from temporary storage into property and evidence, what did  
17 you do with it?

18 A I put it into the storage locker and locked it in there.

19 Q Why was it in temporary storage?

20 A The after-hours clerk receives the items and places them in the lockers. When I come  
21 in I unlock them and check them in.

22 Q Is that the only time that you would have taken possession of this item?

23 A No, it's not.

24 Q When was the next time?

25 A On August 27, 2009 at 2:00.

1 Q Who did you receive it from at that time?

2 A (no response)

3 Q Who gave you the item?

4 A I got this one from Pat Crooks.

5 Q I'm going to show you what's been marked as State's Exhibit Number 28. It is  
6 shown on that same property and evidence sheet. Did you take possession of this item?

7 A Yes ma'am.

8 Q When?

9 A When I came in the next morning.

10 Q Also from temporary storage?

11 A Yes ma'am.

12 Q I'm going to show what's been marked as State's Exhibit Number 45 and the  
13 accompanying property and evidence sheet. Did you come in contact with that item?

14 A Yes ma'am, I did.

15 Q What is that item?

16 A It's cuttings from the shirt and pants.

17 Q Who did you receive this item from:

18 A I received this from Valerie Powell on March 5, 2010 at 4:00.

19 Q The next thing I want to show you, which is listed on the property and evidence sheet,  
20 is State's Number 29 and 42.

21 A (pause to review items)

22 Q Did you take possession of State's Number 29 and 42, which is the GSR tests of the  
23 victim?

24 A I don't see that on the property and evidence sheet, but I'm pretty sure I did sign for  
25 those.

1 Q I'm showing you State's Exhibit 46. Did you take possession of that item?

2 A Yes, I did.

3 Q Was it sealed when you took possession?

4 A It was under seal.

5 Q All these items came in under seal. Correct?

6 A Yes ma'am.

7 Q Did you tamper with the seal in any way, replace the seal?

8 A No ma'am.

9 Q Other than receiving and storing the evidence in this case, have you had any further  
10 involvement?

11 A No ma'am.

12 Q Thank you.

13 Ms. Howard: No further questions.

14 The Court: Any questions, Ms. Manigault?

15 Ms. Manigault: Yes sir.

16 **CROSS EXAMINATION BY MS. MANIGAULT:**

17 Q Mr. Flounders, I want to show you a property and evidence sheet and ask you is your  
18 signature on that sheet?

19 A Yes ma'am.

20 Q What is the date that you accepted property or handled property?

21 A May 18, 2009.

22 Q What were the items that you signed for?

23 A Swabbings of a car.

24 Q Swabbings of a car?

25 A Yes ma'am. The exterior and interior swabbings of the car.

1 Q There's a description of the car on top of the sheet. What does that description say?

2 A 1989 Sundance and the VIN number 523807.

3 Q I'm going to show you another property and evidence sheet and ask you is your  
4 signature on that sheet?

5 A Yes ma'am.

6 Q What was the date of that sheet and the item that you handled?

7 A June 26, 2009 at 18:27.

8 Q What is the item on that sheet that you signed for?

9 A Gun and holster.

10 Q I'm going to show you another property and evidence sheet and ask you is your  
11 signature on that sheet?

12 A Yes ma'am.

13 Q When did you sign that sheet?

14 A May 18, 2009

15 Q And you received what property?

16 A GSR bags from hands and beige-colored night shirt and bags containing hair and nail  
17 clippings.

18 Q Thank you.

19 Ms. Manigault: No further questions, Your Honor.

20 The Court: Step down.

21 Ms. Howard: Your Honor, at this time the State calls Valerie Powell.

22

23

24

25

1                                   **VALERIE POWELL**, duly sworn, testified as follows:

2           Clerk of Court: Please state your name for the record.

3     A           Valerie Powell.

4           Clerk of Court: Thank you. You may be seated.

5     **DIRECT EXAMINATION BY MS. HOWARD:**

6     Q           Ms. Powell, who do you work for?

7     A           I work for the Greenville County Department of Public Safety.

8     Q           Did you receive or handle evidence in this case we're here on today?

9     A           Yes.

10    Q           I'm going to show you what's been marked as State's Number 27 and 28, identified  
11           as the Defendant's shirt and pants. Did you come in contact with these items?

12    A           I did.

13    Q           How and when did you come in contact with them?

14    A           At the time I worked third shift and helped out with property and evidence. And I  
15           would go down and accept the evidence into property and evidence and put it in the  
16           temporary storage until the clerks came in and received it.

17    Q           So, other than marking it into property and evidence, did you have any other contact  
18           with the items?

19    A           Not at all.

20    Q           Other than putting into the storage locker, did you have any other contact with the  
21           items?

22    A           Not at all.

23    Q           Thank you.

24           Ms. Howard; No further questions.

25           The Court: Ms. Manigault, any questions?

1 Ms. Manigault: None, your Honor.

2 The Court: You may step down.

3 Ms. Howard: The State calls Sharon Craver.

4 **SHARON CRAVER**, duly sworn, testified as follows:

5 Clerk of Court: Please state your name for the record.

6 A Sharon Craver.

7 Clerk of Court: Thank you. You may be seated.

8 **DIRECT EXAMINATION BY MS. HOWARD:**

9 Q Ms. Craver, where do you work?

10 A Greenville County Coroner's Office.

11 Q Were you working there on May 18, 2009?

12 A I was.

13 Q Did you receive or handle evidence in this case?

14 A I did.

15 Q I'm going to show you what's been marked as State's Number 50. I'm also going to  
16 show you a copy of the property and evidence sheet. You're not in the property and evidence  
17 division. Correct?

18 A I'm not, no.

19 Q Can you tell the jury what State's Number 50 is?

20 A It's a blood standard.

21 Q From Karen Rojas?

22 A Yes ma'am.

23 Q And how did you come in contact with that item?



1 A The pathologist who did the autopsy took it into evidence was turned over to  
2 property and it was then turned over to the investigators at the Sheriff's Office. I was just  
3 the go-between between that and the Sheriff's Office.

4 Q As the go-between, from where did you retrieve the item?

5 A From Doctor Ward.

6 Q And who did you then give it to?

7 A Wayne Campbell.

8 Q Did you mess with any seals or packaging of the item?

9 A No.

10 Q So, you just delivered it from one person to the other?

11 A Correct.

12 Q Have you had any other involvement in this case other than doing that?

13 A No.

14 Ms. Howard: No further questions.

15 The Court: Ms. Manigault.

16 **CROSS EXAMINATION BY MS. MANIGAULT:**

17 Q What was the date you received the item from Doctor Ward?

18 A 12/21/2009.

19 Q 12/21/2009?

20 A Yes.

21 Q And how was the item packaged when you received it?

22 A It was in a small, manila envelope.

23 Q Do you know, was there a container inside the envelope?

24 A The piece of evidence was inside the envelope.

25 Q Did it feel like a vial or a pencil?

1 A No. It was just a flat piece of paper.

2 Q Flat piece of paper?

3 A Yes.

4 Q Do you know when Doctor Ward collected it?

5 A I don't.

6 Q And you received it on 12/21/09. When did you hand it off to Wayne Campbell?

7 A I collected it at 9:00 a.m. I handed it off to him at 9:06 a.m.

8 Q Where was he?

9 A He came to the office.

10 Q Who is he?

11 A He's a deputy.

12 Q Thank you.

13 The Court: You may step down.

14 Ms. Howard: The State calls Wayne Campbell.

15 **WAYNE CAMPBELL**, duly sworn, testified as follows:

16 Clerk of Court: Please state your name for the record.

17 A Wayne Campbell.

18 Clerk of Court: Thank you. You may be seated.

19 **DIRECT EXAMINATION BY MS. HOWARD:**

20 Q Deputy Campbell, who do you work for?

21 A Greenville County Sheriff's Office.

22 Q How long have you worked there?

23 A Approximately 13 years.

24 Q I'm showing you what's been marked as State's Exhibit 50. That is a blood standard  
25 from the victim in this case, Karen Rojas.

- 1 A Okay.
- 2 Q Did you take possession of that item at any time during the investigation of this case?
- 3 A Yes ma'am, on December 21, 2009 at 9:06 a.m.
- 4 Q Who did you receive that from?
- 5 A Sharon Craver, who is employed by the Coroner's Office.
- 6 Q And you went to the Coroner's Office to retrieve this item?
- 7 A Yes ma'am.
- 8 Q Why did you go to the Coroner's Office to retrieve this item?
- 9 A Investigator Bradley asked me if I could transport it to SLED. Since it was a known
- 10 standard it needed to be transported down.
- 11 Q Where is SLED located?
- 12 A Columbia, South Carolina.
- 13 Q So, you transported that standard down to SLED on December 21, 2009?
- 14 A That's correct.
- 15 Q What did you do with the item when you got to SLED?
- 16 A Once I got to SLED, I gave it to Nicki Perry, who is at forensic intake.
- 17 Q When did you give that to Nicki Perry?
- 18 A At approximately 11:03 that morning she signed for it and it was turned over to her
- 19 and collected into property and evidence.
- 20 Q If you'll take a look at the item for me, please.
- 21 A Okay.
- 22 Q Is that the item you transported?
- 23 A Yes ma'am.
- 24 Q Did you sign for it?
- 25 A Yes ma'am. It's got my name and the date and time I received it.

1 Q And in between the Coroner's office and SLED, did you mess with the evidence or do  
2 anything tampering with the evidence in any way?

3 A No ma'am, I did not.

4 Q You just transferred it from one place to the other.

5 A That's correct.

6 Q And other than transporting that one piece of evidence did you have any other  
7 involvement in this case?

8 A No ma'am, I did not.

9 Q Thank you.

10 Ms. Howard: No further questions.

11 The Court: Ms. Manigault.

12 **CROSS EXAMINATION BY MS. MANIGAULT:**

13 Q Investigator Campbell, when you received the item from Ms. Craver, what did you do  
14 with it?

15 A I placed it in the trunk of my vehicle.

16 Q Was this item in a manila envelope?

17 A That's the way I received it and once I got to SLED it was placed in this plastic bag.

18 Q And you say you checked in with Nicki Perry?

19 A That's correct.

20 Q And were you present when they placed it in the evidence locker at SLED?

21 A Once they sign for it and it's turned over to them, I don't know where she put it after  
22 that.

23 Q Thank you.

24 The Court: thank you. Step down.

25 Ms. Howard: Your Honor, at this time the State calls Chris Hammett.

1                                   **CHRISTOPHER HAMMETT**, duly sworn, testified as  
2 follows:

3           Clerk of Court: Please state your name for the record.

4    A           Christopher Hammett.

5           Clerk of Court: Thank you. You may be seated.

6    **DIRECT EXAMINATION BY MS. HOWARD:**

7    Q           Investigator Hammett, you are an investigator with the Sheriff's Office. Correct?

8    A           Yes.

9    Q           How long have you been with the Sheriff's Office?

10   A           Approximately 15 years.

11   Q           Have you been involved in this case?

12   A           I was.

13   Q           In what capacity?

14   A           Investigator Whaley is the lead investigator, requested that I transport some items of  
15 evidence to SLED in Columbia.

16   Q           I'm going to show you a couple of pieces of evidence, along with a copy of the  
17 property and evidence sheet, which has been marked as State's 41, 46, 7, 29, 42, and also 27  
18 and 28. Did you take possession of those items?

19   A           Yes, I did.

20   Q           When did you take possession of those items?

21   A           It was on May 28, of 2009 at 9:22 in the morning.

22   Q           Who did you receive those items from?

23   A           They were from the property and evidence room at the Sheriff's Office.

24   Q           When you got them, did they come to you in a sealed manner?

25   A           Yes, they're sealed.

1 Q What did you do with those items?

2 A I placed them in my vehicle and transported them to the lab facility at SLED in  
3 Columbia.

4 Q Do you remember who you gave them to?

5 A They were signed in by the intake person, Nicki Perry, at SLED.

6 Q Did you tamper with the seal or break the seal on any of these items at any time?

7 A No ma'am, I didn't.

8 Q So, your only involvement was to transport those items from Greenville to SLED in  
9 Columbia?

10 A Yes ma'am.

11 Q Other than that, have you had any further involvement in this case?

12 A No, I have not.

13 Ms. Howard: Nothing further, Your Honor.

14 The Court: Questions, Ms. Manigault?

15 Ms. Manigault: I have none, Your Honor.

16 Ms. Howard: Your Honor, at this time we call Joe Whitmire to the stand.

17 **JOE WHITMIRE**, duly sworn, testified as follows:

18 Clerk of Court: Please state your name for the record.

19 A Joe Whitmire.

20 Clerk of Court: Thank you. You may be seated.

21 **DIRECT EXAMINATION BY MS. HOWARD:**

22 Q Mr. Whitmire, you work for the Sheriff's Office. Correct?

23 A Yes ma'am.

24 Q Were you asked to aid in the investigation of this case?

25 A Yes ma'am.

1 Q In what capacity?

2 A To take some evidence from Greenville down to SLED.

3 Q When were you asked to do that?

4 A December 17 of 2009.

5 Q Who asked you to transport that evidence?

6 A Investigator Whaley.

7 Q The item you transported-- I'm showing you State's Exhibit Number 27, which is the  
8 Defendant's shirt. Correct?

9 A I didn't actually see the shirt. It was sealed up in a bag.

10 Q But that's the item of evidence you were asked to transport to SLED?

11 A Yes ma'am.

12 Q Where did you get the item to take to SLED?

13 A I got it out of the P&E office at the law enforcement center.

14 Q When you got to SLED what did you do to check the item into SLED?

15 A I left it with Doris Yarborough.

16 Q At any time when you had possession of it, did you do anything to break the seal of  
17 that evidence or open the bag in any way?

18 A No ma'am.

19 Q So, other than transporting the evidence to SLED were you involved in any other part  
20 of the investigation of this case?

21 A I did go down and pick up a package from SLED and bring it back to the law  
22 enforcement center.

23 Q Was it the same item you took?

24 A I believe it was the same item, yes ma'am.

25 Ms. Howard: No further questions.

1           The Court: Any questions, Ms. Manigault?

2   **CROSS EXAMINATION BY MS. MANIGAULT:**

3   Q           I didn't hear who you said you checked the item in at SLED with.

4   A           I believe her name was Doris Yarborough.

5   Q           And you do believe that the item was described as a shirt?

6   A           Yes ma'am. When I signed the P&E sheet the description of the items were spelled  
7           out.

8   Q           And that's the only item that you took down there for them.

9   A           Yes ma'am.

10           The Court: Thank you. Step down.

11           Ms. Howard: Your Honor, at this time the State would call Nicki Perry to the stand.

12                           **NICKI PERRY HUGHES**, duly sworn, testified as follows:

13           Clerk of Court: Please state your name for the record.

14   A           Nicki Perry Hughes, H-u-g-h-e-s.

15           Clerk of Court: Thank you. You may be seated.

16   **DIRECT EXAMINATION BY MS. HOWARD:**

17   Q           Ms. Hughes, can you tell us who you work for?

18   A           I work for the South Carolina Law Enforcement Division, commonly known as  
19           SLED.

20   Q           And that's located in Columbia?

21   A           It is.

22   Q           How long have you been with SLED?

23   A           I've been with SLED for six years.

24   Q           What is your position?



1 A I'm a forensic technician in the evidence control department at the Forensics  
2 laboratory.

3 Q Does that mean you take in evidence that comes to SLED?

4 A I do. I log in and package evidence submitted to the lab for forensic analysis.

5 Q I'm showing you some pieces of evidence. These are marked as State's Number 7,  
6 identified as the GSR kit of the defendant, labeled as SLED Item Number Two. Did you  
7 come into contact with that item, when and how?

8 A I did on May 28, 2009. I received SLED Item Number 2 from Chris Hammett of the  
9 Greenville County Sheriff's Office.

10 Q What did you do with the item?

11 A I would take the item and place it in the envelope and seal it with SLED evidence  
12 tape and have the officer in my presence initial and date the seal. I would then log in the  
13 information and enter the tape into our system, which our system would then generate a field  
14 number, an item number, for that case. And then I would take the sealed evidence and place  
15 it into our trace evidence intake storage.

16 Q Describe to us what the trace intake storage is. Is it just a storage locker for  
17 evidence?

18 A It's a storage locker inside a secure area. We have storage areas for each department  
19 within the laboratory. It is a storage area where we place evidence where it remains until it is  
20 picked up for analysis.

21 Q Is that a secure area?

22 A It is a secure area.

23 Q You also logged in State's Number 29, 42; also 41 and 46. All four items are GSR  
24 tests from the victim and the defendant. Did you take possession of those items?

25 A I don't know what these are. They---

1 Q I apologize. They are SLED Item Number 1 and SLED Item Number 3.

2 A I don't see the items inside these containers. I place it in the envelope and that is  
3 what I identify. From my chain of custody, I took these items on May 28, 2009 from Chris  
4 Hammett of the Greenville County Sheriff's Office.

5 Q As to Item Number-- The envelope that contains this item, is that an envelope that  
6 you recognize?

7 A This is not an envelope that I would have put it in. I do recognize the label. There's a  
8 larger envelope that I would have used. But I recognize the label as SLED Item Number 3  
9 from our lab, Number L09-06444.

10 Q So, with that being said, evidence that comes to you in envelopes, you do not open  
11 them?

12 A I do not.

13 Q And so you took possession of SLED Numbers 1, 2 and 3. Correct?

14 A I did.

15 Q What did you do with those items?

16 A After I logged in those items I then placed them in trace evidence intake storage in  
17 our tracer evidence room.

18 Q And again, you didn't examine any of those items?

19 A I did not.

20 Q The next item, State's Number 50, identified as SLED Item Number 8, did you come  
21 in contact with that item?

22 A Yes ma'am, I did.

23 Q When did you come into contact with that item?

24 A I received it on December 21 of 2009 from Wayne Campbell of the Greenville  
25 County Sheriff's Office.

1 Q When you received that item from Investigator Campbell what did you do with it?

2 A I would receive it. He would hand it to me in an envelope. I would place the  
3 evidence in a heat-sealed pouch, and I'd heat seal it in Mr. Campbell's presence, and then I  
4 would have him initial on the face of the seal and sign and date the front of the bag. And  
5 then after logging in and an item number is given to the item I place the label on the outside  
6 of the package. And then I would have placed that particular item in our DNA evidence  
7 intake storage.

8 Q Is that also a secure area?

9 A It is.

10 Q Once you sealed that evidence did you break it in any way?

11 A No ma'am.

12 Q Finally I'm going to show you what's been marked State's Number 27 and 28, SLED  
13 Item Number 6 and 7. Did you receive these items?

14 A Yes ma'am.

15 Q When did you receive these items?

16 A According to my notes, on May 28 of 2009 I received these items of evidence from  
17 Chris Hammett of the Greenville County Sheriff's Office.

18 Q When you received those items, how did you package them?

19 A I would have placed them in a box and I then sealed the box with SLED sealed  
20 evidence tape and I would have the officer initial and date all the seals on the box.

21 Q You would not break the seal once it was sealed?

22 A No ma'am.

23 Q Where did you place these items once they were sealed?

24 A I then placed those items in our evidence closet on Intake Shelf 209, which is a secure  
25 area, storage area in our secure evidence room.

1 Q Did you have any further involvement in this case other than placing the items into  
2 SLED custody?

3 A No ma'am.

4 Ms. Howard: No further questions.

5 The Court: Ms. Manigault, any questions?

6 Ms. Manigault: Yes, Your Honor.

7 **CROSS EXAMINATION BY MS. MANIGAULT:**

8 Q Ms. Hughes, State's Exhibit Number 50, which would be the heat sealed item. I  
9 believe you testified that you heat-sealed the envelope yourself?

10 A I would place the envelope in the heat seal, yes ma'am.

11 Q So, when you received the item, what kind of package, what kind of container was it  
12 in?

13 A I don't remember. What he handed me was the envelope. So, I would say it came in  
14 that envelope and then I would place it in SLED packaging.

15 Q But you're not sure?

16 A No ma'am.

17 Q Thank you.

18 The Court: Is that all?

19 Ms. Manigault: Yes, Your Honor.

20 The Court: Thank you. Next witness.

21 Ms. Howard: Your Honor, at this time we call Patricia Crooks.

22

23

24

25

1                                    **PATRICIA CROOKS**, duly sworn, testified as follows:

2            Clerk of Court: Please state your name for the record.

3        A                    Patricia Crooks.

4            Clerk of Court: Thank you. You may be seated.

5        **DIRECT EXAMINATION BY MS. HOWARD:**

6        Q                    Tell us where you work, Ms. Crooks.

7        A                    I work for the South Carolina Law Enforcement Division, also known as SLED.

8        Q                    What is your position with SLED?

9        A                    I'm a forensic technician in the evidence control room.

10      Q                    What do you do in that position?

11      A                    I'm responsible for all the evidence in the evidence room. Once evidence is logged  
12                            into SLED it's placed in the evidence room, and then from that point on I'm responsible for  
13                            it. I pull evidence for forensic technicians, our Forensics scientists for them to examine it.  
14                            They'll come down, pick that up. I transfer it from myself once I remove it from storage.  
15                            And then, in turn, I transfer the evidence to the person who's coming to pick it up.

16                            I also take the evidence back once it has been examined. And, in turn, when someone  
17                            from the surrounding agencies comes, such as the sheriff or the police department or  
18                            whatever, then I will transfer that evidence to them.

19      Q                    In regards to the evidence in this case, did you handle evidence related to this case?

20      A                    Yes, I did.

21      Q                    Specifically, SLED Items Number 1, 2, 3, 6, and 7, the GSR tests of the victim and  
22                            the GSR test of the defendant, the GSR test on the defendant's shirt, and the defendant's shirt  
23                            and the defendant's pants, did you come into contact with those items? If you can, just tell us  
24                            about your contact with those items and when you received them.

1 A SLED Item 1, I took custody of that item 5/29/2009, and in turn transferred that  
2 evidence to forensic technician Lindsay Thompson one minute after I took custody.  
3 Next is Item 2.

4 Q Yes ma'am.

5 A On Item 2, can you tell me what this?

6 Q It's identified as 6 and 7, which is the gunshot residue test of the defendant.

7 A I took custody of that 5/29/2009 at 9:48 and in turn transferred that a minute later to  
8 forensic technician Lindsay Thompson

9 Q In regards to Item Number 3, can you identify that and tell us what contact you had  
10 with that?

11 A On Item Number 3, I took custody of it on 5/29/2009 at 9:48, and in turn transferred  
12 to forensic technician Lindsay Thompson one minute later. That was at 9:49.

13 Q When you retrieved these items where did you retrieve them from?

14 A I would retrieve them from the location from within the evidence room. That would  
15 have been the area located in the evidence room called trace evidence intake storage. And  
16 that would have been placed in that storage bin by the person who logged it in. And, in turn,  
17 I would remove that to transfer it to the Forensics technician.

18 Q did you ever open these packages or break any seals when you were transferring it  
19 from one place to the next?

20 A No, I did not.

21 Q In regards to SLED Items Numbers 6 and 7, could you identify those items as they  
22 are labeled by SLED?

23 A Item Number 6 is one sealed box containing the shirt, a blue, button-down Columbia  
24 shirt. I removed that from the evidence processing intake bin at shelf 209. I removed that on  
25 6/9/2009 and transferred that item to forensic technician, Verona Gibson.

1 Q In regards to Item Number 6, did you handle that evidence at any other time?

2 A Yes, I did.

3 Q Could you tell us when?

4 A On 6/4/09, that evidence, at 14:35 that evidence was returned to me by Verona  
5 Gibson and in turn, I transferred that evidence to storage bin 12, shelf C, at 14:38 minutes.  
6 Then I removed it from storage bin 12, shelf C, at 8/27/09, 12:30, and I transferred that to  
7 Israel Flounders who was with the Greenville County Sheriff's Office.

8 Q And did you take possession of this item again later?

9 A On 11/22/11 I took custody of that item from forensic technician Verona Gibson at  
10 8:53. No, that was the other one. That was resubmitted and I took custody of it on 11/22/11  
11 at 12:37 from Verona Gibson. At that time I put it in bin 11, shelf C in the evidence room at  
12 12:54.

13 Q In regards to any cuttings or subsections or subparts that may have come from Item  
14 Number 6, which is the Defendant's shirt, did you take possession of those items at any time?

15 A I do not know if I did.

16 Q In regards to Items 6.1, 6.3,---

17 A I see. 6.1 is a heat-sealed pouch containing cuttings described as from shirt evidence.  
18 And I took custody of that from forensic technician -- excuse me -- forensic scientist Lindsay  
19 Thompson on 6/15/09 at 10:57-- Excuse me. Let me back up there. On 12/3/09 at 14:34 is  
20 when I received it from Lindsay Thompson. And I then transferred it at 14:60 to the  
21 evidence room, bin 8, shelf B.

22 Q And in regards the cuttings 6.3, 6.4, and 6.5.

23 A Okay.

24 Q Did you take possession of those items?

25 A Yes, I did.

1 Q Can you tell us where you took those items from and when and from whom?

2 A I received those items 11/22/11 at 12:37 from Verona Gibson, the forensic technician,  
3 and I placed those items on bin a, intake shelf 66. On 11/29 at 14:59 I removed the evidence  
4 from intake shelf 66 and transferred it to forensic scientist, Stephanie M. Hayes.

5 Q Is that all the contact you had with Item 6?

6 A I had contact with 6.4.

7 Q And 6.5, is that the same area as 6.3?

8 A Correct.

9 Q Now, finally Item Number 7, SLED Item Number 7, which is State's Number 28,  
10 identified as defendant's pants, did you have contact with that item?

11 A Yes, I did. On 6/1/09 at 14:31, I took custody of that item, transferred that custody  
12 same time and date to forensic technician, Verona Gibson. 8/27/09 at 12:30 I took custody of  
13 that item from bin 12, shelf c, and I transferred that item to Israel Flounders with the  
14 Greenville County Sheriff's Office.

15 Q And Ms. Crooks, on all these pieces of evidence, did you break any seals?

16 A No, I did not.

17 Q Did you change the packaging of any of these items?

18 A No.

19 Q You just moved it from one place to another?

20 A I merely transferred from one storage or another.

21 Q Thank you, Ms. Crooks.

22 The Court: Any questions, Ms. Manigault?

23 Ms. Manigault: No questions, Your Honor.

24 The Court: Thank you. Step down.

25 Ms. Howard; Your Honor, at this time the State calls Serena Kinard.



1 **SERENA KINARD**, duly sworn, testified as follows:

2 Clerk of Court: Please state your name for the record.

3      A                      Selena Kinard.

4 Clerk of Court: Thank you. You may be seated.

5 **DIRECT EXAMINATION BY MS. HOWARD:**

6 Q Ms. Kinard, who do you work for?

7 A I work for the South Carolina Law Enforcement Division, also known as SLED.

8 Q Did you receive or handle evidence in the case we're here for today?

9 A Yes, I did.

10 Q This is SLED Item Number 6, which is identified for the court as State's Number 27,  
11 the defendant's shirt. Did you take possession of that item?

12      A                      Yes, I did.

13 Q Where did you retrieve that item from?

14 A On November 18 of 2011 I retrieved it from what we call evidence processing, intake  
15 shelf 61, which is in our evidence room.

16 Q What did you do with that item?

17 A On the same day I transferred that piece of evidence to Verona Gibson.

18 Q The evidence processing, intake storage area, is that a secure area?

19 A It is a secure area within our evidence room.

20 Q Other than retrieving that evidence did you have any further involvement in that case?

21     A                    Not on Item Number 6, I did not.

22 Q Thank you.

23 Ms. Howard: No further questions.

24 The Court: Ms. Manigault.

25

1   **CROSS EXAMINATION BY MS. MANIGAULT:**

2   Q           Did you have any contact with any other items in this case at all?

3   A           Yes ma'am, I did. Let me refer to my chain of custody. Item 6.1, which is listed as  
4               cuttings from the shirt, I returned that evidence to Israel Flounders of the Greenville County  
5               Sheriff's office in 2010.

6   Q           What was the exact date?

7   A           March 5 of 2010. And also Item Number 7, which as listed as pants, khaki pants  
8               from the suspect on November 18 of 2011 and it followed the same of custody as Item  
9               Number 6. I retrieved it from evidence processing, intake shelf 61 and transferred that  
10              evidence to Verona Gibson.

11  Q           Any other evidence?

12  A           And I also returned 7.1, which was a cutting from the pants, I returned that evidence  
13              to Israel Flounders on March 5 of 2010. And looking through my chain, that appears to be  
14              all.

15  Q           Thank you.

16  A           You're very welcome.

17              The Court: Thank you. Step down.

18              Ms. Howard: Your Honor, may we approach?

19              The Court: All right.

20              (whereupon a bench conference took place)

21              Ms. Howard: Your Honor, the State next calls John Roberts.

22

23

24

25

1                                    **JOHN ROBERTS**, duly sworn, testified as follows:

2                    Clerk of Court: Please state your full name for the record.

3        A                    John Roberts.

4                    Clerk of Court: Thank you. Take your seat.

5        **DIRECT EXAMINATION BY MS. HOWARD:**

6        (Transcriber's Note – Recording of this witness' testimony was in progress on the digital recording)

7        Q                    And what is the difference between the gunshot residue that you analyzed and the  
8                    residue from a gunshot that a pathologist would analyze?

9        A                    The main difference is that you can't see mine with the naked eye. If I'm a target  
10                   shooter and I get up really close to the target and I shoot, there's going to be black powder  
11                   deposited, black-colored powder deposited on that target. It's easy to see unless you're  
12                   blind.

13                   But I can see it with my naked eye. The stuff that I analyze is stuff that's taken off  
14                   and collected with a gunshot residue kit. You can't see it with the naked eye.

15        Q                    Have you ever taken samples for a gunshot residue analysis?

16        A                    Yes ma'am.

17        Q                    About how many times?

18        A                    Over fifty.

19        Q                    How many gunshot residue analyses have you performed?

20        A                    A thousand.

21                   Ms. Howard: Your Honor, at this time, I would move Mr. Roberts in as an expert in the  
22                   forensic science of gunshot residue.

23                   The Court: Any voir dire questions in that area?

24                   Ms. Manigault: None, Your Honor.

25                   The Court: He's qualified. Proceed.

1 Q Mr. Roberts, tell us a little bit more about gunshot residue. Is it similar to, like, a  
2 skin residue or is it totally different?

3 A It's similar in the fact that sometimes mechanics will have some microscopic particles  
4 on their hands from the metals that they work with in a mechanic shop. However, what I'm  
5 looking for is spherical in nature. When the hammer is struck and that little explosion  
6 happens the pinnacles are heated and pressurized and then injected out of this really hot  
7 environment of cool of the air around the gun. That cool makes them form into spherical  
8 droplets. So, little basketballs of gunshot residue being tested from this gun. These little  
9 basketballs land on whatever is near the gun when it goes off. Or, within reason, whatever's  
10 down range of when it goes off.

11 If I'm at a shooting range and I shoot twice, if I go shooting and somebody's standing  
12 next to me, they're gonna get gunshot residue on them just because they're near me when my  
13 gun's going off. The target, if it's close enough is gonna get gunshot residue on it just  
14 because it's down range and that's where the gunshot residue lands. I'm gonna get gunshot  
15 residue on me because I'm doing the shooting.

16 That's the difference between mechanics' residue and the gunshot residue.

17 Q Did you actually analyze evidence in this particular case?

18 A Yes ma'am.

19 Q I'm going to show you a couple of different items. The seal has been broken for other  
20 witnesses who testified. State's 46 and 41; State's 7; State's 29 and 42. We will take each  
21 one of them individually.

22 In reference to State's Number 29 and 42, SLED Item Number 1, do you recognize  
23 that as evidence you analyzed?

24 A SLED Item Number 1, State's Evidence Number 42 and 29, are the gunshot residue  
25 kit from Karen Rojas. Part of these would be cloth and the other part would be particles.

1 They both have my initials on them. They both have our lab number, L0906444. And both  
2 of them have the item number that corresponds to the report that I generated.

3 Q Would you go ahead and identify the other items?

4 A State's Exhibit 7 is the gunshot residue kit from Evatt, Wallace. It has my initials on  
5 it. It has the date that I analyzed these under a microscope. It has our lab number and an  
6 item number, Item Number 2, that corresponds to the report I generated.

7 These are just particles. And let me give a brief explanation about a gunshot residue  
8 kit. When gunshot residue kits are taken there's two way to sample gunshot residue. There  
9 are particle kits which are in the can and you can't see it because it's covered up. And it's  
10 got black carbon sticky tape on it. And you pop the top off of it and you daub it on the area  
11 that you want to sample gunshot residue. And you daub just like if you had something sticky  
12 you wanted to pick up something with, you would daub it.

13 In the case of a gunshot residue kit, there's four parts to it. There's the right palm on  
14 the right hand; there's the back of the right hand; left palm and left back; the four parts.

15 In combination kits like this one, State's Exhibit 42 and 29, there are swabs. The  
16 swabs are treated with a little nitric acid and you dissolve any metal particles that may be on  
17 the prints on the hand that would show the gunshot residue.

18 So, that's how you sample gunshot residue. And that's two different types of  
19 samples.

20 State's 41 and 46 are particle lifts, labeled front of shirt, side two dauber, front of  
21 shirt, labeled side one dauber. These are particle lifts that the submitting agency lifted off the  
22 shirt and down towards the arm.

23 Q How did you receive all of this evidence?

24 A They would have been in sealed envelopes with the receiver's initials on them.

25 Q And who would have brought the evidence in for testing?

1     A             They would have come in, be brought in and then picked up by our technician who is  
2             no longer with us anymore. She would have gone down and picked up the evidence, brought  
3             it upstairs, generated a jacket on it. And when the time came to actually run the gunshot  
4             residue test, she would have opened up a sealed envelope, inventoried the contents thereof  
5             and then move them along to whichever analysis needed to be done.

6     Q             When you refer to the technician, are you referring to Lindsay Thompson?

7     A             Yes ma'am.

8     Q             Do you know when you received those items?

9     A             I can check. Just a second, and I can check. (pause) They were processed on May  
10            29, 2009. I ran the gunshot residue kit from Karen Marie Rojas on June 3 of 2009. I ran the  
11            particle lift, the gunshot residue kit from Wallace Evatt on June 5 of 2009. And I ran the  
12            two particle lifts from the shirt on the same day, June 5, 2009.

13    Q             What is the procedure if something comes in not intact?

14    A             If anything comes in unsealed, it would not have been processed. We would have  
15            stopped it right there.

16    Q             So, you ran the tests on gunshot residue from the victim and the gunshot residue test  
17            on the defendant on two separate days? Correct?

18    A             Yes ma'am. They basically had to be because Ms. Rojas' gunshot residue kit, I just  
19            ran the swabs on those. Evatt's kit, I ran the particle test. It didn't have swabs, it just had  
20            particles. It had to be run on separate instruments. The same instrument has the lifts from  
21            the shirt. So, two separate days to run those tests.

22            Ms. Howard: Your Honor, at this time I would ask to admit State's 29, 42, 7, 41, and 46 into  
23            evidence.

24            The Court: Any objection?

25            Ms. Manigault: No objection.

1 The Court: It's in evidence.

2 (whereupon State's Exhibits Numbers 29, 42, 7, 41, and 46 were admitted into evidence  
3 without objection)

4 Q Give us a very brief description of how each technique is analyzed.

5 A Swabs are analyzed on an instrument with places the liquid in to the swabs, turns it  
6 into atoms and then detects metal from lead, determining which is gunshot residue. It's like  
7 separating M&M's into red, green and brown. It separates lead, it separates barium, it  
8 separates antimony so we know how much there is a presence of each.

9 The particle lifts are run on a microscope. For lack of a better explanatory term, it  
10 uses a very high-dollar stream of energy to scan the certain particles that are actual particles  
11 of gunshot residue.

12 So, whereas swabs are picking up the particles for interaction, gunshot residue is  
13 residue that you can't find on anything else but gunshot residue.

14 Q Referring to Items 29 and 42, from the victim's kit, can you tell us what the results  
15 were?

16 A State's 29, SLED Item Number 1, was a gunshot residue from Karen Marie Rojas.  
17 On the right palm, the quantity of metal found did not indicate the presence of gunshot  
18 residue. On the right back, the quantity of metal found was consistent with gunshot residue,  
19 a positive. Now, the positive is a metal that you find in gunshot residue.

20 On the left palm and the left back, the quantity of metal found did not indicate the  
21 presence of gunshot residue. So, a negative.

22 Q In your experience, is this result consistent with someone who is also a victim of a  
23 gunshot/

24 A It could be consistent with somebody who was near a gun when it was shot.

1 Q What are the results of your tests on Item Number 2, State's Number 7, identified as  
2 the lift of the defendant's hand?

3 A State's Item Number 7 was the gunshot residue test from Wallace Eugene Evatt. And  
4 on the right palm, right back; left palm, left back, no gunshot residue. So, a negative.

5 Q In reference to the gunshot residue found on State's 41 and 46, the defendant's shirt,  
6 what was your result?

7 A State's 41 and 46, my Item Number 3, listed as two particle lifts from suspect's shirt,  
8 gunshot residue was found. So, I found gunshot residue on the suspect's shirt.

9 Q From which side, the left or the right?

10 A I'm not sure. It's from the shirt.

11 Q With an inter-oral gunshot wound, where would the majority of gunshot residue be  
12 found?

13 A In the mouth.

14 Q In the mouth?

15 A Yes ma'am.

16 Q In the mouth, could some gunshot escape from the gun?

17 A It could, depending on how the gun was placed in the mouth. It could-- Especially if  
18 it's a revolver it could escape the cylinder of the barrel and be outside of the mouth.

19 Q How far does that travel?

20 A The gunshot residue?

21 Q Yes.

22 A Out of that, no more than four to six feet.

23 Q So, if you have a gunshot in the mouth, depending on the position of the gun, how far  
24 in the mouth, it's your testimony gunshot residue would be found inside the victim's mouth.

25 A Yes ma'am.



1 Q In your opinion, would the gunshot residue from the mouth would travel four to five  
2 feet across the room?

3 A I wouldn't expect it to. I can't say that it could not. It's not impossible. It's just  
4 improbable.

5 Q Thank you.

6 Ms. Howard: No further questions.

7 The Court: Ms. Manigault.

8 **CROSS EXAMINATION BY MS. MANIGAULT:**

9 Q You testified, State's Exhibit Number 1, and your number 3. You said you lifted two  
10 particle lifts from the defendant's shirt, the suspect's shirt?

11 A Yes ma'am, I analyzed those.

12 Q And you could not tell us if it was the left or right because it was not described to  
13 you?

14 A I didn't sample the shirt, and I don't know from where on the shirt it was taken from.  
15 I received this here, it's front of shirt, labeled 51 dauber, and front of shirt, labeled 52  
16 dauber. So, as far as the specifics of where they were taken on that shirt, I can't tell you. All  
17 I can tell you is it is from that shirt.

18 Q Would that have been true for State's Exhibit Number 41 and 46, your number 3?

19 A No ma'am. 41 and 46-- Oh, yeah. State's 41 and 46 was my item number 3.

20 Q Now, you testified that with a revolver that gunshot residue could escape through the  
21 cylinder.

22 A Yes ma'am.

23 Q Did you have a chance to look at State's Number 9, ---

24 A No ma'am.

25 Q ---the gun?

1 A No ma'am.

2 Q But you described with a revolver gunshot residue can escape through a cylinder. Is  
3 that correct?

4 A It escapes in the cylinder gap .

5 Q I'm sorry? Cylinder gap?

6 A I can show you if you show me a firearm. I can explain it if that would be better.

7 Q Explain it

8 A With a revolver, which is a cowboy gun, and it's loaded upright. Every time you  
9 cock the hammer, the cylinder spins and every chamber in the cylinder has a cartridge in it, a  
10 bullet. What happens is there is a very tiny gap in that cylinder in the barrel of that firearm.  
11 And you can hardly can see it with the naked eye. But when I'm analyzing I can see it with  
12 the naked eye. When it turns, the particles escape. So, all these particles that don't go down  
13 the barrel escape out of the gap and they go around the gap.

14 When you've seen pictures of people shooting and you see fire and smoke coming out  
15 before the end of the barrel, that's the cylinder gap. So, these metals will escape that cylinder  
16 gap.

17 Q With those escaped metals, you testified that it could possibly travel between four to  
18 six feet?

19 A Yes ma'am. Depending on where the gun was when it was fired.

20 Q But it's possible it would be able to travel four to six feet and there's a possibility of  
21 the gunshot powder residue escaping through the cylinder, whatever you said?

22 A More than likely would escape; it's almost got to. The traveling of four to six feet,  
23 depending on the conditions.

24 Q Now, you said that a revolver gun and it's loaded upright. What does it's loaded  
25 upright mean?

1 A Well, if I've got a five-shot revolver I'm going to load five rounds. Somebody else  
2 may not load five rounds.

3 Q Okay.

4 A But that's how I load it.

5 Q And if five rounds are not-- If you load four rounds and then fire the revolver, what  
6 would the reaction be? Would it hit a, hit the empty slot and go to the next live slot? Or  
7 how would that work?

8 A You've heard me talk about stuff that I'm not really an expert in, just that I've  
9 experienced on my own.

10 Q When you said load upright, you're talking about all five rounds, live rounds in the  
11 gun. Is that right?

12 A In my opinion, loaded upright means fully loaded, no rounds missing. That way I  
13 don't have to reload.

14 Q And in your work experience you do not do gun test firing?

15 A No ma'am, I don't examine firearms.

16 Q I believe you testified that your testing on the items listed on State's Number 42, on 7,  
17 what was the dates of those tests?

18 A When I completed them?

19 Q Yes sir.

20 A Let me look at my report. (pause) State's 42 and 7?

21 Q Uh-huh.

22 A The gunshot residue kit from Karen Rojas and the gunshot residue kit from Wallace  
23 Evatt. The kit from Karen Rojas was analyzed on June 3 of 2009. The kit from Wallace  
24 Evatt was analyzed on June 5 of 2009.

1 Q In your analyzation (sic) of the kit from Karen Marie Rojas you did find a quantity of  
2 no, that are consistent with gunshot residue on the right back of her hand?

3 A On the back of her right hand, yes ma'am.

4 Q And in your testing of the gunshot residue kit from Wallace Evatt you did not find  
5 gunshot residue on his right palm, right back, left palm, or left back. Is that correct?

6 A Yes ma'am, that's right.

7 Q Thank you.

8 The Court: Any re-direct?

9 Ms. Howard: Briefly, Your Honor.

10 **RE-DIRECT EXAMINATION BY MS. HOWARD:**

11 Q Mr. Roberts, I was not clear in regards how Numbers 41 and 46, and you described  
12 Item Number 3. What I'm asking you is which side tested positive for gunshot residue on the  
13 victim?

14 A Let me check that. (pause) Both particle lifts had gunshot residue on the palm.

15 Q Regarding the nature of gunshot residue, is this something that you can easily wipe  
16 off?

17 A It can be removed from the hand, fairly easy to remove with running water or blood,  
18 running blood will get it off. If I go out and shoot 40 rounds and on the way I open the car  
19 door, touch the steering wheel, put my gun away, I transfer gunshot residue every time I  
20 touch one of those things. If I stick my hand in my pocket to get my keys, I remove gunshot  
21 residue from whichever hand I use.

22 From clothing it would be tougher. If I got and shoot and I'm wearing a short-  
23 sleeved shirt and I don't wash it and I just throw it in the back of my car and leave it there,  
24 it'll stay on there until I wash it or until I remove it.

1 Q So, most likely, the first thing you touch after shooting a gun, you would transfer the  
2 residue onto that item?

3 A Yes ma'am.

4 Q One last thing. It's your testimony that looking at a gunshot which is a revolver it is  
5 not impossible for gunshot residue to travel four to six feet, but it's highly probable?

6 A Yes ma'am.

7 Ms. Howard: No further questions.

8 Ms. Manigault: Your Honor, I have another question.

9 The Court: All right.

10 **RE-CROSS EXAMINATION BY MS. MANIGAULT:**

11 Q You testified that if you fire a gun and drove a car or touched a car door that there  
12 could possibly be gun powder that would transfer to those items.

13 A Yes ma'am.

14 Q Would it just be the steering wheel or could it be on the seat or anything else in the  
15 car?

16 A It would be on anything that I touch.

17 Ms. Manigault: No further questions.

18 The Court: Thank you. Step down. Counsel approach, please.

19 (whereupon a bench conference took place)

20 Ladies and gentlemen of the jury, we will recess for the day. Be back tomorrow morning at  
21 9:00. Please be here promptly at 9:00 in the morning.

22 (whereupon the jury exited the courtroom at 5:05 p.m.)

23 See you in the morning.

24 (whereupon court was in recess for the evening.

25

**JULY 18, 2012 – COURT IN SESSION**

1

2

The Court: Ms. Manigault.

3

4

Ms. Manigault: The tape, the original tape that was played, which is a court's exhibit and the redacted tape, and I'm asking the court to-- I'm making a motion to have the tape played outside the presence of the jury.

5

6

The Court: No, I'm not going to do that. I have a problem with that. Which one?

7

Ms. Manigault: The original.

8

The Court: The original, is that what you want?

9

Ms. Manigault: Yes sir.

10

The Court: All right.

11

12

Ms. Howard: Your Honor, the Court exhibit, the interview that was played, it's already a Court's exhibit. We redacted and gave the court reporter a new copy, and it's now State's Number 53. I have no idea what happened to the Defendant's copy.

13

14

The Court: The first tape you played had all of what I call side parts to it?

15

Ms. Howard: Yes sir.

16

The Court: That's the redacted?

17

Ms. Howard: That tape has been redacted.

18

The Court: It's in evidence?

19

20

Ms. Howard: And it has the redactions that we discussed about the (inaudible) It's not in evidence yet. It's a State's exhibit right now. It's not in evidence yet.

21

The Court: All right.

22

23

Ms. Manigault: Your Honor, I want to make sure that the first tape is in the record, and is not a Court's exhibit.

24

The Court: She wants the first tape, all the parts played a part of the court's record.

1 Ms. Howard: Yes sir, it is. It's Court's Exhibit, either number one or two. It's Court's  
2 Exhibit Number Two, all the parts.

3 The Court: It was played for the court, but it's not introduced into evidence. Is that correct?

4 Ms. Howard: Yes sir.

5 The Court: All right. It needs to be in evidence.

6 Ms. Manigault: Thank you. Bring the jury in.

7 (whereupon Court's Exhibit Number One was made State's Exhibit 52 and entered into  
8 evidence)

9 (whereupon the jury entered the courtroom)

10 The Court: Good morning. Solicitor, call your next witness.

11 Ms. Howard: Your Honor, at this time the State calls Doris Yarborough to the stand.

12 **DORIS YARBOROUGH**, duly sworn, testified as follows:

13 Clerk of Court: Please state your name for the record.

14 A Doris Yarborough.

15 Clerk of Court: Thank you. You may be seated.

16 **DIRECT EXAMINATION BY MS. HOWARD:**

17 Q Good morning, Ms. Yarborough.

18 A Good morning.

19 Q Can you tell us where you work?

20 A I work for the South Carolina Law Enforcement Division, also known as SLED.

21 Q How long have been there?

22 A For four years.

23 Q Did you receive or handle evidence in this case?

24 A I did.

1 Q I'll show you what's been marked State's Exhibit 27, SLED Item Number 6. Is this  
2 the piece of evidence you came in contact with?

3 A Yes ma'am. The only difference is when I received this item it would have been in a  
4 box.

5 Q Could you tell us when?

6 A I received it on November 17, 2011 at approximately 12:02 in the afternoon.

7 Q And when it came to you was it in a secure manner?

8 A Yes, it was.

9 Q What did you do with the item?

10 A This as resubmitted from a previous submission, and when it comes to us we just  
11 make sure the package is secure. We again place more evidence tape on it, and the person  
12 that is submitting it at the time will initial it and date that for that day. And then it's logged  
13 in and placed in our secure evidence room located in our office.

14 Q And who did you receive this piece of evidence from?

15 A Joseph Lee Myers of the Greenville County Sheriff's Office.

16 Q And other than logging that item in and delivering it to the secure area, did you have  
17 any further involvement in this case?

18 A I did not.

19 Ms. Howard: I have no further questions.

20 The Court: Any questions, Ms. Manigault?

21 Ms. Manigault: No questions, Your Honor.

22 The Court: Thank you. Step down.

23 Ms. Howard: Your Honor, at this time the State would call Verona Gibson to the stand.

24

25



1                                   **VERONA GIBSON**, duly sworn, testified as follows:

2           Clerk of Court: Please state your name for the record.

3    A           Verona Gibson

4           Clerk of Court: Thank you. You may be seated.

5    **DIRECT EXAMINATION BY MS. HOWARD:**

6    Q           Ms. Gibson, can you tell us who you work for?

7    A           I work for SLED, the South Carolina Law Enforcement Division.

8    Q           How long have you been with SLED?

9    A           Approximately four years.

10   Q           What's your position with SLED?

11   A           I'm a forensic technician and a DNA evidence processing clerk.

12   Q           What are your duties and responsibilities as a forensic technician?

13   A           We get pieces of evidence, such as clothing, bed linens, knives, and swab them or test  
14           them for the presumptive test for body fluids or to collect ownership from the swabs.

15   Q           And you receive a lot of pieces of evidence that you take cuttings from?

16   A           Yes ma'am. If we are going to test a piece of clothing for a presumptive test for body  
17           fluids we would cut that out or swab it and test it.

18   Q           Tell us about your qualifications that got you a job with SLED.

19   A           I have a Bachelor's of Science from Tri-County Technical College. I have an  
20           Associate in Public Work from Greenville Technical College. And there was six months on  
21           the job training on the job at SLED.

22   Q           We're going to go through a couple of pieces of evidence. Did you handle or receive  
23           any evidence in this case?

24   A           I did.

25   Q           What was your responsibility regarding that evidence?

1 A There was clothing that was brought in that was examined for the presence of blood  
2 evidence.

3 Q Did you make cuttings from the pieces of clothing that were brought in?

4 A I did.

5 Q And how does SLED and your office store the items that are brought in?

6 A In each container there is a seal that is initialed and dated by the person who sealed  
7 the evidence. We look to make sure the seal is not broken as they're passed from different  
8 departments or between different people to ensure that no one tampered with evidence.

9 Q If you receive evidence that looks like the seal's been broken, what do you do?

10 A I will notify my supervisor and the agency to determine how to proceed.

11 Q In any of the evidence in this case did that occur?

12 A No ma'am.

13 Q Everything came to you in a secure container?

14 A Yes ma'am.

15 Q I'm going to show you State's Exhibits 27 and 28, identified as, State's Number 27,  
16 as cuttings from the Defendant's shirt; and State's 28, identified as Defendant's pants. As to  
17 both of these items, can you tell us who you received them from and when that occurred?

18 A The first time I received the items, they were received by Pat Crooks, from Pat  
19 Crooks to me on 6/1 of 2009.

20 Q So, what's identified as SLED Item Number 6, which is State's Number 27, being the  
21 Defendant's shirt, was resubmitted for initial testing?

22 A Yes ma'am.

23 Q Did you take possession of that item the second time?

24 A I did.

25 Q When?

1 A That was on 11/18 of 2011.

2 Ms. Howard: Your Honor, at this time the State would move to introduce State's Number 27  
3 and 28 into evidence.

4 The Court: Any objection?

5 Ms. Manigault: No objection, Your Honor.

6 The Court: Without objection.

7 (whereupon State's Exhibits Numbers 27 and 28 were admitted into evidence without  
8 objection)

9 Q Ms. Gibson, we'll start with the pants, if you will take that out of the envelope.

10 A (witness removes item from envelope) Would you like for me to hold them up.

11 Q That is the defendant's pants. Correct?

12 A Yes ma'am, it is, according to my paperwork.

13 Q And what did you do when you received those pants? Did they come with the  
14 cuttings?

15 A No ma'am. They were cuttings that I took from the pants. Due to the color change of  
16 the pants I called the agency. They looked like they had been processed with a chemical  
17 before they were brought to us. I was informed they were. So, I just cut the areas that the  
18 agency had circled.

19 Q And once you made the cuttings of those pants what did you do with them?

20 A They were placed in a manila envelope, placed in a heat-sealed pouch and then the  
21 cuttings were delivered to a DNA storage area for evidence.

22 Q Now, moving on to State's Number 28.

23 A (witness removes item from envelope)

24 Q Looking at that, State's Number 28, is that the Defendant's shirt?

25 A Yes ma'am.

1 Q Did you take cuttings from this shirt in a similar manner as you did with the pants?

2 A Yes ma'am.

3 Q How did you determine the cuttings you would take?

4 A They were circled by the agency.

5 Q The cuttings, were they done on two separate occasions?

6 A The shirt was brought in the first time. There were two areas that were circled. I  
7 selected those areas, packaged them and forwarded them on to the DNA department. When  
8 it was resubmitted, the shirt was again circled by the agency and there were three more  
9 cuttings taken from that were forwarded on to the DNA department.

10 Q What did you do when you made the cuttings from that shirt. We'll start with the first  
11 two.

12 A What we do is, every item that comes into the agency is given a unique number under  
13 that case number. So, it is in our case as Item 6. And the first item taken off that is Item 6.1.  
14 It just insures that we know which items were taken from which piece of evidence.

15 So, in this case, there were two cuttings and marked as Items 6.1 and 6.2 for our  
16 process.

17 Q Let me show you, Ms. Gibson, what has been labeled as State's Exhibit Number 45.  
18 If you would open that package and tell me if you recognize that.

19 A (witness removes item from envelope) Yes ma'am. This is the first cutting that I  
20 took from the shirt and from the pants. This is heat-sealed pouch they were sealed in, and  
21 then forwarded to DNA for testing.

22 Q Did you personally take those cuttings to the DNA area?

23 A I did.

24 Q The area you placed them in is a secure area?

25 A Yes ma'am. It's only accessible to DNA personnel and administrative staff.

1 Q As to the next cutting you took, would you describe that for the jury?

2 A In the same way I took the others. They were marked by the agency, so I just cut the  
3 circles out. These were items 6.3, 6.4 and 6.5.

4 Q I'll show you what's been labeled as State's Number 47. Would you take that item  
5 out and tell us what it is.

6 A (witness removes item from envelope) This is the three cuttings I took the second  
7 time the shirt was submitted to us.

8 Q What did you do with those items once you took the cuttings?

9 A They were given to Pat Crooks in our evidence control area for the DNA analysis.

10 Q I'm going to show you what's been marked as State's Exhibit Number 44. Do you  
11 recognize that photo?

12 A Yes ma'am.

13 Q Could you tell me what that photo is?

14 A This is a photo I took of the shirt, our Item 6.0, the second time that it was processed.

15 Q Is that picture an accurate representation of the shirt at the time you took that photo?

16 A Yes ma'am.

17 Ms. Howard: At this time the State would move to place Number 44 into evidence.

18 The Court: Any objection?

19 Ms. Manigault: No objection, Your Honor.

20 The Court: It's in.

21 (whereupon State's Exhibit Number 44 was entered into evidence without objection)

22 Ms. Howard: Permission to publish to the jury?

23 The Court: Yes.

24 (whereupon the jury was given State's Exhibit number 44 to examine)

1 Q Ms. Gibson, it might be a little difficult to tell with the lighting in here, but could you  
2 tell the jury which cutting, which one is 6.1?

3 A I need my copy of the report.

4 Q Yes ma'am. Or I can show you this one. Let me show Ms. Manigault your copy.  
5 (whereupon defense counsel reviews report)

6 Can you point to 6.1 and 6.2 for us?

7 A (using laser pointer with overhead projector) This is cutting 6.1 and this is cutting 6.2.

8 Q Could you also point out cuttings 6.3 to 6.5?

9 A This is cutting 6.3. This is cutting 6.4. And this is cutting 6.5.

10 Q Ms. Gibson, after making these cuttings, submitting them to DNA for analysis on two  
11 separate occasions, did you have any further involvement in this case?

12 A No ma'am.

13 Q Thank you.

14 Ms. Howard: No further questions.

15 The Court: Any questions, Ms. Manigault?

16 Ms. Manigault: Thank you, Your Honor.

17 **CROSS EXAMINATION BY MS. MANIGAULT:**

18 Q State's Exhibit Number 44, do you have the date you took the picture?

19 A It would have been the day of the second processing, which is November 18, 2011.

20 Q Did you take a picture of the shirt when it first came in to you?

21 A No, we did not take a picture at that time.

22 Q And you said that when you received this court because of this discoloration you had  
23 to call the agency?

24 A Yes ma'am.

25 Q Why was that?

1 A Because there are certain chemicals that will interfere with our testing when it's used  
2 before it comes to us. And this appeared to have been treated with a chemical. So, in those  
3 cases, we usually don't do the presumptive testing. We just forward the areas to the agency  
4 and they give them to the DNA department.

5 Q Okay.

6 The Court: Thank you. You may step down.

7 Ms. Howard: Your Honor, at this time the State would call Lindsay Thompson to the stand.

8 **LINDSAY THOMPSON**, duly sworn, testified as follows:

9 Clerk of Court: Please state your name for the record.

10 A Lindsay Thompson.

11 Clerk of Court: Thank you. You may be seated.

12 **DIRECT EXAMINATION BY MS. HOWARD:**

13 Q Ms. Thompson, were you employed with the South Carolina Law Enforcement  
14 Division?

15 A Yes, I was.

16 Q Is that also known as SLED?

17 A Yes.

18 Q What was your position with SLED?

19 A I was a forensic scientist in the DNA department.

20 Q How long were there?

21 A I began working at SLED in October of 2006, and I left in early August of 2010.

22 Q What are you doing now?

23 A I actually started teaching high school.

24 Q When you were at SLED as a DNA analyst what were your duties and  
25 responsibilities?

1     A             I was the analyst. I would receive from agencies throughout the state evidence that  
2                   needed to be tested for DNA. I would analyze the evidence I received using the DNA profile  
3                   standard and from the evidence. And I would compare the two if there was going to be a  
4                   match or not. After that I would generate a report, put that report out, and eventually testify  
5                   in court.

6                   In addition to that we would review analyst's reports before they went out. So, a  
7                   person writes their report and then two other analysts would check the report to make sure  
8                   it's accurate before it goes out.

9     Q             I want to back you up a little bit. Tell us what the standard is.

10    A             A standard is the DNA for a person. So, it can be blood that's drawn from a person.  
11                   There are sterile Q-tips that you put inside the mouth and swab in the cheek, called a bucal  
12                   swab. And you put that in a heat-sealed package and deliver it. And we know when do all  
13                   the profiles that piece of Q-tip, or the vial of blood that comes in, that that profile that we get  
14                   is definitely from that individual.

15                   It can be hair, or an unknown, which would be a shirt that comes in, a pair of pants  
16                   that come in, swabs from something that comes in. If we don't know whose it is, we develop  
17                   a profile from that and use that for testing.

18    Q             Tell us about your qualifications, how you came to be a DNA analyst for SLED.

19    A             My education, I went to Virginia Commonwealth University and got a degree, a  
20                   Bachelor of Science degree in Forensic Science and Biology, with a minor in chemistry.  
21                   Then I also obtained a Master's of Science in Biology from Virginia Commonwealth  
22                   University. My schooling for that undergraduate degree required certain course work, DNA  
23                   work, which I also completed all that course work.

24                   In addition to that I went through training at SLED. It was about a year-long training  
25                   under a court-qualified trainer, where I was taught all of the processes that SLED specifically



1 uses to complete analysis. I had some checks and things that I had to go through before I was  
2 released to work my own cases. I also came into the courtroom and watched other experts  
3 give their testimony, and eventually was certified by SLED to perform my own analysis. In  
4 addition to that when I worked at SLED there was also continuing education that you had to  
5 have every year to maintain our status as a DNA analyst.

6 Q How many analyses would you say you performed during your time at SLED?

7 A We don't quantify that, but I would say somewhere in the thousands.

8 Q Have you ever been qualified as an expert in DNA analysis and serology?

9 A Yes, I have.

10 Q What is serology?

11 A Serology is the study of, I guess, circulation of body fluids. And that would be  
12 serology and DNA analysis is a part of that. When we talk about a profile, potentially what  
13 is used is body fluids or blood.

14 Q Have you testified in court as to the results of your analyses?

15 A Yes.

16 Ms. Howard: Your Honor, at this time, the State would move to have Ms. Thompson  
17 qualified as an expert in serology and DNA analysis.

18 The Court: Any voir dire?

19 Ms. Manigault: None, Your Honor.

20 The Court: She's qualified. Proceed.

21 Q Can you tell us a little bit about serology, give us an overview? What is phenol  
22 saline?

23 A Phenol Saline is a chemical that we utilize to indicate the presence of blood. It's a  
24 test that we use which is really inexpensive. We use it as an indication. Do we move on to  
25 the expensive test or do we just stop here because there's nothing to test, in addition.

1                   So, it is a chemical that we use that reacts with the red blood cells in blood. Blood  
2                   has white blood cells which fight infection and red blood cells that give you oxygen. It's that  
3                   component that carries oxygen that phenol saline reacts with. It also can chemically react  
4                   with blood and the hemoglobin in the red blood cells. So, it's just an indication. So, if it's a  
5                   positive then you move on to the other tests with the blood. If it's negative, then we stop  
6                   because there's no reason to further test because it's not indicated.

7    Q                what exactly is DNA? Could you provide a description for the jury?

8    A                Sure. DNA is a chemical that's found in almost every cell of your body. The  
9                   exception is the red blood cells because instead of having that DNA they have the equipment  
10                  that carries oxygen. That chemical is passed down from generation to generation. You get  
11                  half from your mom and half from your dad, which makes you unique. The only people who  
12                  share the same DNA are identical twins.

13                    You look at fifteen locations across all of you DNA that we know are really highly  
14                    variable because no person we know has a very variable. And because of that you expose  
15                    specific locations to what we call a profile and those two applications combined are the  
16                    profile.

17   Q                Do all these locations have to apply to obtain a DNA profile?

18   A                No. What we have are fifteen locations that we call a complete profile, when the  
19                   location mechanism is used, we call it a partial profile. Each of the numbers that we come up  
20                   with in a profile have a specific frequency in population; so, how often do you see it. So, it's  
21                   like saying three out of fifty people have blond hair. So, three out of fifty is the frequency in  
22                   population. So, the numbers we get have a specific frequency in population and because of  
23                   that we can use each of those numbers. If we don't have all of them, it can lead to a more  
24                   general profile. So, you say two numbers, you say somebody with brown hair and blue eyes.  
25                   That could be four people. If you say brown hair, blue eyes, male, size five shoe, six-two,

1 giving a very detailed, very specific, and it's trying to individualize it more and more. That's  
2 kind of how the frequency of DNA works.

3 Q Could you tell us the reason why what you call some of the locations would not be  
4 present?

5 A When we determine a profile, you know, sometimes you have a certain profile added  
6 to it. So, that's a partial profile. If there's a very small amount of DNA present, you have to  
7 have a certain amount in order to be able to get the amount you need to identify the  
8 individual. So, you have to have a starting amount. If a certain amount is on a borderline,  
9 this will make it some type of profile, but some of it may not show up.

10 In addition, if DNA is exposed to different elements, if it's in water for a really long  
11 time, it's not packaged properly, sometimes mold will grow or bacteria. Things like that just  
12 randomly happening to DNA, and what we're looking for is a link. So, if bacteria cuts the  
13 DNA in half in the link we're looking for then we wouldn't see it. So, sometimes that  
14 happens as well.

15 Q Does a general lapse in time affect DNA?

16 A If it's packaged properly, no. If it's packaged improperly, then potentially.

17 Q Tell us in general about how you go about-- Give a brief description of how you  
18 perform a DNA analysis.

19 A When an item comes into us, it's a cutting or a swab or something like that, and we  
20 will take a very small portion of it, expose it to some chemicals. That gets the DNA from  
21 that object. So, the cutting or the swab or whatever it is, we put it into the liquid. Okay? We  
22 will have a tube with more liquid for the analysis.

23 In that tube we don't know how much DNA we got off of that object, so we need to  
24 find out. So we use a machine basically to tell us how much DNA we have. And once we  
25 know how much we have we can do that separation. But in order to do that you have to have

1 a good starting point to determine how much of that, too, to put into the process. Once in  
2 that process, we run copies of those fifteen locations. And we use a kit, a prepared kit that  
3 we order and when it comes in we validate it to make sure it does what it's supposed to do.  
4 When we know what it's supposed to do we use it on evidence. And once we make the  
5 copies, we put it into another machine and a computer reads it. We have validations for that  
6 as well. We have steps that we take to make sure the computer reads accurately. If it's not  
7 reading accurately, we go back and we start over and we re-run from the beginning.

8 And when it appears, the read-out, we have prints to look at, it's kind of like a graph,  
9 and we have to interpret the graph from and generate what is being reported as the numbers  
10 on the chart. Then we compare those numbers on the chart from the evidence and the  
11 numbers on the chart with the graph.

12 Q In this case that we're here for today, did you perform a DNA analysis?

13 A Yes, I did.

14 Q I'm going to show you what's been marked State's Number 45. Do you recognize  
15 that item as being in SLED packaging?

16 A Yes.

17 Q And are those pieces of evidence that you analyzed in this case?

18 A It does have my initials and date here, and it's heat sealed. I did test the items  
19 separately. The Item 7.1, and the case number and evidence description of pants, cutting  
20 from pants.

21 If we open this package, ---

22 Q You can open the package.

23 A It is heat-sealed, which is the way I would have returned to the agency. So, it hasn't  
24 been opened since I had it. Do you want me to open it?

25 Q Yes, please.

1     A               (opening package) So, all of these items are 6.1, 6.2, and 7.1, which are, 6.1 and 6.2  
2               are cuttings from a shirt, and 7.1 is a cutting from a pair of pants. All of these were in my  
3               possession and I analyzed them.

4     Ms. Howard: Your Honor, at this time the State would move these items into, this exhibit  
5               into evidence.

6     The Court: Any objection?

7     Ms. Howard: State's Number 45.

8     Ms. Manigault: No objection.

9     The Court: Without objection.

10               (whereupon State's Exhibit Number 45 was admitted into evidence without objection)

11    Q               Can you tell us why only the cuttings were in the lab and you only analyzed the  
12               cuttings?

13    A               Our space in the lab is a small, defined lab space. So, the item was larger than what  
14               would go through our processing area. So, cuttings are done to utilize better the space for  
15               processing. And if there are swabs, those are used. The cuttings are done downstairs where  
16               they are received and there is a larger area for processing.

17               And these items are identified. So, 6.1 shows that it came from Item 6, the shirt, 6.1  
18               is the first cutting from the shirt. 6.2 is the second cutting from the shirt. So, once they cut  
19               them, they seal them and they are retained in the pouch and sent to the DNA drawer so that  
20               I have the cutting.

21    Q               Did you ever actually cut the shirt yourself?

22    A               No, I did not.

23    Q               Did you receive this item from the DNA drawer?

24    A               Yes, I did, the cuttings from the shirt.

25    Q               What did you do with it?

1     A             I would have taken the package and cut across the top, so I'd make sure it's sealed. I  
2             would cut across the top, making sure not to destroy the signature and date. And then I  
3             would analyze each piece of evidence separately. So, I would take my area, I would sterilize  
4             it and clean my tools. Then I would lay out the sterile sheet, take one item out with my  
5             sterile tweezers and cut one piece of the item, put it in a tube, re-package that particular  
6             envelope and then re-sterilize everything.

7             Once I did that, I would take another item out, put it in a separate tube and then  
8             sterilize that, go back and sterilize everything and using my sterile tweezers place the item  
9             cutting into the tube. Then I would start with the adding chemicals and what-not. Basically  
10            the same process as before.

11    Q             What did you find to be the results of the analysis of these items?

12    A             For Item 6.1, which is the cutting, the first cutting from the shirt, SLED Item 6.1, I  
13             had blood indicated through DNA analysis. Item 6.2, I had blood indicated through DNA  
14             analysis. And 6.7 I had blood indicated through DNA analysis.

15             In the DNA section, I have a DNA profile developed from Item 7.1, and a partial  
16             DNA profile developed from 6.1 and 6.2, as an unidentified male individual at this point in  
17             my report.

18    Q             After you came to that result, what did you do then?

19    A             At this point because the standard that I had was not a typical and I did not know the  
20             standard, I requested a blood standard. And the person that standard was supposed to have  
21             come from was a female, and I had a male indicated. So, I just put this report out and waited  
22             for Forensics to provide a standard from that individual.

23    Q             Once you got this analysis were you then asked about a profile standard? Or asked  
24             to come up with a standard for the victim.

1     A             I was sent hairs from Karen Rojas and was asked to create a profile from those. My  
2             initial standard was that I had an indication of a male and no indication of a female. I  
3             requested a blood standard and was waiting on that because I had an indication of a male, but  
4             I didn't have what we would consider a normal standard.

5     Q             I'm showing you what has been identified as State's Number 50, the blood standard  
6             from Karen Rojas. Is this the standard you received?

7     A             Yes, those are my initials on the package and the date I opened the pouch, indicating  
8             that I handled this evidence, which is also listed on my report.

9     Q             When did you take the possession of the standard?

10    A             I took possession on March 30 of 2010.

11    Q             Was it still in a heat-sealed pouch?

12    A             Yes, it had not been opened.

13    Q             So, when you got the blood standard, the known standard from Karen Rojas, what  
14             did you do with that?

15    A             I would have performed the same fact analysis as I would on the other DNA that  
16             came in. I would take a cutting and put it in the tube, get the DNA off of it, quantify it, go  
17             through the same process. And I would get that final profile, those numbers and charts in my  
18             report.

19    Q             Once the DNA for Karen Rojas was determined, would that stay in the DNA, in the  
20             case file?

21    A             It would be in this report, in the system. So, you would have to look up the case file  
22             and pull up this report and it would show that chart and a copy of all of our files, the graphs  
23             done which I had to interpret. So, if somebody wants to look at that information as well they  
24             have all that, everything that I'd done.

1 Q Once you completed the analysis on State's Number 50, what did you do with that  
2 item?

3 A I would then heat seal it, which is what we have here. And you see where I had cut it  
4 to get in. And I would replace the item, seal it and initialed it over the seal so that the next  
5 person who gets it would check it for the seal, and they would see that I was the last person  
6 who handled it. And I returned the item itself to a technician, Sandy Stevens. She would  
7 have-- I really can't say what she would have done.

8 Q That's okay.

9 A It would have gotten returned through this process.

10 Q And that was after you performed your tests?

11 A Yes, and it was sealed afterwards, yes.

12 Q Did you have any further involvement in this case other than conducting the DNA  
13 analysis?

14 A Not as far as analyzing evidence. I filed my report that certified that I analyzed the  
15 evidence, but did not analyze any other evidence in this case.

16 Q Thank you, Ms. Thompson.

17 Ms. Howard: No further questions.

18 The Court: Ms. Manigault.

19 Ms. Manigault: Thank you, Your Honor.

20 **CROSS EXAMINATION BY MS. MANIGAULT:**

21 Q Ms. Thompson, it's your testimony that you only analyzed cuttings from the shirt and  
22 the pants?

23 A And the blood standard from Karen Rojas.

24 Q And the blood standard from Karen Rojas.

25 A Yes.



1 Q So, your first report came out when? When did you finish that analyzation (sic)?

2 A The first report before the blood from Karen Rojas was sent out, November 18, 2009.

3 Q And with that report you testified that you analyzed Item 7.1, which was the cutting  
4 from pants; and a positive DNA profile developed from Item 6.1 and 6.2, which were  
5 cuttings from the shirt?

6 A I analyzed three items and I got a full profile from those items.

7 Q And at that point you said it was identified as an unknown male individual?

8 A Yes.

9 Q Were you ever submitted known bucal swabs from Wallace Evatt?

10 A No, I was not.

11 Q You were not.

12 A No.

13 Q When you-- When your report-- The second report, I believe you testified-- What  
14 was the date of that report?

15 A August 15 of 2010.

16 Q And you then received a blood standard from Karen Rojas?

17 A Yes, and I added that to the previous report so that I could compare the previous  
18 items with that standard that had come in.

19 Q And the result of that was what?

20 A It was basically the same statement, the DNA profile of selected items, partial DNA  
21 profile was developed, 6.1 to an unknown male individual and did not match Karen Rojas,  
22 That's the position in that report was that it did not match Karen Rojas.

23 Q Thank you.

24 The Court: Thank you. You can step down.

25 Ms. Howard: Your Honor, at this time the State would call Stephanie Stanley.

1                                    **STEPHANIE STANLEY**, duly sworn, testified as follows:

2                    Clerk of Court: Please state your name for the record.

3        A                    Stephanie Stanley.

4                    Clerk of Court: Thank you. You may be seated.

5        **DIRECT EXAMINATION BY MS. HOWARD:**

6        Q                    Ms. Stanley, can you tell us who you work for?

7        A                    I'm employed by the South Carolina Law Enforcement Division, commonly known  
8                    as SLED.

9        Q                    How long have you worked for SLED?

10       A                    A little over seven years.

11       Q                    What's your position with SLED?

12       A                    I'm a forensic scientist in the DNA testing department.

13       Q                    How long have you been a DNA analyst?

14       A                    I worked in the DNA for my entire career, except I was a forensic technician for  
15                    about six months.

16       Q                    What do you do as a DNA analyst?

17       A                    I'm responsible for any evidence that's submitted by law enforcement agencies across  
18                    the state of South Carolina for biological fluids and then comparing them to a DNA standard  
19                    to see if they match, and generating a report based on my interpretation and findings.

20       Q                    How many DNA analyses would you say you have performed for SLED?

21       A                    We don't keep a record but probably thousands.

22       Q                    And were your qualifications prior to becoming a DNA analyst?

23       A                    I have a Bachelor's of Science degree in biological sciences from Clemson  
24                    University. I've been trained by court-qualified analysts at SLED, as part of an in-house  
25                    training program where I was trained in serology, DNA analysis, DNA interpretation,

1 statistics as it relates to analysis, courtroom testimony. I was also trained at the National  
2 Forensic Science Technology Center. I attended Marshall University for DNA analysis  
3 training.

4 Q Have you ever been qualified as an expert?

5 A Yes, I have.

6 Q Have you testified before in court concerning the findings of you DNA analysis?

7 A Yes, I have.

8 Ms. Howard: Your Honor, at this time the State would ask that Ms. Stanley be qualified as  
9 an expert in serology and DNA analysis.

10 The Court: Any voir dire?

11 Ms. Manigault: None, Your Honor.

12 The Court: She's qualified. Proceed.

13 Q Did you perform a DNA analysis in this case?

14 A Yes, I did.

15 Q I'm going to show you what's been marked as State's Exhibit Number 47. Do you  
16 recognize those items?

17 A Yes, I do.

18 Q Are those the items you analyzed?

19 A Yes. This is a heat-sealed pouch that was submitted to SLED. This is the case  
20 number that's associated with this case. These are my initials that I signed. This evidence  
21 analysis has my initials and the date on it.

22 Q When did you receive those items and when did you receive them?

23 A May I refer to my chain of custody?

24 Q Yes.

4 Q What did you do when you received them?

8 Q And it came to you in that heat-sealed pouch in which it's in today?

12           The Court: Any objection?

14           The Court: It's in evidence.

16 Q Ms. Stanley, what type of analysis were you asked to perform?

18 Q Would you give the jury a brief description of how you went about performing that  
19 analysis?

20 A Usually DNA analysis starts out with a swab or a cutting. In this particular case it  
21 was a cutting that was made by the a forensic technician in the evidence processing  
22 department. She would have packaged those items and sent them to me. I would have made  
23 a smaller cutting based on what she identified. I would have added some chemicals and run  
24 it through the process, performed DCR, degenerate crystal relaxation, and made an  
25 interpretation and submitted my report.

1 Q How did you come up with the results of your tests?

2 A My analysis was a follow-up analysis to that of Lindsay Thompson. I took my  
3 crystals that I developed from the three cuttings from the shirt and compared them to the  
4 known blood standards from Karen Rojas.

5 Q How did you go about doing that? How did you go about comparing it with her  
6 profile?

7 A Lindsay had previously recorded on the blood standard from Karen Rojas, which I  
8 think that would be in her final report.

9 Q You did not have a blood standard?

10 A No, I did not.

11 Q Let's talk about the results of your analysis. If you could go through each one, 6.5,  
12 6.4 and 6.3, and tell us what you found.

13 A No measurable DNA was detected on Item 6.5. Partial DNA profile developed from  
14 Item 6.4.

15 Q I'm going to stop you for just a minute. Can you explain to the jury about what you  
16 mean when you say no measurable DNA?

17 A No measurable DNA means there's not enough of anything there for me to further  
18 test. Testing stops at this quantification stage for that item.

19 Q So, if there was a presumptive test already for 6.5, would you test for DNA?

20 A I did not do any presumptive testing. I just took it straight to DNA. And that  
21 particular cutting, that cutting that I chose did not have DNA on it.

22 Q So, would you have to a presumptive test to detect trace evidence of DNA?

23 A That's kind of a broad question, but presumptive testing is to give you an indication  
24 that body fluids may be present and that you should continue with further testing.

25 Q And as to Items 6.4 and 6.3?

1     A             For 6.4, the DNA profile developed from Item 6.4 matches the DNA profile of Karen  
2             Rojas. For 6.3, the partial DNA profile developed for 6.3 is insufficient for a reliable  
3             interpretation.

4     Q             So, 6.3 was insufficient for a reliable interpretation. Could you describe that for us,  
5             please?

6     A             Insufficient for a reliable interpretation means I am given some DNA results but  
7             there's not enough there for me to make an interpretation based on it.

8     Q             And then as to Item 6.4?

9     A             The first DNA results from Item 6.4 matches the DNA of Karen Rojas.

10    Q             Now, when you refer to these cuttings in these areas, 6.3, 6.4, 6.5, is there one spot  
11             analyzed from a cutting or taken from spots in the area?

12    A             In these cuttings there were multiple areas circled and I combined those areas for  
13             analysis. So, each cutting had multiple areas I combined.

14    Q             Now, these cuttings were taken a while after the first cuttings and the blood standard  
15             were analyzed. Can you talk to me about the stability of DNA?

16    A             DNA evidence is relatively stable if it's stored properly. Storage properly of DNA  
17             evidence would be not high heat, not high heat of any kind. You don't want to store it in the  
18             rain, you don't want to store it outside. But room temperature storage is how we store  
19             evidence at SLED. Liquid blood samples would have to be refrigerated and tissue samples  
20             need to be refrigerated. But dried cuttings, dried samples can be stored at room temperature.

21    Q             Thank you, Ms. Stanley.

22             Ms. Howard: No further questions.

23             The Court: Ms. Manigault.

24             Ms. Howard: Answer any questions Ms. Manigault has.

25

1 **CROSS EXAMINATION BY MS. MANIGAULT:**

2 Q What is the date of your report, Ms. Stanley?

3 A The date of my report is December 28, 2011.

4 Q And the 6.5, were pieces of the shirt, according to the SLED numbers?

5 A Yes, these were all cuttings from a shirt.

6 Q So, the 6.5 you said there was no human DNA detected.

7 A Yes.

8 Q So, there was nothing to test?

9 A Testing ending on 6.5.

10 Q On 6.4, the profile was developed was Karen Rojas?

11 A Yes ma'am.

12 Q And then on 6.3, the cutting it was insufficient for reliable interpretation?

13 A Yes ma'am. 6.3 was insufficient for reliable interpretation.

14 Q And had you tested these items before in your work at SLED with this case?

15 A This is my involvement: I tested 6.3, 6.4 and 6.5.

16 Q And you said you received them on November 29, 2011?

17 A Yes.

18 Q And your report was generated on December 28, 2011?

19 A Yes.

20 Q Thank you.

21 The Court: Thank you. You may step down.

22 Ms. Howard: Your Honor, the State calls Tony Segars.

23

24

25

1                                   **TONY SEGARS**, duly sworn, testified as follows:

2           Clerk of Court: Please state your name for the record.

3    A           Tony Segars.

4           Clerk of Court: Thank you. You may be seated.

5    **DIRECT EXAMINATION BY MS. HOWARD:**

6    Q           Mr. Segars, can you tell us your position with Greenville County?

7    A           I'm a deputy coroner for Greenville County Coroner.

8    Q           And was that your position in 2009?

9    A           Yes ma'am.

10   Q           Specifically, May 17, 2009?

11   A           Yes ma'am.

12   Q           Did you respond to the death scene of Karen Rojas?

13   A           I did.

14   Q           Did you enter her trailer?

15   A           I did.

16   Q           Did you in any way touch or remove her body before Forensics took their pictures or  
17           did any of their collecting of evidence?

18   A           No ma'am, not before the processing of the scene.

19   Q           And where did you ultimately move her body?

20   A           Once the scene was processed and it was turned over from Forensics, it was told to  
21           me and Investigator Whaley that it was final at that point, we would have taken her and  
22           placed here in a body bag and removed her from the scene and taken her to the morgue.

23   Q           Placing her in a body bag, how was that done?



1 A We would have set the body bag preferably somewhere very close to her, outside of  
2 any pools of fluids. Sometimes that's not possible. And we would have rolled her in one  
3 direction, placed the bag under her, rolled her into the bag and then sealed it.

4 Q Did you try to do this with as little movement as possible?

5 A Yes ma'am.

6 Q And then once the body is, once someone's body is in the body bag, how is it  
7 transported?

8 A We have a transport agency. What we did and what we specifically do on the scene  
9 with any unexplained death, we would seal that body bag. We would take a seal with a  
10 number and place it between the zipper clasp and seal it and log that number. And then it  
11 would go through the transport agency to our morgue. We would register it at the hospital  
12 and then the medical examiner that was in charge of the post the next morning or later that  
13 day would document that that seal was there and in place when he opened the bag.

14 Q And it is your testimony that you did not touch the victim's body before Forensics  
15 was finished process. Did you touch anything else in the trailer while Forensics was still  
16 processing?

17 A No, we wouldn't have touched anything until Forensics was finished with their  
18 processing.

19 Q Thank you, Mr. Segars. Please answer any questions Ms. Manigault may have for  
20 you.

21 The Court: Ms. Manigault.

22 **CROSS EXAMINATION BY MS. MANIGAULT:**

23 Q Mr. Segars, what time did you get to the trailer?

24 A At 14:10.

25 Q When you arrived did you go straight inside the trailer?

1 A No ma'am. I would have spoke with the Greenville County Sheriff's Deputy that was  
2 on the scene that had the scene secured.

3 Q Did you have to wait any length of time before you could access the trailer?

4 A I waited for Investigator Whaley and for Forensics to get through. What we would do  
5 is we would all meet outside. We would discuss what the people that had to go in prior to us  
6 getting there had seen. And then once Forensics was finished, then we would all enter  
7 together.

8 Q Do you know whether anybody had gone into the trailer before you got there?

9 A Before my arrival?

10 Q Yes sir.

11 A I would tell you that Greenville County EMS would have went in from the original  
12 911 call. And most likely a deputy that would respond to the call.

13 Q But otherwise, you don't have information of anyone else entering the trailer?

14 A No ma'am. And it would have been a log created by the arriving deputy of anyone  
15 that would have went in.

16 Q For any Greenville County official that would have been involved?

17 A Yes ma'am.

18 Q But if it was a citizen there would not have been a log?

19 A Oh, no ma'am.

20 Q You testified that you would try to avoid fluids when placing the body in the body  
21 bag. Is that right?

22 A Yes ma'am.

23 Q And you further testified that you made-- Do you recall exactly how you, in this case,  
24 when you placed the body, did you have to roll it?

1 A I don't recall if we were able to do that, to roll her or if we placed the bag beside her  
2 and lifted her. I don't recall.

3 Q In your experience sometimes does blood remain in the body bag after the person has  
4 been moved?

5 A Remain in the body bag?

6 Q Is there a blood spot or stain that remains in the body bag from if there is blood on the  
7 deceased?

8 A If it's at the scene and it's placed in the body bag with a open wound, at the point  
9 where we would open it at autopsy, I would just about guarantee that there is blood in the  
10 body bag.

11 Q Thank you.

12 The Court: Thank you. Step down.

13 Ms. Salisbury: Your Honor, the state calls Mr. James Armstrong.

14 **JAMES ARMSTRONG**, duly sworn, testified as follows:

15 Clerk of Court: Please state your name for the record.

16 A James Armstrong.

17 Clerk of Court: Thank you. You may be seated.

18 **DIRECT EXAMINATION BY MS. SALISBURY:**

19 Q Good morning, Mr. Armstrong.

20 A Good morning.

21 Q Where do you work?

22 A Greenville County Department of Public Safety, Forensic Division and Crime  
23 Laboratory.

24 Q What are your responsibilities there at the crime lab?

1     A             As an employee of the crime lab, I have dual responsibility of the forensic drug unit  
2             and the forensic crime analyst.

3     Q             To prepare you for those dual responsibilities, what sort of training and education do  
4             you have, did you receive to become certified as a criminal investigator.

5     A             I first started out in the area of drug identification. I have a bachelor of science  
6             degree in chemistry from Erskine College. I have attended numerous seminars and schools  
7             concerning drug use and analysis. I trained in the area of drug identification and I've  
8             testified at least 150 times in state and federal level courts as an expert in that field.

9             Since then I have worked in the area of firearms identification, murder scenes. And I  
10            trained for two years under a retired firearms examiner with the Philadelphia Police  
11            Department. I've attended thirteen manufacturers of firearms where I've watched them  
12            manufacture firearms from the raw materials to the finished product. I've been to four  
13            different ammunition manufacturing's facilities where they've assembled and manufactured  
14            ammunition from raw materials to the finished product.

15           I have attended schools sponsored by the Federal Bureau of Alcohol, Tobacco and  
16           Firearms. I have participated in ballistics analysis and in inspection of firearms in  
17           microscopic training.

18           I have testified in federal and state courts at least twenty-seven times in the area of  
19           crime investigation.

20    Q             Now, specifically as to inspection of firearms and ballistics analysis, how many  
21            firearms do you think you've examined?

22    A             Hundreds.

23    Q             And, specifically, as it relates to the firearms analysis on your job, how many times  
24            have you testified about firearms?

25    A             Twenty-seven times.

1 Ms. Salisbury: Your Honor, at this time the State offers Mr. Armstrong as an expert in the  
2 field of firearms.

3 The Court: Any voir dire?

4 Ms. Manigault: None, Your Honor.

5 The Court: He's qualified.

6 Ms. Salisbury: Thank you, Your Honor.

7 Q Mr. Armstrong, do you recall being asked to examine a firearm in this case?

8 A Yes ma'am.

9 Q When you are asked to perform an analysis on a firearm what's the process by which  
10 you go to obtain the firearm and prepare it for whatever it is you do to analyze it?

11 A When I do that, I have to go down to the property and evidence room in the basement  
12 of the law enforcement center. And I ask the evidence custodian to hand me a box of cases  
13 that are pending to be worked, to hand me the property and evidence sheet where I sign for  
14 the property. And I also make sure there's a request sheet that gives me permission to  
15 analyze the evidence.

16 And once I sign for the evidence on the property and evidence sheet I transport it  
17 back to my office for analysis. Then I open the containers, inventory what I have and  
18 generate my notes and do my analysis and then generate a report.

19 Q I'm going to show you a box that contains State's Exhibits 9 and 10. I want you to  
20 take a look at this box and tell me whether you recognize what's contained inside it. And  
21 then also tell me if the contents of that box are familiar to you.

22 A (pause to inspect box) Yes ma'am, I do.

23 Q How do you recognize this box?

24 A I recognize the box because it has my initials on the tape which I opened to see what  
25 was in the box.

1 Q Now, when you go to pick up particularly firearms evidence from property and  
2 evidence as you've described, are they always contained in one of these white, sealed  
3 packages?

4 A No, they're not.

5 Q Is that how this particular firearm was packaged at the time that you got it?

6 A Yes ma'am.

7 Q Now, will you tell the jury a little bit about how do you start examining a firearm, the  
8 entire process?

9 A The first thing I do is I verify that it's not loaded. I then record the name, model,  
10 serial number and the caliber of the firearm on my report sheet. And from there I generate a  
11 test. I take the type of ammunition that is advised for that type of firearm and go to my  
12 firearm retrieval tank and fire a test shot into that tank and retrieve the projectiles and keep  
13 them in an envelope for future comparison.

14 Q Why do you do that?

15 A So I can get a sample of the projectile that can be compared to and used for  
16 identification of projectiles in the future.

17 Q So you actually fire the gun?

18 A Yes ma'am.

19 Q What kind of retrieval tank? What are you talking about?

20 A It's basically, in simple terms, it's a stainless steel tank full of water, and I use a net  
21 or any type of retrieval device to scoop the projectiles out of the water.

22 Q And after you test fire-- Well, let me back up. How do you decide which caliber of  
23 projectile is appropriate to test fire from any particular firearm?

24 A Well, you go by the caliber of the firearm itself.

25 Q And what did you determine the caliber of State's Exhibit Nine to have been?

1 A The .38 special.

2 Q Do you normally keep that kind of ammunition inside your lab?

3 A Yes ma'am.

4 Q Does that handgun require special ammunition other than it being the same caliber?

5 A No ma'am.

6 Q Now, what happens next in your analysis? You've got your gun that you've  
7 determined is operable because you've been able to fire the bullets. And now you have, you  
8 have collected these casings. What do you do with all that?

9 A It depends if there is anything for comparison. If I have casings or projectiles to  
10 compare to the firearm, I'll then go back to my office and sit down and compare under a  
11 microscope. I'll put the test-fired ones on the right-hand side of my scope, and the unknown,  
12 or the questionable ones on the left-hand side. I then do an overlap comparison to look at the  
13 lands and grooves, which is a fingerprint on that projectile, to see if they were fired from the  
14 same firearm.

15 Q Is each firearm sufficiently unique so that you would be able to determine that a  
16 projectile was fired from a particular gun as opposed to a gun of the same caliber?

17 A Yes ma'am.

18 Q How are you able to determine that?

19 A Looking at what we call lands and grooves, they are striations or imperfections in the  
20 barrel at the time it was manufactured. Those imperfections are transferred to the projectile  
21 and it's like a fingerprint on a person. They're unique to each projectile.

22 Q So, after you have put the test-fired projectile that you have fired from that gun side  
23 by side under that microscope that you just described, after comparing those two, would you  
24 then be able to determine whether the projectile was or was not fired from the standard?

25 A In some situations, yes ma'am.

1 Q I'm showing you State's Exhibit 32, and you can open that up and take a look inside  
2 and tell me if you recognize what's contained inside?

3 A Yes ma'am, I do.

4 Q How do you recognize that?

5 A The sealed container has my initials and the date where I sealed it with heat sealer.

6 Q Where did you get that in order to seal it?

7 A I would have received it from our property and evidence room and it was sealed.

8 Q How would know that item would go with whatever firearm analysis you've been  
9 asked to do?

10 A In order for me to do a comparison, I have to have what is known as a laboratory  
11 request sheet that I fill out asking me to compare one item to another.

12 Q So, if State's Exhibit 32 the actual projectile that you compared to those projectiles  
13 that you test-fired?

14 A Yes ma'am.

15 Ms. Salisbury: Your Honor, the State offers Exhibit 32.

16 The Court: Any objection?

17 Ms. Manigault: None, Your Honor.

18 The Court: It's in without objection.

19 (whereupon State's Exhibit Number 32 was admitted into evidence without objection)

20 Q Now, if you describe to the jury what you looked at and what you found.

21 A I examined the projectile and determined that the projectile was a caliber .38, 357,  
22 and that bore similar but insufficient microscopic marks to commit a positive identification to  
23 the revolver as well as the projectile.

24 Q Now, similar but insufficient, help me and the jury understand what that means.



1 A By looking at the rifling characteristics that they have-- Generally rifling  
2 characteristics have either five or six lands and grooves. The general and shape and size and  
3 direction were all consistent. There were some microscopic agreement inside the lands and  
4 grooves, but not enough detail to make a positive identification. I can't say that this  
5 projectile was positively fired from this firearm, but I also cannot eliminate this firearm.

6 Q Now, why would you be able to tell from your test-fired projectile that it's fired from  
7 the handgun that it's test-fired, but not be able to tell from the projectile that you received?

8 A I don't know what you mean.

9 Q Maybe I was unclear. Let me ask it this way: What about this projectile inhibited  
10 your ability to make that kind of comparison that would help you have enough information to  
11 decide if it was fired from that gun?

12 A Sometimes firearms are made of different metals because the metal structure is a size  
13 of projectile when the actual manufacturer may be a thousandth of an inch smaller or larger,  
14 but is able to be fired through the barrel. But the striking of materials, of wood, metal, foam,  
15 body components or what-not, it also changes some of the structure of the metal. And it also  
16 hides microscopic marks that we're looking for.

17 Q In plain speak does that mean that the projectile just sort of gets messed up?

18 A Yes ma'am.

19 Q So, it is then your finding that the projectile that was submitted to you for comparison  
20 is of the appropriate caliber to be fired from State's Exhibit 9?

21 A Yes ma'am.

22 Q But it was not in good enough shape for you to be able compare it to the bullets that  
23 you test-fired?

24 A I could not make a positive identification.

1 Q One more thing, very briefly. I'd like to show you, and I'll put it up here on the  
2 screen, State's Exhibit 11, the photograph that we looked at earlier in this case. And I was  
3 hoping that you might be able to tell the jury, what are those items that we are looking at  
4 inside the chamber of this revolver? We see one, what appears to be an empty cylinder.

5 As a firearms examiner, that may sound like a very basic question, but what does that  
6 show?

7 A There was not a cartridge loaded into that chamber.

8 Q So, that empty hole is simply unloaded?

9 A True.

10 Q Does that mean that a bullet was never put in that space?

11 A Not in that space.

12 Q Are you able to tell by looking at this photograph which of these bullets was actually  
13 fired?

14 A Yes, I can.

15 Q How can you tell that?

16 A It has a firing pin impression on the, a firing impression of the cartridge.

17 Q Are you able to tell anything at all about the remaining three rounds?

18 A They appear to be un-fired.

19 Q Mr. Armstrong, I appreciate your help. If you will answer any questions Ms.  
20 Manigault may have.

21 The Court: Ms. Manigault.

22 **CROSS EXAMINATION BY MS. MANIGAULT:**

23 Q Mr. Armstrong, do you have a copy of your report with you?

24 A Yes ma'am.

25 Q And when you tested what did the results say?

1 A The results, an RVII revolver to examine and test-fire; had a DSI to microscopically  
2 compare the shots with the RVII revolver. The item DSI fired bullets of same caliber but had  
3 similar but insufficient microscopic marks to commit a positive identification to the item  
4 RVII, a revolver.

5 Q In State's Exhibit Number 11, you pointed to the chart where there was an empty  
6 chamber.

7 A Yes ma'am.

8 Q Can you tell the specifics-- I don't know anything about guns. So, when you load a  
9 gun, is it one, two, three, four, five bullets, or is it, say, is there is a sequence that you would  
10 load the gun?

11 A There's no sequence. If it's a revolver you generally have five or six, but you can  
12 have up to nine or ten, chambers and just load them any way you want to into the cylinder.

13 Q So, if a gun had an empty cylinder-- This was a fired gun?

14 A Yes ma'am.

15 Q And if one cylinder is empty does that determine how the gun rolls to pick up a full  
16 slot?

17 A Not necessarily. Some people will load a revolver and they think, they will load one  
18 and they will leave one cartridge out and put that chamber underneath which is known as the  
19 firing pin for storage. Then when the hammer is cocked and the trigger is pulled, that  
20 cylinder will rotate to one that has a live cartridge in it.

21 Q So, the empty cylinder would move out of the way for a full cylinder?

22 A Yes ma'am.

23 Q Would there be any time when the empty cylinder would not move? For instance,  
24 you load a gun, and you've got an empty cylinder and your expectation is that the empty  
25 cylinder would not fire. Would there be any time that that would happen or could happen?

1     A             If you've got an empty cylinder and it's straight up with the firing pin at the time, and  
2             the trigger is pulled, it will do what we call a double-action load, which will rotate the  
3             cylinder. If that cylinder is empty it will then go to the left or the right of the firing pin which  
4             would then put a loaded chamber right in line with the firing pin and be ejected by the gun.

5     Q             Did you do any other tests with the revolver?

6     A             No ma'am, I did not.

7     Q             Thank you.

8             The Court: Thank you. Step down. We will take a short recess at this time.

9             (whereupon the jury exited the courtroom and court was in recess)

10                             **COURT IN SESSION**

11             The Court: Ms. Salisbury.

12             Ms. Salisbury: Your Honor, we want to discuss with the court concerning the witnesses.

13             Each of these witnesses is familiar with both the defendant and the victim and the State plans  
14             to elicit testimony from them specifically about the victim's state of mind.

15             As the court is aware throughout the course of the trial, it is the defendant's position that Ms.  
16             Rojas committed suicide. I guess that does raise the issue to the jury about the victim's state  
17             of mind.

18             And so, it's the State's position, and I have some people who are interested in hearing about  
19             it, that at that point, because of victim's state of mind is at issue, the State is entitled to elicit  
20             testimony about the victim's state of mind.

21             It's my understanding that our court's position on that issue is that while the State can permit  
22             testimony that the victim may have been fearful, I do not plan to ask details questions about  
23             what each of the witnesses has been instructed; that when I ask her as to the state of mind,  
24             while they are aware that the victim indicated that she was fearful as opposed to despondent

1 and suicidal. I've instructed them not to indicate that she expressed that she was fearful of  
2 this defendant.

3 So, while that issue may be open later, should the defendant open that door in some way, at  
4 least at this point it is the State's intention to elicit that testimony based on the fact that the  
5 victim's state of mind is at issue, based on the fact that the defendant has raised the issue of  
6 suicide on the stand.

7 The Court: Ms. Manigault.

8 Ms. Manigault: Your Honor, of course, we are going to object to that. What it sounds like to  
9 me is a back-door way of character evidence. Under Rule 404, it talks about character  
10 evidence not necessary to prove conduct. And it lists the statutes.

11 We object to any testimony about what the, what Karen Rojas may have said to any of these  
12 people. We have no way of verifying or cross-examining the---

13 The Court: Tell me specifically what the witnesses will testify to.

14 Ms. Salisbury: The first witness is Mr. Michael Saylor. Not only did he see both the  
15 defendant and the victim earlier in the day of the shooting, he also had conversations with  
16 Karen around the time of this incident regarding the fact that she was fearful of the defendant  
17 specifically.

18 Now, I do not plan to ask Mr. Saylor why Ms. Rojas indicated she was fearful. But because  
19 the jury has now been tasked with deciding whether the victim was despondent, depressed,  
20 suicidal, I think it is appropriate for the State to offer evidence that she simply was not. She  
21 was in fact fearful. And to the extent that---

22 The Court: What is he gone say?

23 Ms. Salisbury: It is my understanding that he will say that in his conversations with Karen  
24 she indicated to him that she was afraid, afraid for her life.

25 The Court: And is that specifically what she said?

1 Ms. Salisbury: Yes sir. And I can make it as general as the court would request. Again, I do  
2 not plan to elicit any testimony about particular instances. Each of these people observed  
3 bruises on the victim. Should that come up at some later point in the trial I certainly will  
4 inform the court at that time, but I do not plan to go into any specifics.

5 The Court: Your objection is overruled. I will allow that.

6 Ms. Manigault: Your Honor, for clarification, she mentioned something about bruising and  
7 what Karen Rojas allegedly told these people. There is no mention about the time frame,  
8 whether it was the day of, five months, two months, when. So, my objection is to say that  
9 would be, that it is irrelevant information. And under Rule 404 I think that's a back-door of  
10 finding to get character in.

11 The Court: Okay. Bring the jury in.

12 (whereupon the jury entered the courtroom)

13 Ms. Salisbury: Your Honor, the State calls Michael Saylor.

14 **MICHAEL SAYLORS**, duly sworn, testified as follows:

15 Clerk of Court: Please state your name for the record.

16 A Michael Saylor.

17 Clerk of Court: Thank you. You may be seated.

18 **DIRECT EXAMINATION BY MS. SALISBURY:**

19 Q Good morning, Mr. Saylor.

20 A Good morning.

21 Q Where do you live?

22 A In Pelzer.

23 Q How long have you lived there?

24 A All my life.

25 Q What kind of work do you do?

- 1 A I run a body shop, repair cars.
- 2 Q How long have you been doing that?
- 3 A Since I got out of school.
- 4 Q Do you know the defendant, Mr. Wallace Eugene Evatt?
- 5 A Yes, I do.
- 6 Q How long have you known him?
- 7 A From high school.
- 8 Q What is your relationship like with him? How would you characterize it?
- 9 A It's all right, cordial.
- 10 Q Do you remember back in May of 2009, whether he was working?
- 11 A No.
- 12 Q No, you don't remember, or no he wasn't working?
- 13 A He had been working right up until right at that time. I'm not sure of the dates.
- 14 Q That's fine. How often around that time did you see him?
- 15 A At least every other day.
- 16 Q Would he just come by your garage area?
- 17 A Yes ma'am.
- 18 Q Now, did know Karen Rojas?
- 19 A Yes, I knew Karen.
- 20 Q How did you know her?
- 21 A From the restaurant. We would eat up there a couple of times a day. I think that's
- 22 probably three years that she worked there.
- 23 Q Are you talking about Karen?
- 24 A I'm talking about Karen.
- 25 Q Do you remember the last time that you saw Karen?

- 1 A The day of-- That she-- The day of her death.
- 2 Q The day of her death?
- 3 A Yes.
- 4 Q Do you remember what day of the week that would have been?
- 5 A I don't remember. I seen her that morning.
- 6 Q How did you see her? At the restaurant?
- 7 A At our shop.
- 8 Q Did she come to your shop?
- 9 A Yes.
- 10 Q Did she come by herself?
- 11 A No.
- 12 Q How did she get there?
- 13 A In her car.
- 14 Q Who was with her?
- 15 A Gene.
- 16 Q You said sometime in the morning. Would it have been bright and early with the sun
- 17 or was it a little bit later in the day?
- 18 A It was before lunch. I'm sure of the time. It was before lunch.
- 19 Q Did you speak with her that day?
- 20 A Just for a couple of minutes.
- 21 Q How long did they stay out at your garage?
- 22 A Probably about twenty minutes or so.
- 23 Q How did you understand Karen and Gene's relationship? What was your
- 24 understanding of what their relationship was? I mean, were they friends, were they
- 25 acquaintances, boyfriend-girlfriend? What did you know them to be?



1 A I think they was boyfriend and girlfriend. They lived together.

2 Q Did Gene ever talk to you about Karen?

3 A Yes.

4 Q Did he talk to you about their relationship?

5 A Yes, I think.

6 Q When you saw her that morning, what was she like?

7 A I don't-- They been rough, you know, pretty much, earlier, when they come to the  
8 shop. I kinda guess they was, had been fussin' or something.

9 Q Well, was she friendly to you?

10 A Yes.

11 Q Was she generally friendly with you?

12 A Yes.

13 Q Did she seem to be her normal self, as you always interacted with her?

14 A Pretty much.

15 Q During that time that you talked with her about the defendant and their relationship,  
16 did she ever tell you that she was fearful?

17 A Yes.

18 Q After they left your shop that morning did you ever talk to her again?

19 A No.

20 Q Did you ever see her again?

21 A No.

22 Q Thank you, Mr. Saylors. If you would, answer Ms. Manigault's questions.

23 The Court: All right, Ms. Manigault.

24

25

1     **CROSS EXAMINATION BY MS. MANIGAULT:**

2     Q             Mr. Saylor, you said they came to your shop. Was this one day during the week?

3     A             This was the morning that she passed away.

4     Q             Is your shop open seven days a week?

5     A             We work on Saturdays and Sundays sometimes on our own vehicles.

6     Q             I didn't understand you.

7     A             We have some of our own vehicles that we do and that's almost always on Saturday

8             or Sunday.

9     Q             You were asked the question did Ms. Rojas talk to you about her relationship with

10            Mr. Evatt and you said yes, I think. Did you talk to you or not talk to you?

11    A             Yes.

12    Q             When you saw her that morning, what time of morning was that?

13    A             It was before lunch.

14    Q             Before lunch?

15    A             Yes ma'am. It was morning because it was before lunch.

16    Q             Late morning, early morning, 6:00 a.m., 5:00, 11:00?

17    A             If I was gone put a time on it, I would say ten.

18    Q             10:00 a.m.?

19    A             Yeah. I mean, I not good on time.

20    Q             Okay.

21            The Court: Thank you. You may step down.

22            Ms. Salisbury: Your Honor, the State calls Cindy Rojas to the stand.

23

24

25

1 **CINDY ROJAS**, duly sworn, testified as follows:

2 Clerk of Court: Please state your name for the record.

3 A Cindy Rojas.

4 Clerk of Court: Thank you. You may be seated.

5 **DIRECT EXAMINATION BY MS. SALISBURY:**

6 Q Good morning, Ms. Rojas.

7 A Good morning.

8 Q Ms. Rojas, where do you live?

9 A Piedmont, South Carolina.

10 Q How long have you lived in Piedmont?

11 A Close to twenty years.

12 Q I work at Cracker Barrel.

13 Q How long have you worked there?

14 A Close to seven years.

15 Q Did you know Karen Rojas?

16 A Yes.

17 Q How did you know her?

18 A Karen's my sister-in-law.

19 Q Did you work there together at Cracker Barrel?

20 A Yes.

21 Q What was your relationship like with Karen?

22 A It was fine.

23 Q Did you see her often?

24 A Yes.

25 Q Did you talk frequently?

- 1 A Yes.
- 2 Q Would you describe your relationship as what?
- 3 A Friendly.
- 4 Q How often did-- You said you worked together with Karen, how often would you  
5 talk with her?
- 6 A Every day I worked.
- 7 Q So, what was it several times a week?
- 8 A Yeah.
- 9 Q Do you remember the last time that you saw her and spoke with her?
- 10 A Yes.
- 11 Q When would that have been?
- 12 A It would have been Friday when she was leaving work.
- 13 Q Was she at the Cracker Barrel that day?
- 14 A Yes, she was there.
- 15 Q Now, outside of that Friday and the days before, had you seen her and spoken with  
16 her in the days leading up to her death?
- 17 A Yes.
- 18 Q What was she like?
- 19 A She was worried, she was fretful.
- 20 Q What was she normally like? Over the time you had known her what was her attitude  
21 like?
- 22 A Very fun. She seemed happy and easy going. Wonderful person.
- 23 Q Did the two of you ever make plans to do things together?
- 24 A Oh, yeah. We went out several times. I have been to her home. She's come over to  
25 mine. We did things together.

1 Q In the days and weeks before her death had you made plans to see one another?

2 A Yes. We had talked about getting together and doing some stuff.

3 Q Do you know or recognize the defendant, Mr. Wallace Eugene Evatt?

4 A Yes.

5 Q How do you recognize him?

6 A He had come to Cracker Barrel with her, with Karen.

7 Q And as you understand, how long had Gene been with Karen before her death?

8 A On and off for a while. The last time, a week.

9 Q Did she ever talk to you about him?

10 A Yes.

11 Q Did she ever talk to you about their relationship?

12 A Yes.

13 Q Did she ever indicate to you that she was fearful?

14 A Yes.

15 Q Now, let's talk about that Friday when she was leaving work. Did you talk long that

16 Friday?

17 A Not long. She was very, very tense. She was very worried. She was in a rush.

18 Q Did you ever have an opportunity to talk to her again?

19 A Not after Friday.

20 Q Did you ever see her again?

21 A No.

22 Q Thank you, Ms. Rojas.

23 The Court: Ms. Manigault?

24 Ms. Manigault: I have no questions.

25 The Court: Thank you. You may step down.

1 Ms. Salisbury: The State calls Mr. David Gross.

2 **DAVID GROSS**, duly sworn, testified as follows:

3 Clerk of Court: Please state your name for the record.

4 A David Gross.

5 Clerk of Court: Thank you. You may be seated.

6 **DIRECT EXAMINATION BY MS. SALISBURY:**

7 Q Good morning, Mr. Gross.

8 A Good morning.

9 Q Where do you live?

10 A Easley.

11 Q How long have you lived there?

12 A About twenty year.

13 Q Do you work there?

14 A I work at Cryovac.

15 Q What was your relationship with Karen Rojas?

16 A Karen's my sister. We was real close. We did everything together. We always had a  
17 real close relationship. She was close to both of my sons. Karen, she....

18 (defendant tearful and sobbing)

19 Ms. Manigault: Your Honor, may we approach? I believe the jury needs to be excused.

20 The Court: Take the jury out.

21 (whereupon the jury exited the courtroom)

22 Yes ma'am?

23 Ms. Manigault: I've been shown a picture by the State. I don't know where they're going  
24 with this.

1 Ms. Salisbury: Your Honor, I just had State's Exhibit Number 48, which is a picture of Ms.  
2 Rojas.

3 The Court: Okay.

4 Ms. Salisbury: The victim's family brought this in for consideration to show the  
5 court the impact that Ms. Rojas' death has had on the family.

6 The Court: You're going to do what, now?

7 Ms. Salisbury: Well, Judge, the testimony the jury's heard thus far is a lot of, a lot of  
8 it is about the incident and not so much about the life of the victim. The purpose of this  
9 testimony is to talk about the effect that this incident has had on the family, and I believe that  
10 it's appropriate---

11 The Court: No, I'm not going to let that in. It has no relevance.

12 Ms. Salisbury: That's fine, Judge. But the only pictures the jury has seen thus far  
13 have been pictures of the crime scene and this is a photograph of the victim as she appeared  
14 before that day.

15 The Court: What relevance does that have to the issue of whether it was a murder or  
16 a suicide?

17 Ms. Salisbury: Judge, it's certainly not part of the facts and the investigation of the  
18 case, but, nonetheless, it's the State's belief that---

19 The Court: No, I'm not gonna allow that.

20 Ms. Manigault: Thank you, Your Honor.

21 The Court: Bring the jury in.

22 (whereupon the jury entered the courtroom)

23

24

25

1 (Transcriber's Note: Recording of this witness' testimony on cross examination was in progress  
2 on the digital recording)

3 **CROSS EXAMINATION BY MS. MANIGAULT:**

4 Q When'd you make that purchase?

5 A I don't remember the date.

6 Q Was it in 2009, 2008, 2007?

7 A I believe it was in 2008.

8 Q 2008. You testified that she used to live in Toccoa, Georgia?

9 A Yes.

10 Q Did she own a gun when she lived there also?

11 A Yes.

12 Q And that was for protection, you said?

13 A Yes.

14 Q And did you purchase a holster with the gun?

15 A Yes.

16 Q So, you gave her the gun with the holster?

17 A Yes.

18 Q State's Exhibit Number 9 and 10, that's the gun and holster you gave to her?

19 A Yes.

20 Q And you say you talked a lot and you saw her about five days the weekend before?

21 A Yes.

22 Q And you said she was normal, crazy, sense of humor, something about a sense of  
23 humor.

24 A She had a good sense of humor.

25 Q She like to pull pranks?



1 A She like to teach my sons pranks and stuff.

2 Q Thank you.

3 The Court: Thank you. You may step down.

4 Ms. Salisbury: Your Honor, may we approach?

5 The Court: Sure.

6 (whereupon a bench conference took place)

7 Ms. Salisbury: The State calls Tracy King.

8 **TRACY KING**, duly sworn, testified as follows:

9 Clerk of Court: Please state your name for the record.

10 A Tracy King.

11 Clerk of Court: Thank you. You may be seated.

12 **DIRECT EXAMINATION BY MS. SALISBURY:**

13 Q Investigator King, where you work?

14 A Greenville County Sheriff's Office.

15 Q What's your capacity at the sheriff's office?

16 A I work in the armed robbery unit.

17 Q How long have you been with armed robbery?

18 A Three years.

19 Q As part of your duties as an investigator for the sheriff's office, do you routinely  
20 assist other investigators in their cases where needed?

21 A We do, on an on-call status.

22 Q Do you remembering becoming involved in this particular investigation?

23 A I do.

24 Q How did that happen?

1     A             That was my week to be on call, so I worked 7:00 a.m. Monday morning until 7:00  
2             a.m. the following Monday morning, on-call status. And I believe it was a Sunday evening  
3             on 5/18/09, I was actually called out to respond to the law enforcement center.

4     Q             Did you ever go to the scene of this incident?

5     A             On the first night, no.

6     Q             Why were you summoned to the law enforcement center?

7     A             I was called in and advised that we had a witness to interview.

8     Q             Ultimately, when you got there did you speak with whichever witness you were  
9             assigned to interview?

10    A             I did.

11    Q             Who was that witness?

12    A             That was Mr. Wallace Eugene Evatt.

13    Q             What was your understanding of the purpose of your interview with Mr. Evatt?

14    A             To basically determine what had happened that afternoon at the incident location.

15    Q             Was it your understanding that Mr. Evatt was under arrest?

16    A             No.

17    Q             When he met with you was he in handcuffs?

18    A             No.

19    Q             Was he in custody?

20    A             No.

21    Q             Did you or anyone that you saw tell you that he was arrested or that he was required  
22             to be in handcuffs?

23    A             No.

24    Q             Did you read him Miranda rights?

25    A             No.

1 Q Why?

2 A Again, at that point in time he was not being interviewed or viewed as a suspect. He  
3 was being interviewed as a witness and that's not common practice to read witnesses their  
4 rights.

5 Q Investigator King, I want to show you what's been marked as State's Exhibit 52. Do  
6 you recognize that item?

7 A I do.

8 Q How do you recognize it?

9 A It's got my name up at the top and also my signature at the bottom.

10 Q What is this?

11 A This is the statement that was actually given to me by Mr. Evatt.

12 Q Now, before we proceed any further with what's in that statement, during the course  
13 of your employment with law enforcement, have you ever had the ability, or the occasion, I  
14 should say, as part of your duties to come into contact with people that are impaired by drugs  
15 or alcohol?

16 A Numerous times, yes.

17 Q During you conversation with Mr. Evatt did he appear to be impaired by any  
18 substance?

19 A He did not.

20 Q Was his speech to you coherent and clear?

21 A It was.

22 Q Did he respond clearly to your questions?

23 A He did.

24 Q Did it seem to you that he understood what was going on?

25 A It did appear so, yes.

1 Q Did you verify that he could read and write?

2 A I did.

3 Q Did you during your interview with him indicate that he had to provide a witness'  
4 statement?

5 A I did not, no.

6 Q Now, how did this process of Mr. Evatt providing a statement work? Did you type it  
7 while he was talking? How did that happen?

8 A What I try to do is I try to get the main portion-- I jot it down on a notepad. I'm not  
9 what you would call a speed typer. But I jot it down on a notepad and then I'll go back and  
10 as I'm talking to the gentleman, anyone that I take a statement from, I will go back and type  
11 the statement, basically to allow them to follow as I type.

12 Q And after you finish typing a statement, do you let the witness look over it and it be  
13 corrected?

14 A I do. What I do is, once I finish typing the statement I will print that statement off. I  
15 will hand the individual that copy. And I advise them, please read over this statement, and to  
16 let me know if I need to change, add or delete anything in that statement, due to the fact that  
17 it is that person's statement.

18 Q Did Mr. Evatt review that statement that you had typed for him?

19 A He did.

20 Q Did he indicate to you that he wanted to make any changes?

21 A He did.

22 Q What changes did he make?

23 A there was one change in the second sentence of the first paragraph where I had  
24 inadvertently put in the wrong time. He corrected the time. I had actually put 10:00 p.m. he  
25 corrected it to read 11:00 p.m., and then initialed where he made the corrections.

1 Q Did he indicate to you that he wanted to make any other changes to that statement?

2 A He did not.

3 Q Did Mr. Evatt sign that statement?

4 A He did.

5 Ms. Salisbury: Your Honor, the State offers Exhibit 52 into evidence.

6 The Court: Any objection?

7 Ms. Manigault: None, Your Honor.

8 The Court: It's in evidence.

9 (whereupon State's Exhibit Number 52 was admitted into evidence without objection)

10 Ms. Salisbury: With the court's permission, I'd like to publish it to the jury and have Mr.

11 King read it.

12 The Court: All right.

13 Ms. Salisbury: Actually, Judge, could we approach very briefly?

14 The Court: Sure.

15 (whereupon a bench conference took place)

16 Ms. Salisbury: Thank you, Judge.

17 Q Investigator King, if you would, please read Mr. Evatt's statement as he gave it to you  
18 that afternoon.

19 A Okay. He stated, and this is his exact statement. "I have known Karen Rojas for the  
20 better part of thirty years. We had developed feelings for each other for this whole time. I  
21 have been married twice and divorced and she was still married, but she had left him. We  
22 lived together on and off for the last two years. We had problems like everyone else, but  
23 there was never anything physical and we would just argue. The last time was about three  
24 nights ago when Karen got home. She'd been drinking like she always does and then she got  
25 mad at me about something and she threw a bottle and broke a mirror.

1           Last night, my best friend, Raymond McNeely - I call him Bird because he has a lazy  
2 eye and we started calling him that back in grammar school – came and picked me up and we  
3 went to his house and watched the NASCAR race. Then Karen got off work” – and there’s  
4 the correction – “at 11:00 p.m. She came over to Bird’s house and we all watched the end of  
5 the race together and just hung out and had a good time together.

6           We left Bird’s house around 2:00 a.m. and we went home. We just sat around and  
7 drank beer because that’s what Karen liked to do on her day off. We only get a couple of  
8 channels on television and I know we sat around and watched a couple of church programs  
9 on Channel 16. I don’t think we left the house all day, but if we did Karen would have drove  
10 to get a pack of cigarettes, but I don’t think we did.

11           I remember Karen cut my nails and even used her file on them because I was getting  
12 ready to take a bath and get cleaned up. Then Karen got up, said she was going to take a  
13 shower, and I don’t’ know if she took a shower or not. I just remembered Karen coming  
14 back in the living room and I was sitting on the small couch, the right closest to the door.  
15 And she stated, I need to call my mother because I’m thinking about killing myself. Then  
16 she turned and faced me and put the handgun in her mouth almost to the cylinder and she just  
17 pulled the trigger right there in front of me.

18           I must have gone into shock for about thirty seconds because I saw her body go limp  
19 like a ragdoll and I knew she was dead. I didn’t even go over to her or nothing. I just ran out  
20 and got into her car and I drove to Bird’s house. I noticed there was people out at the lake  
21 fishing that had to have heard the shot and I remember making eye contact with the man that  
22 owned the pond and maybe another guy. And all I could think of was that I had to get to a  
23 phone and call 911.

24           We don’t have a phone, a home phone, and my cell phone doesn’t have any minutes.  
25 So I drove to Bird’s home as quick as I could and I know I got there probably quicker than I

1           should have. But when I got there I was very upset and I don't remember exactly what I  
2           said, but I remember telling Bird that she had killed herself. I know that call was the hardest  
3           call I had ever made. Then Bird drove me back over there and we got there about the same  
4           time that the police got there.

5                     She really treated me like she loved me last night and this morning. This man is  
6           telling you I didn't shoot that woman. I know that I am an alcoholic and Karen was an  
7           alcoholic, too. Karen would drink two 24 ounce beers on her way home from work, and then  
8           she would start into really drinking when she got home. Karen has a temper sometimes.  
9           And like I said, we've had our share of arguments, but she has never talked about suicide  
10          before and I didn't have any clue that she would do anything like this. I don't know what to  
11          say and I can't get it out of my mind."

12   Q                     After this interview was complete, what happened next?

13   A                     Well, during the interview, of course, we went outside for several breaks, several  
14          smoke breaks. He drank a soda. And then Investigator Whaley responded to me at the law  
15          enforcement center.

16   Q                     Did you stick around for that interview that Investigator Whaley conducted with the  
17          defendant?

18   A                     I did.

19   Q                     After that night, after that interview and your assistance in this case, did you assist in  
20          any other way in this case?

21   A                     Other than that, no.

22   Q                     Thank you, Investigator King. If you will answer any questions Ms. Manigault has  
23          for you.

24          The Court: Ms. Manigault.

25

1   **CROSS EXAMINATION BY MS. MANIGAULT:**

2   Q           Investigator King, what time did you start talking with Mr. Evatt?

3   A           I don't recall the exact time, but I know it was in the afternoon, that Sunday  
4               afternoon.

5   Q           How long of a period did you talk with him?

6   A           Approximately two hours.

7   Q           Two hours?

8   A           Yes ma'am.

9   Q           And at the end of the two hours, you had received, you typed this statement, State's  
10               Exhibit 52, which Mr. Evatt signed?

11  A           Yes ma'am.

12  Q           And I believe you said that he had no problem answering any questions?

13  A           He did not.

14  Q           Would you say that he was calm?

15  A           Somewhat calm, yes.

16  Q           What was his demeanor?

17  A           He seemed anxious, like he was really wanting to get his point across.

18  Q           Did he ever break down and cry, start to cry, start shaking in that two-hour period?

19  A           I do not recall that, no.

20  Q           You do not recall?

21  A           No.

22  Q           And when you did this interview with him you were alone?

23  A           Yes ma'am.

24  Q           And I believe you were asked did you stay for the interview with Investigator  
25               Whaley?



- 1 A I did.
- 2 Q And how long was that interview after you had finished your two hours?
- 3 A I 'd say, roughly, an hour or so, maybe a little more.
- 4 Q A little more than an hour?
- 5 A Yes ma'am.'
- 6 Q And you had been interviewing him yourself for two hours and then you observed
- 7 Investigator Whaley interview him for another additional hour?
- 8 A Approximately, yes.
- 9 Q Did you yourself advise Mr. Evatt that you were only talking to him as a witness?
- 10 A Well, at that point, basically with me not being at the scene, not having all of the
- 11 information from all who was present, I was advised that Mr. Evatt was present when this
- 12 event took place. And pretty much, yes, he knew that he was being interviewed as a
- 13 witness.
- 14 Q And also a suspect?
- 15 A Correct.
- 16 Q You testified earlier that when he was giving you a statement he was jumping back
- 17 and forth with information, earlier under oath, on May 18?
- 18 A I don't recall that.
- 19 Q You don't recall?
- 20 A No ma'am.
- 21 Q And you also testified under oath earlier that he did appear anxious?
- 22 A Yes.
- 23 Q And his statement to you was totally voluntary. Is that correct?
- 24 A Yes ma'am.
- 25 Q And he was not in custody and could have left at any time?

1 A Absolutely.

2 Q Thank you.

3 The Court: Thank you. You may step down.

4 Ms. Howard: Your Honor, at this time the State calls Investigator Eric Whaley.

5 **ERIC WHALEY**, duly sworn, testified as follows:

6 Clerk of Court: Please state your name for the record.

7 A Eric Whaley.

8 Clerk of Court: Thank you. You may be seated.

9 **DIRECT EXAMINATION BY MS. HOWARD:**

10 Q Investigator Whaley, can you tell us where you work?

11 A I work at the Greenville County Sheriff's Office.

12 Q How long have you been with the sheriff's office?

13 A I've been with the sheriff's office since about 1998.

14 Q How long have you been in law enforcement?

15 A I started my law enforcement career right out of high school. I was with Air Force  
16 security police for four years. After honorably discharged from the security police, I worked  
17 for the Department of Corrections for a couple of years. Then I was afforded the opportunity  
18 to work for the Clemson City Police Department for five years. And then as I transferred to  
19 Greenville County, I worked at Traveler's Rest, and I finally came with the Greenville  
20 County Sheriff's Office in 1998.

21 Q What's your current position?

22 A I'm a homicide investigator, death investigator, violent crimes investigator with the  
23 sheriff's office.

24 Q Were you in that same capacity in 2009?

25 A Yes ma'am.

1 Q Tell us about the training to become a homicide investigator.

2 A Well, I kind of specialize, I guess. I've worked as an investigator most of my career.  
3 I did work the road some. When I first worked here for the sheriff's office I was a road  
4 deputy. But I kind of focused on investigations. I was a burglary investigator here at the  
5 sheriff's office for about five years. I've been a juvenile investigator. I worked juvenile and  
6 child abuse cases. I was promoted back to the road as a master deputy and went back as a  
7 field training officer back on the road for about ten months.

8 I was afford the opportunity to become a family violence investigator. I did that for  
9 several months and then I was asked to go and work sex crimes. I worked sex crimes  
10 investigation. I worked child abuse, vulnerable adults, adult sexual assaults, child sexual  
11 assaults. And during that time working in the criminal investigation division I was a backup  
12 investigator for homicide investigators. So, that's when I started using my homicide training,  
13 which really started in about 2004.

14 And then I was eventually asked to become a homicide investigator and work full-  
15 time in that capacity which I've been doing, I guess, since about 2006.

16 Q When is a homicide investigator called to the scene of a crime?

17 A Well, the unit that I'm on call for is crimes, homicides. We respond to all suicides,  
18 death investigations that a doctor can't sign off on, such as, for instance, you're a hospice  
19 patient and you die and you're eighty years old, they're not gonna come out and investigate  
20 that. But if you're an infant, anything suspicious, anything a doctor doesn't feel comfortable  
21 signing off on, drug overdose, industrial accident, any murders, we respond to those.

22 Also, if there's a high-profile kidnapping, shooting, something that the road would  
23 need assistance working, we would come out and assist them.

24 Q What do you do when you are called out to assist a scene? How do you go about it?

1     A               Well, it's kinda chaotic. Once I receive a phone call, normally through a supervisor,  
2                    saying we have a shooting, a suicide, a death, whatever, I'm getting dressed, driving. These  
3                    things never seem to happen during business hours; it's always on the weekend or early in  
4                    the morning.

5                    As I'm driving, getting ready to go to the scene, I'm talking to the supervisor, I'm  
6                    talking to the coroner's office, to the deputies, asking them to make sure that certain things  
7                    are done, the scene's secure, the witnesses are separated and secured; maybe we need a  
8                    search warrant. I'm processing a lot as I'm driving.

9     Q               Were you called to Karen Rojas' sudden death on May 17, 2009?

10    A               Yes ma'am.

11    Q               And what did you do when you arrived at the scene? Do you have any recollection as  
12                    to the time that you arrived?

13    A               I got the call. I don't live in Greenville County, I live in Pickens County. So, once I  
14                    got the call I immediately get dressed and start driving. It took me probably forty-five  
15                    minutes to an hour - I don't have the exact time in front of me - to get there. But during this  
16                    time I'm on the phone talking to people. And then I initially got to the scene.

17                    I've kind of got a checklist that I use since I've worked hundreds of deaths of who  
18                    I've talked to and what I've learned.

19    Q               When you were in route, you said you were talking, did you speak to anyone at the  
20                    scene?

21    A               Yes, Master Deputy Black, who is Sergeant Black, and I think testified yesterday. I  
22                    spoke with him. And one of the things we do to kind of speed up the process is we get a  
23                    search warrant. There's two different, separate different scenarios. I'll kind of break this  
24                    down. If the scene's in the home and there's someone there you can get them to sign a  
25                    consent saying that you can go into my house and process the scene, which we can act on it.

1 But if we think that there's something suspicious, if we think that there may be alcohol or  
2 any kind of involvement like that that would not make the search what we would call above  
3 board, we won't even mess with a consent. We'll just get a search warrant.

4 And normally how that's done is I talk to the deputy, they brief me on what's going  
5 on. I ask them did you search things and list these certain things in the search warrant. So,  
6 by the time I get there they have got it completed in their computer in their car. They email it  
7 to the judge's office or the patrol office. They'll take that to a judge and then they'll have it  
8 signed. And it saves about an hour or more.

9 Q When you got there were you allowed to enter the trailer?

10 A We were allowed, yes.

11 Q Did you speak with the defendant when you were at the scene?

12 A I did. One of the briefings that I got from all the deputies that were there, and EMS,  
13 the coroner's office, is I was shown to, that our complainant, I guess, the defendant, Mr.  
14 Evatt, the gentleman sitting over there, and I did briefly speak with him.

15 Q What did you discuss with Mr. Evatt?

16 A I didn't talk with him very in-depth because we had so much going on. And I know it  
17 was beginning to rain. And I knew that there was a reported gunshot that had happened.  
18 And it's customary to ask the witness if we can do some testing of their hands, gunshot  
19 residue. I approached him and asked him to get in the car because I didn't want his hands to  
20 get wetter than they already was, since it was raining.

21 I explained to him who I was. And as I routinely explain in all these such scenes that  
22 I work, what's gonna happen; that we're gonna get a search warrant; we're gonna process the  
23 house. And I asked, since he was a witness, which is normal, if he would voluntarily go to  
24 the law enforcement center and talk to Investigator King. Even though I wanted to talk to  
25 him I had so much going on and couldn't.

1                   So, I asked him if we could do the gunshot residue. And he was more than  
2 cooperative. He kept telling us, test my hands, test my hands. I thought it was a little odd, I  
3 guess, that he was talking about fingernails being clean, test my hands, test my hands.

4                   So, he was tested, photographed and taken to the law enforcement center voluntarily.

5    Q                So, he was not under arrest?

6    A                No ma'am.

7    Q                Did you ever enter the trailer?

8    A                Eventually, yes.

9    Q                I'm showing you what's been marked as State's Number 4. When you entered the  
10 trailer, is that the position that you saw the body?

11   A                Yes ma'am.

12   Q                Did you move the body in any manner?

13   A                No ma'am.

14   Q                Did you touch any of the furnishings or anything before Forensics did their  
15 processing?

16   A                No ma'am.

17   Q                Tell us about when you entered the residence. You said you spoke with the  
18 defendant outside the trailer?

19   A                Yes ma'am.

20   Q                Then what did you do before entering or did you enter immediately?

21   A                We did not enter immediately. The road deputies know when we have a situation like  
22 this to make sure everybody's out of the home; that no one goes into the home until I get  
23 there, or one of the other homicide investigators gets on the scene.

24                   No one until-- I didn't even go in until Forensics gets there and if I do go in, it's with  
25 Forensics. It's their lead. We don't touch anything. We are very careful of where we walk.

1 We will make a brief walk-through just to get a lay-out of what's gong on. And before  
2 anything is done, Forensics can go in, photograph and video.

3 Once that's completed, then we will go in with Forensics to look around, but not  
4 touch anything until-- That's the rule, you don't touch anything until Forensics says okay,  
5 you can touch something. Minus, maybe,-- There was a move to get her identification.

6 Q I'm going to show you next what's been marked as State's Exhibit 51. Do you  
7 recognize that photo?

8 A That's a female's purse. It was identified as Ms. Rojas'.

9 Q And is that picture a fair and accurate representation of where that purse was found  
10 and Forensics found it when you went in the trailer?

11 A That is correct.

12 Ms. Howard: Your Honor, move to admit State's 51 in evidence.

13 The Court: Objection?

14 Ms. Manigault: Without objection.

15 (whereupon State's Exhibit Number 51 was admitted into evidence without objection)

16 Ms. Howard: Permission to publish to the jury.

17 The Court: Go ahead.

18 (whereupon State's Exhibit Number 51 was shown on the overhead projector)

19 Q Investigator Whaley, tell us a little bit about-- Where is this located?

20 A As you walk in the back door of the mobile home, you walk in and there's a bedroom,  
21 a bathroom, washer, dryer. As you're heading toward the living room you go through the  
22 kitchen area. This would be walking, with the purse on your right, before you step down in  
23 the living room.

1                   So, Ms. Rojas is laying over here. The couch on which the defendant said he was  
2                   sitting is on the same side but more up in that area, up there. So, this is in the dining room,  
3                   before you get to the living room.

4     Q               I want to place State's Exhibit 4, so you can kind of show us the general area where  
5                   the purse was located?

6     A               Yes. The purse would be right over in here. You step down to the living room, this  
7                   area, the kitchen, and the purse would have been right over here.

8     Q               Now, in the Forensics video that the jury saw, and it was shown to the court, the purse  
9                   in it was over here.

10    A               Yes ma'am.

11    Q               Explain how that happened.

12    A               Once the whole home is photographed we work from the outside area. One of the  
13                   things that the coroner's office needs in a rather timely manner is any identification of the  
14                   deceased. Let's say it's a man and he has a wallet. We're not gonna take his license out  
15                   because we don't want to mess with the body. But if the man's wallet is on the dresser, we  
16                   may move it enough to determine the identification.

17                   Her purse had already been photographed in this position, which we showed you. So,  
18                   when you look at the purse was moved, like hers was, and opened, additional photographs  
19                   would be taken. And that was the case with this video that you saw. It was looked at and it  
20                   was photographed, it was moved and items removed. If money was in there, of course, that  
21                   was documented. And then anything like a driver's license would have been removed.

22                   And like I said, they need that to start doing things. They can't move the case and so  
23                   forth.

24    Q               After Forensics has finished with the scene, did you and the coroner enter the  
25                   residence?



1 A After Forensics is done?

2 Q After Forensics is done.

3 A As we're working our way to the deceased and other areas are documented from the  
4 point where I walk in how things are. We'll start with, like, the kitchen sink, the bathroom,  
5 the other bedrooms, what in them. It's not a search like you see on TV where we start  
6 flipping things over. We'll look through drawers. We'll look in the toilet. We'll look, you  
7 know, in the dryer, it's empty. The washing machine, it had wet clothes in it. We'll look in  
8 the refrigerator to see what kind of things are there.

9 Of course we may walk around the path where the deceased is, go to the back  
10 bedroom and process our way out. Everything's pretty much done and now we're going to  
11 start focusing on the situation.

12 Q Did you say the washing machine had wet clothes in it?

13 A Yes, and they were photographed by Forensics.

14 Q So, after Forensics inventoried the area, is that the point at which the body would be  
15 removed?

16 A Yes, that's correct.

17 Q Did you assist in that?

18 A I did.

19 Q Tell us a little bit about that. How do you make sure the body is carefully placed in  
20 the body bag?

21 A Well, we make sure-- You only one opportunity to make sure that everything is  
22 documented before the body is moved. And once it's moved, it's moved. So, we make sure  
23 that Forensics has secured all their diagrams, their measurements, their photographs, their  
24 videos, of anything. Body position, we look at that, major livor mortis, things about a body

1           that is different, body changes. We make sure that all of that is done before the body is  
2           placed in a body bag.

3           The body is clean, brand new. They are provided by the coroner transport. If the  
4           body is laying on its side we line the bag up as close as we can, kind of like a plastic sheet.  
5           And kind of tuck it under the body and roll the body back into the open part of the bag. And  
6           then that's photographed, and I'm sure you saw the pictures.

7           Then the body is lifted up. It's not manipulated in any way to preserve any evidence.  
8           The bag is sealed and is transported to the morgue.

9    Q           Did that complete your investigation on May 17, 2009?

10   A           Well, we stayed quite a while and processed and gathered evidence. While we were  
11           there the phones inside the home were ringing. Those were collected. Some swabs were  
12           collected by Forensics. We looked for the projectile. We couldn't find it. We found a hole  
13           in the wall behind where the defendant said he was sitting but we couldn't tell if it was a  
14           bullet hole or not. It was a large hole. We didn't find any bullet fragments or any metal  
15           shreds or anything like that.

16           We didn't know where the bullet hole was. The possibility since we're very careful,  
17           the bullet was still lodged in the victim's, Ms. Rojas' head. So, we weren't sure if we were  
18           gonna have a bullet hole, which is not uncommon.

19           So, once all that was collected and I did meet with some of the witnesses there at the  
20           scene and found out what they saw, what cars were coming and going and so forth. After the  
21           scene was finally secured I did go back to the law enforcement center.

22   Q           Did you ever go back to Ms. Rojas' trailer?

23   A           Several times.

24   Q           Did you get a search warrant signed?

25   A           Yes, absolutely.

1 Q For what reason would y'all return to the trailer?

2 A Well, the following day after the autopsy was completed-- I attended the initial part  
3 which was customary. I had another investigator with me. Once we realized that the  
4 projectile was not in her head and there was a bullet hole in that home somewhere, I left and  
5 went back and secured a search warrant to go back to the home again, since we have to have  
6 a search warrant to go back inside.

7 So, that was the second visit to the house by myself, and Sergeant Shaw was there.  
8 And we went back and he located a bullet hole in the ceiling tile.

9 Q Did you go back again after that?

10 A Another time?

11 Q Another time.

12 A Yes, we did. We went there again. It's not uncommon to go back to a scene several  
13 times. We went back for measurements and an additional photograph. And that's where we  
14 decided once we gathered a little bit more evidence to use the trajectory rod to see what path  
15 the bullet would have taken.

16 Q Now, as the lead investigator you make the decisions of what's sent for analysis and  
17 if there's any follow-up. Is that correct?

18 A Yes.

19 Q Tell me about that.

20 A Well, we're very limited on what we can send to SLED. We're limited to about five  
21 things. If it as up to me, I'd send it all, but we can't. They won't accept everything. They're  
22 not supposed to accept everything. So we take what we think is important at that time. In  
23 this case it was gunshot residue tests. And we sent some hair fibers down for DNA analysis  
24 as well as the defendant's bucal swabs. We were hoping they would be able to do a DNA

1 analysis from the hairs that were submitted, but they weren't able to do that. So, at that time  
2 that's what we felt was necessary to send down.

3 Q Did you also send some clothing?

4 A Yes.

5 Q When was this clothing collected?

6 A The afternoon where the defendant was a witness, not under arrest, to secure his  
7 clothes I got Investigator Maxwell to secure a search warrant for the defendant's clothes.  
8 That way we could collect his shirt, everything. And I brought him clothes from his mobile  
9 home back to the house so he would have something to wear home. So, we did another  
10 search warrant for his items of clothing.

11 Q So, you said earlier SLED limited you to a certain number of items. In 2009, would  
12 SLED only allow portions of items available for analysis?

13 A That's correct.

14 Q So, you sent GSR kits of the victim and the defendant, and the defendant's clothing?  
15 Correct?

16 A Yes ma'am.

17 Q Tell us about the DNA swabs from the gun. Were those sent down, and if not, why  
18 not?

19 A No, they were not. The gun was tested as you heard Sergeant Shaw testify about  
20 latent prints, fingerprints from the gun, which turned up negative. Now, we know the gun  
21 belonged to Ms. Rojas. It was testified that it was hers. The defendant said it was hers. We  
22 know she carried that gun. So we know her DNA is gonna be on that gun.

23 It was in the common area of the home where they had access to it. And the  
24 defendant even admitted that he had touched the gun. So, we know that there's gonna be

1           their DNA on it. We're limited to how much we can send. We don't want to send something  
2           that we don't think is gonna be relevant. And I did not think that it needed to be sent.

3     Q           One other item that really hasn't been touched on too much is Ms. Rojas' car. It's  
4           been testified that the defendant used the car to go call 911, but did not return to the scene in  
5           it. Was that car processed and did you ask for that to be done?

6     A           Yes. Actually one of the things I was doing at the scene is arrangements were made  
7           for our wrecker service to go and pick the car up at the McNeely's home, which was in  
8           Anderson and transport it to our Forensics lab, which is at Greenville Tech.

9           Another search warrant was done to give us permission to go into that car and process  
10          it. Once that's done Forensics will be asked to DNA, to photograph, to see if there's  
11          anything deep in the foam, or located in the foam. We were looking for another cell phone  
12          that he was talking about, the defendant was talking about. So we were looking that, which  
13          we never found. But that vehicle was processed.

14    Q           Can you tell me if there were any results from that?

15    A           There were not. There wasn't anything evidentiary found.

16    Q           Was a cell phone found in the car?

17    A           No.

18    Q           I want to talk to you a little bit about State's Exhibit Number 27, which is the  
19          defendant's shirt. It was sent to SLED for analysis. Correct?

20    A           Yes.

21    Q           And the results of that analysis you were made aware of. Correct?

22    A           Yes.

23    Q           It's been testified that the shirt was tested an additional time. Is that something that  
24          you authorized?

25    A           Well, yes, I did.

1 Q And you made that judgment call?

2 A Well, it wasn't just based on me. We had had a meeting with Forensics discussing  
3 some additional testing being done and that we needed to send something back for more  
4 testing. And if I could, one of the things with SLED, they are so backed up, sometimes it can  
5 be nine months to a year or longer before we have results back. So, there may be a long time  
6 before additional items are sent back.

7 Q I want to you about the evidence found in the trailer. The beer bottles, were y'all able  
8 to get any latent prints off them for analyzation or not?

9 A No. And I can give a reason to you if you'd like. We didn't feel that was necessary.  
10 We know that the defendant had talked that it was just him and Karen that were in the home.  
11 So, there was no other third party that was maybe there drinking. If there might have been or  
12 they said something about some person being there drinking with them, we might have put  
13 that down. But we didn't see that there was any need to do any additional lab testing on  
14 things that were not gonna be relevant. We know they were drinking and we know they were  
15 smoking. We just assumed that was their beer and their cigarettes.

16 Q You testified that spoke with the defendant at the scene. Correct?

17 A Yes.

18 Q Did you speak with him later again that day?

19 A Later that evening when I returned to the law enforcement center.

20 Q At that time was he under arrest?

21 A No ma'am.

22 Q Was this before or after Investigator King interviewed him?

23 A Investigator King had spoke with him and I met with them in his office.

24 Q Did you find him to be impaired in any way?

25 A No ma'am.

1 Q Did you find him to be not understanding what's going on, questioning anything that  
2 was happening to him?

3 A No, he seemed appropriate to talk to.

4 Q I'm showing you what's been marked as State's Exhibit 53. Did you record your  
5 conversation with the defendant at that time?

6 A I did. I used my issued digital recorder.

7 Q When you got back to the law enforcement after processing the scene, did you record  
8 the conversation you had with the defendant?

9 A Yes ma'am.

10 Q Were you able to review that recording to see if it was an accurate recording of what  
11 was said in that conversation?

12 A Yes ma'am.

13 Ms. Howard: Your Honor, at this time, I would ask to move State's Exhibit 53 into  
14 evidence.

15 The Court: Any objection?

16 Ms. Manigault: Continuing my prior objection, Your Honor.

17 The Court: Admitted over objection.

18 (whereupon State's Exhibit Number 53 was admitted into evidence over objection)

19 Ms. Howard: Your Honor, permission to publish to the jury?

20 The Court: Yes ma'am.

21 (whereupon State's Exhibit Number 53, same being a compact disk, was played for the jury)

22 The Court: We'll take our lunch break. Take the jury out, please.

23 (whereupon the jury exited the courtroom and court was in recess for the lunch break)

24

25

**COURT IN SESSION**

1

2

The Court: Are we ready to proceed?

3

Ms. Howard: Ms. Manigault has informed me that she does not need to recall Steven

4

Beacham.

5

The Court: All right.

6

Ms. Manigault: That's correct, Your Honor.

7

The Court: All right.

8

Ms. Howard: So, at this time we call Investigator Whaley to the stand.

9

The Court: Investigator Whaley, you are still under oath.

10 A

Yes sir.

11

**RESUMPTION OF DIRECT EXAMINATION BY MS. HOWARD:**

12 Q

Investigator Whaley, when we left off, Investigator King had concluded his interview

13

and that's when you had begun your interview with the defendant?

14 A

Yes ma'am.

15 Q

Tell me this: When was he arrested after this interview on May 17?

16 A

Several days later.

17 Q

And why several days later?

18 A

We had a lot of work to do. There were a lot of people that needed to be interviewed.

19

Doctor Ward, you will hear from. We needed to go over what we found with the search

20

warrant. We had to read the statements from everybody that was there that saw him coming

21

and going from the mobile home. The Forensics report. I had a lot of work to do. We did

22

search warrants for the phone.

23

So, once all that was completed then we had a meeting. We sat with several people

24

before any decisions were made.



1 Q During that interview that was played for us, it sounded like, and correct me if I'm  
2 wrong, you and Investigator King were acting out, or the defendant was directing you on  
3 how this took place. Is that what occurred and is it on this recording?

4 A Yes ma'am.

5 Q Would you be willing to step down and show me and the jury what occurred?

6 A What we did was we had, while we were sitting in the office, and Mr. Evatt was  
7 sitting right there, we had him tell us where he was standing, where she was standing, the  
8 whole thing and we acted it out.

9 Q Tell us what he was telling you.

10 A As we were sitting in the office, as we heard, I was sitting in the chair and I was  
11 portraying to be the defendant. And I had Investigator King walk down from where Karen  
12 would have been coming from, which in this case would have the other way. So, Mr. Evatt  
13 says he's sitting right there, she comes out of this bedroom, walks past him. And this is a  
14 very small area, like, four feet, I think, that Sergeant Shaw testified to. And as she-- She's  
15 walking from the bedroom towards the kitchen and she stops. And as he's sitting there she  
16 partially turns towards him and with what he recalls her right hand, sticks the gun in her  
17 mouth and pushes it in. And she stuck her finger in there, she pushed it in and pulled the  
18 trigger and she dropped and fell on the ground.

19 We asked him, as you heard, how she was standing. He had standing straight up,  
20 facing him. He's sitting on the couch. And that's pretty much-- He didn't move us around.  
21 He didn't tell us no, she was bending over, she was leaning this way, she was leaning back.  
22 He had her standing straight up and down like this. And I guess she turns and sticks the gun  
23 in her mouth like that.

24 Q And he was arrested after you met with Forensics and discussed the case with the  
25 other investigators?

1 A Yes, we sat and discussed the case.

2 Q And then after the defendant was arrested, did you speak with him again?

3 A I did.

4 Q Let me show you what's been marked as State's Exhibit 54 and 55. Tell me if you  
5 recognize these items and tell me what they are.

6 A This item is a Waiver of Rights that I provided to him. And I know that this is that  
7 document because it has my initials and my writing on it. And this item is the interview, the  
8 second interview that I'd done with the defendant after he was arrested, and it's dated  
9 5/22/09.

10 Q Have you had a chance to review that recording to determine it was a fair and  
11 accurate recording, that it has not been altered in any way?

12 A Yes.

13 Ms. Howard: At this time, Your Honor, the State would ask to move State's Exhibits 54 and  
14 55 into evidence.

15 Ms. Manigault: Stating my prior objection, Your Honor.

16 The Court: Admitted over objection.

17 (whereupon State's Exhibits Numbers 54 and 55 were admitted into evidence over objection)

18 Q Explain to us what a Waiver of Rights is.

19 A If someone's in custody or their freedom is now restricted and they're being  
20 questioned, they're entitled to a Waiver of Rights, just like you see in television. He now  
21 was in custody and arrested. So, before I can talk to him, I needed to make sure that he  
22 understood what his rights are.

23 I know there's a lot of writing on this and I can explain that. When I do a waiver, and  
24 I've done hundreds and hundreds over the years, I always put up here who the person is, and  
25 date of birth, that sort of thing; where they went to high school, if they graduated. And this

1 yes indicates can you read or write. If they say yes, I put yes; if they put say no, I put no.

2 And I have them demonstrate, which I'll show you here in just a minute.

3 As I read this line by line, I put a line there on each one, and I ask the person that I'm  
4 interviewing as I read it to put their initials if they understand it. If they don't understand the  
5 lines, for instance, anything you say can be used against you in court, we would discuss it  
6 and make sure that they understood and they initial it. And then, of course, it goes through  
7 the last part to the waiver.

8 Then the bottom part is the waiver of rights, which, again, I have them initial at the  
9 beginning and the end and I have them read this to me. And how I know that he read it to me  
10 is because I wrote yes to read. If the person can't read, doesn't have their glasses, for  
11 whatever reason, I would mark that and I would say, did not read or no glasses, I read it to  
12 them.

13 Now, under here where it says pressured or coerced, it's standard practice with all of  
14 us to make sure that the person understands what pressure and coercion means. And I put  
15 lines there so we discuss it. Once he understands pressure and coercion, and he feels  
16 comfortable with it, I have him initial it there. We discuss pressure and coercion that he's  
17 not being forced, threatened, make sure that he doesn't feel pressure or coercion, trickery,  
18 promise him anything; or just make sure that he freely and clearly wants to give the statement  
19 to me voluntarily.

20 And then I have him sign it. Then I sign it and my witness, which in this case is  
21 Investigator King, who signed it. I started this waiver at 17:25 and he signed at 17:30. So, it  
22 took us five minutes to discuss it. And that's how the Waiver of Rights is completed.

23 Ms. Howard: Your Honor, at this time, I move to publish this to the jury.

24 The Court: Go ahead.

25 (whereupon State's Exhibit Number 54 was published for the jury)

1 Q Investigator Whaley, through that, one part of that interview with the defendant, you  
2 mentioned something about the pictures and how they didn't add up with his story. Would  
3 you tell the jury why you said that?

4 A Yes ma'am. Before we, before I signed the warrant, as I discussed, we went over all  
5 the inconsistencies and I discussed this with Forensics. One of the things that we discussed  
6 in our meeting was not only the inconsistency of how he said to the road deputies about how  
7 he was not facing towards her at the beginning, to what he told us where he was seated on the  
8 couch where she was facing with her back towards him and turning and sticking the gun in  
9 the left side of her face and standing straight up and shooting herself in an oral shot exiting  
10 out the back of her head to her neck area. And how the bullet was found by Sergeant Shaw  
11 in the top of the mobile home around the trim in the ceiling tile. The trajectory rounds, they  
12 didn't add up.

13 And I asked him to explain that. I asked him if we had it wrong. Was she bent over,  
14 was she leaning forward. And as he demonstrated to us and as he explained it to us she was  
15 standing straight up, stuck the gun straight in, pushed it in past the cylinder and shot herself.

16 So, I made sure that we had the opportunity to discuss that and he could explain it to  
17 us.

18 Q I have no further questions for you. Please answer any questions Ms. Manigault may  
19 have for you.

20 The Court: Ms. Manigault.

21 **CROSS EXAMINATION BY MS. MANIGAULT:**

22 Q When you did the simulated demonstration with Investigator King, both of you were  
23 standing up?

24 A No ma'am. I was sitting down.

25 Q Today.

- 1 A Today?
- 2 Q Yes, today.
- 3 A Yes ma'am.
- 4 Q So, the demonstration you did for the jury today is not accurate?
- 5 A No, but we can redo it if you'd like.
- 6 Q No, just answer my questions.
- 7 A Okay.
- 8 Q So, what you did today was not accurate as far as what happened on 5/22?
- 9 A No, it was not.
- 10 Q And you used the Exhibit Number 25, this drawing to indicate with your pointer
- 11 while you were demonstrating with Investigator King. Did you have that, did you have this
- 12 drawing, or exhibit with you the night, the time you talked with Mr. Wallace Evatt?
- 13 A I did.
- 14 Q All right.
- 15 A Not this exact drawing, but very similar, and we had photographs of the home, yes.
- 16 Q But you didn't have this drawing?
- 17 A Not that drawing.
- 18 Q Do you have the drawing that you had?
- 19 A No.
- 20 Q Now, you testified about irrelevant evidence. As the chief investigating officer, you
- 21 would make the decisions regarding what was relevant. Is that correct?
- 22 A Well, yes and no. At the point that the initial facts of evidence was set down, that is
- 23 correct.
- 24 Q Okay.

1     A             But as the investigation continues and it's reviewed by the Solicitor's office, myself,  
2             Forensics, the other people involved, we made send other items down.

3     Q             So, your earlier testimony was not complete, that you did not make the decision by  
4             yourself; you continued in your investigation and got other people to make decisions with  
5             you?

6     A             That is correct.

7     Q             Now, there's been some testimony that was owned by Karen Rojas and that was  
8             driven on the night or day of May 17, 2009, there was some swabs and evidence taken from  
9             that car, door, steering wheel, and other items. You testified that you did not submit that  
10            because you didn't think it was important.

11    A             I believe I testified that we didn't find any findings on the site.

12    Q             So, you could with your bare eyes see gunshot residue or DNA deposits on the  
13            steering wheel?

14    A             No.

15    Q             So, the steering wheel was tested but that was not the results of your collections--  
16            Excuse me. The results of your collections, you did not send that to be tested for gunshot  
17            residue or any DNA deposits?

18    A             I don't believe we sent that particular items down. I don't believe we sent those  
19            down. If we did, we sent it at a later time, but I don't think we did.

20    Q             Forensics testified that they did not test it.

21    A             Okay.

22    Q             When you said you didn't see anything in the car, what are you referring to? What  
23            were you looking for particularly?

1 A That cell phone that he kept saying-- That other cell phone that never was found,  
2 didn't exist. The two phones that were able to find, bedroom, living room. No third cell  
3 phone.

4 Q And that was the only thing you were interested in the car about?

5 A Yes.

6 Q In your discussion with Mr. Evatt you realized that he had driven that car---

7 A That's correct.

8 Q ---the day of May 17, 2009.

9 A Yes.

10 Q And you realized that-- He told you he had driven the car after the shooting incident?

11 A Correct.

12 Q So, you did not test as far as to see if there were blood spots, stains or anything in the  
13 car on the seat or the steering wheel?

14 A They did spray it, but they didn't find anything that could be submitted to the blood  
15 test lab. The way I understand from their report, nothing was found.

16 Q Were you there when Forensics did the testing?

17 A No.

18 Q Well, who told you nothing was found?

19 A Meeting with Forensics, reading their report, the search warrant, I---

20 Q All right.

21 A ---knew nothing was found.

22 Q Where was the information that nothing was found on the steering wheel?

23 A I---

24 Q Where's that information?

1 A I believe it would be in the Forensics report or in the search warrant that the items  
2 listed, what was recovered in the car.

3 Q I'm talking about DNA evidence, substance, fluids, gunshot residue. There's been  
4 testimony that a gunshot will transfer to anything that you touch after a gun is fired, by the  
5 forensic scientist from SLED. So, with Mr. Evatt having driven the car after the shooting, it  
6 would seem like the steering wheel or something in the car would have been tested for  
7 gunshot residue which, according to the forensic scientist, is not apparent to the naked eye.  
8 So, was there any collection done in the car for that reason?

9 A No, I don't think there was.

10 Q And there was no collection done in the car for any blood swabbings?

11 A No.

12 Q You testified that-- How do you narrow down what is sent? You said that you  
13 collect a lot of things, but you can only send five. So, how do you narrow that down?

14 A Well, I got by what at that particular time I'm looking for. Right then, trying to limit  
15 things that we can send down since we do have a limit, the GSR residue of both the  
16 defendant and Ms. Rojas; the known DNA of her, being the hair that we sent down for  
17 testing; and his bucal swab.

18 Q So, you believe that Mr. Evatt's bucal swab was sent for testing?

19 A Yes.

20 Q Where'd you send it?

21 A To SLED.

22 Q And they tested it?

23 A I believe so.

24 Q You got this report back from Mr. Armstrong, James Armstrong, gun firings?

25 A Yes ma'am.



1 Q You saw that report says that-- What does the report say?

2 A As he testified to, I don't want to paraphrase from what he said, but he said what I  
3 recalled the report saying.

4 Q So, the results were insufficient?

5 A Right.

6 Q Cannot say whether this State's evidence fired projectile---

7 Ms. Howard: Your Honor, I'm going to object. She's asking him the same testimony that  
8 James Armstrong gave, and I don't think he can answer the questions that an expert gave.

9 Ms. Manigault: No, Your Honor, he---

10 The Court: Overruled. Go ahead.

11 Q So, State's Exhibit Number 32, it says unknown caliber projectile recovered from the  
12 ceiling.

13 A Yes ma'am.

14 Q That's what he tested and the results were insufficient to say that it was fired from  
15 this gun?

16 A Yes ma'am.

17 Q And you reviewed that when you did the beginning of the search warrant?

18 A For what search warrant?

19 Q Excuse me. Your arrest warrant for Mr. Evatt.

20 A The arrest warrant, yes.

21 Q And did you have that at that time any reports from SLED, DNA, or gunshot residue  
22 testing before you issued your search warrant?

23 A No, I---

24 Q Excuse me. Arrest warrant.

1 A No. As I said it can be months and months before those are finally returned, so, no I  
2 did not.

3 Q And so, you realize that the testing of the shirt, the cuttings from the shirt came back  
4 as insufficient, but not testing for the correct blood spots? You were in here when they  
5 testified. Right?

6 A The first time the shirt was sent down?

7 Q The first time the shirt was sent down.

8 A Insufficient.

9 Q The second time the shirt was sent down.

10 A We're gonna have to go back to what the DNA expert testified to, and---

11 Q They testified that they didn't find any female residing in any blood spots regarding  
12 Karen Rojas. You did not know that before you issued your search warrant, arrest warrant?

13 Ms. Howard: Your Honor, I'm going to have to object to her testifying what SLED---

14 The Court: She's on cross. You can re-direct when she's through. Go ahead.

15 Q The question was were the results back at the time you issued your arrest warrant?

16 A No. As I said it could be months and months.

17 Q So, on May 17, you were at the trailer area at Piedmont. Is that correct?

18 A Yes.

19 Q And you had so much to do there that you contacted Investigator King or somebody,  
20 but Investigator King met with Mr. Evatt at the law enforcement center.

21 A Yes.

22 Q And Investigator King testified he interviewed Mr. Evatt for about two hours and did  
23 a statement that's marked State's Exhibit Number 52?

24 A That's what he said.

25 Q And he provided you with a copy of that when you got there?

- 1 A Yes.
- 2 Q And then after that you interviewed him for another hour and a half?
- 3 A I'm not sure of the exact time, but I don't believe it was that long.
- 4 Q Was it an hour?
- 5 A I'd have to go back and listen to the beginning and end of the tape.
- 6 Q So, apparently, you had talked with Mr. Evatt on 5/17 for approximately three hours
- 7 straight. Mr. King first, and then you and Mr. King next.
- 8 A I wouldn't say straight. That makes it sound like he wasn't afforded any breaks or
- 9 able to leave which he was a witness and he was able to leave. He stayed voluntarily, talked
- 10 with us. Was it three hours? Maybe so, very possible.
- 11 Q Yes, we acknowledge the break which you acknowledge on the tape. We don't have
- 12 a problem with that. So, we're talking about the total time that you and/or Investigator King
- 13 had him at the law enforcement center questioning him and asking him to tell you what
- 14 happened.
- 15 A Yes.
- 16 Q Mr. Evatt did that voluntarily?
- 17 A He did.
- 18 Q Did he ever ask you in the time that you were with him if he could leave?
- 19 A He did not.
- 20 Q Did Investigator King relate to you that at the time he was questioning him that he
- 21 asked to leave?
- 22 A Investigator King did not tell me that, so I cannot answer that.
- 23 Q And you've heard his testimony today. So, there is no indication that he ever asked to
- 24 leave during the time any of the interviewing.
- 25 A No.

1 Q Mr. Evatt's account to you was that was that Karen Rojas put the gun in her mouth  
2 and shot herself?

3 A Yes.

4 Q And you're asking him to tell you what the discrepancies are from the evidence that  
5 you collected from the trailer area?

6 A Yes.

7 Q Your testimony was you wanted him to tell you about a projectile in the ceiling?

8 A We're talking about the second interview or the arrest date?

9 Q We're talking about the arrest date.

10 A The arrest date, that's correct.

11 Q You had asked him to explain the discrepancies.

12 A Yes.

13 Q So, he told you that he could not explain the discrepancies. Is that right?

14 A That is correct.

15 Q And you asked him about leaving the residence and not trying to tell anybody outside  
16 what happened, and he told you what?

17 A On the initial date, he denied it. Are we talking the arrest date?

18 Q The arrest date, 5/22/09.

19 A Yes. Now, he's telling us that he did leave and he came back.

20 Q So, on the initial date as a witness, not a suspect, he told you he couldn't remember,  
21 he wasn't sure.

22 A Correct.

23 Q On 5/17. On 5/19, now arrested as a suspect he said yes, the day I left I was driving.

24 A That's correct.

1 Q On 5/22, after being arrested, he told you, tells you that Karen Rojas was doing crack  
2 cocaine and he was smoking crack cocaine with her.

3 A Okay.

4 Q He's under arrest.

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

6 Q He further told you that he probably drove the car when they went to get cigarettes.  
7 He's under arrest.

8 A that is correct.

9 Q And you assured him that you were not worried about driving under suspension. I  
10 was worried about the charge, not worried about him driving. Is that right?

11 A That's right.

12 Q Now, when he took a break, y'all took a break at 6:09 and came back at 6:25,  
13 according to your testimony, you stated on the tape that he said he wanted to get an attorney.

14 A Yes.

15 Q And he thought that was the best thing to do?

16 A Correct.

17 Q Correct?

18 A Correct.

19 Q He had talked to you for approximately three hours on May 17 of 2009 without  
20 asking for an attorney?

21 A Approximately, yes.

22 Q Approximately, how many search warrants did you get?

23 A We got several. The initial search warrant by Gladson. When we found out the  
24 projectile was not in her head, we did another search warrant to go back to the home.

25 Q Did you say seven or several?

1 A Several.

2 Q Okay.

3 A We did a search warrant for his clothing and his photographed bucal swab; a search  
4 warrant for the vehicle that was processed by Forensics. We returned to do measurements of  
5 the home. More testing was done. We returned to remove the carpet. So, we did several  
6 search warrants.

7 Q Were you in the home when Forensics was doing the video and collecting any  
8 evidence from the trailer?

9 A On the initial date, yes, I was there.

10 Q And I think you testified that on May 18 you went back with Shaw to look for the  
11 projectile?

12 A That correct.

13 Q Did you collect anything else on May 18?

14 A I didn't. Sergeant Shaw collected the projectile.

15 Q You said at the trailer area when you went to investigate, was chaotic.

16 A That's correct.

17 Q And so you have to assign different people to do different things.

18 A That's correct.

19 Q How long did you stay at the trailer area on the 17<sup>th</sup>?

20 A I was there for several hours. I think, if I recall correctly, I don't have it in front of  
21 me, but I left around, shortly before the waiver of rights-- I'm sorry. Shortly before that  
22 interview with him, because that was long enough for me to drive from the scene to meet  
23 with Investigator King to start that recording.

24 Q Were you able to verify during your investigation, the cell phones you found, who  
25 they belonged to?

1 A Yes.

2 Q Who did they belong to?

3 A The phone in the bedroom belonged to Karen Rojas. And the phone that was  
4 processed at the scene, that was near the couch on the little table, it is believed to belong to  
5 the defendant.

6 Q Believed to belong. Did you not verify that?

7 A I can't testify to that. You'd have to talk to the investigator that did the search  
8 warrant.

9 Q You testified to the first phone.

10 A It's in my report belonging Karen Rojas.

11 Q And the second phone is not in your report?

12 A Yes, they're both in there.

13 Q Now when you talked to Mr. Evatt on the 22<sup>nd</sup> at the arrest he said that they were  
14 drinking and there was some fussing.

15 A That's correct.

16 Q Did you ask him what they were fussing about or did he tell you what they were  
17 fussing about?

18 A I believe he testified to it being her dress, her appearance.

19 Q Her appearance?

20 A Yes.

21 Q And there was nothing else that he related to you that is not on this tape that we heard  
22 today from 5/22?

23 A No.

24 Q Do you recall how many diagrams you showed him on 5/22?

25 A No, I do not recall.

1 Q But you do believe that you showed him something?

2 A Yes.

3 Q And I believe on the tape it sounded like you asked Mr. Evatt to get up and  
4 demonstrate for you, with you what he said happened on the 5/22 – I'm sorry – 5/17 date.

5 A Yes.

6 Q And he voluntarily got up and showed you what he believed happened?

7 A Yes, that's correct.

8 Ms. Manigault: No further questions.

9 The Court: Any re-direct?

10 Ms. Howard: Just briefly, Your Honor.

11 **RE-DIRECT EXAMINATION BY MS. HOWARD:**

12 Q Investigator Whaley, in response to Ms. Manigault's questions you said that you and  
13 Investigator King were acting it out and it was inaccurate. What was inaccurate about it?  
14 Was it that the two of you were standing up?

15 A Yes ma'am. I believe that's what he said, and I told him we would do it again  
16 because when I re-did it, I was sitting down and he showed me. And Investigator King was  
17 walking from the bedroom, as he was walking from the bedroom past me.

18 Q And that was inaccurate because he said he was sitting down?

19 A That's correct.

20 Q And as to the car that Ms. Manigault asked you about, the defendant admitted he had  
21 been in that vehicle. Correct?

22 A He drove it, yes ma'am.

23 Q So, would there have been any need to look for DNA if the defendant admitted to  
24 being in there?

25 A No, we already knew that DNA was there.



1 Q And Forensics does testing and provides results to you and then you go from there. Is  
2 that correct?

3 A That's correct.

4 Q And when the phenol saline test came back with no results, is that what made you  
5 decide not to go forward?

6 A That is correct.

7 Ms. Howard: No further questions, Your Honor.

8 The Court: Thank you. Step down.

9 Ms. Howard: The State calls Doctor Michael Ward to the stand.

10 **MICHAEL WARD**, duly sworn, testified as follows:

11 Clerk of Court: Please state your name for the record.

12 A Michael Ward.

13 Clerk of Court: Thank you. You may be seated.

14 **DIRECT EXAMINATION BY MS. HOWARD:**

15 Q Good afternoon, Doctor Ward. Tell the court what you do for a living.

16 A I am a physician licensed in the state of South Carolina and my specialty is pathology,  
17 and my sub-specialty is forensic pathology. And I am the medical examiner for Greenville  
18 County.

19 Q Can you describe to us what forensic pathology is?

20 A Forensic pathology is a sub-specialty of pathology. Pathology is the study of disease  
21 and disease processes and how they affect man. Forensic pathology takes that one step  
22 further dealing with trauma, injury, adding these things that these processes and applying  
23 them as to how and why people die. And then the presentation of that information in a court  
24 of law.

25 Q How long have you practiced in this field?

1 A Almost twenty years.

2 Q Would you tell the Judge and jury your educational background?

3 A Yes. I have a bachelor's degree in biology from the University of Alabama. I have a  
4 master's degree in forensic science from the University of Alabama at Birmingham. I  
5 received my medical degree from the University of South Alabama, which is in Mobile. I  
6 did a four-year anatomic pathology residency at the Medical University of South Carolina in  
7 Charleston, and a one-year fellowship in forensic pathology at the University of New  
8 Mexico. I am board certified by the American Board of Pathology in both anatomic and  
9 forensic pathology.

10 Q What are your duties as a forensic pathologist?

11 A To investigate death to determine cause and manner of death.

12 Q Do you also perform autopsies as part of that?

13 A Yes, I do.

14 Q How many would you say you've performed?

15 A Over 2500 medical legal autopsies.

16 Q What's the purpose of an autopsy?

17 A An autopsy basically is a detailed physical examination performed on someone who  
18 has died for the purpose of determining cause of death and using that information to make the  
19 determination of the manner of death.

20 Q Have you ever been qualified in court as an expert in the field of forensic pathology?

21 A I have.

22 Q In which court?

23 A Both criminal and civil court, as well as district and federal court.

24 Q How many times would you estimate?

25 A Well over a hundred times.

1 Q And have you testified in court after being qualified as an expert?

2 A Yes, I have.

3 Q How many times would you say that's been?

4 A Well over a hundred times.

5 Ms. Howard: Your Honor, at this time I would move to have Doctor Ward declared an  
6 expert in forensic pathology.

7 The Court: Any voir dire?

8 Ms. Manigault: None, Your Honor.

9 The Court: He's qualified.

10 Q Doctor Ward, were you working as a forensic pathologist in Greenville County in  
11 May of 2009?

12 A Yes ma'am, I was.

13 Q Did you perform an autopsy on the body of Karen Rojas on May 18, 2009?

14 A I did.

15 Q How did you know the identity of her that day?

16 A She was identified to me by Greenville County sheriff's detective Eric Whaley.

17 Q Would you give us a description of how a body comes to you for autopsy?

18 A In Greenville County, the Greenville County coroner's office is our eyes and ears at  
19 the scene, if you will. They visit the investigation. They, for lack of a better word, package  
20 the body for transport by placing it into a clean body bag. They seal the body bag with a  
21 unique number so that it may not be tampered with. And then the transport service brings the  
22 body from the scene to our morgue. Our security then takes charge of putting that body into  
23 our morgue cooler and logging the body in.

24 In this case, the next morning, we performed the autopsy. The body was removed

1 from the cooler was checked. It was intact, and it was then removed. And then I made the  
2 examination.

3 Q Are autopsies made in a secure location in Greenville County?

4 A That's correct.

5 Q Who else was present for this autopsy?

6 A There was sheriff's detective, Eric Whaley; Mary Seals and Tracy King; Forensics;  
7 Greenville County Criminal Justice Police Department, Sergeant Dar Shaw; and Sergeant  
8 Bucholtz; and Greenville County Deputy Coroner, Scott Medlin.

9 Q Were any items collected during the autopsy?

10 A Yes, they were.

11 Q What were those?

12 A At the scene, prior to her transport, clean paper bags had been placed over decedent's  
13 hands and protected from contamination during transport. At the time of autopsy those were  
14 removed by me. Also, her clothing was removed and it was a beige housecoat, with a tie. In  
15 an envelope containing her pubic hair, and a sample of her pubic hair and a sample of head  
16 hair, as well as fingernail clippings from each of her hands were receipted to Officer  
17 Bucholtz of the Greenville County Criminal Justice Police Department.

18 Q Did you also collect a blood standard or blood sample at that time?

19 A We did.

20 Q Was that placed in a secure location?

21 A It was.

22 Q Could you describe in general terms how you begin an autopsy?

23 A The autopsy begins with an external examination. If they're clothed we examine the  
24 clothing. We remove the clothing to examine the external surface of the body to look for any

1 trace evidence that may be present, or any evidence of natural disease that may be present or  
2 any trauma that is present.

3 Following the external examination the body is photographed. Any injuries are  
4 diagrammed on paper. And then the internal examination is performed, which is incisions to  
5 allow us to examine the brain, the organs of the thoracic and abdominal cavity, and in this  
6 case, the spinal cord as a result of trauma.

7 Again, examining for any natural things that may be present or a continuation of  
8 trauma from the external surface of the body to the internal surface.

9 Q Did you perform a toxicology test on the victim?

10 A Yes. During the autopsy, general blood and other tissues, other fluids that are present  
11 are removed and submitted for toxicological analysis.

12 Q And there was one performed on the autopsy of Ms. Rojas?

13 A Yes, it was.

14 Q What were the results of the toxicology report?

15 A The examination of Ms. Rojas' femoral blood revealed cocaine, cocaine break-down  
16 products called benzoylecgonine ethanol, and then it metabolizes, both cocaine and  
17 ethanol, when they are metabolized together, called Cocaethylene.

18 Q What was the cause of the injury in this case?

19 A Ms. Rojas had a gunshot wound to the head.

20 Q What did you observe about that injury?

21 A As we examine the body for any injuries we diagram them. we measure them and  
22 photograph them. With an intra-oral gunshot wound, part of that examination occurred after  
23 removal of the intra-oral. In this case the intra-oral gunshot wound is best examined  
24 following removal of organs of the chest and abdomen, allowing removal of the brain to help  
25 decrease bleeding in the area as well as removal of the tongue.

1                   Then after we did that, then we were able to examine the oral cavity in a more  
2 appropriate fashion. While we were removing the tongue one of her maxillary teeth was  
3 present in the back of the throat near the entrance of the gunshot wound.

4    Q            Tell us a little bit about the entrance of the gunshot wound. You're not referring to  
5 the entrance of the mouth, you're referring to the where the bullet actually entered her  
6 mouth?

7    A            The gunshot wound entrance is not-- In my opinion the weapon was not discharged  
8 outside of Ms. Rojas' lips. The muzzle of the gun was inside her oral cavity. There is  
9 tearing of the skin at the corners of her lips as a result of the gas expelling her mouth, causing  
10 her lips and teeth to stretch and tearing the skin here.

11               But on the outside of her lips and on the outside of her face, there was no gunshot  
12 residue, which we would expect to see if the weapon was discharged close to her oral cavity  
13 but not inside her mouth.

14               Present on the mucosa or the soft tissue of the back of her throat, not the top of the  
15 mouth, not the hard palate or the soft palate, but behind her tongue in the back of her throat,  
16 on that mucosa, or that soft tissue, there was black spraying of a foreign material, gunshot  
17 residue deposited on the surface of that mucosa.

18               Within the midline of the back of her throat was a gunshot wound entrance which was  
19 about a half-inch in diameter. It passed through that soft tissue, through the bone of the  
20 second cervical vertebrae, transecting the spinal cord at that level, exiting the second cervical  
21 vertebrae and exiting the midline of her posterior, or the back of her neck six inches from the  
22 top of her head.

23    Q            Would you describe that as a straight, through and through gunshot?

1 A This was a through gunshot wound which traveled in a horizontal plane, or a front to  
2 back plane without deviation up or down and Ms. Rojas was standing upright without being  
3 bent at her neck or at her waist.

4 Q When you say gunshot residue, that is not the same thing as gunshot residue used for  
5 ballistics testing, is it?

6 A That is correct; it is not.

7 Q What's the difference?

8 A In my vernacular, gunshot residue is, are particles that exit the muzzle of the gun  
9 along with the bullet. When we discharge a weapon the bullet leaves the barrel of the gun.  
10 We all know that. But along with the bullet is hot gas, is burned gunpowder that we call  
11 soot, and unburned gunpowder that never has a chance to ignite. They also exit the muzzle  
12 of the gun along with the bullet and at various distances will deposit themselves on the target.  
13 If the muzzle is close enough to that target then the gas, the soot and the unburned  
14 gunpowder will all deposit themselves on the area, in this case, the mucosa was burned on  
15 the back of her throat.

16 Q And this scenario that you're referring to, is it visible to the naked eye?

17 A Yes. It's visible to the naked eye and microscopically.

18 Q And you said there were bags on her hands?

19 A That is correct.

20 Q And that you removed those bags?

21 A Yes.

22 Q Did you find evidence of blood on her hands?

23 A I did not. There was no blood transfer, nor was there blood spatter present on her  
24 hands.

25 Q Was that unusual to you?

1     A             Frequently, when a person commits suicide and the weapon is discharged either next  
2             to the skin of the head, or within the oral cavity, the force of that discharge pushing the bullet  
3             into the skin also causes blood to go back the other way. And this is high velocity blood  
4             spatter, so it's a very fine mist and will deposit itself either on the hand or on the weapon.

5     Q             Let's talk about the gunshot wound itself. You testified it was parallel. Correct?

6     A             It would be parallel to the ground.

7     Q             Did this strike you as unusual in this case?

8     A             It is unusual. Intra-oral suicide gunshot wounds generally are directed upward so that  
9             they enter the brain. That's where we understand the most effective way to commit suicide,  
10            is to shot ourselves in the head. A gunshot wound directed straight back as a suicide is a very  
11            unusual direction and location for a suicide.

12    Q             With the direction of that gunshot would, where would you expect the projectile to be  
13            found?

14    A             If Ms. Rojas is standing straight, assuming she's in what we call the anatomic  
15            position, which is standing erect without being bent at the knees, the waist or the neck, this is  
16            a gunshot wound traveling essentially parallel to the floor. So, as it exited her neck it would  
17            continue to travel in a roughly parallel direction to the floor. So, if it struck the wall behind  
18            Ms. Rojas it would be approximately five feet above the ground, as Ms. Rojas was 66 inches  
19            in height and it exited six inches from the top of her head.

20    Q             If I was to tell you that the bullet was found in the ceiling tile, would that give you  
21            any indication of how Ms. Rojas would have been standing?

22    A             As this wound is without deviation up or down through her neck, Ms. Rojas, I don't  
23            believe was bent very much at the neck. So, for this to be above her, she would have to be  
24            bent more at the waist with the weapon in her mouth, with her neck relatively straight so that  
25            the bullet as it exited her mouth it then directed upwards. So, if she's looking down, flexed



1 more at the waist, the bullet goes in, travels straight through the neck and yet still strikes  
2 somewhere at the scene.

3 Q What would you expect to happen to Ms. Rojas's body when this gunshot would have  
4 occurred?

5 A The missile, as it passed through her vertebrae transected her spinal cord, her high  
6 spinal cord. This would result in immediate loss of voluntary muscle control, basically from  
7 the level of her neck downward. So, Ms. Rojas would essentially collapse to the floor  
8 immediately without, with no longer be able to move her arms or her legs.

9 Q And would this gunshot have enough force to have thrown her back and twisted her  
10 around?

11 A No, I don't think so.

12 Q Is there a line of resistance on the part of the body that this gunshot wound passed  
13 through?

14 A Well, it passes only through a very short distance, through one bone. But gunshot  
15 wounds don't characteristically cause the person to be thrown back or to be twirled around.  
16 Generally the wound passes through very quickly, or, the missile passes through very quickly  
17 and it's not as we envision on media, on television, things like this. It doesn't throw a person  
18 back. It doesn't cause them to have all these dramatic things happen to them. You know,  
19 they just get shot, and in this case, all the spinning of the missile is not in the body, much of  
20 it is spinning outside the body as it exited. So, she would have collapsed right where she  
21 was.

22 Q Would there be any part of her body that would absorb the blood from the gunshot?

23 A You mean from bleeding from the skin or as the bullet exited the skin?

24 Q As the bullet exited the skin.

1     A             Her hair was covered, or this portion of her neck was covered by her hair, which was  
2             approximately, I believe, six to eight inches in length. So, you know, her hair is down  
3             roughly to her shoulders so that part of her neck is obstructed by her hair, or covered by her  
4             hair. This certainly is not going to stop the bullet. It may not even stop some large particles  
5             of blood or some pieces of the tissue that may come out. But the vast majority of blood that  
6             exits along with the missile will be caught in the hair.

7     Q             In addition to the damage caused by the bullet, describe for us the injury caused to the  
8             mouth.

9     A             There was trauma to the angle of the mouth that resulted from the over-expansion of  
10            the over-stretching of her lips and cheeks as a result of the gas being present in her mouth.  
11            Basically, the weapon discharged. The gas that usually dissipates within the air is now trying  
12            to dissipate inside her mouth, causing her lips and teeth to expand outward and stretch,  
13            causing tearing to the angle of the mouth. There was also one of her front teeth, basically on  
14            the top was chipped, and the other was traumatically knocked out. The one that was chipped,  
15            we did not recover that piece. The one that was knocked out was recovered from basically  
16            the back of her throat.

17    Q             Would that have been caused by the recoil of the gun?

18    A             I don't think so.

19    Q             And why not?

20    A             When a weapon's discharged, the recoil of the gun is upward. And as I'm holding it  
21            this way, it's upward and backward, which would get your teeth going upward and knocking  
22            it out of your mouth, not inside of your mouth. So, I don't-- As in Ms. Rojas' instance, I'm  
23            going to collapse. I don't see where she was-- I don't see how her actions after that would  
24            get the tooth from nearly outside of her -- at least outside of her teeth back into her posterior  
25            throat. I think the force of knocking her tooth out carried it into the back of her throat.

1 Q And would transferring the body, placing it on the autopsy table, things like that,  
2 would that lodge that tooth back into her throat?

3 A I wouldn't think so.

4 Q And why not?

5 A The changes of a body after death, and in this case, rigor mortis, which is stiffening of  
6 the body-- And these scene investigations aren't done quickly. They take time. They take  
7 hours. And during that time Ms. Rojas would become stiffer due to rigor mortis. The  
8 tongue, like any other muscle, would become stiffened, such that when they start to move  
9 her, muscles that are in place will stay in place until we break, until we manipulate them  
10 enough to break that rigor mortis. In dealing with the tongue, until I reach up and move it  
11 myself. So, anything in front of the tongue stays in front of the tongue because it's blocked  
12 by that stiffened tongue. Anything behind the tongue tends to stay behind the tongue because  
13 it's blocked by the stiffened tongue.

14 Q As part of your examination of Ms. Rojas' during autopsy, did you perform a  
15 microscopic examination as well?

16 A Yes, I did.

17 Q What did that reveal, or did it reveal anything?

18 A There were basically three findings on microscopic examination. The first was  
19 examination of the mucosa surrounding the gunshot wound, which demonstrated the gunshot  
20 residue that I've already described. As I could see it with my naked eye I could also see it  
21 under the microscope.

22 Secondly, examination of the tissues of the brain and spinal cord demonstrated  
23 hemorrhage around the base of the brain and trauma to the spinal cord, disruption of the  
24 tissues of the spinal cord.

1           Also, examination of the lungs confirmed the findings with my naked eye that when I  
2           looked at her lungs, the left lung appeared relatively normal. The right lung-- I'm sorry,  
3           didn't appear normal. The right lung had a sort of a quilt-like distribution, if you will, of  
4           normal pink coloration and darker red coloration. And that quilt-like distribution of  
5           coloration to the lungs is indicative of what we call chemo-aspiration, or breathing in of not  
6           only air, but blood into her lungs.

7           She was lying on her right side. So, whenever she breathes in, air may-- She's still  
8           able to breathe. She originally had the final-- The brain stem has not been traumatized so  
9           she still may have involuntary breath movement. She's still able to move air. And part of  
10          this air, since she's on her right side, as she breathes in air and blood, the blood is going to  
11          the right side and not upward into the left side

12          Microscopically, I was able to demonstrate that fresh blood present within the alveolar  
13          spaces of her lungs, again, indicating that this isn't just blood that trickled down into her  
14          lungs, but was inhaled into her lungs, getting it out into the periphery.

15   Q           So, after the gunshot wound she was still alive, still breathing in?

16   A           Clinically alive, yes.

17   Q           Was her inhaling or breathing in of blood, what would she have been doing, what  
18          kind of breaths?

19   A           Oh, I suspect instead of having quiet respiration, this is now more of a gurgling-type  
20          noise, as with air mixed with a liquid going in and out of her lungs.

21   Q           Doctor Ward, I want to show you these pictures. I'm going to start with what's been  
22          admitted into evidence as State's Number 19. Do you see that?

23   A           Yes, I do.

24   Q           Is that blood that could be caused from her breathing in and out of this blood that  
25          you're speaking of?

1 A No, I don't believe it is.

2 Q And why not?

3 A Blood that exits either the nose or the mouth as we exhale or cough, generally as we  
4 breathe in and out, the blood's only going to come up to the mouth and maybe dribble over  
5 the lips or run out of the lips. It would collect very close to the oral cavity. You certainly  
6 can cough blood and then it comes out in droplet form. This appears to be blood which is  
7 smeared across the top of the carpet. And this pattern here appears more as a drag mark in  
8 blood across the carpet as opposed to individual drops.

9 Q I'm going to next show you State's Exhibit Number 20. Doctor Ward, in regard to  
10 the area of her cheek, right in between her cheek and her chin, would you like me to point  
11 that out so we'll know we're talking about the same thing?

12 A This area here?

13 Q That area in there. What does that appear to be to you?

14 A This is a pattern of blood that you would expect to see as it basically runs out of the  
15 oral cavity, either because the mouth is filling with blood or there's some respiratory  
16 movement and blood coming out with it.

17 The blood here, as it is above the level of the lips, it's certainly not blood that had  
18 naturally come from, flowed from the mouth and upward to this position. That's not the way  
19 it happened. So, this is, looks more like smeared blood, which would be a blood transfer  
20 from something that was already bloody and then touched her there or dragged it from here  
21 across there.

22 Q Again, you did not find any blood on her hands?

23 A She had no blood on hands.

24 Q Doctor Ward, I will show you what has been marked and has been admitted into  
25 evidence as State's Number 18. What do you see there?

1     A               This is a photograph of the back of Ms. Rojas' head. This is the top of the head,  
2               coming this way to the posterior portion of-- This is the garment, the robe that she was  
3               wearing. Within this region would be the gunshot wound exit. This appears to be hair that is  
4               within the hair-- I'm sorry. Appears to be blood which has saturated the hair in this region.

5     Q               Does that area appear to be matted or flattened to you?

6     A               It certainly does, yes.

7     Q               Doctor Ward, in your opinion, if you can say what, do you believe the cause of this  
8               matting was the gunshot exit?

9     A               Well, as that-- As you can see, that portion of her hair is now upward in relation to  
10              the gunshot wound. So, something has happened to that hair. Either it was at one time down  
11              and she had been moved or something had touched her hair after the gunshot wound, and  
12              touched it such that blood that was on the skin is now mixed in with the hair. So, the back of  
13              her head may have been touched, matting that hair, as well as the front of the face, causing  
14              that blood transfer to the left cheek.

15    Q               And I believe you testified earlier that the purpose of an autopsy is to determine how  
16              a death occurred and the manner of that death. Correct?

17    A               That is correct.

18    Q               What's the difference?

19    A               Cause of death is the either traumatic injury or natural disease process that results in a  
20              person dying. So, in the coronary artery disease when somebody has a heart attack, or it  
21              could be lung cancer, those are the causes of death. In this case, Ms. Rojas' traumatic injury  
22              that resulted in her death was a gunshot wound to the head.

23    Q               And Doctor Ward, what was your conclusion as to the manner of Ms. Rojas' death?

24    A               It's my opinion that the manner of death was a homicide.

1 Q Thank you, Doctor Ward. I have no further questions. Please answer questions Ms.

2 Manigault may have.

3 The Court: Ms. Manigault.

4 Ms. Manigault: Thank you, Your Honor.

5 **CROSS EXAMINATION BY MS. MANIGAULT:**

6 Q Doctor Ward, you talked about involuntary movement if the body collapsed down to  
7 the floor.

8 A Involuntary movement?

9 Q Involuntary movement.

10 A Yes ma'am.

11 Q What areas would involve involuntary movement?

12 A Following a trans-section of the spinal cord at the level of C-2, virtually you should  
13 have loss of, use of her arms, her legs, and of the muscles of her body core; so, her trunk and  
14 chest area.

15 Q Could you explain again the gunshot residue that is visible to you with the naked eye,  
16 when it's not the same as testified to by Forensics?

17 A Yes ma'am. My understanding is that in both cases we are referring to gunshot  
18 residue, both from Forensics and from my report. As I understand the gunshot residue test by  
19 Forensics is the components of the primary cartridge used to discharge. All bullets have a  
20 primer cap that contains various components of heavy metals, basically, barium, antimony  
21 and lead. The hammer of the gun strikes the primer. This primer ignites and that ignites the  
22 gunpowder, causing the immediate explosion inside the bullet, producing the gas, which  
23 pushes the bullet down the barrel of the gun and out.

24 When that primer cap is struck and discharges there's a cloud of heavy metals that are  
25 created around the end of the gun where that hammer strikes the bullet, so that those heavy

1 metals may be deposited on the person discharging the weapon, on their hands, may be  
2 deposited on their clothing and may be deposited on some other person's hands if they are in  
3 close proximity to the weapon. And using various techniques they test for those heavy  
4 metals. They are invisible to the naked eye and invisible to the light microscope, which is  
5 what I use.

6 In the forensic pathology parlance of gunshot residue I am referring to components of  
7 the gunpowder which are ignited by the primer, predominantly it's a nitro-saline loaded  
8 compound. So, I'm looking for the unburned gunpowder that also comes from the muzzle of  
9 the gun, the burned gunpowder, and sometimes the evidence of that hot gas striking the skin  
10 near the entrance wound.

11 So, one is a component of the gunpowder, which I'm looking for. Another is a  
12 component of the primer cap which Forensics is testing.

13 Q And I believe you said in your report that soot, unburned gunpowder, burned  
14 gunpowder reacted to this area of the skin?

15 A From the length and the outer of the surface of the skin surrounding the mouth on the  
16 outside, not on the inside.

17 Q Now, when you explained the entrance of the wound and the exit, did it hit a bone?

18 A Yes ma'am, it did.

19 Q Could you describe what the exit looked like with the bone that was hit? Is that  
20 possible for you to do?

21 A I think I can. If I understand you're talking about the exit wound in the skin?

22 Q Yes.

23 A Yes ma'am. This was a very classic gunshot wound. There's an exit which is where  
24 it's slit-like tear in the skin, such that when a bullet strikes the skin as an entrance gunshot  
25 wound it's generally traveling nose first and creates a nice, round hole. And we can



1 recognize that in a gunshot wound as the entrance. Generally, when they exit, as the bullet  
2 passes through the body it's no longer spinning and it's no longer traveling nose first, but  
3 begins to tumble. So, as it exits the skin, it may come out nose first, it may come out  
4 sideways, it may come out tail end first. And it pushes the skin outward, and then as it comes  
5 outward it causes the tearing of the skin. So, it creates a lacerated, what we call a lacerated  
6 gunshot wound of exit. So, it's not a round circle anymore; it's a irregular hole in the skin  
7 with little tears in the side.

8 Q I think the question was asked if a person's body, if a person's body stays in a  
9 position for a while will blood start settling in certain areas of the body?

10 A Yes ma'am.

11 Q Will blood start settling in the hands if the hands are at rest?

12 A It would.

13 Q Lying on the floor?

14 A It would settle in the hands. It would depend on which part is dependent. So, if the  
15 hand is like this, then livor mortis, or the discoloration of the skin due to settling of the blood,  
16 to gravity, will be to the back side of the hand.<sup>6</sup> If the hand is like this, it would be to the  
17 palm, or the front surface of the hand.

18 Q You noted in your report that there was evidence of medical intervention, which  
19 included the safety pads on the lower extremities.

20 A Yes ma'am.

21 Q So, you are aware that some medical intervention had been performed?

22 A Yes ma'am.

23 Q Now, you noted that with only lower extremities. Did you note any of that  
24 intervention at the top, such as the heart, for the safety pads or any electro pads?

25 A No ma'am. I only noted them on her ankles.

1 Q On her ankles. You specified that if some, her hair would have been matted if  
2 someone had moved it after she'd fallen to the floor. There was a question about State's  
3 Exhibit Number 18. You testified about the matting.

4 A Yes ma'am.

5 Q And is it your opinion that that hair would have to be moved, would have to be  
6 moved by someone or something?

7 A I think to better state my opinion is that when you look at this photograph that the  
8 blood that's going to exit from, or the bleeding that's gonna occur from the exit wound is  
9 going to go downward. Her hair in this photograph, the part that is matted with blood is not  
10 downward such that with her head in this position, such that this could not have become  
11 bloody simply this way. One explanation for that is if her head is moved either from a  
12 position to where this part was down and bloody, or if someone put their hand back there and  
13 that hand became bloody along with her hair.

14 Q Now, you testified that the toxicology report on Karen Rojas revealed some  
15 substances. Can you give us the level of those substances that you found in your report?

16 A Yes ma'am. The Ethanol was present at .18 percent.

17 Q The Ethanol would consistent with blood?

18 A I'm sorry?

19 Q The Ethanol would be consistent with---

20 A With alcohol, ethyl alcohol.

21 Q Alcohol, okay.

22 A She had a cocaine level of .05 milligrams per liter. She had benzoylmethylecgonine.  
23 Benzoylmethylecgonine is a break-down product of cocaine, at .15 milligrams per liter. And  
24 then that combination of cocaine and ethanol then causes Cocaethylene, which was at .04  
25 milligrams per liter.

1 Q Now, you said in your report the nature of the hands revealed no evidence of gunshot  
2 residue or trauma. Can you explain that for me? Not the gunshot residue part, but the trauma  
3 part?

4 A Yes ma'am. There was no injury to the hands, front or back.

5 Q After the body has laid there is there a possibility that blood just settled up in the neck  
6 area from laying down, in this cavity?

7 A You mean from the exit where---

8 Q No, I'm just talking about a body having rested for hours. How would the neck  
9 appear, not from the wound, but the appearance of if there's any blood left settling and so  
10 forth.

11 A Not from the bleeding from trauma?

12 Q No.

13 A If a person dies and they're laying on their back, then blood settles through gravity,  
14 such that if I'm laying down, then this area here will become discolored due to livor mortis.  
15 If I'm laying-- Part of this is also due to gravity. So, this part of my chin is now draining in  
16 this area here. You can have discoloration of the skin of this region here, livor mortis is in  
17 the area here. Then this part would be uninvolved because it is up, but this part is actually  
18 down in relationship to the front part of the face. So, you can have livor mortis changes of  
19 the neck, of the front part of the neck.

20 Q In your opinion, could there have been any involuntary movement of her hands once  
21 she collapsed to the floor?

22 A Involuntary?

23 Q Yes.

24 A Yes ma'am.

1 Q So, her hands could have collapsed and gone back down? Do you have a description  
2 of how it could have been?

3 A There could have been non-purposeful movement of her hands such that it may have  
4 been retracted up. Generally when there is loss of motor control from the brain to the rest of  
5 the body there can be non-purposeful movement, which is generally a movement that results  
6 in flexion like this, and then extension like this. So, there is a possibility of non-purposeful  
7 movement, yes.

8 Q You also mentioned earlier about involuntary coughing.

9 A Well, coughing, yes.

10 Q Would that coughing cause any fluids to expel from a person's mouth?

11 A It certainly could, yes. If blood was present within the airway or the oral cavity, then  
12 that could be coughed out, yes.

13 Q And I believe you testified you measured Ms. Rojas and she was approximately 66  
14 inches?

15 A She was 66 inches in height, yes.

16 Q And you noted the trauma to her body through your autopsy?

17 A Yes ma'am.

18 Q And you did not go to the scene?

19 A I did not.

20 Q Your autopsy was done on May 18?

21 A That is correct.

22 Q Thank you.

23 The Court: Thank you, Doctor. You may step down. Ms. Howard, we may excuse Doctor  
24 Ward. Is that correct?

25 Ms. Howard: Yes, Your Honor.

1 The Court: Thank you, sir.

2 Ms. Howard: Your Honor, at this time the State rests.

3 The Court: Take the jury out, please.

4 (whereupon the jury exited the courtroom)

5 Ms. Manigault, any motions?

6 Ms. Manigault: Yes sir. Your Honor, we respectfully move for a directed verdict on the  
7 grounds that the State has not proved homicide. We do believe the evidence shown in the  
8 most favorable light to the State, that it would not prove a homicide.

9 The Court: I deny your motion.

10 Ms. Manigault: Thank you, Your Honor.

11 The Court: Are you going to have some testimony?

12 Ms. Manigault: Yes, Your Honor.

13 The Court: Let me examine the defendant.

14 **WALLACE EUGENE EVATT, JR. ,** duly sworn, testified  
15 as follows:

16 Clerk of Court: Please state your name for the record.

17 A Wallace Eugene Evatt, Jr.

18 **EXAMINATION BY THE COURT:**

19 Q Mr. Evatt, we have reach the point in your trial where you need to make a decision as  
20 to whether you will or will not take the stand and testify. Do you understand that?

21 A Yes sir.

22 Q I tell you that it is your constitutional right not to take the stand and testify or  
23 otherwise present any testimony or evidence. And that's because the burden is on the State  
24 to prove you guilty beyond a reasonable doubt. Do you understand that right?

25 A Yes sir.

1 Q And with that understanding I tell you that you have a perfect right to take the stand  
2 and testify and give your side the story. Okay?

3 A Yes sir.

4 Q If you take the stand then you become like any other witness, subject to cross-  
5 examination by the State. Do you understand that?

6 A Yes sir.

7 Q I don't know whether you have any prior criminal record for which you could be  
8 impeached, but if you do, then the State would be able to use that against you. Do you  
9 understand that?

10 A Yes sir.

11 Q With that understanding, have you made a determination of whether you will or will  
12 not testify?

13 A No sir, I haven't.

14 Q You have not decided?

15 A I have not decided.

16 Q So you want to talk to your attorney about that?

17 A Yes sir, I do.

18 Q Are you under the influence of any alcohol, drugs or any other substance right at this  
19 moment?

20 A No sir, just medicine I take for my heart.

21 Q But you're sober?

22 A Yes sir.

23 Q You know what you're doing?

24 A Yes sir.

1 Q All right. We'll take a break so you can talk to your lawyer, Ms. Manigault, and then  
2 we'll pick back up.

3 Ms. Manigault: Your Honor, before we take a recess, if my client's gonna testify, we'd like  
4 to know if the State has any charges they will use for impeachment.

5 The Court: Sure.

6 Ms. Howard: We do, Your Honor. We have-- He does have a record that has some things  
7 that we may not use at this time. But one thing we can impeach him on is a 2003 failure to  
8 stop; a 2002 shoplifting, August; and a false injury claim, presenting a false injury claim  
9 from 1999. He received five years' probation on that. His probation would be within the ten  
10 years. And then there's a purse snatching that he plead to on June 15, 1999. That probation  
11 was ended approximately July, July or August of 2002.

12 The Court: Thank you. Did you get that, Ms. Manigault?

13 Ms. Manigault: Yes sir.

14 The Court: We'll be in recess.

15 (whereupon the court was in recess)

16 **COURT IN SESSION**

17 The Court: Ms. Manigault?

18 Ms. Manigault: Defense rests, Your Honor.

19 The Court: What is Mr. Evatt's decision?

20 Ms. Manigault: He is not going to testify.

21 The Court: He is not going to testify. And I will so instruct the jury that is his constitutional  
22 right. Counsel approach.

23 (whereupon a bench conference took place)

24 Bring the jury in.

25 (whereupon the jury entered the courtroom)

1 Ladies and gentlemen, in the trial of any case, a defendant has absolutely no burden. The  
2 burden's on the State to prove a defendant guilty beyond a reasonable doubt. Now, this  
3 defendant does not have to take the stand and testify because that is his constitutional right. .  
4 I will tell you has exercised that right to not testify or to otherwise present testimony or  
5 evidence. So, the testimony in this case is now complete. And what we have remaining is  
6 the final arguments of the attorneys and there's my charge on the law. So, we'll do that  
7 tomorrow morning.

8 I'll ask that you be back in your jury room at 9:00 in the morning. Please keep your badges  
9 on and have them on when you come back. I will again remind you of the order of the Chief  
10 Justice of the Supreme Court concerning your duty as a juror on this case. So, among other  
11 things, don't discuss this among yourselves or with anyone else, including members of your  
12 own family. I don't know if there are going to be any news accounts of the case, but if so,  
13 don't read or listen to them.

14 So, please be back at 9:00 in the morning. Thank you.

15 (whereupon the jury exited the courtroom)

16 The Court: Do you have any requests to charge> I will give my usual charge on  
17 circumstantial evidence. Is there anything else that you want to request?

18 Ms. Hammond: Your Honor, do you have a charge regarding the credibility of expert  
19 testimony?

20 The Court: I do, and I will certainly charge expert testimony.

21 Ms. Howard: No further requests from the State, Your Honor.

22 The Court: Ms. Manigault, any requests?

23 Ms. Manigault: No sir.

24 The Court: All back. I'll see you back at 9:00 in the morning.

25 (whereupon court was in recess for the evening)



**JULY 19, 2012 – COURT IN SESSION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

The Court: Ms. Salisbury.

Ms. Salisbury: Your Honor, I just want to make sure that Ms. Manigault has made all the appropriate motions, and make sure the defense has rested, and if any more motions needs to be made.

The Court: Ms. Manigault.

Ms. Manigault: Your Honor, we would renew our previous motions.

The Court: And I will deny those motions. Bring the jury in.

(whereupon the jury entered the courtroom)

Ms. Salisbury, you may proceed.

Ms. Salisbury: Your Honor. Ladies and gentlemen, what I've done, what I'm doing is offering you words out of Mr. Evatt's mouth. You've heard the audio recorded by Investigator Whaley. And when that 911 came in on May 17, 2009, at 4:45 in the afternoon, the words that came out of her mouth were, she shot herself. That's where the story begins. The problem with a lie is once you tell the lie, you have to remember. The truth stays the same. Truth remains constant. But a lie evolves. As the evidence comes in, facts are discovered, you have to remember that first lie.

Now, the State has the burden of proof in this case. We have to show to you, prove to you that beyond a reasonable doubt this defendant murdered Karen Rojas. Beyond a reasonable doubt does not mean beyond any and all doubt. It means if you can further in depth about anything that happened that day.

Now, murder, as the Judge will charge you on the law after the arguments have concluded, is the unlawful killing of another person with malice aforethought. My co-counsel told you at the beginning basically two things. We need to prove to you that he pulled the trigger that day, shot Karen Rojas and that he did it with malice, did it with ill will,

1        meanness. So, starting that day, May 17, 2009, about 1:15 in the afternoon, you heard  
2        witnesses' testimony, they hear a gunshot. They look around and say two to three minutes  
3        later, this defendant comes running out of the trailer. Think about three minutes, a significant  
4        amount of time. (pause) That was only fifteen seconds. And what happened? He bailed out  
5        of that trailer, he got in Karen Rojas' car and he fled. He drove, went to his friends' home to  
6        call 911 and he said, she's dead, she shot herself, she's dead. There is testimony from the  
7        medical examiner that she wasn't dead right away. She was laying there gasping, most likely  
8        gurgling. How did he know? How was he so sure she's dead?

9                When he returned to the scene he was more concerned with convincing everyone he  
10        came into contact with that he didn't do it. Not much mention of what he was doing in there  
11        inside the trailer. And in speaking with the investigators at the scene, he said, I did not shoot  
12        that woman. Not at any time does he say, I did not shoot that lady. Not even caring to call  
13        her by her name. That woman, Karen Rojas. That woman had a loving family, had a good  
14        job, she had friends, she had plans. The morning of the shooting she had called her friend,  
15        Cindy McNeely, told her about how she was able to get off work to go to her, Cindy  
16        McNeely's son's birthday party. She had just spoken with her brother about starting a  
17        routine of getting together once a week with her parents and eating out. She had plans. All  
18        of this and he hasn't even gone inside the trailer yet. Too much blood was still inside that  
19        trailer.

20                When law enforcement got in and surveyed the scene, you heard testimony that  
21        Forensics photographed everything before anything was done. Everyone that was in that  
22        trailer, there was testimony that they didn't touch the body, they didn't move the body, they  
23        didn't touch any furnishings, they didn't touch any furniture. The EMS, Mr. Roger Dobbs,  
24        who testified, he testified that he slightly lifted Karen Rojas' robe to put leads on her  
25        shoulders and her legs. So, it seems a little odd, the odd places at the scene. You see the rear

1 door where the defendant was seen fleeing from, but in the kitchen area was Ms. Rojas'  
2 purse. In this area was a holster. Right here was her body. The defendant said her bathroom  
3 was back here. She walked out of it. The testimony from a couple of people, even hearing it  
4 from the defendant's interview, that she usually kept that gun in a holster that's usually held  
5 in her purse.

6 It's odd that she's coming one way while all the other stuff was the other way. And  
7 then, just her body, just the position of the body in general. You can see in this picture the  
8 two couches here, the holster, her body. Again, testimony from everyone that the body was  
9 not moved. The testimony that you heard from Forensics experts and from the medical  
10 examiner about how she would have to be positioned for the bullet to end up where it did.  
11 The bullet ended up in the ceiling tile up in that corner right there. The medical examiner  
12 said due her height, due to the straight through and through of the gunshot wound that she  
13 would have had to have been leaning forward, bending forward. He said she could not have  
14 been bent at just the neck. For her to be bent forward like this. And he said once that  
15 gunshot went off it cut the vertebrae, causing her to crumple forward. He said, Doctor Ward  
16 said, that's it's not like TV, the gunshot blast would not have thrown her back, twisting her  
17 around, but instead would immediately cause her to collapse. This victim fell where she  
18 stood. And there you see her twisted and turned some ninety degrees. Doctor Ward said she  
19 wouldn't have twisted.

20 Not to mention the smearing. Not just one, not just two, but three different  
21 smearings. Now, this, to which Doctor Ward referred to as a drag mark, and it has blood up  
22 here, but yet the wound was that way. She also has a smear on her face right there, loud and  
23 clear, which Doctor Ward testified could not have come from this, from the mouth. She was  
24 laying the other way. And this matting on the back of her head, right there, Doctor Ward  
25 said would have been cause by something up against the back of her head, or from her having

1        been lying flat. And so, does it make sense that she has to be down in this position, they're  
2        struggling, he's got her by that hair, he shoves that gun into her mouth and pulls the trigger?  
3        There's blood, which is shown right here, which we'll get to in a minute. She crumples, he  
4        positions her body in a way that he thinks is the most favorable to what he's gonna try to say  
5        happened.

6                So, you have the gun lying at her feet. The gunshot wound to the mouth, and it's all  
7        in her mouth, there's no blood on that gun. They said, Forensics testified that they ran  
8        fingerprint analysis on that gun and they found not even latent prints. There wasn't even any  
9        ridge detail on that gun, nothing. Why is that? It was wiped clean and laid right there to  
10       rest.

11               And the gunshot residue. The defendant would say he was sitting right there in this  
12       area. That's where she is. John Roberts testified that it would be highly improbable that  
13       gunshot residue would fly across that room from an intra-oral, with a gun placed in  
14       someone's mouth. But, yet, there's gunshot residue on his shirt. John Roberts also testified  
15       that gunshot residue is easily removed from the hand, but not easily removed from the  
16       clothing. Gunshot residue can come off. One of the first things you touch, like when you  
17       wipe your hand on your shirt. There was some gunshot residue on her hand, but he also  
18       testified that was consistent with a gunshot victim.

19               And then there was his shirt itself. When Forensics performed their presumptive test,  
20       you heard testimony that they circled all the spots that showed presumptive for blood, a  
21       pattern-like area. The original-- The shirt was sent twice for analysis to SLED. You heard  
22       testimony they first tested this spot and this spot, 6.1 and 6.2, is what they were called. Both  
23       came back as unidentified male blood. Jon Derby noted at the scene that the defendant had  
24       some scratches on his hands and his arms. So, he is bleeding and there is blood. So, when it  
25       was sent down for a second analysis, DNA is found on the shirt. I'll show the shirt to you so

1 we can point out the spots. (whereupon shirt is shown to jury) Now, you'll have this shirt  
2 back there in the evidence room with you. It was testified by the SLED technicians that  
3 there were labels were attached to the shirt, 6.5, 6.4, 6.3, 6.2 and 6.1 6.4, the area right in  
4 here, came back with her DNA in it. Down here, there was not enough DNA to make a  
5 determination, not enough for the technician to be able to give a reliable, to have a reliable  
6 interpretation. But this right in here was, and it was her blood.

7 The carpet that we saw, which I will put up one more time. You heard testimony  
8 from the Forensics, Sergeant Shaw, who performed a presumptive test on this section of the  
9 carpet that was in the trailer. He told you that LCD, the test that was performed, immediately  
10 reacts. Therefore he knew from that test on this area, he knew that the discoloration at the  
11 time may occur in other areas. He highlighted for us the sections where there was blood.

12 Now, the victim's body is here. The defendant is right here. He wants you to believe  
13 GSR jumped that carpet and landed on his shirt. He wants you to believe that blood jumped  
14 across that carpet and landed on his shirt. And no blood was found in this entire area.

15 You heard Doctor Ward testify about the blood in her lungs, that she was still  
16 breathing after she crumpled to the floor, that the blood in her lungs was not a result of blood  
17 trickling down, but from her breath. She was laying there, gasping and gurgling, making  
18 noises. And then there's the teeth. Two teeth, with the being gun stuck in her mouth, flying  
19 to the back of her throat. Doctor Ward testified that could not have gotten there through  
20 transport, could not have gotten there through any kind of recoil. It came from the gun being  
21 shoved in her mouth.

22 Now, we'll talk about some of the evidence in this case that was collected that was  
23 not submitted for analysis. You heard from Investigator Eric Whaley, an experienced  
24 homicide investigator with the Greenville County Sheriff's Office. It's his job and his role to  
25 determine what he can collect and find from this trailer to show us, give us the best picture

1 we can have of what happened. There was a question as to why some beer bottles weren't  
2 processed for latent prints, why a car wasn't further tested, and why DNA wasn't sent down  
3 on the gun. You heard the audio recordings of the defendant. He admitted that he had  
4 handled that gun. He knew it was Karen Rojas' gun. He admitted to handling it. So, his and  
5 her DNA on that gun would not have told us anything. Same with the prints on the beer  
6 bottles. He admitted that they were both drinking.

7 And the car, when Forensics performed their presumptive test to see if there was any  
8 blood evidence in the car and it came back negative, there was nothing else in the car that  
9 showed up.

10 So, what you have to believe to believe that Karen Rojas shot herself is not  
11 believable. You have to believe that instead of crumpling forward, she turned, twisted and  
12 pivoted. You have to believe that the bullet somehow took a magic path to end up in that  
13 ceiling. You have to believe that those GSR, gunshot residue, and blood jumped that section  
14 of the carpet and landed on the defendant where he said he was sitting. You have to believe  
15 that the witnesses were not telling the truth about not moving the body. You have to believe  
16 that the truth just wasn't in there at all. You have to believe that Karen Rojas suddenly  
17 became despondent after making plans, walking and being happy as she approached the  
18 trailer, all of a sudden she just thought, I'm gonna shoot myself. All of those things you have  
19 to believe.

20 One of the things that you have to believe is the defendant's story you heard on audio.  
21 From the beginning, when he told officers that he walked in the room, he turned around and  
22 saw her with the gun in her mouth. Told that to Sergeant Gladson and Deputy Reece. But  
23 then, he lied and he said, she turned and faced him. And a couple of hours later when he's  
24 talking to Investigator King and Investigator Whaley he was sitting down, right here. You  
25 heard it on audio. On the small couch closest to the door. The door is right here. He said

1 she turned around and stood up and looked him in the eye, which would not put the bullet up  
2 there. And furthermore, I remind you that no one moved anything until Forensics took  
3 pictures. How was he sitting on this couch right here? There are pillows and blankets and  
4 other stuff. The only explanation for that is he's not telling the truth.

5 Now, under the law a defendant is "an innocent", is presumed innocent until proven  
6 guilty. The funny thing about the truth, the truth will always out. And in this case, the truth  
7 shines through. And the lie continue to evolve. A lie does not match the evidence. And it's  
8 not what the State wants you to believe, but what the State has shown to you through the  
9 testimony and the exhibits here today, and the evidence.

10 At the beginning of this trial I told you this case is not three things. I'll summarize  
11 those three things. It's about whatever triggered him that day, May 17. For whatever reason,  
12 it's about picking up that gun, struggling with her, having her bend down, shoving that gun in  
13 her mouth to the point where it breaks her tooth back, pops it to the back of her throat. This  
14 case is about malice. It's about pulling that trigger, watching her body crumple to the floor,  
15 positioning her body in a way that he would think would be favorable to him. Laying there,  
16 watching her gasp, breathe, and gurgle. And stepping over her body, looking for her keys to  
17 get into her car and driving away. In this case it's about driving away from the scene as  
18 Karen Rojas lay there dead on May 17, 2009 as a result of this defendant's action.

19 And ladies and gentlemen, all of this is to help you know and help you feel confident  
20 going back into your jury room, deliberating and rendering a verdict of guilty, that beyond a  
21 reasonable doubt Wallace Eugene Evatt pulled the trigger that day and shot and killed Karen  
22 Rojas. Thank you.

23 The Court: Ms. Manigault.

24 Ms. Manigault: If it please the court.

1 Ms. Manigault: Ladies and gentlemen, suicide is not practical, it's not reasonable,  
2 it's not predictable. In our everyday experiences in life we hear about people committing  
3 suicide, family members are shocked, neighbors are shocked, friends are shocked. So,  
4 suicide is not predictable.

5 Let's start with the medical examiner, Doctor Ward. He did his autopsy on May 18.  
6 He received his information from the investigating officers. And as relating to what was told  
7 to him and what he saw, it didn't line up. So, he ruled it a homicide without any of the  
8 forensic reports being in. No gunshot residue report, no DNA report, nothing. He said that  
9 the front and back entrance and exits without deviation, that he did not believe it was suicide.  
10 But he did say it could have been. So, he didn't rule it all the way out. His final decision  
11 was it was homicide. But again without any reports, no DNA, no gunshot residue, nothing.

12 Now, before I get any further in recounting any testimony, you as jurors are to  
13 recount the testimony as you remember it. I would not intentionally misstate something to  
14 you. Neither would Ms. Howard or Ms. Salisbury. Your Honor will tell you that it's your  
15 recollection along with the law, and you apply the law to your decision.

16 So, when the State says presumption of innocence, a person comes before the court  
17 presumed innocent, that's true. And that presumption of innocence is like a cloak of  
18 righteousness; it's a cloak, it's a robe. It's like a trench coat buttoned up. All right? And for  
19 the State to remove that cloak of innocence it has to prove beyond a reasonable doubt that the  
20 person charged did what they said. So, unbuttoning a button does not remove your coat.  
21 Unbuttoning a second button does not remove your coat. So, I submit to you that the State  
22 has not presented you with evidence beyond a reasonable doubt in this case.

23 When we talk about somebody trying to get rid of evidence-- All right? The State's  
24 witness said that maybe within two or three minutes. And they said it was estimated. It  
25 could have less, it could have been more. All right? So, within two or three minutes that he



1 heard the shot he saw Mr. Evatt come running out of the house, run to the car, drive off. All  
2 right?

3 If you're going to be in the house trying to clean up a scene it seems like you would  
4 take off your shirt and the pants that you had on. They say he washed his hands, so that's  
5 why there's no gunshot residue on his hands. But if you're trying to clean up a scene and  
6 position stuff and rearrange stuff, it seems like the first thing you would do is take off your  
7 shirt and your pants.

8 Now, the investigator testified that he reviewed the scene. And you have a tape in  
9 there where they reviewed the scene on video. And he looked in the sink, in the tub. All  
10 right? Didn't say anything about anything being wet in there. But he did mention to you  
11 this: that there were some wet clothes in the washing machine. But he didn't tell you  
12 whether it was women's clothing or male clothing. So, you are to presume without facts that  
13 perhaps it was male clothing. No wet sink, no wet tub, nothing. If you desire to review that  
14 same video, you can see where they scanned the area. So, again, somebody trying to  
15 rearrange an area, trying to make sure that they present themselves as innocent, seems like  
16 they would take off their shirt and pants.

17 Odd about the position of items in the house. Odd, an injured person in the dining  
18 area. Odd. People place things everywhere in their house. Purse sitting beside the front  
19 door. There's a bedroom. On the kitchen counter. So, what's oddity about the placement of  
20 the purse.

21 Doctor Ward-- And again, please remember the testimony as you recall it. I do recall  
22 him saying you lose muscular control and you drop to the floor and there could be  
23 involuntary movement or action. I do recall he said that. I do recall that he said that there  
24 was no other trauma on Karen Rojas. Not the neck, not the hands, not anywhere else on the  
25 body, just the gunshot wound to her mouth. No other trauma.

1           What am I saying? If a person stands there, sits there, kneels there, whatever their  
2 theory is, and lets you just shove a gun down their mouth and not put up some struggle, not  
3 put up some resistance to show some kind of bruising on the body. You just gonna sit there,  
4 stand there, stoop there, however they want to present to you, and let somebody shove a gun  
5 in your mouth and just do nothing? Now, that's odd, that's very odd.

6           The DNA analysis. Testimony came from Lindsay Thompson. According to her  
7 report on August 16, 2010, the items were eight, Number 8, was the blood standard from  
8 Karen Rojas. Number 6.1 was cuttings from the shirt. Number 6.2 was cuttings from the  
9 shirt. Number 7.1 was the cutting from the pants. And her report says the DNA profile  
10 developed from 7.1, cutting from the pants, and the possible DNA profile developed from  
11 6.1, 6.2, cuttings from the shirt, from an unidentified male individual and do not match Karen  
12 Rojas. Do not match.

13           So, that report was generated August 16, 2010. And then a report generated  
14 December 28, 2011, cuttings from the shirt, 6.3; cutting from the shirt, 6.4; cutting from the  
15 shirt, 6.5; and eight, blood standard from Karen Rojas previously analyzed by Lindsay  
16 Thompson on report dated 12/28 came back. 6.3, DNA profile, DNA profile 6.3 is  
17 insufficient for reliable interpretation. 6.5, no human DNA was tested. And then 6.4 DNA  
18 profile developed from Item 6.4 matches DNA profile for Karen Rojas, with probability of  
19 random selection.

20           She did not say it was a huge area. She did not testify to the size of the area. She said  
21 she had a cutting from the shirt and she sampled that cutting. All right? But this now over a  
22 year and a half later. The second request over a year a half later. But then State's Exhibit  
23 Number 44, perhaps you can see a small spot number, and that was a circled spot, whoever  
24 put this in.

1           Now, this same test-fired weapon, which is a revolver, State's Exhibit Number 9, Mr.  
2           Armstrong testified that the gun was examined, it was operable, test-fired. But the bullet  
3           from there had similar but insufficient microscopic marks to make a positive identification  
4           that the bullet found in the ceiling was the bullet. Was the bullet. Insufficient microscopic  
5           marks to make a positive identification. They could not even say the projectile which come  
6           from the ceiling was fired.

7           Now, they did say they, the bucal swab collected presumptive, physical evidence  
8           from the ceiling, but they didn't test it. They didn't test it.

9           All right. I asked Mr. Shaw who testified about the revolver. No fingerprints on the  
10          gun. Of course, the State would have you believe that in that two to three minutes, whatever  
11          time he was in there wiping up, wiping off the gun, removing the prints. Their own pictures  
12          show that's a confined area. So, if the body is being moved around, where isn't the gun  
13          barrel residue all over the rest of the carpet, all over anything else? Where is it? He's the  
14          one who delineated the area on the carpet.

15          Now, as far as the trajectory line from the infrared light that he put to the ceiling, he  
16          couldn't-- Well, you heard testimony about the reliability of the testing, but there's no  
17          testimony about how often it's used or whether that is standard law enforcement procedure,  
18          such as the 3-D picture. So, one of my questions to him-- Doctor Ward also testified that he  
19          thought Karen Rojas was five six. So, my question was the was where is the five feet point  
20          position on this line. He didn't even figure that out. Well, how does a person have to stand  
21          up? I mean, what's the position to be at any point on this line? You have a picture of a  
22          trajectory line, but please remember the questions that I asked him about measurements and  
23          consider why that wasn't done. No fingerprints on this gun. The grip and the trigger was  
24          swabbed for DNA and labeled but never tested.

1           Now, the gunshot residue. The testimony is that the GSR kit was collected from  
2           Karen Rojas during the autopsy and that was May 18. The testimony was that the GSR kit  
3           was collected from Wallace Eugene Evatt, and that was on May 17. Ms. Rojas' hands were  
4           bagged at the scene at the trailer to preserve the evidence. And when it was tested the report  
5           came back from Mr. John Roberts, forensic scientist, that the test on Karen Rojas' right palm,  
6           the quantity available found did not indicate the presence of gunshot residue. On her right  
7           back the quantity of metal was found are consistent with gunshot residue. On the left palm,  
8           metal found does not indicate the presence of gunshot metal, the quality of the metal found.  
9           On the left back, same, the quantities of metal found did not indicate the presence of gunshot  
10          residue. On the GSR kit for Mr. Wallace Evatt, right palm, no gunshot residue found.

11          Now, when he testified you notice he said the quantity of metals found on Karen  
12          Rojas did not indicate. So he did find quantities of metal. But for Mr. Wallace Evatt, on the  
13          right palm, no gunshot residue found; right back palm, no gunshot residue found. On the left  
14          palm, no gunshot residence, on the left back, no gunshot residue found.

15          Now, he did testify to you that when a gun is fired, when a gun is fired, that the GSR,  
16          gunshot residue comes out of the barrel of the gun. He also testified that it can come out  
17          through the cylinder. And if you recall his testimony he said something about there could be  
18          black clouds. And he said that gunshot residue coming out can travel in the air a distance of  
19          four to six feet. The measurement according to Mr. Roberts and other State's witnesses,  
20          between the two couches was only four feet between the two couches, was only four feet.

21          So, if you had two individuals standing up in that four feet, then they are naturally  
22          closer to each other. So, a gunshot being fired could travel out of the gun and hit the person  
23          standing in this very close field. And that's the testimony of forensic scientist, Mr. Roberts,  
24          it could travel. He said if I'm standing next to a person – as you will recall his testimony – if  
25          I'm standing next to a person that fires a gun in close proximity then the residue can float

1 through the air and land on me, if I'm within four to six feet of the person, from the  
2 individual.

3 He testified further that two, two particle lifts were from Mr. Evatt's shirt. Two.  
4 Particles can be floating in the air. He even further offered us this example: Mr. Roberts  
5 said that, for instance, if I were to shoot a gun and go drive a car, or touch the car, gunshot  
6 residue would be on the car. If I touch the steering wheel, gunshot residue would transfer to  
7 the steering wheel. Gunshot residue will transfer to any area that I touch. And he did say  
8 there were small ball-like particles that float that may not be visible to the naked eye. And  
9 Doctor Ward explained the difference between his GSR and the one that Mr. Roberts was  
10 talking about.

11 Karen Rojas owned a gun. According to her brother she lived in Toccoa, Georgia at  
12 one point and had another kind of gun. And he testified that it was for her protection. And  
13 there was no testimony that Wallace Evatt visited her in Toccoa, Georgia. He said that she  
14 had a concealed weapons permit from Georgia. Her brother testified that he bought her the  
15 gun, and you will read in the statement and you will hear on the tape if you listen to it again,  
16 what Mr. Evatt said to the police officer when he was being questioned as a "witness". So,  
17 he thought her father purchased the gun, but Mr. David Gross informed us that he purchased  
18 the gun as a gift. That they did everything together, she was real close, had a great sense of  
19 humor.

20 In their testimony they want you to believe that things were just not going well  
21 between Karen and Wallace. You'll read in the statement and you'll hear on the tape when  
22 he told the officers that Karen was smoking crack cocaine and he was smoking crack  
23 cocaine, too. They were smoking crack cocaine together. He was drinking Icehouse, Icebox,  
24 whatever it's called beer. She was drink Icehouse or Icebox beer. And they both each had  
25 their own stash.

1           You heard Doctor Ward testify that Karen's blood alcohol level was .82, .82.  
2           Alcohol mixed with cocaine, that there were cocaine levels, that cocaine metabolizes. So,  
3           what do people do? Do people act normal when they drinking and drugging? The change of  
4           mind, do you think there was a change of mind that Karen Rojas or having consented-- And  
5           we don't dispute that they had arguments, they fussed at times. That's on the tape. That's on  
6           the tape.

7           So, to think that Wallace Evatt all of a sudden just went berserk, grabbed Karen and  
8           shot her in the mouth, that's odd. That's odd.

9           What the 3-D profile done by Sergeant Shaw and what the trajectory line done by  
10          Sergeant Shaw, and what the tape out on the carpet by Sergeant Shaw is to try to convince  
11          you of a best guess. It is a guess of what happened. The best guess. There is no question  
12          that the death of Karen Rojas is regrettable. There is no question that there is a loss in her  
13          family. That is not in question. But we submit to you that Wallace Evatt did not take her  
14          life. We submit to you that strange things happen in people's minds. Who can tell why a  
15          person commits suicide? You can only guess afterwards what happened when they try to  
16          piece things together. So, we submit to you that Wallace Evatt did not shoot Karen Rojas.

17          The pictures that you have of the robe of Karen Rojas that shows the spatter at the  
18          top, gunshot residue. Blood on the sleeves of the arms. You're sticking the gun in your  
19          mouth, you're right-handed. It was testified that it was highly possible, probable gunshot  
20          residue would be on the of the hand.

21          Now, the trauma of the tooth. You will hear on the tape and you will read the report  
22          that Mr. Evatt told the officers as a witness that she was shoving the gun in her mouth.  
23          Again, how do people act when they are drinking and drugging? It is not a reasonable or a  
24          logical action. No evidence of struggle except what the Solicitors described to you this  
25          morning. They want you to think about the broken mirror as evidence. That's in the

1 statement that it was done several days before by a beer bottle. They want you to think about  
2 his hands, the scratches on his hands. The testimony from the tape is were they scabbed over  
3 or were not scabbed over or were they fresh. You'll see all that for yourself.

4 There's a picture of Karen Rojas from the autopsy showing blue marks or settling.  
5 And I believe Doctor Ward testified that the settling of blood, post-mortem. And the same  
6 thing for her hands.

7 Let's talk about the swipe marks or the drag marks that they were talking to you about  
8 on the floor. EMS testified that they came in with their monitors, their equipment. There  
9 was no testimony elicited from them, where did you put it, where did you set it, where'd you  
10 place it. There was no testimony about that. But yet, they did testify that they hooked her  
11 up, up here; then had to move her robe slightly off her shoulders and hook, put the pads on  
12 her legs, both legs. Now, when I asked Doctor Ward, did he see the robe up here, he didn't,  
13 because the EMS guy did testify that he did put it there. So, just because Doctor Ward didn't  
14 see the evidence, it was done.

15 All right. Now, the EMS guy also testified that he moved her legs to put the pads on  
16 the legs because one leg was under the other. He moved the leg. He moved the robe, he  
17 moved the leg. Pictures were not taken before EMS went into the trailer. Pictures were  
18 taken after EMS left the trailer. And when the question was asked of the assistant, I think her  
19 name is, the EMS lady, the EMS person, did you touch anything or move anything; she said  
20 no, I didn't touch the body but I may have bumped something with my bag. Just being  
21 honest.

22 But in order to offer medical assistance to an individual with a head wound and to  
23 check for vital signs, I think the EMS called these motions or actions, he was up around her  
24 head area. Or was he getting closer? Or was he on this side of the couch? There was no  
25 testimony about that. So I submit to you that the swipe marks, that's how they were probably

1 done. Look at them closely. They're not marks that could be associated with dragging a  
2 body. Associated with something in a smaller, confined area. But this could have been  
3 somebody, EMS, a bag or anything else.

4 And specifically I asked the medical examiner in the mouth and could involuntary  
5 coughing cause that to come out of the mouth, not just dribbling, because he testified that  
6 blood just dribbled. But there was involuntary coughing and it could come out. And that  
7 could happen with her down. With the loss of muscular control she would have hit the floor.  
8 Coughing, mouth full of blood, could have coughed and spat it out.

9 Now, as I told you before, the Judge will charge you the law. What I suggest you  
10 look at is the serious lack of physical evidence that could have, I mean, it just could have  
11 been done. Because they want you to believe that they could only submit five pieces of  
12 things to be tested. This is a serious matter for the Rojas family and for Mr. Evatt. Three  
13 years later and they could only get five pieces of stuff tested? This happened May 17, 2009.  
14 The last test done, the reported generated December 28, 2011.

15 I submit to you today that Wallace Evatt did not, did not kill Karen Rojas. I submit to  
16 you today that Karen Rojas committed suicide. It's not explainable. Things happen. We  
17 don't know why. Sometimes there's no way to know what happened. Thank you.

18 The Court: All right. No one in or out of the courtroom during my charge, So, if  
19 anyone needs to leave now is the time to do so.

20 Mr. Foreman and ladies and gentlemen, as you know, the defendant in this case has  
21 been indicted for murder. Murder is a statutory offense and Section 16-3-10 of our Code of  
22 Laws states the following: Murder is the killing of any person with malice aforethought,  
23 either expressed or implied. So, what are the elements which constitute murder? First of all,  
24 the killing of another. And secondly, that it was done with malice aforethought, either  
25 expressed or implied.



1           Now, with respect to the first element that is the killing of another, I charge you that  
2 any killing of a human being is called a homicide. But all homicides are not necessarily  
3 unlawful. For example, when one kills another in self-defense, this is known as excusable  
4 homicide. Or where a police officer shoots a fleeing armed robber, this is known as justified  
5 homicide. And neither of these homicides is necessarily unlawful. As an element of murder,  
6 the homicide must have been unlawful; that is, without just cause or excuse.

7           Now, with respect to the second element; that is, malice aforethought, expressed or  
8 implied, I charge you that malice is a legal term of art which is implied wickedness and  
9 excludes a just cause or excuse. Malice means a condition of the mind or heart which  
10 prompts one to take the life of another without just cause or excuse. Now, malice is said to  
11 spring from a heart devoid of social duty or obligation and is one solely and deliberately bent  
12 on mischief.

13           Now, to prove malice, I charge that it is not necessary for the State to prove the  
14 defendant had hatred or ill will toward the person they killed. As I stated, malice must be  
15 aforethought. Now, aforethought simply means deliberate or planned. In other words,  
16 aforethought means that malice must have been in the mind sufficiently at the time to  
17 produce the act that caused the death. However, no period of time must have existed. If it  
18 was there long enough to bring on the act that caused the death it is sufficient in point of  
19 time.

20           Now, as I read you the statute, it said malice may be expressed or it may be implied.  
21 Expressed malice means that there is some direct proof of malice. For example, when a  
22 person by word of mouth states his or her hatred or ill will for another; or where there is  
23 evidence of a previous threat of lying in wait or making plans, that is direct evidence.

24           Implied malice, on the other hand, may be shown from the facts and circumstances  
25 surrounding the incident or event. Implied malice exists where there is no actual intent to kill

1 a person, but death is caused by something which the law regards as showing such a state of  
2 mind equivalent to an actual intent to kill. It may be manifested by implication of the facts  
3 and circumstances of pending transaction.

4 I further charge you that motive is not an essential element of the crime of murder  
5 and the State is not therefore not required to prove motive for murder.

6 Ladies and gentlemen, in the trial of a case, the State can rely on direct evidence or  
7 circumstantial evidence or on a combination of the two. Now, direct evidence proves the  
8 existence of a fact by using one or more of our five senses, but without the aid of any  
9 inference. For example, the testimony of a person who asserts or claims to have actual  
10 knowledge of a fact, that is direct evidence.

11 Circumstantial evidence, on the other hand is where certain facts known by using one  
12 or more of our five senses produces a logical inference that would prove those facts.  
13 Circumstantial evidence is the proof of a chain of facts and circumstances indicating the  
14 existence of a fact.

15 As I said, the State may rely on either or both of these, direct or circumstantial and  
16 neither is superior to the other. One is as good as the other and equally meaningful to you  
17 and they are each entitled to the same weight.

18 Now, you should consider all of the evidence in this case and after doing so, if you  
19 are not convinced of the defendant's guilt beyond a reasonable doubt, then you are to find  
20 him not guilty.

21 Ladies and gentlemen, our law does not compel a defendant in a criminal case to take  
22 the witness stand and testify. And no presumption of guilt may be raised and no inference of  
23 any kind may be drawn from this defendant's decision not to testify. Our law never imposes  
24 upon the defendant in a criminal case the burden or duty to call any witnesses or produce any

1 evidence or testify. Therefore, the decision of this defendant not to take the stand and testify  
2 cannot be taken, held, discussed or considered against him in any manner whatsoever.

3 Now, as jurors in this case you have a function or a responsibility that's entirely  
4 separate and distinct from my function in this case. I am the Judge of the law, but you are the  
5 judges of the facts. And I am specifically prevented by the constitution of our state from  
6 charging you on the facts of this matter. Therefore, if during the course of this trial, or  
7 during the course of my charge, you have a feeling or you have been left with the impression  
8 that I have a personal feeling about this case one way or another, you need to disregard that  
9 feeling or that impression.

10 Now, it's your duty and your duty alone to weigh the testimony and evidence in this  
11 case, and judge the credibility or the believability of the witnesses that you heard testify.  
12 You have a right to believe all that a witness told you or specifically what a witness told you.  
13 You can believe a part of what a witness told you and disagree with part of what a witness  
14 told you. You have the right to take into consideration any bias or prejudice or interest that  
15 you feel the witness might have.

16 Now, with respect to witnesses, I charge you that our rules of evidence ordinarily do  
17 not permit them to testify as to opinions or conclusions about scientific or specialized matters  
18 or technical matters. Now, an exception to this rule exists for those whom we call experts.  
19 Witnesses who by education and experience have become expert in some art, science,  
20 profession or calling, can state an opinion as to material matters they profess to be expert in.  
21 They also state their reasons for their opinion.

22 Now, you should consider any expert opinion in this case and give it such weight as  
23 you think it deserves. If you should conclude that their opinion as an expert witness is not  
24 based upon sufficient education or experience or if you should conclude that the reasons

1 given for that opinion are not sound, or that their opinion is outweighed by other evidence,  
2 you may disregard that opinion.

3 I charge you that an expert's testimony is to be given no greater weight than that of  
4 other witness simply because that person has been declared to be an expert.

5 As I told you, ladies and gentlemen, I am the judge of the law in this case. It is my  
6 duty to charge you the law applicable to the facts in the case. It's not a question of what you  
7 feel the law might be or what it should be. It is not necessarily what the lawyers may have  
8 told you it is. You are required to take the law as I give it to you, apply that law to the facts  
9 as you remember those facts to be, and to write your verdict for the court.

10 Ladies and gentlemen, in this case, as in all criminal cases, this defendant comes into  
11 this courtroom presumed to be innocence, and this presumption continues to carry through  
12 the entire trial, unless and until is removed by evidence that satisfies you of his guilt beyond  
13 a reasonable doubt. The burden is on the State in this case to prove the defendant and to  
14 prove each and every element of the offense with which he is charged, beyond a reasonable  
15 doubt.

16 Now, some of you may have in the past served as jurors in civil cases. If so, you  
17 were most likely told that it was only necessary that a fact was more likely true than not. But  
18 in criminal cases, the State's proof must be more powerful. As I told you, it must be beyond  
19 a reasonable doubt.

20 Now, proof beyond a reasonable doubt is proof that leaves you firmly convinced of  
21 this defendant's guilt. There are very few things in this world we know with absolute  
22 certainty, and in criminal cases our law does not require proof that overcomes every possible  
23 doubt. If, based on your consideration of the elements in this case, you are firmly convinced  
24 that this defendant is guilty, then you must find him guilty. If, on the other hand you think

1       there is a real possibility that he's not guilty, you must give him the benefit of that doubt and  
2       find him not guilty.

3               Ladies and gentlemen, under the oath you took in this case you swore to try this case  
4       based only on the testimony and evidence presented in this courtroom. I tell you that it is  
5       your duty to lay aside all outside opinions, bias or prejudice, or perceptions you may have in  
6       reaching your verdict. The word, verdict, comes from the Latin word, verdict, and it means  
7       to speak the truth. You have no friends to reward in this case or enemies to punish. I charge  
8       you to abide by your oath and return a verdict that speaks the truth.

9               You will have in the jury room with you the indictment in this case, but that  
10       indictment does not constitute evidence. It sets forth the allegations by the State and it is the  
11       legal document by which this case came to this courtroom to be presented for your  
12       determination.

13              Now, there are one of two verdicts that are possible in this case, guilty or not guilty.  
14       And whatever that verdict is, it must be unanimous; that is, all twelve of you must agree.

15              Mr. Foreman, you will find the place on the back of the indictment where it says  
16       verdict, and whatever the unanimous verdict of the jury is, guilty or not guilty, please write it  
17       out in that space and sign your name on the line where it says Foreperson of the Petit Jury.

18              Now, at this time I am required to go over my charge with the lawyers. I need you to  
19       go back into your jury room. Don't begin deliberating until I send word for you to do so.  
20       Thank you.

21       (whereupon the jury exited the courtroom)

22       Anything from the State?

23       Ms. Howard: Nothing from the State, Your Honor.

24       The Court: Anything from the defense?

25       Ms. Howard: Nothing, Your Honor.

1 The Court: All right. Get all the exhibits together and take them all in at the same time.  
2 (whereupon the exhibits were reconciled by the court reporter and counsel and deliberations  
3 began at 10:27 a.m., with court being in recess)

4 **COURT IN SESSION – 11:43 A.M.**

5 The Court: I have a note from the jury where they want to hear the tapes of the 911  
6 calls and the interview made with the officer, and the Coroner's report, which is not in  
7 evidence. Is that correct?

8 Ms. Howard: That's correct.

9 The Court: Let's bring the jury foreman in and I'll explain that to him.  
10 (whereupon the jury foreman entered the courtroom)

11 Mr. Foreman, you have requested that we play the 911 calls and the interview. I  
12 assume that's the interview with Investigator Whaley?

13 Jury Foreman: Yes sir.

14 The Court: Now, with regard to the Coroner's report, I can't give that to you because  
15 that's not in evidence.

16 So, if you'll go back and let your other jury members know, I will bring you all in  
17 here and we'll do the playback.

18 Jury Foreman: Yes sir.

19 (whereupon the jury entered the courtroom)

20 The Court: Mr. Foreman, you have requested that I reply the two 911 calls and the  
21 interview with Officer Whaley. I tell you that generally reports of coroners or officers are  
22 not admitted into evidence. So, that's the reason I can't give you that.

23 At this time we will play the first 911 call.

1 (Whereupon the audio of the first 911 call was played for the jury; after which the audio of  
2 the second 911 call was played for the jury. Thereafter the interview with the officers was  
3 played for the jury)

4 The Court: Okay, ladies and gentlemen, your lunch is here. If you want to take a  
5 short recess and eat your lunch, that's fine. Or if you want to finish deliberating during  
6 lunch, that's fine, too. Okay? Thank you.

7 (whereupon the jury exited the courtroom and deliberations resumed at 12:49 p.m.)

8 **COURT IN SESSION – 3:14 P.M.**

9 The Court: It's my understanding that the jury has reached a verdict. I want to tell  
10 everyone in the courtroom that I will not permit any sort of outburst or show of emotion  
11 when the verdict is read. If you feel like you can't control yourself, you can leave the  
12 courtroom now. Is there anyone who does not understand what I just said?

13 (no response)

14 Bring the jury in.

15 (whereupon the jury entered the courtroom)

16 Mr. Foreman, have you reached a verdict?

17 Jury Foreman: Yes sir.

18 The Court: Please give the bailiff the verdict form.

19 (whereupon the verdict form was passed to the Clerk of Court)

20 Madam Clerk, please publish the verdict.

21 Clerk of Court: Your Honor, this is case number 2009-GS-23-009628, in the matter  
22 of the State versus Wallace Eugene Evatt, Jr. We the jury find the defendant guilty. Signed  
23 Bret Boulware. If this is your verdict, so say you all. Please signify by raising your right  
24 hand.

25 (whereupon all jurors raised their right hand)

1 Clerk of Court: Thank you.

2 The Court: Anything further from the jury?

3 Ms. Howard: Nothing from the State, Your Honor.

4 Ms. Manigault: Nothing from the defense, Your Honor.

5 The Court: Thank you, ladies and gentlemen, for your service on this case and thank  
6 you for your service this week. This will conclude your service. And I want to thank you for  
7 coming and serving this week. I want you to know that we are well aware of the fact that  
8 jury service is a burden to you. We know it requires you to take time off from your families  
9 and jobs to serve on jury duty, but I do hope you do understand the importance of being here  
10 this week, for without your presence, the State could not get off the docket the cases it does.  
11 You have performed a very important service this week, and I thank you very much for that  
12 service.

13 If you will report downstairs to the jury assembly room, you will have a voucher for  
14 your service this week, which has been hard-earned, we are sure. Thank you so much. You  
15 are free to go.

16 (whereupon the jury exited the courtroom)

17 Any motions?

18 Ms. Manigault: Yes, Your Honor. At this time I would make a motion for a new trial  
19 in that we do not believe that the State was not able to prove the case.

20 The Court: I'll have to deny that motion.

21 Ms. Manigault: Thank you, Your Honor.

22 The Court: All right, Solicitor.

23 Ms. Howard: Your Honor, we are ready to proceed for sentencing. At the  
24 appropriate time the victim's family would wish to address the court.

25 The Court: All right. Bring the defendant forward, please.



1 (whereupon the defendant stood at the bar)

2 The Court: Mr. Evatt, you exercised your constitutional right not to testify during the  
3 course of the trial. At this time is there anything you'd like to say before I sentence you?

4 Mr. Evatt: I'm not a guilty man. I didn't do this. And I'm thinking we can appeal.

5 The Court: Sir, I don't have anything to do with appeals. That's left up to your  
6 counsel, who I am sure will advise you.

7 Solicitor, am I to understand that the defendant has a record.

8 Ms. Howard: Yes, Your Honor, he does. He has a 1978 simple possession of  
9 marijuana; a 1979 possession of marijuana; 1979 public disorderly conduct; 1986 marijuana  
10 possession, unlawful carrying of a pistol, driving under suspension, open container; 1993  
11 CDV; 1996, presenting a false claim for insurance payment; 1997 CDV; 1999 purse  
12 snatching; 1998 driving under the influence; 2001 driving under suspension; 2002  
13 shoplifting; 2003 driving under suspension second, failure to stop for a blue light, resisting  
14 arrest and shoplifting; 2007 possession of crack cocaine; and then a 2009 driving under  
15 suspension.

16 The Court: Do you have one person who would briefly like to address the court?

17 Ms. Howard: Yes, Your Honor. I'm not sure which family member wishes to speak.  
18 I believe it will Karen Rojas' sister-in-law.

19 The Court: All right.

20 Angela Gross: Karen Rojas was my sister-in-law since 1999. It's hard to articulate  
21 the impact that this has had on my life. It truly is overwhelming and in some ways we will  
22 never know the full impact. What we lost from Karen was her personality, her friendly  
23 smile, and all the other things that made us love her so. She also had a close bond that she  
24 shared with her brother, David. They were so close and did everything together. Each  
25 weekend they did family things together. She always knew just what to say to make my sons

1 laugh. She had a very close relationship with them as well. And they have been impacted by  
2 her death. It has been heartbreaking to see her characterized as bad. She was so good and so  
3 close to her parents, to assist them and be there for them. And she talked to them daily to  
4 check on whatever they needed. They always came first with her. And losing a child like  
5 this I just can't imagine the loss they feel.

6 You know, the impact of her death didn't just start. For several years before that, the  
7 family did everything that was possible to protect her from this person. She was in obvious  
8 dependent relationship. There were occasions we had stories from family, friends, everyone  
9 that she was made to sleep on the floor. There were accounts of physical abuse that were  
10 told to us. She was physically being thrown out of her home. And she told us that she was in  
11 constant fear and danger. We tried to all be there for her.

12 I just think that Karen was very fearful as a person and it was not a relationship that  
13 got bad on that particular date. This is something that has been coming about for quite a  
14 while. And domestic violence is a real thing to our family, what she suffered.

15 We are thankful for all the people that have told us how much they cared for her, her  
16 smile, her words of kindness and her friendly ways. She always had a soft spot for helping  
17 those in need. And I think that's what kept her in that relationship.

18 I also want to thank all the countless people who helped bring the defendant to  
19 justice. Thank you all, Your Honor, Judge Pyle, and the Solicitors who prosecuted this case.  
20 We are glad to know that this person who is capable of this crime can't hurt anyone else.

21 The Court: Thank you. Ms. Manigault.

22 Ms. Manigault: If it please the court, Your Honor. My client is 52 years old. He has  
23 worked body work most of his life. He has been married twice. He has four children. They  
24 are all grown. Your Honor, we are asking the court for mercy in this case. We respect the

1 jury's verdict as they have spoken it. So, we are asking the court for mercy in this case. I  
2 would like to say his father and his mother and his mother's pastor have been here every day.

3 The Court: Thank you. Anything further?

4 Ms. Howard: Nothing from the State, Your Honor.

5 The Court: It is the sentence of this court that you be committed to the Department of  
6 Corrections for the period of your life.

7 (whereupon the case was concluded)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## Certificate

I, Phyllis S. Barrett, Court Reporter, do hereby certify that the foregoing is a true, accurate and complete transcript of the testimony and evidence given in the trial of the captioned matter on July 16, 17, 18, and 19, 2011, in the Court of General Sessions of the Thirteenth Judicial Circuit, Greenville County, South Carolina.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

PHYLLIS S. BARRETT

## FORM 5

STATE OF SOUTH CAROLINA )

County of Greenville, S.C. )

IN THE COURT OF COMMON PLEAS

2016-CP-23- 00479

Full name and prison number (if any) of Applicant )

Wallace Eugene Evans )  
102055 v. )Greenville County )

State of South Carolina )

APPLICATION FOR )

POST-CONVICTION RELIEF )

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL H. JORDAN  
JAN 29 AM 9 03INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kirkland Correctional Institution  
4344 Broad River Rd. Columbia, SC. 29210
2. Name and location of Court which imposed sentence Greenville County  
Court of General Sessions 305 East North St. Greenville SC. 29601
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) GS20091478256 Murder/Murder

- (b) N/A
- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 19, 2012 LIFE
- (b) N/A
- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
YES AUTOMATIC APPEAL DUE TO NOT GUILTY PLEA
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Appellate Court
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. NO MERIT
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. MARCH 27 2015 (APPROX.)
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NOT TO MY KNOWLEDGE
- ii. N/A
- iii. N/A
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

- (b) N/A
- (c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) NO Counsel, Failed to represent me all together
- (c) All SHE Did was stand beside me when Sentenced

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) ATTORNEY In her closing statement said
- (b) "she had no knowledge of Guns." Failed to have
- (c) victims gun fingerprinted, angle of gun indicated Suici

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A



16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Attorney Was Awarded \$15000 for GSR, Forensic  
 (b) Testing, NO Results were ever produced  
 (c) NEVER CALLED ANY witnesses nor rebutted anything

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A YES  
 (b) your trial, if any? YES  
 (c) your sentencing? YES  
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES  
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:  
 i. Attorney / Public Defender Dorthy Manigault  
~~Attorney Susan B. HACKETT~~ Public Defenders Office  
~~Columbia~~ Greenville, SC  
 ii. Susan B. Hackett APPELLATE Court Columbia, SC  
 iii. \_\_\_\_\_  
 \_\_\_\_\_  
 (b) the proceedings at which each such attorney represented you:  
 i. arraignment, Trial and Sentencing  
hearing before Honorable Judge Stilwell  
 ii. Direct Appeal, Anders Brief  
 iii. N/A

19. State clearly the relief you seek in filing this application:

Vacation of Sentence as I am Not Guilty

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )

County of Richland )

VERIFICATION

I, Wallace Evert, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Wallace Evert

SWORN to and subscribed before me this 21  
day of Jan, 2016.

[Signature] (L.S.)  
Notary Public

My Commission Expires:

DEVERLE ALBERT  
Notary Public, State of South Carolina  
My Commission Expires May 3, 2023

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, Wallace Ewart, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Wallace Ewart

Applicant

SWORN or affirmed to and subscribed before me this

21 day of Jan, \_\_\_\_\_  
[Signature]  
 Notary Public

My Commission Expires

**DEVERLE ALBERT**  
 Notary Public, State of South Carolina  
 My Commission Expires May 3, 2023

Some of the things my Lawyer didn't do to help me

① No forensic help after Judge Stilwell's ordered her \$7500.00

② Didn't bring out that she was on cocaine and two other drugs and Liquor and Beer,

③ Didn't bring out that they were no defensive wounds, nothing under finger nails or broke nails

④ Didn't even question her Husband or parent, even after my multiple requests to do so.

⑤ Didn't bring up her OCD - (obsessive compulsive disorder,

⑥ Didn't point out angle of bullet was wrong for me to have done it.

⑦ No Gun Shot Residue on ~~me~~ my hands, only her right hand

⑧ After the prosecution didn't or wouldn't finger print gun, she, after many requests from me, didn't have it finger printed either;

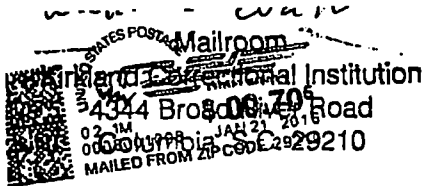
⑨ After finding out that the prosecution had two lawyers, I requested to have two also. It ~~did~~ did no good.

⑩ ~~she had hinted~~ Karen Rohay had hinted toward suicide. I didn't take her serious.

I Am Innocent

Wallace Evans

1-17-16



2016-CP-23- 00479

MS  
71LEGAL  
MAIL  
ONLY

Greenville County Clerk's Court  
 Att. Paul Wickensimer  
 305 East North St.  
 Greenville, S.C. 29601

408 should not get Fingerprints  
off gun

He never talked to him

Mother to reconsider

→ Lawyer said that witness  
was at court that.

|                                     |   |                              |
|-------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA             | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GREENVILLE                | ) | THIRTEENTH JUDICIAL CIRCUIT  |
|                                     | ) |                              |
| Wallace Eugene Evatt, Jr., #102055, | ) | 2016-CP-23-0479              |
|                                     | ) |                              |
| Applicant,                          | ) |                              |
|                                     | ) |                              |
| v.                                  | ) | RETURN                       |
|                                     | ) |                              |
| State of South Carolina,            | ) |                              |
|                                     | ) |                              |
| Respondent.                         | ) |                              |

---

In response to the post-conviction relief application filed on January 29, 2016, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted by the December 2009 term of the Greenville County Grand Jury for Murder (2009-GS-23-09628). Dorothy Manigault, Esquire, represented him. On July 16, 2012, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Victor C. Pyle, Jr. sentenced the Applicant to confinement for life.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Evatt, Op. No. 2015-UP-159 (filed on March 18, 2015). The Remittitur was issued on April 10, 2015.

---

<sup>1</sup> Respondent requests that counsel be appointed

## II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
  - a. "No counsel, failed to represent me all together (sic)."
  - b. "All she did was stand beside me when sentenced."
  - c. "Attorney in her closing statement said "she had no knowledge of guns."
  - d. "Failed to have victims (sic) gun fingerprinted, angle of gun indicated suicide (sic)"

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

## III.

Respondent construes Applicant's allegation as alleging ineffective assistance of counsel. Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).



Second, counsel's deficient performance must have prejudiced Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

*[Signature follows]*

V.

WHEREFORE, Respondent requests counsel be appointed and an evidentiary hearing solely for the purpose of determining whether Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPER  
Assistant Attorney General

By: PLG  
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

July 1, 2016.

|                                    |   |                               |
|------------------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA            | ) | IN THE COURT OF COMMONS PLEAS |
|                                    | ) | CASE NO: 2016-CP-23-0479      |
| COUNTY OF GREENVILLE               | ) |                               |
|                                    | ) |                               |
| Wallace E. Evatt, Jr. SCDC# 102055 | ) | AMENDMENTS TO                 |
| Applicant,                         | ) | POST CONVICTION               |
|                                    | ) | RELIEF APPLICATIONS           |
| vs.                                | ) |                               |
|                                    | ) |                               |
| THE STATE OF SOUTH CAROLINA,       | ) |                               |
| Respondent.                        | ) |                               |
| _____                              | ) |                               |

2016 OCT 13 AM 10:33  
CLERK OF COURT  
JANICE L. BROWN  
CLERK OF COURT

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.

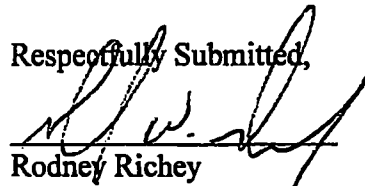
15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements fo the crime charged were or whether or not I understood exactly what the term "criminal" element" actually meant.
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
20. My defense attorney never explained to me or discussed with me any kind of defense strategy.
21. My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make.
22. My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options.
23. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
24. Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings.
25. My defense attorney did not subject the prosecution's case to any adversarial testing.
26. My defense attorney failed to oppose the prosecution's case with any adversarial litigation.

27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.
29. The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees.
30. My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence.
31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Sosebee v. Leeke, S.C. 362, F. 2<sup>nd</sup> 221 (1987), citing Strickland v. Washington 46 S.E.2D. 813 (1984), See also Butler v. State 286 S.C. 441, 334 S.E. 2d 813 (1985), also, Hill v. Lockhart 474 U.S. 88 (1985).

Respectfully Submitted,

  
Rodney Richey  
Richey and Richey, P.A.  
Post Office Box 10916  
Greenville, South Carolina 29603  
Attorney for the Applicant

October 13, 2016

1     STATE OF SOUTH CAROLINA     )  
2     COUNTY OF GREENVILLE     )     IN THE COURT OF COMMON PLEAS

3  
4     Wallace Eugene Evatt, Jr., )  
5                           Applicant, )     TRANSCRIPT OF RECORD  
6     -vs-                           )     2016-GS-23-00479  
7     The State,                     )  
8                           Respondent. )     October 26, 2016  
9                                     )     Greenville, South Carolina

10  
11     B E F O R E:

12                     HONORABLE JOHN C. HAYES, III, JUDGE  
13  
14

15     A P P E A R A N C E S:

16                     RODNEY W. RICHEY, ESQUIRE  
17                     Attorney for the Applicant

18                     PATRICK L. SCHMECKPEPER, ESQUIRE  
19                     Attorney for the Respondent  
20  
21  
22

23                                     Margaret A. Woods  
24                                     Circuit Court Reporter  
25

|    |                                       |              |             |
|----|---------------------------------------|--------------|-------------|
| 1  |                                       | <u>INDEX</u> |             |
| 2  |                                       |              | <u>PAGE</u> |
| 3  | WALLACE EUGENE EVATT, JR.             |              |             |
| 4  | Direct examination by Mr. Richey      |              | 5           |
| 5  | Cross-examination by Mr. Schmeckpeper |              | 11          |
| 6  | DOROTHY MANIGAULT                     |              |             |
| 7  | Direct examination by Mr. Richey      |              | 16          |
| 8  | Cross-examination by Mr. Schmeckpeper |              | 25          |
| 9  | WALLACE EUGENE EVATT, JR.             |              |             |
| 10 | Direct examination by Mr. Richey      |              | 27          |
| 11 | Certificate of reporter               |              | 29          |

12

13

14

15

16

17 NO EXHIBITS INTRODUCED

18

19

20

21

22

23

24

25



1 THE COURT: All right.

2 MR. SCHMECKPEPER: Your Honor, this is Wallace Evatt vs.  
3 the State of South Carolina, 2016-CP-23-0479. The applicant  
4 was indicted December of 2009 for murder, he was represented  
5 by Dorothy Manigault. On July 16th 2012 he proceeded to a  
6 jury trial, was found guilty as indicted, Judge Pyle sentenced  
7 him to life. Following a notice of appeal, an appeal on his  
8 convictions were affirmed and his appeal was dismissed. The  
9 remittitur was issued on April 10th 2015, this application was  
10 filed on January 29th 2016. We're here for an evidentiary  
11 hearing today, at this point I'll turn over to ---

12 THE COURT: Uh, ---

13 MR. SCHMECKPEPER: --- opposing counsel.

14 THE COURT: --- counsel.

15 MR. RICHEY: Thank you, Your Honor, we'll call Mr. Evatt  
16 at this time, ---

17 THE COURT: All right, ---

18 MR. RICHEY: --- we'll be moving ---

19 THE COURT: --- so ---

20 MR. RICHEY: --- forward.

21 THE COURT: --- and help me kinda know what's it, what  
22 are the issues. I've looked at his application and ---

23 MR. RICHEY: Well, ---

24 THE COURT: --- it's ---

25 MR. RICHEY: --- Your Honor, uh, ---

1 THE COURT: --- it's very general.

2 MR. RICHEY: --- well is is a failure to in --  
3 investigate, um, found that there was a, uh, expert that the  
4 Court, uh, allowed Ms. Manigault to hire that did not testify  
5 at trial, um, ---

6 THE COURT: That's the gunshot residue?

7 MR. RICHEY: Yeah, it's gunshot residue and the angle of  
8 the gun, um, and that client and that my client was not  
9 allowed to testify in his defense ---

10 THE COURT: Okay.

11 MR. RICHEY: --- and he did not know the maximum, uh, and  
12 the minimum sentence.

13 (Whereupon, the applicant came forward.)

14 THE COURT: Oath.

15 THE CLERK: Mr. Evatt, ---

16 THE APPLICANT: Yes, ma'am.

17 THE CLERK: --- can you place your left hand on the  
18 Bible ---

19 THE APPLICANT: Yeah.

20 THE CLERK: --- and -- yeah, not this one, ---

21 THE APPLICANT: Yes, ma'am, ---

22 THE CLERK: --- eh, raise your right hand.

23 WALLACE EUGENE EVATT, JR., having  
24 been first duly sworn, testified as follows:

25 THE CLERK: Thank you.

WALLACE E. EVATT, JR. - DIRECT EXAMINATION BY MR. RICHEY

1 THE APPLICANT: Want me to get up there?

2 THE CLERK: Please state your full name for the record.

3 THE APPLICANT: Wallace Eugene Evatt, Jr.

4 THE CLERK: Thank you.

5 THE BAILIFF: You wanna stand?

6 THE APPLICANT: Yes.

7 DIRECT EXAMINATION BY MR. RICHEY:

8 Q. Sir, can you state your name, please.

9 A. Wallace Eugene Evatt, Jr.

10 Q. And, Mr. Evatt, are you currently in Department of  
11 Corrections?

12 A. Yes, sir.

13 Q. And why are you in Department of Corrections?

14 A. My girlfriend's killed herself.

15 Q. Okay, I want you tell me the charge. Were you ---

16 A. Charge was murder.

17 Q. And were you convicted in Greenville County?

18 A. I was.

19 Q. Okay, and who represented you on that murder charge?

20 A. Dorothy Manigault.

21 Q. And you have filed an application for post-conviction  
22 relief because you believe she did not effectively represent  
23 you, is that correct?

24 A. That's correct.

25 Q. And and that the some a facts a the case this was, your

WALLACE E. EVATT, JR. - DIRECT EXAMINATION BY MR. RICHEY

1 position you allege that the the woman committed suicide,  
2 correct?

3 A. Yes, sir, she did.

4 Q. And the State alleged that you in fact murdered the lady,  
5 correct?

6 A. That's correct.

7 Q. Okay, and and durin' the, durin' the course a this trial,  
8 uh, from from your perspective there's an issue about the  
9 angle a this gun, how it was fired and gun powder residue,  
10 that correct?

11 A. Yes, there was, that's correct.

12 Q. And that you requested Ms. Manigault get anybody to help  
13 her with that.

14 A. Uh, yes, uh, Judge Robin Stilwell granted her \$7500  
15 monies to hire a guns and a forensic specialist for my my m --  
16 for my case which she did not do.

17 Q. Okay. Uh, did the expert, do do you know whether she got  
18 the order to get the money? Do do you believe she got the  
19 order to get the money, correct?

20 A. Correct.

21 Q. Uh, is it your position that person did not assist in  
22 your trial, ---

23 A. Absolutely.

24 Q. --- uh, and that that you all discussed what that person  
25 would help you with or not help you with?

WALLACE E. EVATT, JR. - DIRECT EXAMINATION BY MR. RICHEY

1 A. Correct.

2 Q. Do -- did you all discuss that: you and Ms. Manigault?

3 A. We we discussed -- the way it went down was we went to  
4 the hearin' before Mr. Stilwell, he granted the money and she  
5 she said she talked to one person in Columbia and that the  
6 next day after she talked with that person the State, the  
7 solicitor contacted that person and asked him was he gonna,  
8 uh, testify for me and he said yes and they told him not to  
9 and he ditch.

10 MR. SCHMECKPEPER: Your Honor, I would object to hearsay.

11 THE COURT: I I sustain the objection.

12 MR. RICHEY: Okay.

13 BY MR. RICHEY:

14 Q. Um, and so you believe that a qualified expert woulda  
15 helped you in this case.

16 A. Yes, sir.

17 Q. Okay, and you expressed that to your attorney.

18 A. Sir?

19 Q. You you told that to your attorney.

20 A. Yes.

21 Q. Okay. Um, was one of the issues about gunpowder residue  
22 when -- and there was some forensic done in this case and was  
23 there any gunpowder residue found on you?

24 A. No, sir, it was not.

25 Q. Okay. Uh, was any found on the victim?

WALLACE E. EVATT, JR. - DIRECT EXAMINATION BY MR. RICHEY

1 A. On her right hand and arm, yes, sir.

2 Q. Okay, and you allege that's because she killed herself.

3 A. She sure did and that was never brought up at my trial.

4 Q. All right, that was -- um, did did you testify, um, as to  
5 your defense in this case?

6 A. No, I did not.

7 Q. And did you want to?

8 A. Yes, I did.

9 Q. Did you express that to Ms. Manigault?

10 A. I did. She said that she didn't want me to testify  
11 because she could be the last one to -- on closin' arguments  
12 and then when she got to closin' argument finally, the first  
13 thing she said was, I don't know a thing in the world about  
14 guns.

15 Q. Okay, so it was, it was her advice to you not to testify  
16 so ya'll get the last argument, is that ---

17 A. Yes, sir.

18 Q. Did you agree with that strategy?

19 A. Well, I ju -- finally I did, um, I didn't really want to  
20 but I didn't know what she was advisin' me so I had to go by  
21 that, ya know. It was hard, I wanted to tell those people  
22 what happened but, eh, shoot, if your lawyer tells you one  
23 thing and you think another and she's supposed to know more  
24 about it 'n I do so I went with that.

25 Q. Was there any other evidence that was put forth on your

WALLACE E. EVATT, JR. - DIRECT EXAMINATION BY MR. RICHEY

1       behalf?

2       A.    Any what?

3       Q.    Any other evidence in your case that was provided for you  
4       in the trial.

5       A.    Well, let's see, ---

6       Q.    Did sh -- well let me phrase this way: Did you all call  
7       any other witnesses?

8       A.    No, no witnesses at all.

9       Q.    At the time a this trial and durin' this case, did  
10       anybody ever discuss with you the maximum and minimum  
11       sentence?

12       A.    No, sir.

13       Q.    You did not know what the maximum sentence was.

14       A.    No, I didn't.

15       Q.    Did did Ms. Manigault talk to you about, Hey, this is  
16       what you face?

17       A.    No.

18       Q.    Okay, so you had no idea what you could be sentenced to.

19       A.    I sure hadn't.

20       Q.    And did you discuss with Ms. Manigault, uh, the victim's  
21       alleged previous attempts at suicide, did you talk to her  
22       about that?

23       A.    We talked and I hope that she would, I asked her to talk  
24       to the the girl's husband and her mother and father about that  
25       but as far as I know that was never done.  Nope, she didn't

WALLACE E. EVATT, JR. - DIRECT EXAMINATION BY MR. RICHEY

1 talk to any a them people: her husband, her mother, her father  
2 or brother.

3 Q. Did you, um, did you discuss takin' a lie detector test  
4 with Ms. Manigault?

5 A. I asked when I first got, uh, when they first took me to  
6 LEC, I asked for the solicitor to give, uh, police to give me  
7 one then they wouldn't do it.

8 MR. SCHMECKPEPER: I object to relevance, Your Honor.

9 THE COURT: I s -- I overrule objection.

10 MR. RICHEY: Okay.

11 BY MR. RICHEY:

12 Q. Um, so is your position you want a new trial 'cause  
13 you're completely innocent a this charge?

14 A. Absolutely, yes, I am.

15 Q. Okay, and y -- and and based off the evidence you believe  
16 that, uh, this alleged victim shot herself.

17 A. She sure did.

18 Q. And and did you and Ms. Manigault go over the angle of  
19 the bullet and how it went in, all that stuff?

20 A. Well the, uh, the State had taken pictures, ---

21 Q. Yeah.

22 A. --- these pictures I I looked at and it tried to say that  
23 the angle a the bullet came from that toward the floor and  
24 upwards, that the gun was in her mouth and the bullet was  
25 goin' upwards at such an angle as this (demonstrating) but if



WALLACE E. EVATT, JR. - CROSS-EXAMINATION BY MR. SCHMECKPEPER

1 I'd a done it, I'd a been standin' up this way (demonstrating)  
2 shootin', I mean, how you gonna get a woman to let you put a  
3 gun in her mouth and not try defend herself and shoot 'em?  
4 She didn't try to and she didn't, like there was no evidence  
5 there. She didn't have nothin' on her fingernails 'cause it  
6 was, it didn't happen that way, she shot herself.

7 Q. And do you believe Ms. Manigault argued that position  
8 fully for you?

9 A. That what now?

10 Q. Do you believe Ms. Manigault argued that well for you in  
11 the case?

12 A. No.

13 Q. So so is your position that you are entitled to a new  
14 trial on these charges based off Ms. Manigault's  
15 representation?

16 A. Yes, I need a new trial, yes, sir.

17 Q. Okay, thank you, answer any questions the attorney  
18 general has for you.

19 CROSS-EXAMINATION BY MR. SCHMECKPEPER:

20 Q. Mornin', Mr. Avatt. Am I pronouncin' that correctly?

21 A. Evatt.

22 Q. Evatt? Now your first allegation in this that your  
23 counsel should have presented the expert on gunshot residue?

24 A. Sir?

25 Q. Your first allegation is that your counsel, your

WALLACE E. EVATT, JR. - CROSS-EXAMINATION BY MR. SCHMECKPEPER

1 attorney, had a expert and that she should have presented that  
2 expert at trial, correct?

3 A. If she had one, yeah.

4 Q. I think your next allegation is you wanted to testify.

5 A. I did.

6 Q. Your counsel told you not to?

7 A. Absolutely.

8 Q. Do you have a copy a the transcript with you? Your  
9 Honor, may I approach?

10 THE COURT: Yes, sir.

11 (Whereupon, counsel approached the witness.)

12 Q. I'm just gonna point your attention to page 368, I'll  
13 open it up for ya too.

14 A. 'kay.

15 Q. And I'm just askin' you about a part in your trial where  
16 the judge asks you whether or not you wanted to testify, ---

17 A. Oh, yeah, I remember ---

18 Q. You ---

19 A. --- that.

20 Q. --- remember that portion specifically?

21 A. Right, but she had already advised me not to.

22 Q. But the judge did tell you that you have the right to  
23 take the stand.

24 A. He told me I had a right to ref -- to take a stand or not  
25 take the stand but my lawyer had advised me not to, she wanted

WALLACE E. EVATT, JR. - CROSS-EXAMINATION BY MR. SCHMECKPEPER

1 to be the last one heard. She said if I didn't testify and  
2 nobody else testified for me that then she could talk at the  
3 very last and then when she got up to do her talk she said,  
4 first thing she said was, I don't know a thing in the world  
5 'bout guns, to the jury.

6 Q. And I I'm just asking you were aware that you had the  
7 right to testify, ---

8 A. Yes.

9 Q. --- correct? And your counsel, even though you -- she  
10 may have advised you one way or another or counsel didn't tell  
11 you you're -- you cannot testify, I won't let you testify.

12 A. She couldn't stop me I don't guess but she advised it and  
13 I had to go by what she said because, man, she's my lawyer,  
14 she's supposed to do my best interest.

15 Q. I just wanna go over something the solicitor said  
16 following that. You did have some criminal background ---

17 A. Absolutely, ---

18 Q. --- at the time, is that ---

19 A. --- yes.

20 Q. --- correct and some a that coulda been possibly used to  
21 impeach you on the witness stand?

22 A. A what?

23 Q. You had, you had a criminal background when you were  
24 tried, is that, is that true?

25 A. Yes.

WALLACE E. EVATT, JR. - CROSS-EXAMINATION BY MR. SCHMECKPEPER

1 Q. And some a that the solicitor said could be used to ex --  
2 impeach you on the witness stand.

3 A. To impeach me?

4 Q. So when you got up to testify, they coulda brought up  
5 your prior criminal history to show the jury that you weren't,  
6 that you were untruthful.

7 A. I guess.

8 Q. And did your counsel go over that with ya?

9 A. Do what?

10 Q. Did your counsel go over that with you?

11 A. No.

12 Q. So your counsel didn't go over your criminal background  
13 with you?

14 A. No.

15 MR. SCHMECKPEPER: Beg the Court's indulgence.

16 Q. All right, and I, and I think the next thing you alleged  
17 was your counsel never told you the max of the, the maximum  
18 sentence for murder was life, the minimum was 30 years.

19 A. I didn't -- she didn't never tell me I could be gettin'  
20 life.

21 Q. You didn't know that though?

22 A. No, ---

23 Q. You never seen ---

24 A. --- I thought she said sumtin' to me about 30 years.

25 Q. You ever see -- you never, you never seen Law & Order,

WALLACE E. EVATT, JR. - CROSS-EXAMINATION BY MR. SCHMECKPEPER

1       you didn't know the maximum sentence for murder is life?

2       A.    No, and I know I coulda probly got it I guess, you know,  
3       I'm not sure, it's all, everything it was happenin' so fast it  
4       had me spinnin', I, half the time I didn't even know where I  
5       was even at.

6           MR. SCHMECKPEPER:   Your Honor, I have no further  
7       questions.

8           THE COURT:   All right.

9           MR. RICHEY:   Um, no further questions.

10          THE COURT:   All right, you can ---

11          MR. RICHEY:   Call ---

12          THE COURT:   --- step down.

13          MR. RICHEY:   --- Ms. Manigault.

14          THE COURT:   You can step down.

15          THE APPLICANT:   Thank you.

16          THE COURT:   Now don't ---

17          THE APPLICANT:   Okay.

18               (Whereupon, the applicant left the stand.)

19               (Whereupon, the witness came forward.)

20          THE CLERK:   Ms. Manigault, how are you?   Huh.

21          THE WITNESS:   Fine.

22          THE CLERK:   Please place your left hand on the Bible,  
23       raise your right hand.

24                               DOROTHY MANIGAULT, having been  
25       first duly sworn, testified as follows:

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MR. RICHEY

1 THE CLERK: Thank you. Please state your full name for  
2 the record.

3 THE WITNESS: Dorothy, sorry, Dorothy Manigault.

4 DIRECT EXAMINATION BY MR. RICHEY:

5 Q. Ma'am, um, are you a, what's your occupation?

6 A. Attorney.

7 Q. Okay. Now you practice in Greenville?

8 A. Yes.

9 Q. And do you recall representin' a Wallace Everatt [sic],  
10 Jr.?

11 A. Yes.

12 Q. And you recall reprena -- representin' him for a murder  
13 charge?

14 A. Yes.

15 Q. Okay. During your representation of him, you you were in  
16 the courtroom the applicant testify, um, do do you recall  
17 whether you went over the maximum sentence with him and and  
18 when and, first did you and that if you did when?

19 A. Uh, yes, I went over the maximum sentence with  
20 Mr. Wallace Evatt, um, he stayed in jail approximately two  
21 plus years and we had s, uh, several visits. He had a an  
22 offer to plea to voluntary manslaughter and that's where he's  
23 getting the maximum sentence of 30 years from. We discussed  
24 that offer voluntary manslaughter from the solicitor's office,  
25 um, he had a chance to think over it for a couple a months.

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MR. RICHEY

1 Um, when I went to see him again, he refused the offer and  
2 wanted to go to trial. I explained to him from the very  
3 beginning that if he's convicted of murder or pleas to murder  
4 the possibility, uh, was a life sentence.

5 Q. So you believe that he just thought it was 30 years  
6 'cause it's voluntary.

7 A. No, I believe that, uh, he's fabricating.

8 Q. Okay.

9 A. I I explained to him voluntary manslaughter's 30 years  
10 and murder is a, is a possibility of life.

11 Q. Okay. Uh, let's get to this expert, Ms. Manigault. This  
12 this, uh, did you get a a firearms expert this case?

13 A. Yes, I did.

14 Q. And who was that expert?

15 A. Um, me get my notes. The firearm expert was Don Gurntz  
16 (phonetic), let me make sure I'm getting it right. Okay, yes.  
17 Yeah, h -- beg the Court's indulgence.

18 THE COURT: Yes, it's all right.

19 A. The firearm expert was Don Gurntz from Columbia, a  
20 retired S -- S -- um, SLED.

21 Q. Okay, and and as Mr. Evatt testified you did get an order  
22 from, um, the judge for funding, correct?

23 A. Yes, I did get an order.

24 Q. And what was the amount of funding that you could could  
25 receive?

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MR. RICHEY

1 A. I could receive up to \$7500 for expenses.

2 Q. So that this is not a process where you get \$7500, you  
3 have to submit some invoice, is that correct?

4 A. I submit an ex -- a petition, uh, for an ex parte order  
5 for expenses ---

6 Q. Um-hum.

7 A. --- on the case to the judge, um, if he wants to have a  
8 hearing or discussion with me and the solicitor, uh, we go in  
9 chamber, discuss why I need expenses. Um, in this case I  
10 needed the expenses for ballistic, um, expert, gun expert, and  
11 a D -- DNA expert forensic.

12 Q. But once you get that order you don't get a check for  
13 \$7500 ---

14 A. No, no, I do ---

15 Q. --- but ---

16 A. --- not get a check. Uh, the order's approved, put in  
17 the file, once the work is completed the, um, experts submit  
18 their vouchers for payment and that payment is made from the  
19 State to the, directly to the experts.

20 Q. Okay. Tell me, uh, this gentleman did not testify  
21 Mr. Evatt's trial, correct?

22 A. Correct.

23 Q. Um, did you consult with this gentleman prior to his  
24 trial?

25 A. Yes.



DOROTHY MANIGAULT - DIRECT EXAMINATION BY MR. RICHEY

1 Q. Okay. And and what what, why was he not called as a  
2 witness durin' Mr. Evatt's trial?

3 A. In discussion even at the detention center before trial,  
4 we, Mr. Evatt and I talked about whether he was gonna testify,  
5 um, he was hesitant, he said he didn't know whether he should  
6 testify because his testimony would be that after the, uh, the  
7 gunshot he ran out, ran out of the house, sped away in a car,  
8 left several people standing in in close proximity that he  
9 could have asked for help and he left the scene. Um, he was  
10 worried about how that would look, um, to the jury and other  
11 people and he left the scene, left the, left Karen there on  
12 the floor dying or dead.

13 Q. Okay. Um, did he express to you that he was innocent?

14 A. He expressed, yes, the same thing he said this morning  
15 that she shot herself, ---

16 Q. Right.

17 A. --- he said that.

18 Q. Did he, did he ever waiver on that premise that he was  
19 innocent? Did he ever say, Well maybe not, was it always, I'm  
20 innocent?

21 A. No, the only o -- to me is what he just said. The only  
22 thing that we discussed that was in the police report is he  
23 told the police, uh, that something to the effect of, uh, What  
24 I did was wrong, ---

25 Q. Okay.

## DOROTHY MANIGAULT - DIRECT EXAMINATION BY MR. RICHEY

1 THE APPLICANT: That's not true, sir.

2 Q. Oh, oh, oh. Um, ---

3 A. --- but to me he never expressed that he was guilty.

4 Q. Okay. Um, and and during the case, um, would you agree  
5 that there was no gunpowder residue found on him?

6 A. Um, as far as a, the hand test there was nothing.

7 Q. Okay.

8 A. They submitted a shirt to SLED and there were particles  
9 found on the sh -- on my client's shirt.

10 Q. Uh, and that was, uh, yeah, there were, there were  
11 particles on the shirt but none on his hands, right?

12 A. Correct.

13 Q. Okay. Uh, on, there were particles found on the victim's  
14 hands, that correct?

15 A. Um, I am not certain at this point. I think that on her,  
16 had a report that says on her left hand there was nothing, on  
17 her right hand was nothing and then, um, there was a third  
18 area in it that they may have found something ---

19 Q. Right, ---

20 A. --- but on the left hand and right hand was nothing.

21 Q. --- but that wa -- that was, that was but there was none  
22 found on him so do you believe that the expert, uh, coulda  
23 helped ya in trial in terms of firin' a firearm and help  
24 persuade the jury there would be evidence left on his hand,  
25 you think that a firearms expert coulda helped you with that?

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MR. RICHEY

1 A. My experts woulda killed us. My expert typ what, uh, in  
2 our interview, um, at his office in Columbia, he went over the  
3 fact that my client had ample opportunity to wash his hand,  
4 wash wash up, it was raining that day, he was standing outside  
5 in the rain when he, when he did come back to the scene, um,  
6 so he went over all a that with me. My expert was available  
7 for trial, he was here at the courthouse ready to testify if I  
8 wanted him.

9 Q. So is your position because of the negative aspect of  
10 testimony outweighed any positive aspects, I mean, ---

11 A. Correct.

12 Q. --- that he he coulda got on the witness stand and told  
13 the jury when you fire a firearm there'll be some res, uh,  
14 could be residue left, correct, ---

15 A. Correct.

16 Q. --- but your sayin' your position was the negative stuff  
17 outweighed that.

18 A. Correct. My ex -- my expert would have said that it,  
19 when particles, 'cause I submitted all the reports, ---

20 Q. Um-hum.

21 A. --- um, from SLED and from the police department to my  
22 experts, and so he te -- he t -- told me that, he explained to  
23 me that if particles are found on a person's clothing, that  
24 means that they're near the individual that was shot or they  
25 did the shooting themselves.

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MR. RICHEY

1 Q. Okay.

2 A. My client's position was he was sitting in a chair not  
3 close to the, to the victim Karen.

4 Q. Okay. Okay. Uh, did you discuss that with Mr. Evatt?

5 A. Yes.

6 Q. Did you, did you -- it -- 'cause you've heard he's been  
7 pretty adamant about this expert, did you, did you go to the  
8 jail and sit down with him say, Hey, this is what this expert  
9 is gonna say, I can't hire hi -- I can't bring him to trial,  
10 that kinda stuff?

11 A. Yes.

12 Q. You did?

13 A. I did discuss that with him; however, I did su -- bring  
14 the expert to the trial the day of trial, he was ready to  
15 testify if we wanted him.

16 Q. Did -- do you know whether Mr. Evatt knew that or not?

17 A. He he knew, he knew 'cause we took a break, um, and then  
18 went in the hallway to talk to the expert Don and we came back  
19 in and had chance to talk with Mr. Evatt about how we were  
20 gonna proceed.

21 Q. Okay. Did -- were there any fingerprints, um, taken  
22 off the gun?

23 A. None.

24 Q. And so there was, there was none that matched Mr. Everatt  
25 [sic] at all?

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MR. RICHEY

1 A. None that matched Mr. Evatt, none was on there for Karen,  
2 the victim, the gun was clean.

3 Q. What was that, I'm sorry, ma'am.

4 A. I said the, as far as fingerprints the gun was clean.

5 Q. Okay. Do you, do you know, do you know whether they  
6 attempted to lift the fingerprints off the gun?

7 A. They did, they did, the report says no latent prints.

8 MR. RICHEY: One moment, Your Honor.

9 Q. Did he, did he, did he discuss with you about, um,  
10 talkin' to witnesses about the victim's prior of suicide  
11 attempts?

12 MR. SCHMECKPEPER: Objection to relevance.

13 THE COURT: Uh, I'll I'll allow his question.

14 A. Um, he he probly did, uh, I am not sure, but he probly,  
15 he he may have.

16 Q. And do you recall ever contactin' any a them or . . .

17 A. The, I think there was a co-worker at the pizza place or  
18 somethin' that I talked to and I did talk to, um, a family  
19 member, um, the morning before the trial ---

20 Q. And did they ---

21 A. --- about ---

22 Q. --- ever ---

23 A. --- the ---

24 Q. Go ahead, I'm sorry, excuse me.

25 A. --- 'bout the suicide attempts.

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MR. RICHEY

1 Q. And so did they express to she had prior prior suicide  
2 attempts?

3 A. Um, they expressed that she tried to, um -- yes, the  
4 answer's yes.

5 Q. And do you believe that woulda been helpful in your  
6 case?

7 A. No.

8 Q. You do not?

9 A. No. She never, their expression was there was never a  
10 gun involved.

11 Q. And as as far as his testifyin', did did he and and I  
12 think you mighta went over this, I'm sorry if that's ---

13 A. No, ---

14 Q. --- if you -- I'm gonna ask this question. Um, you  
15 wanted final argument, correct?

16 A. We, expect -- explained to him and discussed the strategy  
17 of the case, Mr. Evatt made his own decisions. Wanting to get  
18 final argument was not the point, I told him that if I did not  
19 put up any witnesses that I would get final argument, he  
20 thought that was a good idear so we could hammer home his  
21 points, um, to the jury.

22 Q. So you're sayin' that that came from him not from you.

23 A. We do -- correct, I advise the client of what the  
24 strategy is, the client tells me what what he or she wants to  
25 do, that was no different for Mr. Evatt. I just tell 'em what

DOROTHY MANIGAULT - CROSS-EXAMINATION BY MR. SCHMECKPEPER

1       what the layout is like or what it would look like.

2       A.    Thank you, answer any questions the attorney general has  
3       for you.

4       CROSS-EXAMINATION BY MR. SCHMECKPEPER:

5       Q.    Ms. Manigault, ---

6       A.    Yes.

7       Q.    --- just to clear a couple things up: You testified,  
8       correct me if I'm wrong, that you did you express to the  
9       applicant the maximum sentence for murder was life, is that  
10      correct?

11      A.    Yes.

12      Q.    And in terms of the expert witness, you consulted with an  
13      expert witness, you talked to the expert witness, you got the  
14      expert's findings, considered them, had the expert ready on,  
15      uh, on call at trial but chose not to use them for strategic  
16      reasonings?

17      A.    Correct, and that's the gun expert. I did not, um, bring  
18      the forensic or DNA expert, uh, because he sent me a report, I  
19      shared it with Mr. Wallace, he would not help us.

20      Q.    Uh, uh, concerning his, uh, right to testify, did you  
21      explain to him that he did indeed have a right to testify?

22      A.    Yes, I did.

23      Q.    Did you explain to him the benefits and and negatives of  
24      potentially testifying?

25      A.    Yes.

## DOROTHY MANIGAULT - CROSS-EXAMINATION BY MR. SCHMECKPEPER

1 Q. Did you go over the fact that solicitors could use his  
2 prior criminal record in his test, uh, if he testified?

3 A. Yes, I did.

4 Q. I think there was, there's some mention of of ex -- of of  
5 witnesses the applicant potentially wanted you to call, um,  
6 concerning the victim's prior suicide attempts and I believe  
7 your testimony and correct me if I'm wrong was you spoke to  
8 them and chose not to use them.

9 A. Correct.

10 Q. If they, if you felt that they had -- they woulda been  
11 beneficial to your client's case, would you have called them?

12 A. Yes.

13 Q. You had felt the expert would've been beneficial to your  
14 client's case, would you have called him?

15 A. Most assuredly. Even when the ballistic, uh, when the  
16 gun expert came to court, he reiterated to me in in the  
17 conference room and hallway on break that what he was going to  
18 say if, uh, it would not help us at all 'bout 'bout 'bout the  
19 direction of the bullet, the angle, that would not help us, it  
20 would hurt us.

21 Q. 'cause what you're saying is and what I believe you're  
22 saying is and and please correct me if I'm wrong his t --  
23 hi -- what he would've said would've been inconsistent with  
24 the applicant's actual version of ---

25 A. Yes, ---



WALLACE E. EVATT, JR. - DIRECT EXAMINATION BY MR. RICHEY

1 Q. --- events.

2 A. --- totally against what the applicant explained to me.

3 Q. Okay.

4 MR. SCHMECKPEPER: Your Honor, I I don't have anymore  
5 questions.

6 THE COURT: Redirect?

7 MR. RICHEY: No, no no more redirect.

8 THE COURT: You can step down and be excused, we  
9 appreciate your time.

10 THE WITNESS: Thank Your Honor.

11 THE COURT: Thank you.

12 MR. RICHEY: Your Honor, now if I could I would like to  
13 recall Mr. Evatt for one question, he could do it here.

14 THE COURT: All right, why don't you just remain where  
15 you are, uh, Mr. Evatt, you're still under oath even though  
16 you're not in the witness stand, you can testify from where  
17 you're seated.

18 THE APPLICANT: Yes, sir.

19 DIRECT EXAMINATION BY MR. RICHEY:

20 Q. Mr. Everatt, it, you heard Ms. Manigault testify that you  
21 spoke with the expert?

22 A. I never speak with no expert.

23 Q. You never saw, you never spoke to at trial?

24 A. Never spoke no ex -- expert period.

25 MS. MANIGAULT: I didn't say that.

WALLACE E. EVATT, JR. - DIRECT EXAMINATION BY MR. RICHEY

1 Q. Okay, thank you, sir.

2 MR. SCHMECKPEPER: Nothing, Your Honor.

3 THE COURT: Uh, you can step down, be excused.

4 THE WITNESS: Thank Your Honor.

5 THE COURT: All right, I'll take it -- anything else from  
6 State?

7 MR. SCHMECKPEPER: Your Honor, that's the State's case or  
8 the State has nothing.

9 THE COURT: Okay.

10 MR. RICHEY: That's it? That's it, Your Honor.

11 THE COURT: All right, I'll take this one under  
12 advisement.

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER  
2

3 I, Margaret A. Woods, Court Reporter in and for the State  
4 of South Carolina at Large, hereby certify that I reported the  
5 preceding case on October 26, 2016 at the time and place  
6 heretofore set forth; and that the foregoing pages numbered  
7 from 2 through 28, inclusive, constitute a true and accurate  
8 transcription of my stenographic notes of the said proceeding.

9 I further certify that I am neither attorney nor counsel  
10 for, nor related to or employed by any of the parties  
11 connected to the action, nor am I financially interested in  
12 the action.

13 February 15, 2017  
14

15 Margaret A. Woods

16 Margaret A. Woods, Court Reporter  
17 in and for the State of South Carolina at Large.  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )  
Wallace Eugene Evatt, Jr., )  
#102055, )  
Applicant, )  
vs. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2016-CP-23-0479

ORDER

ENTERED COMPUTER

FILED  
CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2016 NOV 4 PM 2:55

Applicant filed this Post-Conviction Relief Application on January 29, 2016. The matter was heard October 26, 2016. Applicant was represented by Rodney W. Richey, Esq. The State was represented by Patrick Schmeckpeper, Esq.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted by the December 2009 term of the Greenville County Grand Jury for Murder (2009-GS-23-09628). Dorothy Manigault, Esquire, represented Applicant. On July 16, 2012, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Victor C. Pyle, Jr. sentenced the Applicant to confinement for life.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to *Anders v. California*, 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. *State v. Evatt*, Op. No. 2015-UP-159 (filed on March 18, 2015). The Remittitur was issued on April 10, 2015.

In his application for Post-Conviction Relief the Applicant alleges that he is being held in custody unlawfully for ineffective assistance of counsel and presented testimony as to the specifics of this general allegation.

When ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 690, 104 S. Ct. 2066. Applicant must overcome this presumption in order to receive relief. *See Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

DeA#2

Applicant testified trial counsel was ineffective for not calling a forensic expert to testify at trial. Applicant testifies that, in spite of trial counsel obtaining funding to call an expert in the analysis of gunshot residue evidence, she did not call one to testify at trial.<sup>1</sup>

Trial counsel testified she obtained funding for a gunshot residue expert and hired one. Trial counsel also testified that she met with the expert and had him present in the courthouse on the day of Applicant's trial. Further, trial counsel testified that the expert's opinion was of no help to Applicant. Trial counsel testified that this was the case since there was no gunshot residue on Applicant's hand nor on the victim, that gunshot "particles" were present on Applicant's shirt, and that Applicant (who sped away from the scene) had time to wash his hands and stood at the rain at the scene when he returned to the scene.

Trial counsel further testified that she explained to Applicant why she chose not to call the gunshot residue expert and that this decision was not based on reserving final closing argument. Where trial counsel articulates a valid reason for employing a certain strategy, such choice will not be deemed ineffective assistance of counsel. *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992).

Applicant testified he wanted to testify based on trial counsel wanting to preserve her right to final closing argument. However, Applicant agreed with trial counsel that it was the best trial strategy for him to not testify to preserve final closing argument.

Trial counsel testified she did discuss the strategy of preserving final closing argument with applicant, but that final closing argument "was not the point." Trial counsel testified Applicant made, on his own, the decision not to testify. Trial counsel testified the decision was

---

<sup>1</sup> Trial counsel received funding also for a DNA expert, and retained one. Trial counsel testified that DNA expert's testimony would be of no help to Applicant and informed him of this.

7c tt #3

ultimately his, not hers. Trial counsel further testified that her discussion with Applicant also included the impeachment he would face based on his prior criminal record and his flight from the scene.

I find that based on proper communication by trial counsel, Applicant's decision to not testify was his own and that, had he wished, he would have been "allowed" to testify. Additionally, the record reflects that Applicant was aware of his right to testify, the prior record the State would use to impeach him, and his right to remain silent (Trial Transcript p. 367, l. 19 through p. 369, l. 20).

Applicant also claims he was not aware of the maximum penalty he could receive for the charges he was facing. Trial counsel's testimony, which I find credible, establishes that she advised Applicant thoroughly as to the sentence the court could impose. On cross examination, Applicant testified, after testifying that he did not know he was facing a life sentence, that he "probably" did know but was "not sure."

Applicant raised at his hearing an issue which would fall under the umbrella of "failure to investigate." This had to do with his claim that trial counsel had not talked with witnesses who could testify as to victim's prior suicide attempts.<sup>2</sup> Trial counsel did, in fact, investigate the suicide attempts and talked to two witnesses to whom Applicant had directed her. Trial counsel testified that the witnesses confirmed the victim had made prior suicide attempts, but not by self-inflicted gunshots. Therefore trial counsel, after proper investigation, determined the witnesses would not be of any benefit to Applicant and decided not to call them. This is again, is proper trial strategy under the rubric of *Stokes*, 308 S.C. 546, 419 S.E.2d 778.

---

<sup>2</sup> Applicant's defense was that the victim had committed suicide.

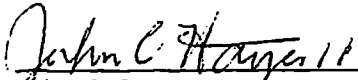
*JEH*

Wherefore, I find that Applicant has failed to prove by a preponderance of the evidence that he is entitled to relief on the grounds of ineffective assistance of counsel. Therefore, Applicant's request for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

October 27<sup>th</sup>, 2016  
Greenville, South Carolina

  
John C. Hayes, III  
Presiding Judge 



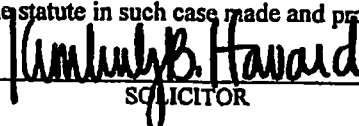
STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF GREENVILLE     )

INDICTMENT FOR  
MURDER

At a Court of General Sessions, convened on **DEC 15 2009** the Grand Jurors of Greenville  
County present upon their oath:

That WALLACE EUGENE EVATT, JR. did in Greenville County, on or about the 17th day of May 2009,  
unlawfully and with malice aforethought kill KAREN ROJAS by means of shooting, and that KAREN ROJAS  
died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as  
amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
SOLICITOR

WITNESSES

Eric Whaley *EW*

Greenville County Sheriffs Office

5/22/2009

ARREST WARRANT NUMBER

1478256

ACTION OF GRAND JURY

**TRUE BILL**

*Tim Miller*  
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

*Guilt*

*Phat B. J.*  
Foreperson of Petit Jury

*7-19-12*

Date:

*E*

DOCKET NO. 2009-GS-23-

KB

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December TERM 2009

*7-19-12*

THE STATE

VS.

WALLACE EUGENE EVATT, JR.

Indictment for

✓  
0116

MURDER

VIOLATION § 16-03-0010

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville  
STATE VS.Wallace Eugene Evatt Jr

AKA:

Race: WHIT Sex: M Age:    DOB:     SS#:    Address:    City, State, Zip: Anderson, SCDL#:     SID#:    \*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was  
TO: MurderINDICTMENT/CASE#: 2009GS2309628A/W#: 1478256Date of Offense: 5/17/2009S.C. Code § : 16-03-0010, 0020CDR Code #: 0116

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45  
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Howard, Kimberly Boan73639  
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 2 1/2 days/months/years or ☐ under the Youthful Offender Act not to exceed     years  
and/or to pay a fine of \$    ; provided that upon the service of     days/months/years and/or payment  
of \$    ; plus costs and assessments as applicable\*; the balance is suspended with probation for    months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$     plus 20% fee: \$    Payment Terms:    ☐ Set by SCDPPPS    Recipient:    

\*Fine:

|                                        |         |               |
|----------------------------------------|---------|---------------|
| § 14-1-206 (Assessments 107.5 %)       | \$      |               |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ <u>100</u> |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$            |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$            |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$            |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$            |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ <u>25</u>  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$            |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$            |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ca | \$            |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ <u>5</u>   |
| 3% to County (if paid in installments) | \$      | \$            |
| TOTAL                                  | \$      | \$            |

Clerk of Court/ Deputy Clerk

Court Reporter: April Herron

SCCA/217 (03/2011)

PTUP

    days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp.    May serve W/E beginning    Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$     beginning    \$     paid to Public Defender FundOther:    ☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$ 500 be paid to Clerk  
during probation.

Presiding Judge

Judge Code: 2070Sentence Date: 7/19/12