

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Robin B. Stillwell, Circuit Court Judge

Appellate Case No. 2016-000548
Case No. 2013-CP-23-6522

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SC Court of Appeals

Madel C. Rivero, as Personal Representative for the
Estate of Lilia Lorena Blandin, Respondent,

v.

Sheriff Steve Loftis, in his capacity as
Sheriff of Greenville County, Appellant.

RECORD ON APPEAL - VOLUME II

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1 [REDACTED] BLANDIN, after being duly
2 sworn, testified as follows:

3 THE CLERK: And tell us what your name is.

4 THE WITNESS: [REDACTED] Blandin.

5 THE CLERK: Okay. Just have a seat.

6 EXAMINATION:

7 BY THE COURT:

8 Q Miss Blandin, if you'll just sit right here.

9 I'm going to ask you just a few questions, all right?

10 Q Miss Blandin, how old are you?

11 A I'm 10.

12 Q 10. Where do you go to school?

13 A Welcome Elementary.

14 Q Welcome Elementary. What grade are you in?

15 A Fifth.

16 Q Okay. Do you have brothers and sisters?

17 A Yes, sir.

18 Q Who are they?

19 A My brother, [REDACTED] and my sister, [REDACTED].

20 Q How old is [REDACTED]?

21 A He is 14.

22 Q Okay. And how old is [REDACTED]?

23 A Seven.

24 Q Seven. Okay. And who takes care of you?

25 A My grandma.

[REDACTED] BLANDIN-EXAMINATION BY THE COURT

1 Q What's her name?

2 A Madel Rivero.

3 Q Okay. And do you know what you're doing here
4 today?

5 A Yes, sir.

6 Q You do? What are you doing here today?

7 A I am telling the truth of what happened to my
8 mother.

9 Q Okay. And do you know who your -- who's
10 representing your mother or your grandmother, Ms. Rivero?
11 That is, who is her lawyer?

12 A Dan Farnsworth.

13 Q What Dan's job, do you know?

14 A To help us succeed this case.

15 THE COURT: Okay. Good enough.

16 All right. Do you have any questions that you'd
17 like to ask her bearing upon her competency to
18 testify? I'm going to give a general charge to the
19 jury, certainly, regarding children as witnesses.

20 But, you know, right now, I'm just trying to
21 determine whether she's competent to testify.

22 Essentially, whether she's able to give coherent and
23 lucid testimony.

24 MR. HARTE: The only thing I would mention is
25 about the oath.

[REDACTED] BLANDIN-EXAMINATION BY THE COURT

1 THE COURT: The oath?

2 MR. HARTER: Yes, sir.

3 THE COURT: Okay.

4 BY THE COURT:

5 Q You understand that you just took an oath? Do
6 you remember the oath that Ms. Coker, the nice lady, asked
7 you to take?

8 A Yes, sir.

9 Q Okay. And what did she ask you?

10 A She asked me to take an oath to tell the truth
11 in this case.

12 Q Okay. All right. And do you understand what
13 telling the truth means?

14 A Yes, sir.

15 Q Okay. And do you understand if you fail to tell
16 the truth that you can potentially -- that you can get
17 into trouble? Even if you're telling your grandmother a
18 lie, you can get in trouble, right?

19 A Yes, sir.

20 Q Is it right or wrong to tell a lie?

21 A Wrong.

22 Q Okay. And do you -- you had the opportunity to
23 talk about your testimony to Mr. Farnsworth?

24 A Yes, sir.

25 Q Okay. And you know the difference between what

[REDACTED] BLANDIN-EXAMINATION BY THE COURT

1 is the truth and what is not the truth?

2 A Yes, sir.

3 Q Okay. And has everything you've discussed with
4 him been the truth as far as you know it?

5 A Yes, sir.

6 Q And is anything you -- do you intend to tell any
7 lies today?

8 A No, sir.

9 Q What happens when you tell a lie?

10 A I could get into big trouble.

11 Q Okay.

12 THE COURT: All right. Do you have any
13 additional questions?

14 MR. HARTER: No, sir. Thank you.

15 THE COURT: All right. Okay. I do find that
16 she's competent to testify. She clearly knows the
17 meaning of telling the truth as opposed to a lie. I
18 also note that without provocation or any
19 instigation, in her initial response, she indicated
20 that what she was here to do today was tell the
21 truth, which at inception gave me cause to feel
22 comfortable with her competency.

23 MR. HARTER: We don't have any other questions
24 about that. I just -- if you'll give special
25 instruction, that will be fine.

[REDACTED] BLANDIN-EXAMINATION BY THE COURT

1 THE COURT: Yes, sir, we'll do that at the close
2 of the case.

3 Miss Blandin, this is what I'm going to ask you
4 to do. I'm going to ask you to go and sit back down.
5 What will happen is when the jury comes in,
6 Mr. Farnsworth will call you back up to the stand and
7 you will take another oath in front of the jury,
8 okay?

9 MISS BLANDIN: Yes, sir.

10 THE COURT: All right. Okay. Bring them in
11 now, please.

12 (WHEREUPON, the jury came into open court at
13 approximately 1:55 p.m.)

14 THE COURT: All right. Welcome back, ladies and
15 gentlemen.

16 Mr. Luginbill, Mr. Wilson, Mr. Farnsworth, you
17 may call your next witness.

18 MR. FARNSWORTH: Thank you, Your Honor. We call
19 Chelsea Blandin to the stand, please.

20 THE BAILIFF: Chelsea, I want you to put your
21 left hand on the Bible, raise your right hand and
22 face the clerk of court there.

23 [REDACTED] BLANDIN, after being duly
24 sworn, testified as follows:

25 THE CLERK: What's your name?

[REDACTED] BLANDIN-EXAMINATION BY THE COURT

1 THE WITNESS: [REDACTED] Blandin.

2 THE CLERK: Thank you. Please be seated.

3 DIRECT EXAMINATION

4 BY MR. FARNSWORTH:

5 Q Hey, [REDACTED]. Can you tell the jury how old you
6 are?

7 A Ten.

8 Q Okay. And where do you go to school?

9 A Welcome Elementary.

10 Q What grade are you in there at Welcome
11 Elementary?

12 A Fifth.

13 Q You know you're here today to talk about what
14 happened to your mom, right?

15 A Yes, sir.

16 Q And I'm going to have some questions for you and
17 then the attorney for the sheriff's department is going to
18 have some questions for you, okay?

19 A Okay.

20 Q You know you're here today to tell the truth,
21 right?

22 A Yes, sir.

23 Q Okay. Do you remember when the police came to
24 your house the morning of December 9th, 2011?

25 A Yes, sir.

[REDACTED] BLANDIN-DIRECT BY MR. FARNSWORTH

1 Q The night before that, can you tell the jury
2 what you remember seeing between your mom and your dad?

3 A My dad and mom were arguing. And that night, he
4 hit her in the stomach.

5 Q Okay. Where were they arguing, inside the
6 house, outside the house?

7 A Inside the house.

8 Q Okay. And were they downstairs or were they
9 upstairs?

10 A They were upstairs in my mom's bedroom.

11 Q Okay. About what time was this?

12 A In between 8:00 to 11:00.

13 Q So, it was later in the night?

14 A Yes, sir.

15 Q Who else was in the room when you saw your dad
16 hit your mom?

17 A My brother.

18 Q Okay. What's your brother's name?

19 A [REDACTED]

20 Q [REDACTED] How old is he?

21 A Fourteen.

22 Q Okay. And how long had your mom and dad been
23 fussing that night?

24 A An hour.

25 Q Okay. Do you remember what they were fussing

[REDACTED] BLANDIN-DIRECT BY MR. FARNSWORTH

1 about?

2 A No, sir.

3 Q Okay. And when did you walk into the room where
4 they were arguing? Were you in there the whole hour they
5 were fussing or not?

6 A I was in there the whole hour.

7 Q Okay. What room was this?

8 A My mom's bedroom.

9 Q Okay. And when you saw your mom hit your dad,
10 tell us exactly what you saw.

11 A He hit her in the stomach twice with the same
12 arm.

13 Q Okay.

14 A And then he spit in her face.

15 Q Did he say anything to her when he was hitting
16 her?

17 A No. No, sir.

18 Q How far away were you standing when this
19 happened?

20 A Like four feet away.

21 Q Okay. Close as you are to the Judge maybe?

22 A Yes, sir.

23 Q Okay. Where was your brother standing?

24 A He was standing on the other side of them. I
25 was standing on one side and he was standing on the other.

██████████ BLANDIN-DIRECT BY MR. FARNSWORTH

1 Q Why were you and ██████████ in the room with them
2 when they were arguing?

3 A We thought that we could stop the fight or calm
4 them down.

5 Q Okay. Had they fussed like this before this
6 happened?

7 A Kind of, yeah.

8 Q And had you seen your daddy hit your momma
9 before?

10 A Yes, sir.

11 Q Okay. And had you seen your daddy being taken
12 to jail by the sheriff's deputies before for hitting your
13 momma?

14 A Yes, sir.

15 Q Okay. Now, what happened after you saw your
16 momma get hit in the stomach by your dad, what happened
17 next?

18 A They kept -- she -- that night?

19 Q Yes, that night.

20 A She went to the -- she left with me and ██████████
21 and my brother stayed with him to calm him down.

22 Q Okay. So, did she leave the house pretty
23 quickly after she was hit?

24 A Yes, sir.

25 Q Did she get things together or did she just rush

██████████ BLANDIN-DIRECT BY MR. FARNSWORTH

1 out upset? Tell us about what happened when she left to
2 go outside?

3 A She just rushed out upset.

4 Q Okay. And did she -- what did she tell you and
5 Makayla?

6 A She didn't tell us nothing. She just went out
7 with us.

8 Q So, you followed your mom outside?

9 A Yes, sir.

10 Q To the car?

11 A Yes, sir.

12 Q Okay. And tell us -- I don't think I asked you
13 this, but tell us who Makayla is. Tell us who ██████████ is.

14 A ██████████ is my sister.

15 Q Your little sister?

16 A Yes, sir.

17 Q How old is she?

18 A She is seven.

19 Q Okay. And so when you and your mom and ██████████
20 rushed outside that night, where did you go?

21 A To the car and we drove to McDonald's and she
22 made a phone call to her sister.

23 Q Okay. And how late do you think this was?

24 A Eleven.

25 Q Okay. And did y'all go inside and get anything

██████████ BLANDIN-DIRECT BY MR. FARNSWORTH

1 to eat at McDonald's?

2 A No, sir.

3 Q Go through the drive-thru or anything?

4 A No, sir.

5 Q She just got away from the house and made a
6 phone call?

7 A Yes, sir.

8 Q Could you hear what she was saying to her sister
9 on the phone?

10 A No, sir.

11 Q Okay. After she finished the phone call, where
12 did y'all go?

13 A We went back to the house and she parked her car
14 in the garage and we slept in the garage that night.

15 Q Okay. Did she -- when she left the house, did
16 she tell Holland anything -- your brother anything about
17 staying there?

18 A She told Holland to call her on the house phone
19 if anything happens.

20 Q The house phone or the cell phone?

21 A The house phone.

22 Q Oh, from the house phone?

23 A Uh-huh.

24 Q Okay. So, this is in December, right?

25 A Yes, sir.

██████████ BLANDIN-DIRECT BY MR. FARNSWORTH

1 Q Was it cold that night in the van?

2 A Kind of.

3 Q Okay. And why did you -- why did you and your
4 mom and your little sister not just leave?

5 A We didn't leave -- we did not leave because we
6 didn't want to leave ██████████ behind.

7 Q Okay. Had ██████████ been able to calm your dad
8 down when this happened before?

9 A I think so.

10 Q Okay. I think you said ██████████ stayed behind to
11 try to calm your dad down?

12 A Yeah.

13 Q And that had worked before or had tried that
14 before, do you know?

15 A No, sir.

16 Q Okay. So, during that night, did y'all wake up
17 and go inside and sleep in your beds?

18 A No, sir.

19 Q Okay. Did -- do you remember whether your dad
20 came to the door to try to get your mom to come inside?

21 A No, sir.

22 Q So, the next morning, does your mom wake you up
23 or do you wake up first?

24 A My mom woke me up.

25 Q Okay. Then what did you do?

██████████ BLANDIN-DIRECT BY MR. FARNSWORTH

1 A We went into the house and got some clothes to
2 leave.

3 Q Okay. And did she tell you whether to be quiet
4 or not be quiet?

5 A She told me to be quiet.

6 Q Why did she tell you that?

7 A So, we wouldn't wake my father up.

8 Q Okay. And you were going to get clothes why?

9 A So, we can leave to go to our grandma.

10 Q Okay. When she went back inside with you, did
11 she bring your little baby sister inside, too?

12 A Yes, sir!

13 Q Was your little baby sister sleeping or does she
14 walk in with y'all?

15 A She was -- she was not sleeping.

16 Q Okay. Where did she put the baby, do you
17 remember?

18 A She put her on the couch.

19 Q Okay. Is that upstairs?

20 A Downstairs.

21 Q Downstairs. Okay. So, you guys were quietly
22 trying to do what in the house that morning?

23 A Get our clothes and gather our stuff so we could
24 leave.

25 Q Okay. Did anyone go wake up ██████████?

CHELSEA BLANDIN-DIRECT BY MR. FARNSWORTH

1 A My mom did.

2 Q Okay. Then what happened?

3 A And then [REDACTED] went to the car and then me and
4 my mom went to the -- she was going to use the restroom
5 and freshen up. And he came downstairs, my father came
6 downstairs.

7 Q Okay. Was he -- was he -- was he angry or was
8 he nice or how was he acting when he came downstairs?

9 A He was angry.

10 Q Do you remember anything he said?

11 A He said he was awake the whole time.

12 Q You mean the morning y'all had been quiet?

13 A Yeah.

14 Q What else did he say?

15 A That was it. He just argued with her a little.

16 Q Okay. So, your mom had woken [REDACTED] up and he
17 went ahead and got some things and went outside to the
18 van, is that what you said?

19 A Yes, sir.

20 Q So, that left Makayla inside on the sofa and you
21 with your mom in the downstairs bathroom?

22 A Yes, sir.

23 Q Okay. What happened next?

24 A He -- he came down, argued -- they argued and
25 then he hit her in the stomach.

CHELSEA BLANDIN-DIRECT BY MR. FARNSWORTH

1 Q And where were you when he did this the second
2 time?

3 A I was right beside them.

4 Q Okay. Was this in the bathroom, outside the
5 bathroom, or the hallway or what?

6 A In the bathroom.

7 Q Okay. And what did you think about that?

8 A Can you repeat that, please?

9 Q Yeah, what did you think about what you saw,
10 your dad hitting your mom?

11 A What I was thinking?

12 Q Yeah.

13 A I don't know. Maybe like --

14 Q Let me ask you this easier question. What did
15 you do next after you saw your dad hit your mom in the
16 stomach that morning? What did you do?

17 A Oh, we went -- we rushed out to the car.

18 Q You and who?

19 A My mom.

20 Q Okay. And [REDACTED] was already out there?

21 A Yes, sir.

22 Q And what was your dad saying or doing?

23 A When we were going to the car?

24 Q Uh-huh.

25 A He didn't say anything.

██████████ BLANDIN-DIRECT BY MR. FARNSWORTH

1 Q Okay.

2 A He -- when we were going to the car, we forgot
3 to get ██████████ on the couch. And then he picked her up
4 and when we went -- then we were in the car and then he
5 came out with ██████████

6 And my mom kept saying, Give me ██████████

7 And after like five minutes, he gave ██████████
8 through the window.

9 Q Okay. And when he had ██████████ and wasn't giving
10 her back to you and your mom, is that when your mom called
11 the police that morning?

12 A Yes, sir.

13 Q And I think you said a few minutes later, he
14 handed ██████████ back to your mom?

15 A Yes, sir.

16 Q Did she open the door for him?

17 A No, sir.

18 Q Okay. She just rolled the window down a little
19 bit?

20 A Uh-huh, yes, sir.

21 Q Okay. So, then what did your dad do?

22 A He went back inside.

23 Q Okay. Did he stay there or did he come back
24 outside?

25 A He stayed inside the house.

██████████ BLANDIN-DIRECT BY MR. FARNSWORTH

1 Q Until when?

2 A Until the police arrived.

3 Q Okay. When the police arrived, was he still
4 inside?

5 A Yes, sir.

6 Q Okay. When the police were there, where were
7 you?

8 A In the car.

9 Q Still in the white minivan?

10 A Yes, sir.

11 Q Okay. And when the police arrived, was your dad
12 still inside?

13 A Yes, sir.

14 Q Okay. What did the police officers talk to you
15 about?

16 A He did not talk to me.

17 Q Okay. How many police officers did you see show
18 up at your house that morning?

19 A Two.

20 Q Okay. And did you see your grandma show up at
21 the house?

22 A Yes, sir.

23 Q Okay. And when she showed up, who did she talk
24 to?

25 A She was with my mom talking to the police.

CHELSEA BLANDIN-DIRECT BY MR. FARNSWORTH

1 Q Okay. Before she was -- when the police first
2 got there, was your mom outside with you in the van?

3 A Yes, sir.

4 Q And then at some point, she went inside with the
5 police officers?

6 A Yes, sir.

7 Q Okay. When your grandmother first got there, do
8 you remember whether your mom was inside or outside?

9 A She was outside.

10 Q Okay. And when -- when the police officers were
11 there, you saw your mom and grandmother talking to the
12 officers?

13 A Yes, sir.

14 Q Okay. Could you hear what they were talking
15 about?

16 A No, sir.

17 Q How close were they talking to where you were
18 sitting in the van?

19 A They were like -- like five feet away from the
20 van.

21 Q Like about this space or less from me to you?

22 A Yes, sir.

23 Q Okay. And what did it look like that your mom
24 and grandmother -- what kind of conversation did it look
25 like they were having?

██████████ BLANDIN-DIRECT BY MR. FARNSWORTH

1 MR. HARTER: Excuse me, Judge, can we approach
2 on that?

3 THE COURT: Sure.

4 THE WITNESS: They were having --

5 MR. FARNSWORTH: Hold on a second. We're going
6 to talk to the Judge a minute, okay.

7 THE WITNESS: Okay.

8 (WHEREUPON, an off-the-record bench conference
9 was held in the presence of the jury but out of
10 the hearing of the jury.)

11 BY MR. FARNSWORTH:

12 Q So ██████████, my question was when you saw your
13 grandmother and your mom out by the van near you talking
14 to the police officer, what did it look like they were
15 talking about?

16 MR. HARTER: Objection.

17 THE COURT: Yes, sir. Yes, sir.

18 THE WITNESS: They looked like they were talking
19 about what happened that night and what happened that
20 morning.

21 BY MR. FARNSWORTH:

22 Q Okay. And what you were seeing, did you see
23 them having a cooperative conversation? Do you know what
24 cooperative means? It means getting along?

25 MR. HARTER: Objection, Your Honor.

██████████ BLANDIN-DIRECT BY MR. FARNSWORTH

1 THE COURT: I got you. I understand. You've
2 got a continuing objection.

3 THE WITNESS: Yes, sir.

4 BY MR. FARNSWORTH:

5 Q Did it -- did your --- tell me this, this would
6 be a better question. To you, what did it look like your
7 mom was doing when she was talking with the police
8 officers?

9 MR. HARTER: Your Honor --

10 THE WITNESS: Can you repeat that?

11 THE COURT: You've got a continuing objection.

12 I understand.

13 BY MR. FARNSWORTH:

14 Q Did it look like your mom was happy talking to
15 the officers or was upsets?

16 A Kind of upset.

17 Q Okay. Could you tell whether your grandmother
18 was upset or happy talking with the officers?

19 A She was upset, too.

20 Q ██████████, there's some things that I want to ask
21 you about that have been talked about already in the case,

22 okay? And you just tell me whether these things happened
23 or didn't happen, okay? When your mom the night before
24 got hit and you and ██████████ saw it and she got angry and
25 left the house with you and ██████████ did your dad lock the

██████████ BLANDIN-DIRECT BY MR. FARNSWORTH

1 door and lock her out?

2 A No, sir.

3 Q Did your dad keep you three kids inside and not
4 let your mom have you?

5 A No, sir.

6 Q Okay. ██████████ voluntarily stayed inside, didn't
7 he?

8 A Yes, sir.

9 Q Did your mom sleep in the van by herself all
10 night or sleep in there with you and ██████████

11 A With me and ██████████

12 Q The next morning when you woke up, was your dad
13 still keeping you kids away from your mom?

14 A No, sir, he was in the bed.

15 MR. FARNSWORTH: Okay. Okay, ██████████, thank
16 you. Mr. Harter is going to have some questions for
17 you, okay.

18 THE WITNESS: Yes, sir.

19 THE COURT: Mr. Harter.

20 CROSS-EXAMINATION

21 BY MR. HARTER:

22 Q Hey, ██████████

23 A Hi.

24 Q How are you?

25 A Good.

██████████ BLANDIN-CROSS BY MR. HARTER

1 Q Good. My name is Rusty. Do you mind if I ask
2 you a few questions?

3 A No, sir.

4 Q Good. ██████████, what's your birthday?

5 A ██████████.

6 Q Okay. Now, did you have to go to school the
7 next day, do you remember?

8 A No, sir, I didn't go to school.

9 Q Was it a school day or not?

10 A It was a school day.

11 Q It was a school day?

12 A (The witness nods.)

13 Q But you didn't have to go to school?

14 A No, sir.

15 Q Or do you remember?

16 A I didn't go to school.

17 Q Okay. You're doing okay now? You're going to
18 school now and doing good I hear?

19 A Yes, sir.

20 Q Making good grades?

21 A Yes, sir.

22 Q And your grandmother is taking good care of you?

23 A Yes, sir.

24 Q And you're doing some stuff at school and
25 outside school stuff, right?

██████████ BLANDIN-CROSS BY MR. HARTER

1 A Yes, sir.

2 Q What are you doing?

3 A I do homework.

4 Q Okay. I know you do that, what else?

5 A And sometimes projects.

6 Q Okay.

7 A And stuff like that.

8 Q Do you do any kind of like dancing things or
9 play soccer or any of those things?

10 A No, sir.

11 Q Okay. But you're doing good?

12 A Uh-huh.

13 Q Okay. Do you mind if I talk about the things
14 Mr. Farnsworth was asking you about for a minute or two?

15 A No, sir.

16 Q Okay. Before that day or that night, had you
17 ever seen your momma and your daddy have an argument or
18 fight, ██████████?

19 A Yes, sir.

20 Q Had you seen your dad ever push her or hit her
21 before that? I'm not talking about that day

22 Mr. Farnsworth was talking about, but any time before
23 that?

24 A Yes, sir.

25 Q Okay. How many times do you think you'd seen

██████████ BLANDIN-CROSS BY MR. HARTER

1 something happen like that between your mom and daddy
2 different times?

3 A When he hit her?

4 Q Yes, ma'am. How many times have you seen your
5 dad hit your mother, different times?

6 A Like three.

7 Q Okay. Three different days, three different
8 times?

9 A Before the big argument?

10 Q Yeah, before -- I'm not talking about the day
11 that this happened. Any other days or nights where you
12 remember your dad hitting your mom?

13 A Once.

14 Q And where did he hit her then?

15 A He hit her in -- he hit her face.

16 Q Okay. And where did that happen?

17 A That happened at the house -- we had a house
18 before we moved in that house where the big argument was,
19 so he hit her that time.

20 Q That was in another house?

21 A Yes, sir.

22 Q Okay. In the house that y'all were living in at
23 that time, had you ever seen him hit her before?

24 A No, sir.

25 Q Had the police ever come out before -- to your

██████████ BLANDIN-CROSS BY MR. HARTER

1 home before this day Mr. Farnsworth was talking about that
2 you remember?

3 A Before the big argument?

4 Q Yeah, before the one that you were talking to
5 Mr. Farnsworth about when you went to McDonald's, before
6 that day?

7 A Yes, sir.

8 Q Had they -- had he hit her in that house before
9 that you remember?

10 A No, sir.

11 Q Okay. Had he ever hit her in the stomach
12 before?

13 A No, sir.

14 Q Like that?

15 A No, sir.

16 Q You'd never seen that?

17 A No, sir.

18 Q And before when you went to McDonald's, do you
19 know if your mother called the police? You were with her
20 the whole time, do you know if she did?

21 A No, sir.

22 Q Okay. Was she upset then?

23 A Yes, sir.

24 Q Okay. All right. Now, I want to talk about
25 after it all happened and the police and your grandmother

██████████ BLANDIN-CROSS BY MR. HARTER

1 came, okay?

2 A Okay.

3 Q When your grandmother was there and your mother
4 was there, did you tell us that they were talking to a
5 police officer in a uniform?

6 A Can you repeat that?

7 Q I will. And I'm sorry. When your grandmother
8 came?

9 A That day?

10 Q I'm sorry, yes, that day when your grandmother
11 came and there was police officers there and they were
12 talking -- your mother and your grandmother were talking
13 to a police officer?

14 A Yes, sir.

15 Q Do you remember that?

16 A Yes, sir.

17 Q Okay. I don't mean to get confused. But you
18 remember that day when your grandmother got there, your
19 mother was there and your grandmother was there and they
20 were talking to a police officer?

21 A Yes, sir.

22 Q Okay. And that's what you told Mr. Farnsworth a
23 little while ago, right?

24 A Yes, sir.

25 Q You didn't hear what they were saying, did you?

██████████ BLANDIN-CROSS BY MR. HARTER

1 A No, sir.

2 Q And did you ever hear your mother say anything
3 to the police officer that day?

4 A I didn't hear anything what they were saying.

5 Q Okay. You didn't hear anything that was said to
6 the police officer when they were there?

7 A I didn't hear anything.

8 Q I'm sorry, you didn't hear anything?

9 A No.

10 Q Okay. Okay. Do you remember -- nevermind.

11 ██████████ I hope you'll still do good in school and keep
12 studying hard, okay?

13 A Okay.

14 Q And listen to your grandmother, okay?

15 A (The witness nods.)

16 MR. HARTER: That's all I have, Your Honor.

17 THE COURT: Mr. Farnsworth, any additional
18 questions?

19 MR. FARNSWORTH: No other questions, Judge.
20 Thank you.

21 THE COURT: Thanks for coming. You can step
22 down.

23 Okay, you may call your next witness, gentlemen.

24 MR. FARNSWORTH: We call Madel Rivero to the
25 stand.

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 THE BAILIFF: Place your left hand on the Bible,
2 raise your right hand and face the clerk.

3 MADEL RIVERO, after being duly sworn,
4 testified as follows:

5 THE CLERK: State your name, please.

6 THE WITNESS: Madel Rivero.

7 THE CLERK: Thank you, please be seated.

8 DIRECT EXAMINATION

9 BY MR. FARNSWORTH:

10 Q Madel, you're the grandmother of these Blandin
11 children of Lilia's, correct?

12 A Yes, sir.

13 Q And can you tell us their names and ages,
14 please?

15 A Well [REDACTED] Blandin 14 years, [REDACTED] Blandin,
16 10 years, next month 11. And [REDACTED] Blandin, 7 years.

17 Q Okay. And how long have you been living here in
18 Greenville with them?

19 A Almost 17 years.

20 Q Okay. So, you were in here before they were
21 born?

22 A I'm sorry?

23 Q You were here in Greenville before these
24 grandchildren were born?

25 A Yes, sir.

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 Q And before coming to Greenville, where did you
2 grow up, what's your home country?

3 A Mexico.

4 Q Okay. What did you do in Mexico before coming
5 here to America?

6 A I was teacher for 30 years. I work for govern.
7 I working two shifts. In the morning, 11:30 and the
8 afternoon middle or high school. I working in the
9 summertime. I was almost [indiscernible] mother, my kids
10 go to the college.

11 Q Okay. So, you had -- did you retire after 30
12 years of being a teacher?

13 A Yes, sir.

14 Q And your daughter, Lilia, who we're here about
15 today.

16 A Yes, sir.

17 Q Was she your only child or did you have other
18 children too?

19 A Can you repeat that, please?

20 Q How many children did you have?

21 A I have four children's. In Mexico I have one
22 lady, Maria. Here, Juana, Lilia and Jorge.

23 Q And Jorge is your only son?

24 A Yes, sir.

25 Q Okay. And Juana would be your oldest daughter?

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 A Yes, my oldest daughter.

2 Q Now, when you came to Greenville about 17 years
3 ago, did Lilia and Jorge come with you?

4 A The first time, no. I go sometimes to Mexico
5 where they [indiscernible] my retirement.

6 Q Okay.

7 A Then last time they come and supposed to just
8 for vacations. But. . .

9 Q Before you -- let me ask you this, what
10 citizenship status do you have? Do you have a permanent
11 visa, do you have a green card?

12 A Me?

13 Q Yes.

14 A I have visa 1970. And permanent.

15 Q Okay.

16 A Because I working for the govern and you know.

17 Q So, before coming to Greenville 17 years ago,
18 you had visited the United States some before being a
19 permanent resident here?

20 A Yes, sir.

21 Q Okay. When Lilia was living with you in Mexico,
22 did she go to college anywhere? What did she do?

23 A Yes. She go to the college -- university. She
24 was account.

25 Q Accountant?

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 A Accounting, yeah.

2 Q And after college what kind of work did she do
3 in Mexico?

4 A After college, no, she was in school only. When
5 finish college she work in a bank.

6 Q A bank there in Mexico?

7 A Yes.

8 Q Okay.

9 A Yes, sir.

10 Q When she came to Greenville did she work here in
11 Greenville too?

12 A Yes, some parts.

13 Q What kind of jobs did she have here in
14 Greenville.

15 A At first she work in a manufacture and you know.

16 Q Okay. Then what?

17 A Furman University she was a full-time.

18 Q Okay. Furman University, what did she do there?

19 A [Indiscernible]

20 Q What' that?

21 A [Indiscernible]

22 Q Oh, the dinning room?

23 A Yes.

24 Q Very good. Then did she end up getting a job at
25 a bank here, too?

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 A Yes. After [REDACTED] [verbatim] born she found
2 job at Wood Forrest Bank.

3 Q Okay. Wood Forrest Bank, was that located
4 inside the Wal-Mart stores?

5 A Yes, sir, Whitehorse Road.

6 Q How long did she work at the Wood Forrest Bank
7 before -- before she was killed. Just a guess.

8 A Almost three years and a half.

9 Q Three years in a half?

10 A Two years.

11 Q Okay.

12 A Sorry. Two years and a half.

13 Q And when she -- how often did you see her? She
14 and the kids. Did you spend time with Lilia and her kids?

15 A Me?

16 Q Yes.

17 A Oh, yeah. Maria [verbatim] was for me like my
18 friend.

19 Q If you need to take a minute.

20 A Sorry.

21 Q That's okay. It's okay, I know some of those
22 questions are going to be hard. We'll take a break when
23 you need to.

24 A She was my oldest, she was my small daughter.
25 And she was like my friend. I working some nights in the

MADDEL RIVERO-DIRECT BY MR. FARNSWORTH

1 morning or the afternoon and she called me everyday,
2 almost. And she told me, Momma come in, come in, come in,
3 come with me. We talking sometimes the nights. Momma,
4 come in, come in, the kids need to see you.

5 When I don't work, I was laid off, I kept for
6 two years, the kids, two years Maria work for Wood Forrest
7 Bank. [indiscernible] -- here because sometimes finish
8 7:30, working Saturdays, Sundays. I get the kids.

9 Q Okay. So, you took care of the kids some when
10 Lilia was working?

11 A Yes.

12 Q I'm going to show you what's been marked as
13 Plaintiff's Exhibit 26. Can you tell us what this
14 photograph is? Who's in that?

15 A That is Mahayla new house. [indiscernible].

16 MR. FARNSWORTH: Any objection to these?

17 MR. HARTER: No objection. Show it, tell them
18 what it is if you want to.

19 MR. FARNSWORTH: Okay.

20 BY MR. FARNSWORTH:

21 Q Okay, while that's coming up, this picture would
22 be of Lilia and the three children around Christmas time
23 before this incident happened?

24 A Yes, right before.

25 Q And that would be her last Christmas with the

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 children?

2 A Yes, sir.

3 Q What kind of mom was Lilia?

4 A Lilia was -- when my daughter -- Lilia was very
5 good mom. Very good mom. She -- when her husband not
6 work she selling [indiscernible] for school clothes or
7 give to kids most anything, you know.

8 Q Okay, let me stop you there--

9 A And she loved her kids. She make a beautiful
10 cake for birthdays.

11 Q Cake for birthdays?

12 A Yes. Sometimes she don't have money and she
13 make everybody a Chuck E Cheese and I don't know how. And
14 she kept watching the kids. She worried about the kids.

15 Q So, you said that on the weekends she would do
16 what at the flea market?

17 A She three years use clothes.

18 Q Okay. So, she'd sell clothes at the flea
19 market?

20 A Yes, sir.

21 Q Were there times that --

22 A On Saturdays and Sundays.

23 Q Okay. And this is when her husband was out of
24 work? When Avery wasn't working?

25 A Yes. Sometimes he kind find a job later, you

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 know.

2 Q All right. Okay. Now, when did you become
3 familiar with Lilia having trouble with her husband? Was
4 this something new? Was this something that went way
5 back?

6 A Could you repeat the question, please?

7 Q When did you find out that she was having
8 trouble with her husband abusing her?

9 A When they live in the Highway 20 -- 183.

10 Q Okay.

11 A In the old house.

12 Q This was a house before the -- where this
13 incident happened?

14 A Yes, sir.

15 Q Okay. And when -- when you found out that there
16 had been an incident December 9th of 2011 date, what
17 [REDACTED] referred to as, I think she called it the big
18 incident or the big problem, what did you do when you
19 found out that there was trouble at the house that
20 morning?

21 A Oh, when I -- can I speak?

22 Q Yeah.

23 A December 8th, the night my daughter call me.
24 And told me that [indiscernible] she say we left my home
25 because he don't support anymore. She give to him the

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 last chance, the last opportunity because she was going
2 care for her family, their kids, family, but he not care.
3 He was everything [indiscernible].

4 Q So, let me clear this up. So, this was the
5 night before the police showed up?

6 A Yes, yes.

7 Q So, there was a phone call with Lilia about
8 that?

9 A Yes.

10 Q And she said she was trying to give him another
11 chance but it didn't work. Did she explain what the
12 problems were?

13 A Yes. She said that he stay behind her and
14 the -- [indiscernible] why he just he was on the back of
15 me. Either I go to there -- [indiscernible] he opened the
16 door and broken the lock and not let me, not let me, stand
17 in the door. He told me so many times. [indiscernible] I
18 said don't call my momma.

19 Q So, he was calling her a lot at work and he was
20 kind of following her at home real closely?

21 A Yes, sir.

22 Q Are you familiar with any problems that he had
23 with drinking alcohol all this time? During the marriage?

24 A I don't understand, I sorry.

25 Q Sorry, if you don't understand. Did Lilia

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 complain of him drinking alcohol and becoming abusive?

2 A Oh, yes, sir. She told me that he get drunk.

3 Q Did she talk to you about that or let you know
4 that she asked him to go to rehab?

5 A Yes.

6 Q Okay. And had he done that, do you think? From
7 what she told you?

8 A About what?

9 Q Had he gone to rehab as far as you know for
10 alcohol?

11 A Oh, yeah. He go to AA, I believe or something,
12 Uh-huh.

13 Q Okay.

14 A But only for a few days, something like that.
15 After that he lived a -- it's a group right?

16 Q Okay. Now, let's go back to December 9th.
17 Okay, you mentioned there was a phone call from Lilia
18 December 10th -- December 8th to you. So, the next
19 morning you went to her house, correct?

20 A Oh.

21 Q Why did you do that?

22 A Because that night Lilia had called twice or
23 three times, I don't remember calling. She told me that
24 we love him and say come live with me?

25 I say, Yes, yes.

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 Told me that first need to go to

2 [indiscernible]. Say after I call you.

3 I say, Okay, I will stay ready when you call me.

4 Q Okay. Now, so you made plans to go to Family
5 Court with Lilia?

6 A Yes, sir.

7 Q Okay. What I need to know first is when you
8 went to the house that morning and saw the police officers
9 there.

10 A Yes, sir.

11 Q Do you remember that?

12 A Yes, sir.

13 Q Okay. Why did you go to the house?

14 A Lilia.

15 Q Right, why did you go Lilia's house that
16 morning?

17 A Okay, the police was [indiscernible].

18 Q Yeah, the day -- the morning the police were
19 outside of Lilia's house you showed up there, right?

20 A Yes.

21 Q Okay. Just tell the jury why you went to her
22 house.

23 A Me?

24 Q Right.

25 A Oh. I went to the house because I -- I want to

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 go with my daughter and my grandkids.

2 Q Okay. Had someone told you that something was
3 wrong?

4 A Yes, yes. Juana -- because my daughter, Juaná,
5 called me in the morning when I was ready. And told me
6 her sister wasn't doing good. Well, I would ready, get my
7 pocketbook and drive and call her. Call Lilia.

8 Q And when you got to Lilia's house, what did you
9 see?

10 A What I see, I see one police officer. I see
11 Avery Mitsubishi car in the driveway. I see my daughter
12 come close to the Mitsubishi. I pull my car by the
13 Mitsubishi car and I see the kids inside the van.

14 Q Okay. I'm going to show you photographs,
15 Mrs. Blandin [verbatim] and I just want you to kind of, as
16 you're explaining what you saw, if you kind of tell me --
17 first of all, can you identify what this is a photograph
18 of?

19 A Yes, sir, my daughter house.

20 Q Okay. Yeah, sit right there and use the
21 microphone, please.

22 A Okay.

23 Q I'll move closer.

24 A Was my daughter house.

25 Q Okay. And this is Lilia's house?

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 A Lilia's car.

2 Q And that's her white mini van?

3 A Yes, sir.

4 Q And when you drove up to her house that morning
5 where did you see the police officer standing?

6 A The police was standing almost in the street.

7 Q Okay. So, along side the road, street?

8 A Yes, sir.

9 Q Okay.

10 A The kids inside the car.

11 Q The kids were inside the van?

12 A Yes.

13 Q Okay. Where was the other police officer?

14 A Inside with my daughter.

15 Q Okay. So, your daughter was inside also?

16 A Yes, I ask the police where is my daughter?

17 He told me, She's inside.

18 They in her house, I can explain the yellow

19 something I cannot -- they talking inside.

20 Q They were talking inside?

21 A I don't speak very good English.

22 Q All right, you're doing fine. So, when you
23 first got there, what did you ask the police officer?

24 A Where is my daughter?

25 Q What did he say?

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 A He say, They are inside. They talking.

2 I say, Kids inside the car, hi momma, hi momma.

3 Q Okay. So, you went to check on the kids in the
4 car?

5 A Yes, sir.

6 Q And so, then what happens next? What do you see
7 next? Are you waiting for a few minute or what?

8 A I waiting for 10, 15 minutes, I don't know.

9 Q Okay. And then what happens, that you remember?

10 A After that my daughter come with the police
11 officer.

12 Q They walk outside?

13 A They walk. They walk. They through this --
14 they walk this door, they walk on this standing almost in
15 the place. Not around the ornaments.

16 Q Okay. So, they walked out the front door --

17 A Yes.

18 Q -- the other officer and Lilia walked out the
19 front door --

20 A Yes.

21 Q -- and they stop, then what happens?

22 A I ask the police officer what happen? What
23 would happen with him? He say nothing. I told him why?
24 Why nothing? He hit my daughter stomach. My daughter
25 told me --

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 My daughter told him, Yes, he hit me in my
2 tummy.

3 She said tummy not stomach.

4 The police officer say, Yes, but it's only her
5 version, she has no evidence.

6 Q Okay. So, you asked the officer that walked out
7 of the house with Lilia, What are you going to do with
8 him? And he says nothing. Is that correct?

9 A Yes.

10 Q Okay. And you say, But he hit her in the
11 stomach and?

12 A He say, She has no evidence.

13 Q And Lilia is standing there with you?

14 A Yes.

15 Q And the kids are in the van watching your
16 conversation with the officer and Lilia?

17 A Yes.

18 Q Lilia speaks up says, yeah, he hit me in the
19 stomach?

20 A Yes, sir.

21 Q And the police officer said again, what?

22 A She has no evidence. It's only her version.

23 Q Only her version?

24 A Yes, sir.

25 Q You sure he said that?

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 A Me?

2 Q You heard him say that?

3 A Yes, sir.

4 Q Okay. And where was the other officer standing
5 when you were talking to this officer?

6 A Behind me.

7 Q Was he in the same area?

8 A About -- I don't remember very well because I
9 see him, I see my daughter, I'm walking, standing, I think
10 the kids they were in van.

11 MR. HARTER: I'm sorry, I couldn't hear that.

12 Could you ask her to repeat that for me?

13 BY MR. FARNSWORTH:

14 Q Could you repeat where the kids were sitting?

15 A The car -- the kids they were inside the van.

16 Q Was the other police officer standing close
17 enough to hear what you were talking about?

18 A The other police don't say nothing.

19 Q He doesn't say anything?

20 A No, he don't say nothing.

21 Q How close was he standing to you and the other
22 officer and Lilia when you were talking?

23 A Was almost closer because not too big of a
24 place.

25 Q Okay. So, what else did he say after he says

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 that was her version? What else did the police officer
2 say?

3 A The police officer, In this case I recommend the
4 people divorce. Can you go to the Family Court? You know
5 where the Family Court?

6 And I say, Yes.

7 My daughter said, Yes.

8 Can you go to the Family Courts for the papers?
9 And fill the protection order.

10 That's it.

11 Q Okay. So, he recommended that they get a
12 divorce and told you to go to Family Court to get a
13 Restraining Order?

14 A Yes, sir.

15 Q Okay. And after leaving that morning, in fact,
16 you guys went to Family Court; didn't you?

17 A Yes, we go to the Family Court.

18 Q And?

19 A After four o'clock.

20 Q Okay. Were you able to get a Restraining Order
21 that day?

22 A No. First we went to my home because my
23 daughter told me need to take a bath. Stay all night in
24 the van. We go to my home, she take a bath. The
25 [indiscernible] Restraining Order.

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 I say, Lilia worry because it's too late.

2 And we go first Sunday [indiscernible] the --
3 the insurance card.

4 Q Okay.

5 A She has to spend [verbatim] the driver's license
6 and he told [verbatim] because he not pay one month the
7 insurance.

8 Q Okay. But after that did you go to Family Court
9 that day?

10 A After the DMV we go to Family Court. I stay in
11 the car.

12 She say, Mamma, stay here. Take care of kids, I
13 go with the papers.

14 She go with the papers. And come -- I say, Let
15 me see the papers. She has all the papers.

16 Q She had papers and what did she tell you that
17 Family Court told her?

18 A She told me -- I say, What happened?

19 She say, Not right now, nothing. I need to
20 call Rita, this attorney in Mauldin. And I need to call
21 him or her for protection order.

22 Q Okay. She was told to call Rita and when was
23 that going to happen? When was she told to call Rita?

24 A She told almost -- she -- she told me I will
25 call Rita almost twice but Rita not answer. After that

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 she said, We'll just be careful. Because she said maybe I
2 know [indiscernible] but say I will go to vacation. I
3 will go to vacation Monday and my assistant will call you
4 the next week or make a appointment and you come in and
5 sign the Restraining Order.

6 Q Okay. So, she put Rita on the speaker phone so
7 you could hear what her instructions were?

8 A Yeah.

9 Q And she said that she was going on vacation
10 Monday but that she could have someone help her Monday
11 with her Restraining Order?

12 A Yes, sir.

13 Q Okay. And then, after that, did you go some
14 other places? After leaving Family Court?

15 A After Family Court was almost 3:30 or 4:00. We
16 go to eat and go to Woodruff Road. [indiscernible] only
17 they told me pain in stomach. And she not eat that much.
18 She don't want to eat that much.

19 Q What did she say about her stomach?

20 A Has a pain.

21 Q Has a pain in her stomach?

22 A Yes, sir.

23 Q Okay. And did she tell you what that pain was
24 from?

25 A Yes, because he hit her tummy. He hit her

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 stomach.

2 Q Okay. And let's go back to when you were
3 leaving her house and the police officers were in the yard
4 and you talked to them already and you got in the -- you
5 didn't leave in Lilia's van, right?

6 A No.

7 Q You left in your car?

8 A Yes, sir.

9 Q Okay. You left in your car. And when you left
10 did Lilia get a phone call pretty quickly that you
11 remembered?

12 A In the morning?

13 Q No, when you left her house and y'all were
14 driving away?

15 A Uh-huh.

16 Q After talking to the police officers, and they
17 didn't arrest Avery, did Lilia get a phone call that you
18 remembered?

19 A Yes, yes.

20 Q Tell me what you heard on that phone call? Or
21 did she say who it was?

22 A Mariata [ph].

23 (WHEREUPON, Mr. Farnsworth and witness were
24 talking at the same time.)

25

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 BY MR. FARNSWORTH:

2 Q I'm sorry, I'm moving times on you a little bit.

3 But when you got in the car, your car with the kids.

4 A Yes, sir.

5 Q At Lilia's house.

6 A Yes, sir.

7 Q After you had spoken with the police officers.

8 A Yes, sir.

9 Q And they told you that they didn't have any
10 evidence and that was just her version, okay. You got in
11 your car with the three kids and Lilia and started driving
12 away?

13 A We drive for my home. To my home.

14 Q Okay. And when you did that, did Lilia get a
15 phone call?

16 A Yeah, get a phone call?

17 Q Right.

18 A Yeah, call -- when that her husband called too
19 many times.

20 Q Okay. So, that's what I was referring to. Do
21 you remember that Avery called her more than once?

22 A Yes, sir, yes, sir. Lilia no answer. Say, I
23 don't want to answer him. And he sent me -- one text to
24 me.

25 Q He sent a text to you?

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 A Me.

2 Q And what did the text say that he sent to you?

3 A Don't hear [indiscernible] sorry about the word.

4 MR. HARTER: I'm sorry, I didn't hear. I
5 couldn't -- could you repeat that?

6 BY MR. FARNSWORTH:

7 Q Can you repeat it?

8 THE COURT: You might want to restate the
9 question so she knows.

10 THE WITNESS: I don't want to --

11 MR. HARTER: It has some bad language.

12 THE WITNESS: Don't hear the [indiscernible]
13 bitch.

14 BY MR. FARNSWORTH:

15 Q This was a text that Avery Blandin sent to you?

16 A Yes.

17 Q When you left?

18 A Remember I sent to you.

19 Q Yeah, you just need to tell me what you
20 remember. What I want to know is--

21 THE COURT: Hold on, Mr. Farnsworth.

22 MR. FARNSWORTH: All right.

23 MR. HARTER: I didn't understand it.

24 THE COURT: He didn't understand --

25 MR. HARTER: What is that word? I didn't

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 understand.

2 THE COURT: You want her to restate it one more
3 time? What the text said I believe is what. . .

4 MR. HARTER: Yes, sir.

5 BY MR. FARNSWORTH:

6 Q Did he call you a bad name in the text?

7 A No.

8 Q Avery?

9 A No. No. You -- in the --

10 Q The text was to you?

11 A Uh-huh.

12 Q All right. Mr. Harter wants to know what the
13 text said. You said it a couple of times but what did the
14 text -- do you remember what the text said to you from
15 Avery when y'all left?

16 A Yeah, my phone -- it's on my phone.

17 Q Okay. But do you remember exactly what it said?

18 MR. HARTER: Okay, I'm sorry. I didn't. . .

19 BY MR. FARNSWORTH:

20 Q He called you a bitch, is that right?

21 A Yes. . .

22 Q Okay. When he called a couple of times after
23 that to Lilia, she didn't want to answer. Did she end up
24 answering a call from him?

25 A Yes. She told me, Okay, I will like to call

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 him. And she call with him but I not listen what they
2 talking about because she not on the speaker phone and I
3 drive and the kids talking in my back.

4 Q Okay. Okay. When -- later that leaving, did
5 you go back to the house?

6 A Yeah, we go to my home for the -- for the
7 clothes, the keys and.

8 Q Okay. But before going home that night after
9 all this happened, you stayed -- Lilia stayed with the
10 kids at your home, correct?

11 A Yes, sir.

12 Q But before going home for the night, you went
13 back by Lilia's home, didn't you?

14 A Oh, before eat and happy [indiscernible] we go
15 almost six.

16 Q Okay.

17 A And I told her we need to work another thing
18 because van and clothes.

19 Q Okay. So, she needed some clothes out of the
20 van?

21 A Yes.

22 Q Okay. And when you got there did you go inside?

23 A No, no, no.

24 Q Okay.

25 A We were -- when got out my car Lilia go, Oh,

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 momma, look at my van. All the four tires were cut. The
2 car was flat.

3 Q So, the four tires were cut on the van?

4 A Yes, sir.

5 Q Okay.

6 A I told Lilia, You know, with that knife can he
7 cut to you.

8 Q So, you guys leave the house then?

9 A Yeah, you pick up the things, we go to my home.

10 Q Okay. So, go to your house?

11 A Yeah, my house.

12 Q And that night she slept there with the kids at
13 your house?

14 A Yes, sir.

15 Q Okay. And the next morning -- what were her
16 plans the next morning?

17 A The next morning I get up. I listen
18 crying. I get up. I sleep in the living room and she
19 sleep in my room with the kids. And my son go with
20 friends. In the morning my son come in maybe 6:30 or 7:00
21 and told me, Momma, you see your car? What happened? He
22 said the tire was cut, was flat. My car.

23 Q So, the tire was cut on your car?

24 A Yes, sir.

25 Q That morning.

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 A And after that I told Lilia.

2 And Lilia say, What are we doing? Say, You try
3 to move the car.

4 And I told her, you don't need to go to work.

5 Yes, but I need to go to work because, you know,
6 the manager be angry with me.

7 Q Okay. And she was working there in the Wood
8 Forrest bank? She was scheduled to work that morning?

9 A Yes, sir.

10 Q And that's in Wal-Mart there at Whitehorse Road,
11 correct?

12 A Yes, sir.

13 Q Okay. Let's go back to something else. Your
14 home that you had her stay with you, where is that
15 located? Where is your home?

16 A I live in a mobile home park. River View Park.

17 Q Is that out toward -- kind of towards Easley
18 inside Greenville County?

19 A Yeah, Highway 123, Greenville County.

20 Q And Lilia's house where this incident happened
21 was over in Simpsonville?

22 A Was in Simpsonville close to Pelham Road.

23 Q Okay. Now, in this -- the home that you
24 share -- I think your son lived with you there?

25 A Yeah, my son live with me.

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 Q How many bedrooms in your mobile home?

2 A Two.

3 Q Okay.

4 A One master and one little.

5 Q Is that where you and the grandchildren live now
6 with your son?

7 A Yes, sir.

8 Q Okay. So, your son has one bedroom and you're
9 sharing your bedroom with these three grandchildren?

10 A No, my son has his bedroom and we stay in the
11 big bedroom.

12 Q Okay, your bedroom?

13 A In my bedroom, yes.

14 Q Okay. And you've been -- you've been caring for
15 them since this happened almost four years ago?

16 A Yes, sir.

17 Q There at your home. Have you been, this is
18 something I asked you before, but you've been appointed by
19 the Probate Court as personal representative of Lilia
20 Blandin's estate, right?

21 A Yes, sir.

22 Q And you've also been appointed as conservator
23 for the kids?

24 A Yes, sir.

25 Q With the conservatorship, that's something where

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 the Court has to approve any money spent for the kids and
2 they look over and make sure any expenses that are
3 incurred are court approved, is that correct?

4 A Yes, sir. But I work part-time.

5 Q That was my next question. But since you had
6 been here, been retired and now taking care of these kids,
7 have you gone back to work somewhere?

8 A Yes, sir. I work in Goodwill store. I working
9 8:00 to 2:00 because I find other jobs but the problem is
10 I have my little granddaughter. [REDACTED] has asthma,
11 eczema, sinus and sometime they call me, [REDACTED] is sick,
12 I need to leave job and I go for her. And other place I
13 can't do that because they fire me, you know?

14 Q Right. So, this job with the Goodwill let's you
15 come and go a little better the kids?

16 A Yes, yes. One all one or more [indiscernible]
17 can I do another job, can I do? But I can't find one that
18 the -- the -- the schedule I need, you know?

19 Q Right. Okay, let me ask you another question.
20 Do you take these kids to church with you?

21 A Sir?

22 Q Do you go to church here in Greenville?

23 A Oh, yes, sir.

24 Q Where do you go?

25 A We go to the Saint Mary.

MADEL RIVERO-DIRECT BY MR. FARNSWORTH

1 Q How long have you been going there?

2 A When I come to Greenville I go to same church.

3 Q That's a long time.

4 A Yes, sir.

5 MR. FARNSWORTH: Thank you, Madel. Mr. Harter
6 is going to have some questions for you so please
7 answer his questions.

8 MS. RIVERO: That's fine, thank you.

9 MR. HARTER: Can we have a minute, Your Honor?

10 THE COURT: Yes, sir. You need to take a little
11 break?

12 MR. HARTER: Yes, sir.

13 THE COURT: That's okay.

14 All right, let's take a little break, ladies and
15 gentlemen. Please don't discuss the case.

16 (WHEREUPON, the jury left open court at
17 approximately 3:00 p.m.)

18 THE COURT: Okay. We'll be in recess.

19 Ms. Rivero, you're still under oath. You're
20 welcome to take a break as well, please don't discuss
21 your testimony with your lawyers or anyone else.

22 MS. RIVERO: Okay, sir.

23 (WHEREUPON, a short break was taken.)

24 THE COURT: Okay, ready for the jury?

25 MR. HARTER: Yes, sir.

MADEL RIVERO-CROSS BY MR. HARTER

1 THE COURT: Okay, bring them in, please.

2 (WHEREUPON, the jury came into open court at
3 approximately 3:22 p.m.)

4 THE COURT: Okay, all right.

5 MR. HARTER: Thank you, Judge.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. HARTER:

9 Q Ms. Rivero, good afternoon.

10 A Good afternoon, sir.

11 Q I'm going to ask a few questions, okay? And if
12 you will, please try to speak up into the microphone so we
13 can get it, all right?

14 A Got it.

15 Q All right. Now, your daughter and Avery Blandin
16 had been living together and/or married since about 2000;
17 is that right?

18 A Yes, was in 2000.

19 Q Okay. So, between 2000 and 2011 when this
20 happened, they lived together continuously all the time?

21 A Yes, sir.

22 Q Never separated?

23 A Never.

24 Q And they never did get any counseling or
25 marriage help that you know of?

MADEL RIVERO-CROSS BY MR. HARTER

1 A No, sir.

2 Q And they never went to any Family Court thing
3 that you know of, did they? In that time.

4 A No, sir.

5 Q Okay. And I know you said they had some issues
6 between them but she worked and he worked, correct?

7 A Yes. He no work and she work.

8 Q But he worked sometimes, he had a job at
9 Michelin for a while, right?

10 A Yeah.

11 Q Okay. And then, were you also aware that about
12 sometime back in October, before December, that there had
13 been an incident between Mrs. Blandin and her husband and
14 he punched her in the mouth, right?

15 A Yes, sir. I saw my daughter in the bank and --
16 I went in the bank and I saw my daughter -- my daughter
17 with a big punch in the face.

18 Q And you knew he punched her? She told you -- I
19 don't mean that. She told you he punched her in the mouth
20 then?

21 A Yes, sir.

22 Q Okay. And he hit her in the stomach then, too,
23 right?

24 A Yes, sir.

25 Q Okay. And then that was in October?

MADEL RIVERO-CROSS BY MR. HARTER

1 A Yes, sir.

2 Q And you know that your daughter got him out of
3 jail the next day, didn't she?

4 A I don't know about that because when she live
5 183 and I have a connection with her. But when she move
6 the other house, I angry and I [indiscernible].

7 Q So, you don't know?

8 A I don't know.

9 Q Okay. But you know that they went back to
10 living together, right back together in their home on
11 [REDACTED] right after October and were living together
12 in December when this happened; right?

13 A Yes.

14 Q Is that a yes?

15 A Yes.

16 Q Okay. And the -- you actually went over to
17 Ms. -- your daughter and her husband's house sometime that
18 morning after you had gotten a call, is that right?

19 A Sometimes in the morning, yes. Wasn't
20 December 9th.

21 Q Right. You got a call that morning and you went
22 over to their house?

23 A No, no. I call one night before.

24 Q I'm talking about that morning, though. You
25 went to the Blandin residence?

MADEL RIVERO-CROSS BY MR. HARTER

1 A Oh yeah, I went to there.

2 Q Okay, that's what I want to talk about. You
3 went there that morning?

4 A Yes, sir.

5 Q It was daylight, correct?

6 A Yes, sir.

7 Q Okay. And when you got there there were two
8 police officers and two police vehicles that were already
9 there?

10 A Yes, sir.

11 Q Is that right?

12 A Yes, sir.

13 Q Okay. And I think you told us that when you got
14 there the children were in the van, all three of them?

15 A Yes, sir.

16 Q And then, I think you also told us that there
17 was an officer that was outside and then you asked him
18 where your daughter was, is that right?

19 A Yes, sir.

20 Q And then, a little while after that your
21 daughter and another officer came out of the door, out of
22 the house?

23 A Yes, sir.

24 Q Okay. And the -- Mrs. Blandin had some of her
25 things, correct?

MADEL RIVERO-CROSS BY MR. HARTER

1 A Yes, sir.

2 Q Okay. Now, the officer that came out of the
3 door with your daughter spoke to you and to her?

4 A Yes, sir.

5 Q All right. And you told us what you remembered
6 from that conversation. And now, I want to ask you, in
7 that conversation, did the officer tell you or discuss
8 with your daughter going and getting an Order of
9 Protection?

10 A When finish the conversation, the officer say, I
11 recommend in this case divorce.

12 Q So, he used the word divorce?

13 A Yes, sir.

14 Q Okay. Now--

15 A I thought it was he say, okay?

16 Q I'm sorry?

17 A I -- what he say.

18 Q What I want to know--

19 MR. LUNGINBILL: Let her answer, Rusty.

20 BY MR. HARTER:

21 Q Well, did he mention anything about going to the
22 court to get an Order of Protection?

23 A Yes, he say that.

24 Q That's what I want to know. Maybe I
25 misunderstood you.

MADEL RIVERO-CROSS BY MR. HARTER

1 A That's okay.

2 Q But he specifically -- he told your daughter
3 about things she might could do to go to the court to get
4 an Order of Protection?

5 A Pick up all the papers and order protection.

6 Q Did he talked about an Order of Protection?

7 A Yes.

8 Q That would be something you knew, she knew that
9 you could go to the court to get, right?

10 A Yes, sir.

11 Q Okay. All right. And, Ms. Rivero, I want to
12 also ask you if you can tell the jury, do you remember
13 that he said something to the effect that if you need to
14 come back to the house to get anything, I recommend you
15 get a police officer to come?

16 A Yes, sir.

17 Q Okay.

18 A He say, If you need something for you or the
19 kids, I recommend you, after they get a protection order,
20 coming with police with you, not coming yourself.

21 Q But he recommended that if you needed anything
22 out of the house, anything else out of the house, that you
23 get a police officer to come?

24 A Inside the house.

25 Q Okay. If you need to go inside the house to get

MADEL RIVERO-CROSS BY MR. HARTER

1 anything out, he recommended you get a police officer?

2 A Yes, sir.

3 Q Okay. All right. Now, I want to make sure I
4 understand. Now -- and then, the officers stayed there
5 until you and your daughter left, is that right?

6 A (There was no response.)

7 Q They stayed there until after y'all left?

8 A Yes.

9 Q Okay. And then, I think you told us that you
10 went to the DMV because there was a problem with the
11 insurance?

12 A Insurance, yes.

13 Q Okay. And then you went to your house?

14 A Yes.

15 Q Okay. And then, I think later that night after
16 dark, you and your daughter went back to her residence?

17 A Yes, sir.

18 Q And it was dark then?

19 A Yes, sir.

20 Q And it was just you and her?

21 A Yes, sir. And the kids.

22 Q And one of the children?

23 A No, the three kids.

24 Q I'm sorry.

25 A The three kids, my daughter and me.

MADEL RIVERO-CROSS BY MR. HARTER

1 Q The -- I'm sorry.

2 THE COURT: Three kids.

3 BY MR. HARTER:

4 Q Three kids, okay. Okay, three kids.

5 A Yes.

6 Q The three children, your daughter and you went
7 back to the residence?

8 A Yes.

9 Q Okay. And it was after dark?

10 A Yes, sir.

11 Q Okay. All right. And Avery's vehicle was in
12 the driveway?

13 A I don't remember.

14 Q Well, what kind of car did he have?

15 A Mitsubishi Montero.

16 Q Okay.

17 A White.

18 Q Do you remember telling me before that his car,
19 that the Montero was in the driveway?

20 A I don't remember, sir, because I pull
21 [indiscernible] and my daughter van, there was cut in the
22 tires. And she want to take a picture. She taking
23 pictures. But I say I would call the police.

24 And she told me, No, because they will say it's
25 only your version.

MADEL RIVERO-CROSS BY MR. HARTER

1 Q Okay. But anyway you and your daughter and the
2 three children went back to the residence by yourself
3 after dark?

4 A Yes, sir.

5 Q Then y'all were there about 20 minutes getting
6 some things out of the car, is that right?

7 A Maybe 10, 20 minutes, it was fast.

8 Q Okay, 10, 20 minutes?

9 A Yeah.

10 Q Okay. And when you were there that's when y'all
11 noticed that all of the four tires on Mrs. Blandin's
12 vehicle had been slashed?

13 A Yes, sir.

14 Q And cut and they were flat?

15 A Yes, sir.

16 Q Okay. And you probably thought and had a good
17 idea that Avery had done that, right?

18 A Yes. We go fast to my mobile home, my house.

19 Q You what?

20 A We go faster to my car because I scare for, you
21 know.

22 Q You left fast?

23 A Yes.

24 Q Okay. And you figured that Avery had done that
25 to your daughter's car?

MADEL RIVERO-CROSS BY MR. HARTER

1 A Yes, sir.

2 Q And you told her that she should call the
3 police?

4 A Yes.

5 Q Okay. And then, you went -- and she didn't want
6 to do that?

7 A No. Because she not have evidence that was him.

8 Q But in any event, she didn't do that and you
9 didn't do that?

10 A No, she told me, No. And I respect.

11 Q Okay. And then y'all went to your home, is that
12 right?

13 A Yes, sir.

14 Q You and her and the three children?

15 A Yes, sir.

16 Q And then at your home that night, you were
17 there, your son was?

18 A Yes, sir.

19 Q Because he lived there?

20 A Yes, sir.

21 Q And then, your daughter and Ms. Hamby and her
22 husband came over?

23 A Uh-huh.

24 Q And y'all spent -- and the children were there,
25 right?

MADEL RIVERO-CROSS BY MR. HARTER

1 A Yes, sir.

2 Q And y'all spent some time together that night at
3 your house together?

4 A Yes, sir. For a little while, not so much the
5 whole time.

6 Q Okay. And then, your son went out for the night
7 and spent the night out somewhere?

8 A Yes, sir, uh-huh.

9 Q Ms. Hamby and her husband went home to where
10 they live?

11 A Yes, sir.

12 Q And you and Mrs. Blandin and the three children
13 stayed there over night?

14 A Yes, sir.

15 Q Okay. And then, the next morning you got up and
16 your daughter got up and you were going to take her to
17 work, right?

18 A Yes, sir.

19 Q And when you started to take her to work, you
20 learned that the tire -- a tire on your car had been
21 slashed, right?

22 A No. My son come in, he told me.

23 Q Okay. Your son came in and told you?

24 A Yes.

25 Q Because he had come in from the night before?

MADEL RIVERO-CROSS BY MR. HARTER

1 A Yes.

2 Q Okay. And he told you your tire had been
3 slashed?

4 A Yes.

5 Q And you figured that was Avery?

6 A Yes, sir.

7 Q Okay. And at that time, did any of you or y'all
8 call the sheriff's office to report anything about that?

9 A No, sir.

10 Q Okay. And then I think what happened is you
11 then told us that you took Mrs. Blandin to work, is that
12 right?

13 A Yes, sir.

14 Q You dropped her off at the bank or some distance
15 from the bank?

16 A Yes, sir.

17 Q And then she went to work, right?

18 A I not come in there inside the Wal-Mart because
19 I have a scare, you know. She go inside, he do something
20 to her.

21 Q Okay. You let her out before you got to the
22 Wal-Mart?

23 A Yes.

24 Q And she went to work?

25 A Yes, sir.

MADEL RIVERO-CROSS BY MR. HARTER

1 Q Okay. And then later that morning you're at
2 home and you get this horrible message about what happened
3 to her?

4 A No, I was in Wal-Mart because they fixing my
5 tire. And I left Wal-Mart maybe 12:30.

6 Q Okay.

7 A I had -- I go home. When I stay home my son few
8 minutes my son pull me and told me because something
9 happening.

10 Q You went home and then later after you got home
11 you got this horrible news from your son about what had
12 happen to your daughter?

13 A Yes, sir.

14 Q And you never expected that that would happen
15 and were shocked by it, weren't you?

16 A Yes.

17 Q Okay. And never before have you had any
18 knowledge or information that your daughter had ever had
19 any medical treatment from anything that had happened with
20 all of the issues that she and Avery had had throughout
21 their marriage?

22 A No, sir.

23 MR. HARTER: Excuse me, just a minute.

24 Ms. Rivero, thank you for answering my questions.

25 MS. RIVERO: Thank you.

MADEL RIVERO-REDIRECT BY MR. FARNSWORTH

1 MR. HARTER: That's all I have.

2 THE WITNESS: Okay, thank you.

3 THE COURT: Mr. Farnsworth.

4 REDIRECT EXAMINATION

5 BY MR. FARNSWORTH:

6 Q Madel?

7 A Yes, sir.

8 Q Were you afraid that Avery was going to hurt
9 your daughter?

10 A I pray, I angry but I'm not sure.

11 MR. FARNSWORTH: That's all, Judge.

12 MS. RIVERO: For my daughter and for her kids.

13 THE COURT: Okay, thank you, Ms. Rivero.

14 THE WITNESS: You're welcome.

15 THE COURT: You can step down.

16 MR. LUNGINBILL: Your Honor, if we can -- can
17 she be excused to take the children home?

18 THE COURT: Yeah, there's no problem with that.

19 MR. HARTER: No, sir.

20 MR. LUNGINBILL: Thank you.

21 THE COURT: You may call your next witness.

22 MR. LUGINBILL: Call Mel Tucker.

23 THE BAILIFF: Sir, place your left hand on the
24 Bible, raise your right hand. Face the clerk,
25 please.

MEL TUCKER-DIRECT BY MR. LUGINBILL

1 MEL TUCKER, after being duly sworn,
2 testified as follows:

3 THE CLERK: State your name, please.

4 THE WITNESS: Melvin L. Tucker.

5 THE CLERK: Thank you. Please be seated.

6 DIRECT EXAMINATION

7 BY MR. LUGINBILL:

8 Q Good afternoon, Mr. Tucker.

9 A Good afternoon.

10 Q I appreciate you being patient with us today, I
11 know you've been here all day. If you would, please tell
12 the jury just a little bit about your background and your
13 training, your education and your experience in the law
14 enforcement field.

15 A Okay. Well, I started in the law enforcement
16 field in 19 -- late 60's, '68, '69 as an FBI agent under
17 J. Edgar Hoover. And when they wanted to move me to
18 Baltimore, Maryland, I had been moved so much, I decided I
19 would move into municipal policing, so I was hired at the
20 age of 27 as a police chief in Morristown, Tennessee,
21 stayed there for three and a half years. Moved to
22 Hickory, North Carolina, as chief of police, stayed there
23 three and a half years. And then to Asheville, North
24 Carolina, as a reformed chief. They had a lot of
25 corruption at that time, so I went there and stayed just

MEL TUCKER-DIRECT BY MR. LUGINBILL

1 two years. Then I went back to my home state,
2 Tallahassee, Florida, as the chief of police where I
3 stayed until my retirement. I was there almost 15 years.
4 That's it.

5 Q What was your position in Tallahassee?

6 A I was chief of police in Tallahassee, too, yeah.

7 Q So, the buck stopped with you?

8 A It always does. If you're the chief of police,
9 that's where it stops.

10 Q Now, in your duties there as chief of police in
11 Tallahassee, did you have the opportunity to train and
12 supervise 911 departments?

13 A I did. Not only at Tallahassee, of course, but
14 I did at the other departments, too. I had communication
15 sections to supervise, telecommunications people. In the
16 old days, it was just strictly one person, the desk
17 sergeant, then it got more. I think I had probably 30
18 people working in my communications section in
19 Tallahassee.

20 Q Now, you've also had some specific experience in
21 the field of domestic violence; is that true?

22 A Well, yes. First of all, in the 70's, that was
23 a major topic for law enforcement to be addressing. There
24 had been a study done by the Minneapolis Police Department
25 that basically showed that if there was intervention, that

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1 if the police got involved in domestic violence and made
2 an arrest, there was a lot less likelihood of that cycle
3 of violence continuing. The person would be deterred from
4 doing it again. So, that was a prominent subject matter
5 going on in the 70's, which, of course, resulted in
6 pro-arrest policies and states passing laws making
7 misdemeanor domestic violence assaults where you could
8 make an arrest even if you weren't present and didn't
9 witness it yourself.

10 Q Have you served on any boards or committees,
11 study groups, hearing committees, things of that nature
12 that deals directly with training law enforcement on how
13 to handle domestic violence?

14 A Well, first of all, I trained my officers, my
15 own officers on -- I wrote the policies for my department
16 on how to respond to domestic violence calls, especially
17 after the pro-arrest procedures came into place. So, I
18 did that training myself.

19 Then later, when I was working as a faculty
20 member at the University of Maine in Augusta, Maine, and
21 working for the Maine Community Police, I served four
22 years on the Kennebec Valley Regional Domestic Violence
23 Task Force. Which was made up of sheriff, police chiefs,
24 investigators, shelter, safe home directors, places where
25 women could go that were being battered, court watchers

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1 that would report on the outcome of cases, psychologists
2 that counseled the battered women and counseled with the
3 batterers themselves. So yeah, I did that for four years
4 straight.

5 Q Are you called upon to do training anywhere else
6 around the country in various place?

7 A Now?

8 Q Have you in the past or are you doing it now?

9 A Sure. I've been doing -- training my full law
10 enforcement career and will be this next Saturday morning
11 lecturing on police use of force with the current crisis
12 going on in the lack of trust in the police by society
13 because of all the shootings on our people. I'll be in
14 New Haven, Connecticut at the Henry Lee Institute. He was
15 the criminalist in the O.J. Simpson trial, some of you may
16 remember.

17 Q Are you an anti-police expert?

18 A I'm not anti-police nor -- let me say it this
19 way, I'm not anti-police and I'm certainly not an
20 apologist for the police either. In fact, when my family
21 has a reunion, it's like a law enforcement reunion. My
22 son-in-law is with the Florida Highway Patrol. My oldest
23 brother is retired law enforcement. I have two nephews
24 that are deputy sheriffs. My son-in-law's father is
25 retired deputy director Florida Department of Law

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1 Enforcement. So certainly, I'm not an antagonist to the
2 police.

3 Q Is it important to you that police forces and
4 police officers do their jobs correctly?

5 A It's extremely important for the community to
6 have trust in the police and they can't have trust in the
7 police if they don't do their jobs properly.

8 Q Now, how many times have you been qualified as
9 an expert witness in a court of law like this?

10 A Today will be -- assuming I'm qualified today,
11 the 87th time in federal and state courts across the
12 country.

13 MR. LUGINBILL: Your Honor, at this point, we
14 would offer Mr. Tucker as an expert in the field of
15 both 911 communication operations and law
16 enforcement.

17 THE COURT: Any exceptions?

18 MR. HARTER: We'd like to take up one matter
19 with the Court.

20 THE COURT: Sure.

21 (WHEREUPON, an off-the-record bench conference
22 was held in the presence of the jury but out of
23 the hearing of the jury.)

24 THE COURT: All right, Mr. Harter, any
25 objection?

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1 MR. HARTER: No, sir. Thank you, Judge.

2 THE COURT: Okay, any voir dire for this
3 witness?

4 MR. HARTER: No, sir.

5 THE COURT: Okay, ladies and gentlemen, this
6 witness has been offered as an expert witness in the
7 stated field. The reason either party would
8 introduce someone or characterize someone as an
9 expert witness is because an expert witness is
10 allowed to offer his or her opinion on matters of
11 expertise that lay outside of the normal and ordinary
12 knowledge of a layperson. A person may be qualified
13 as an expert witness because of his or her education,
14 experience or expertise in a chosen field. A party
15 introduces evidence from an expert witness to help
16 the jury better understand the evidence that is
17 presented.

18 Now, when the Court accepts someone as an expert
19 witness, that does not mean that that expert witness
20 has any special value or that his testimony has any
21 greater weight or value. An expert witness's
22 testimony is just like any other evidence that you
23 receive in a case. Meaning, you can put whatever
24 weight you think is appropriate on the testimony.
25 You can determine whether it's valuable and whether

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1 it aids you in your determination. You can determine
2 whether the witness is credible or not credible in
3 your sole and exclusive discretion just like with any
4 other piece of evidence that you receive and just
5 like any other witnesses in the case. I will accept
6 Mr. Tucker as an expert witness in the stated field.

7 MR. LUGINBILL: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 BY MR. LUGINBILL:

10 Q Now, as a good law enforcement officer, you had
11 to do some investigation before you could perform an
12 opinion, right?

13 A Yes, certainly.

14 Q Please tell the jury what you reviewed and what
15 investigations and research you did before coming to a
16 conclusion in this case.

17 A Well, the first thing I do is sit down and try
18 to identify what the concepts and issues are in a case.
19 In this case in particular, after reading materials, I
20 had -- I was provided materials by Mr. Luginbill, two
21 pages worth of materials, about 66 items all together,
22 including about 15 depositions and maybe 15 statements,
23 the general orders of the Greenville Sheriff's Office, the
24 complaint, supplemental reports, incident reports, the 911
25 tapes, most of the materials that you've already been

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1 exposed to, at least, from what I saw today, transcripts
2 of the 911 calls, the actual audio of the 911 call. Then
3 from that, I say well, what are the issues involved in
4 this case? And I identified several.

5 One was what is now referred to as criminal
6 domestic violence. When I go back to the 70's, we just
7 referred to it as domestic violence. As far as I'm
8 concerned, all domestic violence is a crime. But the
9 issue of domestic violence and what is it. The
10 dispatcher, the call takers' responsibilities and what
11 training they receive on what they're supposed to do and
12 what they're supposed to tell an officer is another matter
13 and issue for officer safety purposes. And then officers
14 going to the scene of a possible crime. And that brings
15 in the concept of probable cause to determine -- to give
16 you the authority to make an arrest. And the whole idea
17 of how to do a preliminary investigation and what the
18 training of law enforcement officers is on conducting a
19 preliminary investigation into an alleged domestic
20 violence situation. Those were the issues that I saw.

21 So, I went to those and I went right through
22 them one at a time and developed my opinions as to what
23 happened in this case, at least, as far as I was
24 concerned.

25 Q And as to the operations of the 911 department,

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1 did you form any opinions as to whether or not those
2 operators, in particular, Patricia Sullivan, met the
3 standards of what a reasonably trained 911 communication
4 specialist should have done?

5 A Yes, I did develop an opinion in that regard.

6 Q What was your opinion?

7 A Well, simply stated, Patricia Sullivan did not
8 comply with what she was taught in basic communications
9 training. She did not listen to the complaint from Lilia
10 Blandin and classify it properly. She -- Lilia mentioned
11 three times in my review of the transcript of the 911 call
12 that she had been hit. She had been threatened by Avery
13 three times and mentioned child custody once. But
14 Patricia Sullivan sent it out as a -- on a code of child
15 custody instead of domestic violence. And to me, that
16 sort of set the tone for how the officers responded to the
17 call with one exception. The one thing that was done
18 certainly right that you heard from today was Neil Logan,
19 who -- what he heard and why he classified it --
20 reclassified it as domestic violence.

21 Q Okay. And do you have any criticisms of
22 Mr. Logan?

23 A I have absolutely no criticism of Mr. Logan. He
24 did what he should have done. He listened. He erred --
25 if there was going to be a judgment call, which there's

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1 always judgment, you always choose to go to the public
2 safety side of it. If there's any concern, you always go
3 to the safety side. In this case, okay, she said
4 violence, domestic violence, hit me, threatened to kill
5 me. That means we need to classify this -- err on the
6 side of safety and look at it the way he did, domestic
7 violence.

8 Q In your experiences, have you ever come across a
9 department that does not train 911 operators to err on the
10 side of caution?

11 A No. Every officer is taught -- dispatchers,
12 call takers, whatever you want to call them, communication
13 specialists and police officers, deputies in the field are
14 always taught if there's any question at all, err on the
15 side of public safety. That's what you want to do.
16 That's what we're all about. Serve and protect.

17 Q I want to show you and talk about just briefly
18 here the incident recall because that's sort of the
19 transcript of what the 911 operators did, correct?

20 A Yes, sir.

21 MR. WILSON: No. 8.

22 BY MR. LUGINBILL:

23 Q All right. You probably have a copy of it
24 there, but this is what's been marked as Plaintiff's
25 Exhibit 8, this is the incident recall. When the initial

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1 call is entered and it's just entered as a custody call,
2 there's no other information entered in there; is that
3 right?

4 A That right. At 10:13, it was classified as a
5 child custody.

6 Q Now, once Ms. Sullivan did that, all the other
7 information she gathered from the caller, essentially
8 stays with her, right? It doesn't get out into the system
9 for the officers to see?

10 A Correct.

11 Q How did that effect this whole incident going
12 forward?

13 A Well, as I said early, it sort of set the tone
14 for how the officers in the field would respond. If she
15 doesn't tell them -- that is Patricia Sullivan doesn't say
16 the call came in, it involves child custody. But also,
17 she said that he had threatened to kill her, he had hit
18 her and he had just been arrested before that for domestic
19 violence -- which by the way, dispatchers are taught to do
20 that because it's an officer safety issue. And I can't
21 emphasize that enough. If you don't tell the officer in
22 the field what information you have, then you're sending
23 that officer into something that could get him killed.
24 And it happens all too frequently, in fact.

25 Q Okay. Now, when Mr. Logan reclassified, he :

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1 actually entered some text, correct?

2 A Yes. Her husband threatened her.

3 Q All right. Let's stop. So, we're looking at
4 10:28?

5 A Yes.

6 Q He said that the sister called to advise that
7 1024 is outside the house. And again, you don't -- you
8 believe this was done appropriately, correct?

9 A Yes, certainly.

10 Q My question is, if Ms. Sullivan had properly
11 classified the call, that information of what she
12 received, I was hit in the stomach, my child is inside and
13 he threatened to kill me, that would have been on the
14 system as well, correct?

15 A That's correct.

16 Q Is that what should have happened?

17 A Yes.

18 Q All right. Tell the jury, if you would, how you
19 think that would have changed the flow of this call?.

20 A Well, first of all, there wouldn't have been a
21 delay in getting there. That wasn't significant in this
22 case because nothing happened to Lilia during that time
23 period, but in others cases, that could have been very
24 significant because it was referred to a sergeant to call
25 her to see about the child custody issues. But most of

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1 all, what it did was made the officers think that this was
2 just a child custody, not a safety potential danger
3 situation.

4 Q And when we get down here to 10:37 at -- and you
5 see that Neil Logan, 10:28, changes it to a domestic
6 incident call and the system changes it to a high priority
7 and then Patricia Sullivan changes it right back. Can you
8 tell me what valid law enforcement reasons would have
9 existed for Ms. Sullivan to do that?

10 A I can't think of a reason in the world why she
11 would do that, except maybe -- maybe took it personal that
12 somebody changed her classification of the call. But I
13 can't think of any other possible reason.

14 Q Did changing that call make any person involved
15 in this, the officers, the caller, the potential victim,
16 did that call -- that change in status, that change in
17 call type, did that do anything to increase anybody's
18 safety?

19 A Changing it to -- by Neil Logan?

20 Q When Ms. Sullivan changed it from a domestic
21 back to a custody, did she increase or decrease the safety
22 of everybody involved?

23 A She increased the danger to everybody involved.
24 The officers, the -- of course, Lilia, and we know the
25 outcome of that. And it might not have happened that way

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1 if it had been treated from the very beginning as a CDV.

2 Q In sum, what is your opinion of the manner in
3 which Ms. Sullivan handled this call, not only the initial
4 call, but also when she called back?

5 A Well, as I said, stated my opinion and that is
6 simply that it was reckless disregard to the safety of the
7 officers and Lilia to have done that. And certainly,
8 violated what she was taught in training and should not
9 have happened.

10 MR. HARTER: I object to that conclusion about
11 reckless disregard, Judge. That's an inappropriate
12 conclusion on his behalf.

13 THE COURT: Okay. All right, I'll overrule the
14 objection. But, of course, as necessary in the
15 charge on the law, we'll address definitions if we
16 need to.

17 MR. HARTER: Okay. Thank you. That's all I
18 ask.

19 THE COURT: Yes, sir.

20 BY MR. LUGINBILL:

21 Q Mr. Tucker, my next question is -- and you
22 testified about it somewhat, you said this changed the
23 outcome of the call somewhat, it changed the direction of
24 the call, right?

25 A Right.

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1 Q Okay. And do you believe that had an impact in
2 him ultimately not being arrested on the morning of the
3 9th?

4 A I do, yes.

5 Q Okay. Tell the jury how you think it effected
6 that.

7 A Well, law enforcement officers go through
8 training and they're taught in basic academy -- and I
9 think -- in fact, I have it with me. It's lesson plan
10 module one, weeks one through three. So, in the first
11 three weeks of their training, they go through a class
12 called law enforcement response to CDV, criminal domestic
13 violence. And in that, they are taught -- and I'm looking
14 at the lesson plan here, about what officers are supposed
15 to do when responding to a domestic violence call. And
16 you also saw that in General Order 238, which basically
17 repeats what they're taught in basic law enforcement
18 training that they should do.

19 Q This is 238, correct?

20 A Yes, sir, it looks like it.

21 Q So, we go to the officer's responses. In the
22 Greenville County General Order 238, this is essentially
23 their policy procedure. This is the part that mirrors
24 what they were trained, correct?

25 A That's correct.

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1 Q Just tell the jury about what an officer is
2 supposed to do in general and then why it matters in this
3 case?

4 A Well, this is what officers are taught and what
5 their general orders says that an officer is supposed to
6 do when responding to an allegation of criminal domestic
7 violence. So, what they're saying here is these are the
8 things that an officer should do when making his or her
9 determination as to whether or not there's grounds, which
10 we call probable cause, and you've heard about it, to make
11 an arrest. In other words, has a crime been committed or
12 not, the crime of domestic violence.

13 And these are the things -- how many of them
14 there are, seven or whatever. I think there was 10 of
15 them in their training program that they should do. And
16 when they have done that, they will have gathered -- for
17 example, privately interview all parties, including
18 children. That's significant. Extremely important.
19 Because I heard, you heard that the children, at least,
20 one child in this case did see things. So, if they would
21 have been interviewed as the training said they should
22 have been and as the general order says they should have
23 been, then the young girl would have said to them what she
24 said here on the stand. And that would have been
25 information, which we call incriminating information that

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1 goes to the probable cause determination.

2 So, what they're supposed to do is do these
3 things, get written statements, take photographs, see --
4 you know, all these things that are listed there. And
5 then what you come up with -- there's only four types of
6 information you can possibly come up with. Four types of
7 facts. Neutral facts, the weather was bright and sunny,
8 has nothing to do with whether a crime was committed or
9 not, so those don't apply. Neutral facts. There are
10 incriminating facts, which they would have learned of if
11 they had interviewed the children, that goes to the
12 probable cause determination. There are exculpatory
13 facts, which Avery -- they said Blandin said no, he didn't
14 do it. Well, that's exculpatory information. It tends to
15 clear him if he says that. Then the other kind of fact is
16 those facts that are equivocal or disputed facts.

17 When you have equivocal facts, you have to do
18 more investigation to determine whether -- if you can,
19 whether that equivocal fact falls over on the
20 incriminating side of the balance sheet or on the
21 exculpatory side. If it falls to the exculpatory side,
22 you don't have probable cause to make an arrest. If it
23 falls on the incriminating side, you do have the authority
24 to make an arrest because you have probable cause. So,
25 that's the typical process that is followed on -- when

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1 you're doing domestic violence investigation.

2 Q I want to talk a little bit about how that
3 process would have been applied here. These officers were
4 called out to a domestic call, that's the only reason
5 there was two officers called, correct?

6 A Well, when it was changed, yes, then they went
7 on to two officers, yes.

8 Q So, if you're an officer in -- you're in your
9 car and you get this code change, you're now dispatched to
10 the scene. How are officers trained to view it when they
11 first arrive? Do they start from scratch or do they --
12 should they be thinking okay, this is a domestic violence
13 and I have to follow this?

14 A Well, I heard the start from scratch stuff, but
15 let me tell you something, not only are the officers
16 trained, but the dispatchers, the call takers,
17 communication specialists are trained to try to get as
18 much information as you can to provide to the officers
19 about the address they're going to, any calls that you've
20 had there prior to this one, whether or not there's a
21 person who lives there -- if you get the name of the
22 person who lives there, you do a quick criminal history
23 check on them. And you provide all that information to
24 the officers so they'll have that.

25 Now, if the officer doesn't get it as he or she

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1 is driving to the scene, most officers, being responsible
2 and trying to be thorough, will call dispatch. Dispatch,
3 do me a criminal history check on that address, do me a
4 call history check on that address, tell me the last time
5 we were out there, etcetera, etcetera, etcetera, do a name
6 check on the individual who lives at that address so that
7 when you arrive there, you have all the information that
8 you can possibly get. And if you don't do that, you run
9 the risk --

10 And I can just give you one anecdotal situation
11 that just happened in Tallahassee, Florida a few months
12 back where there was a call of a house fire. And dispatch
13 did not run a name check on the person who lived there.
14 If they would have done it -- that was my old 911
15 center -- they would have learned that the person who was
16 living there had emotional problems and had threatened to
17 kill an officer if they came to his house. And Deputy
18 Smith went there on a fire call. He thought he was
19 responding to assist the fire department. He walked up
20 and the man shot and killed him. So, that's how
21 significant it can be.

22 Q Okay. All right. And does that go into what we
23 had talked about earlier with the deputies, the totality
24 of the circumstances when you're determining probable
25 cause?

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1 A You do consider the totality of the
2 circumstances in the probable cause determination. All
3 the facts that are known to you or you've observed or been
4 told because you can use hearsay information in a probable
5 cause determination, all of that goes together. It's sort
6 of like a balance sheet process as described earlier until
7 you make a determination was there probable cause or is
8 there probable cause to believe a crime has been committed
9 of domestic violence or not. If there is, you arrest.

10 Q So, in this case, the officers are coming in a
11 domestic violence call. The system has told them there's
12 a threat that the husband has threatened to kill the wife.
13 That's pretty much what they know because they weren't
14 told about the first call, correct?

15 A That's correct.

16 Q And they didn't call back?

17 A That's right.

18 Q So, logically to me, it would seem that they
19 would talk to the adults first, correct?

20 A Yes. Typically -- they started off right,
21 separating the parties and then talking to each of them,
22 yes.

23 Q You were in the courtroom for Ms. Madel Rivero's
24 testimony, correct?

25 A Yes.

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1 Q If the officer was told what she said Lilia
2 Blandin told the officers, in other words, if she's right
3 and she's accurately telling the officers what she
4 remembers, did that officer need to do more investigation
5 or did he already have probable cause?

6 A Well, let me answer it this way. Experts are
7 not allowed to assign credibility to witnesses. That --
8 and I'm sure that Your Honor will instruct you at some
9 point that you make that determination who to believe.
10 You'll decide on whether to believe the deputies in this
11 case or Ms. Rivero.

12 But if I -- I can only assume facts. And if I
13 assume her facts to be true, that is that she told the
14 deputies -- you know, asked him why isn't he being
15 arrested and he hit my daughter and all of that, and they
16 ignored that, then, you know, that took away information
17 that -- that should have gone to the incriminating side of
18 the balance sheet. And, in fact, by itself would have
19 been probable cause in my opinion to make an arrest.

20 Q Let's assume they're still not sure. They have
21 that information. So, would it have, at least, triggered
22 further investigation?

23 A Well, that's what I was talking about earlier
24 with the equivocal or so-called disputed facts. When you
25 have one party says this, one party says that, how do you

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1 resolve it? You resolve it by doing the best
2 investigation you can, you go further.

3 In this case, where would you go? Well, you'd
4 want -- your checklist is right there in front of you.
5 You go to the children who were present and could have or
6 maybe could not have, we didn't know at the beginning of
7 this investigation, either affirmed what Ms. Rivero was
8 saying or said know they didn't see anything happen. So,
9 you have to do further investigation to resolve those
10 disputed facts or so-called equivocal information.

11 Q And you were in the courtroom and you heard
12 [REDACTED] testimony, correct?

13 A Yes, I did.

14 Q And if that testimony was given to those
15 officers on the scene, if you apply your training to that,
16 what's the logical conclusion?

17 A Well, without question, if they would have
18 interviewed her and she told them what I heard her say
19 today, they had probable cause to make an arrest and
20 should have made an arrest.

21 Q Bear with me one minute. You told us that
22 you've been a law enforcement officer chief all the way up
23 in Tallahassee. In your experience, if you have a person
24 who is arrested for domestic violence and at that time,
25 it's determined that they have two pending domestic

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1 violence charges at that time and that there's a bond
2 restriction against that person having contact with the
3 victim from the most recent one that occurred just five
4 weeks earlier, in your experience, what is the likelihood
5 that that person would get a bond?

6 A Well, I don't think there's many judges that I
7 have seen that somebody violates their bond that they're
8 going to give them another shot at it. I know where
9 they're going to go, they're going to go right to jail, no
10 passes.

11 Q That's what should happen, right?

12 A That's what should happen, yes, if we're going
13 to literally disobey an order of the Court.

14 Q And why is that so important when you get into
15 the cycle of domestic violence?

16 A Well, because research shows over and over and
17 over again for the last 30 years without question that
18 intervention into the cycle of violence, if law
19 enforcement intervenes by making an arrest, there's a lot
20 less likelihood that, typically, man repeating the offense
21 of beating his wife. If there's not that intervention,
22 the cycle continues, but the continuum of violence gets
23 greater and greater until you have a fatality. It starts
24 off a slap, then it turns into a punch, then it turns into
25 more than that, and eventual death.

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1 By the way, I heard the issue of the punches in
2 the stomach. I hate to admit this, but law enforcement
3 officers use to be trained on use of force back 40 years
4 ago when I first came into the business that if you wanted
5 to hurt somebody, but not have them show the injuries, you
6 hit them in the stomach. So it's -- I mean, it's been
7 there for 50 years.

8 Q That technique is not new?

9 A It's not new. It's been there for as long as I
10 can remember. And I've been out there a long time..

11 Q I'm going to show you just briefly here the
12 supplemental report that was filed in this case. And I
13 want you to note that there's no case number on that. In
14 your experience, you know, reviewing these cases and
15 you've looked at a lot of different departments in a lot
16 of different areas of the country, what is one reason that
17 a law enforcement agency would do a report but not give it
18 a case number?

19 A Well, Mr. Luginbill, I've had 520 cases in 40
20 states. When I see that -- and I have seen it before on
21 several cases. The reason there's not anything -- you can
22 put an incident number there because there was an incident
23 number assigned to the call when it went out there.
24 Incident recall -- you wouldn't be able to go to an
25 incident recall if you didn't have that. But when you

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1 don't do that, that's because you're not wanting the news
2 media who's going to come down as soon as they find out
3 there's been a murder, they're going to look to see what
4 the history is on that. And they go immediately to the
5 offense report number and backtrack it. And, of course,
6 they would learn quickly that the Greenville County
7 Sheriff's Department had been out to Lilia Blandin and
8 Avery Blandin's house the night before she was murdered.
9 So, that's an effort, in my opinion, because I've seen it
10 before to keep the news media from finding out that there
11 had been a prior call there.

12 Q If they wanted to tie this to the incident
13 recall, they could have just used that incident report
14 from the CAD report, correct?

15 A Sure. Sure. Incident number, yeah.

16 Q Okay. And that would help keep it from getting
17 lost?

18 A Well, you don't do reports so that they get
19 lost. I have to admit that I was surprised to hear that,
20 too. One of these showed up and one didn't. So, I don't
21 know what to say about that, except you could put an
22 incident number on there if you didn't want to use the
23 actual investigation report number.

24 Q Is it a deviation from the standard of care of
25 police procedures for a police department to lose evidence

MEL TUCKER-DIRECT BY MR. LUGINBILL

1 in a case?

2 A Is it a deviation of procedure?

3 Q Yes, sir.

4 A I say it's more than a deviation of procedure.
5 You don't lose evidence. You know, once something is
6 classified -- once you do a report like this or anything
7 that you gather evidence, you better not lose it. There's
8 a chain of custody, there's forms you fill out to transfer
9 from one place to the next. And if you don't, you're
10 running the risk of being accused of spoliation of
11 evidence and intentionally disposing of it.

12 Q Okay. What's the purpose of keeping -- like,
13 for instance, Officer Picone said he had this tape and it
14 was his practice to record his interactions with the
15 public and then this tape gets turned over and it's held
16 for 90 days. What's the purpose of holding that for 90
17 days?

18 A So that you do have 90 days to determine whether
19 it's of evidentiary value to the organization. I can tell
20 you that as a law enforcement officer responding to calls
21 in the field -- and most officers do wear what's called a
22 belt tape. They'll carry a little tape recorder under
23 their belt they can push on when they think they're going
24 to have interaction with somebody that might be something
25 that they'll need proof of what happened. They make sure

MEL TUCKER-DIRECT BY MR. LUGINBILL

1 they keep those. I've seen officers keep them 15 years
2 after they retire just in case, you know, that ever comes
3 up. So you don't lose -- if you get that kind of stuff
4 and you're recording it yourself, it doesn't disappear.
5 You keep it. Like I said, I've seen them keep it for as
6 long as 15 years.

7 Q Is it reasonable for an agency to have that tape
8 in their possession, whether it be the officer themselves
9 that took it or the supervisor who holds it for that 90
10 days, is it reasonable for them to not -- when they know
11 she's been killed the next day, to not include that tape
12 as part of the murder investigation?

13 A That would -- immediately upon learning, which
14 they did pretty quickly because they wouldn't have asked
15 for this supplemental report if they didn't know that --
16 in fact, the officer testified today -- the officer said
17 that he told the homicide investigators look, we'd been
18 out there just the day before. So, they learned the next
19 morning, that morning, the 11th, I guess that would be.
20 At that point, there should have been a -- grabbed ahold
21 onto anything that was out there, like the dash cam or any
22 tape recordings or anything relative to that call because
23 that could be potential evidence in the homicide.

24 Q Now, when you were chief in Tallahassee, let's
25 assume you had something like this that happened where

MEL TUCKER-DIRECT BY MR. LUGINBILL

1 officers were out and then that person was killed the next
2 day, would you and your higher command level folks, would
3 you have been thinking we may have a problem here, we may
4 have some civil liability?

5 A We always --

6 MR. HARTER: Judge, I think this is beyond the
7 scope of his opinion, the expertise that we've
8 stipulated he has. He's going into motives and
9 mindsets of other people in the sheriff's office and
10 that's not appropriate for his opinion in this case.

11 THE COURT: What's your position?

12 MR. LUGINBILL: Your Honor, I ask him
13 specifically if this had happened when he was a
14 police chief, would they have thought it was a
15 problem for them civilly and he was getting ready to
16 answer that question.

17 THE COURT: I'll allow you to ask that question,
18 but I'm not going to let you go much further than
19 that at all.

20 MR. LUGINBILL: I understand. Thank you, Your
21 Honor.

22 THE COURT: Yes, sir.

23 THE WITNESS: The answer to that is yes, we
24 think of potential liability, civil liability coming
25 down the road.

MEL TUCKER-CROSS BY MR. HARTER

1 MR. LUGINBILL: Thank you, Mr. Tucker, that's
2 all I have.

3 THE COURT: Cross-examination?

4 MR. HARTER: Yes, sir.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. HARTER:

8 Q Let me ask you about the report right now,
9 Mr. Tucker. I think you've indicated that it would be
10 your speculation or idea that maybe what you had seen is
11 reports like this with no case number on it because that
12 suggests that somebody is trying to hide the fact that
13 they were actually at that location the day before from
14 the media; is that right?

15 A Yes. And let me say that it's not speculation.
16 I'll give you the case that I've seen this in before.

17 Q Well, you're speculating about this case,
18 correct?

19 A I'm saying that I have seen this happen before.
20 And in particular cases -- as a matter of fact, I can give
21 you more than one if you want.

22 Q Well, let me just say, in this case, are you
23 suggesting that maybe a case number was not put on this
24 report because the sheriff's office did not want anybody
25 to know that they had responded to a call at that location

MEL TUCKER-CROSS BY MR. HARTER

1 on December 9th?

2 A I'm saying to you very simply that I cannot
3 think of any other reason why you would not put a case
4 number on a report that you've asked to be submitted by
5 the officers that were involved. I really can't come up
6 with anything.

7 Q So, the reason why you would think there was not
8 a case number on this is because we don't want anybody to
9 know that our officers were out there on December the 9th,
10 correct?

11 A What I'm saying is that it certainly slows --
12 the practice has been to slow the media down when there's
13 things like this happening.

14 Q But Mr. Tucker, Madel Rivero, the mother of the
15 victim, knows that law enforcement was out there on
16 December the 9th and so it doesn't make sense that they're
17 leaving a number off a report --

18 MR. LUGINBILL: Your Honor, I'm going to have to
19 object. He's not asking the question and he's
20 directly addressing the jury. I would ask that he
21 conduct his cross-examination by asking the witness
22 questions.

23 THE COURT: Sustained. Ask the questions.

24 BY MR. HARTER:

25 Q Ms. Rivero was out there on the day of the law

MEL TUCKER-CROSS BY MR. HARTER

1 enforcement investigation on December 9th, wasn't she?

2 A Yes, she was.

3 Q And does it make sense that the sheriff's office
4 would leave off the case number of a report to keep
5 somebody from knowing that they were out there on December
6 the 9th?

7 A Yes, it makes perfect sense to me because
8 Ms. Rivero -- how is the news media going to know that Ms.
9 Rivero even exists if they don't know --

10 Q Okay.

11 A You know, if they don't really get into it and
12 then go interview her.

13 Q Okay.

14 A And why would you interview Ms. Rivero on her
15 daughter being murdered?

16 Q Okay. Do you know if they did that or not?

17 A If I know who did what?

18 Q Do you know if the news media interviewed
19 Ms. Rivero or any members of her family?

20 A I do not.

21 Q Okay. And let me ask you -- let me go --
22 Mr. Tucker, you've been in law enforcement in some way,
23 shape or fashion for a number of years, right?

24 A Yes, sir.

25 Q And you mentioned this idea of probable cause,

MEL TUCKER-CROSS BY MR. HARTER

1 right?

2 A Yes, sir.

3 Q And you've been in law enforcement training and
4 administration for years, right?

5 A Yes, sir.

6 Q And we agree on -- let me see if we can agree on
7 a few things. That it doesn't matter who you are, it
8 doesn't matter what the seriousness of the crime is, there
9 is a Constitutional requirement that a law enforcement
10 officer ensure there's probable cause before he arrest a
11 citizen or subject?

12 A Absolutely.

13 Q You agree with that?

14 A We absolutely agree.

15 Q And do we agree that it doesn't matter what
16 somebody's criminal history is, but that whatever the
17 charge is, whoever it is, there must be probable cause
18 then and there for what offense may be at issue, agree
19 with that?

20 A No, not -- I don't. If you know that 10 days
21 before a person beat his wife and then you're out on
22 another call, the fact that you're aware of the prior
23 incident can go towards the probable cause determination.
24 Because the best predictor of future activity is past
25 activity.

MEL TUCKER-CROSS BY MR. HARTER

1 Q I'm not talking about the prior incident, I'm
2 talking about a criminal record. If somebody has a
3 criminal record, does that relax the requirement of a
4 probable cause requirement to arrest that person?

5 A I'm not sure I understand your question. You
6 have to have probable cause to make an arrest.

7 Q If I have --

8 A If you're asking whether I think it can be
9 considered, the answer to that would be, yes.

10 Q Well, let's say I have a record or an arrest or
11 a criminal record for assault and battery, okay, six
12 months ago, and then I'm being investigated for a charge
13 of burglary six months later. The fact that I have a
14 record or have been arrested for assault and battery six
15 months before does not change or negate or relax the
16 probable cause requirement for the officer who is
17 arresting me for burglary, agree?

18 A Correct, yes.

19 Q Okay. Thank you. Do you agree that victims
20 have -- that officers have the right to reasonably rely on
21 the information they receive from victims during an
22 investigation?

23 A Yes, although, with explanation to that answer,
24 in the area of domestic violence, that's one of the issues
25 that -- it is at the heart of domestic violence cases.

MEL TUCKER-CROSS BY MR. HARTER

1 Now, in the old days, in the 70's, police hated
2 to respond to allegations of domestic violence because
3 they would go there and the woman would say yes, he struck
4 me and they would make an arrest. And then when it got
5 ready to go to the prosecutor's office, she would --
6 because she relied on this husband to provide income and a
7 home and food and shelter, she would back away from that.

8 So, that's the reason why the states went ahead
9 with pro-arrest policies and allowed misdemeanor arrest
10 committed outside of the presence of the officer to occur
11 and all those other factors because women traditionally
12 being beaten by their husbands did not want to say so or
13 would often back away from that.

14 Q Okay. Let me ask you if you can look at Page 24
15 of your deposition. I just want to see if I got the
16 answer right.

17 And I think I said, Question: Do you believe
18 that law enforcement officers are entitled to reasonably
19 rely on information they are provided by alleged victims
20 of a crime?

21 What was your answer that day, sir?

22 A The answer was yes, but I didn't give an
23 explanation. Absolutely.

24 Q The answer was certainly. Isn't that what it
25 says, Certainly?

MEL TUCKER-CROSS BY MR. HARTER

1 A Okay.

2 Q Okay. Now, the next question, But law
3 enforcement have a right to reasonably rely upon
4 information provided by the victims themselves?

5 And you said what?

6 A Certainly.

7 Q Certainly. Okay. Now, do victims have a
8 responsibility to assist law enforcement and provide
9 accurate information during an investigation?

10 A I either said absolutely or certainly.

11 Q Okay. Thank you. I'm trying to figure out the
12 things we agree to first, okay? And if a law enforcement
13 officer were to relax the requirement of a probable cause
14 showing or requirement and arrest somebody without
15 probable cause, even if they thought they had probable
16 cause, if some Judge or jury determines that they did not
17 have probable cause, that would be a violation of the
18 Constitution, correct?

19 A I can't give an answer yes or no to a question
20 like that. If the officer thought he had probable -- he
21 or she had probable cause, in good faith thought they had
22 probable cause, it's not a violation of the Constitution
23 if they make an arrest. It may be thrown out because
24 somebody else, a judge or a magistrate or a prosecuting
25 attorney, would say no, there wasn't probable cause. But

MEL TUCKER-CROSS BY MR. HARTER

1 that doesn't mean the officer has committed some kind of
2 Constitutional violation, but you can't arrest without
3 probable cause.

4 Q Mr. Tucker, haven't you been in cases where law
5 enforcement officers made arrests believing there was
6 probable cause and arrested somebody and took them off to
7 jail. And then you have served as an expert witness in a
8 lawsuit saying that person's Constitutional rights were
9 violated because that officer arrested somebody without
10 probable cause. You've done those cases, right?

11 A I certainly have. If -- I don't know what
12 you're saying. If a person makes -- if an officer makes
13 an arrest without probable cause, that is a Constitutional
14 violation because you're required to have probable cause
15 to make an arrest.

16 Q That's my question.

17 A But you threw in the question about did he
18 have -- he had a reasonable belief that he had probable
19 cause. I'm just saying if he had a reasonable belief,
20 then that's okay.

21 Q If he has a reasonable belief that there's
22 probable cause, but some Judge or some expert says he
23 doesn't, then that's a violation of his Constitutional
24 rights, correct?

25 A Well, they would say that he did not really have.

MEL TUCKER-CROSS BY MR. HARTER

1 probable cause, so that's correct.

2 Q That's right. So, I guess if he's mistaken
3 about whether or not he has probable cause or not, then
4 that could be or would be a violation of the person's
5 Constitutional rights, right?

6 A Well, you're asking me -- I guess it's a legal
7 opinion you're asking me because -- which what we'd refer
8 to as mistaken belief.

9 Q Right.

10 A Experts do, but I don't know what the lawyer
11 argument would be on that.

12 Q But if somebody is arrested and somebody
13 determines there was no probable cause, that's a violation
14 of their Constitutional rights, that can expose them to
15 civil liability and that's a bad arrest and that's a
16 violation of an officer's oath, agreed?

17 A Yes, sir, I generally agree with that.

18 Q Okay. Thank you. All right. Now, you were
19 asked some questions about the 911 folks and you looked at
20 the incident recall, Mr. Tucker. And I want to pay
21 attention to that for a minute. And I want to see if we
22 can agree on this, that the call was initially treated as
23 a custody call, the call got changed to a disturbance
24 call, whether it's domestic violence, disturbance,
25 argument, the appropriate response to this call -- if

MEL TUCKER-CROSS BY MR. HARTER

1 Mrs.-Blandin was threatened or if Mrs.-Blandin reported
2 that she was punched in the stomach, the appropriate
3 response to that call would be two officers going to the
4 scene without delay, correct?

5 A If it was dispatched as a domestic violence
6 call, there would be two officers go to the scene without
7 delay.

8 Q That's right. And in this case, two officers
9 did go to the scene without delay --

10 A No.

11 Q -- correct?

12 A Absolutely not.

13 Q Well, two officers went to the scene?

14 A Not -- let me tell you, two officers went to the
15 scene as I understand it. There were -- but they didn't
16 go to the scene -- there was a long delay of time while
17 the sergeant was supposed to call Lilia about the child
18 custody.

19 Q Okay. Let me correct that. Two officers did go
20 to the scene?

21 A Yes.

22 Q And you said because the call was initially
23 coded as a 21 that that delayed their time getting there,
24 right?

25 A 21, 80, all those numbers don't mean anything to

MEL TUCKER-CROSS BY MR. HARTER

1 me because every department has different ones.

2 Q But you said there was a delay in them getting
3 there?

4 A Well, they didn't send somebody to go directly
5 there, I don't think.

6 Q Right. You said --

7 A Because there was a call -- there was a sergeant
8 that was called and he was supposed to call Mrs. Blandin
9 first.

10 Q And there was a delay in them getting there,
11 right?

12 A I think so, yes.

13 Q Okay. Now, that delay, if they had been
14 dispatched immediately at 10:13, two deputies to the
15 scene, as opposed to when they were dispatched, you don't
16 have any evidence that that delay in the response had
17 anything to do with the outcome of this case?

18 A I agree with that. There's nothing --

19 Q You agree with that?

20 A Nothing happened during that delay, fortunately.

21 Q Okay. So, the fact that there was a delay in
22 them getting there didn't have anything to do with it?

23 A The delay was not the problem. The
24 classification as a child custody is the problem because
25 that sets the tone for everybody.

MEL TUCKER-CROSS BY MR. HARTER

1 Q Okay. And that's your thought process. Now,
2 let me ask you this, when the call got responded to
3 ultimately, you know two officers got there and you know
4 they spoke with both of the parties. And you know both of
5 those officers when they got there had access to what is
6 on this incident recall, right? Right?

7 A Yes.

8 Q Okay. All right. And they had access to
9 information that Mr. Blandin had supposedly threatened to
10 kill his wife?

11 A That's correct.

12 Q Okay. Did you hear Officers Picone and Tyner
13 testify?

14 A Yes, sir.

15 Q That when we responded to the call, we responded
16 to a disturbance call and when we got on the ground, we
17 investigated whatever was going on, did you hear them say
18 that?

19 A I heard them say they treated it as a domestic
20 violence call.

21 Q Okay.

22 A But they didn't because they did not follow the
23 protocol that's set there for domestic violence calls or
24 they would have interviewed the children.

25 Q I understand what you're saying, but they did go

MEL TUCKER-CROSS BY MR. HARTER

1 there with information that this might be a possible
2 criminal domestic violence call. You heard them say that,
3 right?

4 A I think we've talked about might and possible.
5 I don't deal with might and possibles.

6 Q You heard that, didn't you?

7 A I heard the officers say they dealt with it as a
8 criminal domestic violence call. And I'm saying they did
9 not follow the protocol if that's what they were -- if
10 they were responding to it that way, they didn't follow
11 the protocol.

12 Q Their mindset was this is a criminal domestic
13 violence call when they got there, you agree with that?

14 A Well, I think their mindset was that it was a
15 child custody call because they did not -- you know, it's
16 real simple to me, it either --

17 Q Mr. Tucker --

18 MR. LUGINBILL: Let him finish, Rusty.

19 BY MR. HARTER:

20 Q -- when they got there, did you hear these
21 officers say when they got there, they considered that it
22 might be a criminal domestic violence call? Did they say
23 that?

24 A I heard them say that, yes.

25 Q All right. And they interviewed both

MEL TUCKER-CROSS BY MR. HARTER

1 Mrs.-Blandin and Mr. Blandin, correct?

2 A That's correct.

3 Q And they separated them?

4 A That's right.

5 Q And then they checked with NCIC to determine if
6 there was an Order of Protection or a --

7 A Warrant.

8 Q -- Restraining Order, correct?

9 A Yes.

10 Q And you saw they said they did that?

11 A That's correct.

12 Q Okay. You saw that they took Mr. Blandin inside
13 and Mrs.-Blandin stayed outside and one of the officers
14 discussed with her that she might consider getting an
15 Order of Protection, did you see that?

16 A I heard that, yes.

17 Q Okay. Do you have any reason to think that
18 didn't happen?

19 A No reason to think that didn't happen.

20 Q Okay. Now, have you -- you mentioned your
21 experience in criminal domestic violence calls. And it's
22 a unique challenge for law enforcement; isn't it?

23 A Yes, it is.

24 Q And it's a unique challenge because sometimes
25 people don't give you complete information, sometimes they

MEL TUCKER-CROSS BY MR. HARTER

1 don't tell you everything, right?

2 A Well, it's particularly true when you're talking
3 to the victim of domestic violence for the reasons I said
4 earlier. Oftentimes, the woman is trying to protect her
5 home, her life, her husband's job, all kinds of things can
6 come into play. But the officer still has the
7 responsibility to conduct a thorough investigation to
8 determine whether or not a crime has been committed and
9 they didn't do it.

10 Q I hear you. But CDV calls are particularly
11 troublesome to officers because they have to pry
12 information out of people, don't they?

13 A They have to do that on any kind of call.

14 Q Well, sometimes, did you say, CDV victims just
15 don't want to tell them what happened; is that right?

16 A That's correct.

17 Q And that's frustrating for an officer who's
18 doing an investigation, right?

19 A Just like the sexual battery crime, oftentimes,
20 a victim doesn't want to say exactly what happened.

21 Q And sometimes witnesses -- if it's a family
22 member, sometimes witnesses aren't real forthcoming with
23 information about a crime, are they?

24 A Correct.

25 Q And I know you heard this young lady speak this

MEL TUCKER-CROSS BY MR. HARTER

1 morning about what she said she witnessed or what she
2 would have said if she was questioned. But we don't know
3 for sure, do we, Mr. Tucker, what would have been said
4 back then at the time, do we?

5 A As I said earlier, that's an issue of
6 credibility. This jury is going to decide whether to
7 believe that young lady or believe the officers.

8 Q I understand. Patricia Sullivan -- did you say
9 that Patricia Sullivan did not get all of the five W's
10 when she dealt with this call, who, what, when, where and
11 why?

12 A Yes, I did in my deposition, but not here today.
13 But if you're going to ask me that same question again, I
14 would say to you that she didn't get all the information,
15 at least, out to the officers that she should have.

16 Q But she got all the five W's, didn't she?

17 A Well, I guess if you say what, she said child
18 custody, and I say what, I say domestic violence was the
19 issue. So she may have thought she got all the W's. I
20 don't think she got all the W's.

21 Q You don't. Okay.

22 A What happened was domestic violence, not child
23 custody.

24 Q Did you tell me before in your deposition that
25 she did get all the five W's?

MEL TUCKER-CROSS BY MR. HARTER

- 1 A As I said, she may have thought she did, yes.
- 2 Q Did you agree that she did?
- 3 A Well, as far as she was concerned, she did, yes.
- 4 Q Okay. Did you think she got the five W's?
- 5 A Yes.
- 6 Q You do now?
- 7 A I think -- are we asking the same question?
- 8 Q Yes. Let's just make sure we're clear.
- 9 MR. LUGINBILL: May I approach briefly?
- 10 THE COURT: Yeah, come on up.
- 11 (WHEREUPON, an off-the-record bench conference
- 12 was held in the presence of the jury but out of
- 13 the hearing of the jury.)
- 14 BY MR. HARTER:
- 15 Q All right. Do you remember your deposition?
- 16 A I certainly do.
- 17 Q Page 87 of your deposition, Question: I
- 18 understand that, Mr. Tucker, but in terms of asking or
- 19 obtaining the basic information, who, what, where, when,
- 20 why, we agree she got that, don't we?
- 21 You said -- what did you say?
- 22 A Correct.
- 23 Q No. I don't mean to be picky. You said,
- 24 Ignored it -- got it and ignored it.
- 25 Question: She got it and didn't respond --

MEL TUCKER-CROSS BY MR. HARTER

1 A And I'm saying the same thing today.

2 Q Well --

3 A She asked the questions of what and she ended up
4 with child custody. She ignored the questions that she
5 asked about threatening, hitting.

6 Q And in that call -- let me ask you about that
7 call. You listened to the call itself. All of those
8 calls, you listened to them just like we did?

9 A Yes, sir.

10 Q Okay. Did you have any trouble at all
11 understanding what she was saying?

12 A Did I have any trouble? I don't think I had any
13 difficulty understanding.

14 Q Okay. And you were provided with a transcript
15 that was done of that call in connection with the murder
16 case; weren't you?

17 A I was provided with a transcript, yes, of that
18 call.

19 Q You were provided with the transcript that was
20 done by the Greenville County Sheriff's Office in
21 connection with the murder call, right? Is that right?

22 A I'm not sure I understand -- are you asking
23 me --

24 Q Yeah.

25 A I was provided with a transcript. Now, whether

MEL TUCKER-CROSS BY MR. HARTER

1 it was developed because of the murder investigation, I
2 don't know.

3 Q Fair enough. In discovery in this case, months
4 ago, you were provided with a transcript, right?

5 A Yes, sir.

6 Q And we talked about it in your deposition and
7 that's one of the things you said you reviewed in coming
8 up with your opinions, right?

9 A Yes, sir.

10 Q And I think when I -- you didn't have any issue
11 with the transcript that you were looking at. It, in your
12 mind, was an accurate transcript of the call; is that
13 right?

14 A I didn't see anything -- no, I thought the
15 transcript was consistent with what I heard on the tape.

16 Q And when you heard the tape, you heard
17 Ms. Sullivan take information from Mrs. Blandin and you
18 heard Ms. Sullivan respond that a unit or somebody -- that
19 an officer would call her, right?

20 A Yes.

21 Q And then later, you heard and saw that Neil
22 Logan had taken a call from the sister?

23 A Yes.

24 Q Okay. And the call from the sister -- and you
25 listened to that call, too, right?

MEL TUCKER-CROSS BY MR. HARTER

1 A Yes.

2 Q And the call from the sister said that she was
3 not there with her sister, but that she, her sister, had
4 told her that she was being threatened or threatened to
5 kill her, right?

6 A Yes.

7 Q Okay. And then you heard Patricia Sullivan's
8 call back to Mrs.-Blandin where she discussed additional
9 facts about what was going on, right?

10 A Patricia Sullivan did call back to Lilia
11 Blandin, that's correct.

12 Q To determine where she was and --

13 A You're outside. You can tell your sister she
14 doesn't need to call again, we're on our way.

15 Q And Mrs.-Blandin said, I'm fine. I'm just
16 waiting outside here to get my little girl?

17 A Yeah.

18 Q Do you remember hearing that?

19 A I believe so, yes.

20 Q Okay. Now, in connection with those
21 communications, Patricia Sullivan is filtering through
22 this information. And this is the information that you
23 understand officers will be considering when they respond
24 to the call, right?

25 A That's correct.

MEL TUCKER-CROSS BY MR. HARTER

1 Q Okay. Now, in this case, you agree that when
2 two officers respond, they have a responsibility to
3 conduct a complete and thorough investigation, right?

4 A That's not the two officers. Any officer that
5 responds has an obligation --

6 Q Any officer, okay.

7 A -- to conduct a preliminary investigation which
8 would be objective and thorough.

9 Q Okay. And in doing an objective and thorough
10 investigation, they have to talk to parties, determine
11 what they believe is going on and then follow their nose
12 and follow where their instincts lead them. Is that
13 pretty good investigative techniques?

14 A Sometimes you can't interview the parties,
15 especially if one of them is dead, and you find that
16 sometimes when you get to a homicide scene. So, I would
17 say to you they have an obligation to interview any
18 possible witnesses. And in this case, in particular,
19 we're talking about following the checklist that they're
20 taught about -- in basic training on domestic violence.

21 Q Okay. Let's look at the General Order 239
22 [verbatim], if we could.

23 A 238?

24 Q I'm sorry, 238. Okay. And this -- did you tell
25 us this tracks the model policy of most sheriff's or law

MEL TUCKER-CROSS BY MR. HARTER

1 officer agencies?

2 A Yes.

3 Q All right. And on Page 1, there's a definition
4 of criminal domestic violence, discussion of Orders of
5 Protection. And let's look at Page 2. And Page 2 says,
6 South Carolina mandatory arrests -- state mandatory
7 arrests are applicable in three situations, physical
8 manifestation of injury, violation of restraining order,
9 violation of order of protection. No Order of Protection,
10 no violation of Restraining Order, agreed?

11 A Right.

12 Q Now, in order for there to be a mandatory or
13 warrantless arrest, there must be physical manifestation
14 of an injury and -- of domestic violence and probable
15 cause, agreed?

16 A No.

17 Q Under Paragraph 1?

18 A No, that's only under mandatory.

19 Q That's what I'm talking about, I'm talking about
20 mandatory.

21 A In mandatory arrest, yes.

22 Q I'm talking about mandatory arrest, yeah. Fair
23 enough. Now, did Mrs. Blandin have, based on your
24 information, any physical manifestation of injury?

25 A Well, we don't know. The only thing I can say

MEL TUCKER-CROSS BY MR. HARTER

1 is I heard the officer testify today in this courtroom
2 that you don't have to have a visible physical injury.
3 And I think what he was saying is the same thing that I
4 would say, which is if you had somebody say I've been
5 punched in the stomach and you see the woman holding her
6 stomach, that's a manifestation of a physical injury.

7 Q Thank you. I appreciate that. Now, at the
8 scene, did you hear any witness or anybody describe a
9 physical manifestation of injury that was communicated to
10 these officers?

11 A Well, again, it depends on who you want to
12 believe.

13 Q Well, who --

14 A If I'm going to believe what Mrs. Blandin's
15 mother said she told the officers, or the little girl,
16 what she saw, then I'm going to have one opinion. If --
17 you know, if I hear what the officers say, I have to have
18 a different view.

19 Q Are you saying that testimony or a statement is
20 the same thing as physical manifestation of injury,
21 Mr. Tucker?

22 A No, I didn't say that. I don't believe that's
23 what I said at all.

24 Q Okay. All right. Well, like a scratch, or a
25 bruise, or redness, or torn clothes, or somebody favoring

MEL TUCKER-CROSS BY MR. HARTER

1 a part of their body, are those physical manifestations of
2 injury?

3 A Yes. I think I understand what your question is
4 now. No, I didn't hear any of the officers describe any
5 of that.

6 Q Did you hear anybody at the scene describe any
7 physical manifestation of injury?

8 A Yes.

9 Q Who?

10 A The mother who said that she -- her daughter was
11 holding her stomach.

12 Q When -- when did she say that? At home?

13 A I think you're right.

14 Q At home.

15 A At home.

16 Q I'm talking about at the scene.

17 A No, I don't think so.

18 Q At the scene when these officers investigated
19 this incident at the location where you say this arrest
20 should have been made, you don't have any indication there
21 was any physical manifestation injury, do you? Do we
22 agree to that?

23 A We agree to that.

24 Q Okay.

25 A Now, with that said, that's only under the

MEL TUCKER-CROSS BY MR. HARTER

1 mandatory arrest.

2 Q That's what we're talking about. That's what
3 we're talking about.

4 A But if they have probable cause, they can make
5 the arrest by choice. This is only saying under this set
6 of circumstances when you have probable cause and the
7 physical manifestation, you don't have a choice.

8 Q That's right.

9 A But if you have probable cause, you can do it on
10 your own. And that's what a good law enforcement officer
11 would have done if he had probable cause.

12 Q And we can banter back and forth about this all
13 afternoon, I guess, but I'm asking about the mandatory
14 arrest.

15 A Okay. I understand. That's what I just
16 explained. This is mandatory --

17 Q And there was no physical manifestation injury
18 you're aware of that would trigger the mandatory arrest,
19 agreed?

20 A Correct.

21 Q Okay. Now, there's been mention of a -- you
22 mentioned a bond issue with a no contact order. And now,
23 I think you're aware, Mr. Tucker, that Mr. Blandin was
24 arrested on October the 30th of 2011 and taken to jail.
25 You're aware of that, right?

MEL TUCKER-CROSS BY MR. HARTER

1 A Yes.

2 Q It was reported at that time by Mrs.~Blandin
3 that she had been punched in the face and punched in the
4 stomach, right?

5 A Yes.

6 Q Okay. And Greenville County Sheriff's deputies
7 immediately arrested Mr. Blandin and took him to jail?

8 A That's correct.

9 Q Do you know when his bond was posted?

10 A No, I don't.

11 Q Do you know if Mrs.~Blandin posted his bond and
12 got him out of jail the next day?

13 A I don't.

14 Q Okay. You do know that following that incident,
15 Mr. and Mrs.~Blandin obviously went back together because
16 they were living together when this thing happened on
17 December the 9th, right?

18 A Correct.

19 Q Okay. Now, I believe we discussed this before,
20 but do you agree, Mr. Tucker, that if Mr. and Mrs.~Blandin
21 went back together that there would be no way a judge
22 would enforce or put Mr. Blandin in jail for violation of
23 a no contact order?

24 A I think that's correct on a no contact order,
25 but that has nothing do with the bond.

MEL TUCKER-CROSS BY MR. HARTER

1 Q That's what I'm talking about, no contact order.
2 That would nullify that, right?

3 A I don't think most judges would do anything
4 about that if it was a voluntary violation on the part of
5 the victim on a no contact situation.

6 Q Right.

7 A That's different than the bond situation.

8 Q I understand that. But to the extent there
9 would be some bond restriction or a no contact order to
10 prevent these people from being together, they went back
11 together, nothing can be done about that, agreed?

12 A Yes.

13 Q Okay. And that would not be a basis for an
14 immediate arrest of Mr. Blandin because these people had
15 gone back together, agreed?

16 A Yes, sir, I think so.

17 Q Okay. Now, you are aware that everybody,
18 regardless of -- there's only certain crimes that would
19 prevent somebody from getting a bond, right?

20 A Yes.

21 Q You're not suggesting that Mr. Blandin would not
22 have been able to get a bond, are you?

23 A I'm not suggesting --

24 Q If he had -- I'm sorry. If he had been arrested
25 on December the 9th, you're not suggesting that he would

MEL TUCKER-CROSS BY MR. HARTER

1 not have been able at some point in time to get out on
2 bond, right?

3 A He probably would have been able to get out at
4 some time on a bond probably.

5 Q Okay. All right. Now, let me ask you,
6 Mr. Tucker, a hypothetical question. Okay. If deputies
7 on the scene had been told by Mrs.-Blandin that she had
8 not been assaulted and had not been hit there that night,
9 if she had said that, would there be probable cause for
10 this arrest?

11 A By that statement alone, if the officer follows
12 what he's supposed to do, he wouldn't make that
13 determination. In fact, what happened here is exactly
14 that. The officer said here's a piece of exculpatory
15 information, at least, that's their version of it, so
16 therefore, we don't have probable cause, so therefore
17 we're not going to make an arrest.

18 Q Okay.

19 A But the procedure they're supposed to follow and
20 taught in training is to do all those other things, too,
21 to make a legitimate determination of probable cause based
22 upon on all what the witness have to say.

23 Q Okay. Is the victim who was there, i.e.
24 Mrs.-Blandin, is the weight to be given to what she says
25 any greater or it is less than what Ms. Hamby said?

MEL TUCKER-CROSS BY MR. HARTER

1 A Well, we did talk about this before.

2 Q Right.

3 A And I think it's probably less because I said
4 and still say that if you're right there at the scene and
5 you've been beaten by your husband and you're afraid of
6 him, you're going to be less likely to say those things
7 when you're at the scene. Now, the sister, who was at a
8 different location had no problems telling the officer
9 what her sister had told her, which makes sense to me.

10 Q But her sister wasn't there, agreed?

11 A She wasn't on the scene. And that's right.

12 Q And the sister didn't report to anybody in her
13 call or in her communications that her sister,
14 Mrs.~Blandin, had been punched, did she?

15 A I think it was threatened to kill.

16 Q She didn't say anything about being punched, did
17 she?

18 A I said I think all she said was threatened to
19 kill.

20 Q Now, let me ask you this hypothetical. If
21 Mrs.~Blandin was questioned privately and said she was not
22 threatened, she wasn't hit and she wasn't struck that
23 night, and if the children were questioned and said they
24 didn't see anything or their mother wasn't threatened or
25 hit. But if Ms. Hamby said that she had talked to her

MEL TUCKER-CROSS BY MR. HARTER

1 sister over the phone and that her sister's life had been
2 threatened, but she didn't see it and she wasn't there,
3 you told me that would be probable cause, didn't you?

4 MR. LUGINBILL: Your Honor, I'm going to object.
5 He's offering a hypothetical of facts not in evidence
6 and he's trying to tie it to a prior deposition
7 question that he hasn't presented to the witness. I
8 think it's an improper question on two grounds.

9 MR. HARTER: Okay, I'll just do the deposition
10 question.

11 THE COURT: Okay. If you'd restate the
12 question, please. I must acknowledge I'm a little
13 bit confused, too.

14 MR. HARTER: Okay.

15 BY MR. HARTER:

16 Q Hypothetical question. If Mrs. Blandin was
17 questioned privately and said that she was not threatened,
18 that she wasn't hit, that she wasn't beat up and she
19 wasn't struck, and if the children were questioned and
20 said they didn't see anything, their mother wasn't hit or
21 threatened, and if Ms. Hamby said the information she had
22 came from the phone call with Lilia, but she wasn't there
23 and she didn't see it, based on those facts, you told me
24 there would be probable cause?

25 A That's right. Because you can use hearsay

MEL TUCKER-CROSS BY MR. HARTER

1 information in a probable cause determination and that's
2 it.

3 Q And the only hearsay information in that
4 hypothetical that you said would be sufficient for
5 probable cause was the statement by Ms. Hamby that her
6 sister reported that her life was threatened, but she said
7 she wasn't there and she didn't see it, right?

8 A That's correct.

9 Q Okay. Mr. Tucker, you indicated that you had
10 done some 911 training; is that right?

11 A Yes, sir.

12 Q Or CDV training?

13 A I'm sorry?

14 Q I'm sorry. You indicated that you had done some
15 CDV training at the Maine Community Policing Institute?

16 A Yes.

17 Q I think that's what you said in your initial
18 remarks?

19 A Yes.

20 Q Okay. And you mentioned that Kennebec Valley
21 Domestic Violence Task Force.

22 A Kennebec Valley Regional Domestic Violence Task
23 Force.

24 Q Now, that training -- or that involvement with
25 that CDV training you did then, that was back in 2004;

MEL TUCKER-CROSS BY MR. HARTER

1 wasn't it?

2 A Yes.

3 Q Okay. And that's the last time you did that,
4 right?

5 A Yes.

6 Q Okay. And you mentioned a study or some
7 information from a Minnesota study or a model policy of
8 domestic violence, right?

9 A Minneapolis study, yes.

10 Q I'm sorry. And that was the International
11 Association of Chiefs of Police, concepts and issued paper
12 that was revised October 1, 2006, right?

13 A I don't know anything at all about revised.

14 Q Well, I'm looking at it. I think I got this
15 from you.

16 A Okay. I'll have to look at it and see.

17 Q Okay. I'm looking at this one. Or did I -- is
18 that something you had -- that you looked at?

19 A Yes, it's the same thing I have, but I don't see
20 anything at all about revised.

21 Q What does that say?

22 A Originally published, August 1st, 1990, revised
23 October 1, 1996, not 2006.

24 Q I meant to say 1996, I apologize. Okay.

25 Revised -- and this is some of the information that you

MEL TUCKER-CROSS BY MR. HARTER

1 rely on in support of your opinions today?

2 A Is this something I relied upon? My experience
3 was refreshed by looking at this article, this policy,
4 that's correct.

5 Q Okay. And this paper -- can you flip over to
6 Page 3?

7 A Yes, sir.

8 Q Tell me if I'm reading correctly from the top
9 line. It's also important to know that Omaha -- that in
10 Omaha, although arrest by itself did not deter continued
11 conflict, neither were victims whose spouses were arrested
12 in any greater danger of continued violence.

13 Is that out of the report?

14 A That's out of the model.

15 Q Okay.

16 A Concepts and issued paper, yes.

17 Then it says, skip down a line, However, since arrests
18 alone may not deter continued domestic violence,
19 researchers and policymakers must consider which
20 additional strategies are most effective. As discussed
21 later, the model policy includes procedures for providing
22 victims with protection, referral sources and information.

23 Right?

24 A All that's true.

25 Q Okay. And that would be consistent with Deputy

MEL TUCKER-CROSS BY MR. HARTER

1 Tyner providing Mrs. Blandin with information about going
2 to the Family Court to get an order of protection, right?

3 A That's correct, certainly.

4 Q Okay. Then on the next page, I think it's Page
5 4, tell me if I'm reading correctly on the third
6 paragraph. One common misconception has been that
7 domestic violence is predominantly a problem among the
8 poor. Poor victims do account for more reported domestic
9 violence; however, many experts believe this is simply
10 because they cannot afford private counseling and other
11 resources available to middle or upper class income
12 persons. Nor is domestic violence a blue collar problem,
13 batterers include doctors, lawyers, business executive,
14 government officials, police officers, clergymen, all
15 occupations. Similarly, no assumptions about battering
16 should be based upon racial or ethnic stereotypes.

17 Right?

18 A Yes, sir, that's correct.

19 Q Officers should appreciate that and not be prone
20 to make judgments about criminal domestic violence based
21 on race or ethnic.

22 Right?

23 A That's correct.

24 Q And the conclusion -- one of the conclusions on
25 the second paragraph, Law enforcement officers should make

MEL TUCKER-CROSS BY MR. HARTER

1 arrests whenever probable cause and legal authority exist.
2 Support for this news widespread based on experience of
3 advocates for battered women, current social science
4 research, changes in the state law and the courts.
5 Nevertheless, the model policy also recognizes that
6 arrests alone may not deter future acts of violence. It
7 is recommended additional measures to provide victims with
8 information and protection and encourage referrals for
9 needed services. Arrest is viewed as only one tool in the
10 officer's tool bag of possibly responses to instances of
11 domestic violence.

12 Right?

13 A That's exactly what we found in the Kennebec
14 Valley Regional Domestic Violence Task Force, that an
15 arrest -- you have to start with the arrest because once
16 the person is arrested and goes to court on the charge,
17 then the court can order some of these other things, like
18 counseling for the batterer and/or alcohol -- if it's
19 associated with drugs or alcohol abuse, the court can then
20 impose that on that individual, so you have all the tools
21 combined.

22 Q Right. Let's move on to the next page to one of
23 the other conclusions.

24 A JUROR: I'm sorry, sir, I can't stay much
25 longer, I won't have time get my son.

MEL TUCKER-REDIRECT BY MR. LUGINBILL

1 THE COURT: How much longer do you have?

2 MR. HARTER: I have less than two minutes.

3 THE COURT: Less than two minutes?

4 MR. HARTER: Yes, sir.

5 THE COURT: Okay.

6 MR. HARTER: I'll try to make it 90 seconds.

7 THE COURT: Okay.

8 BY MR. HARTER:

9 Q Mr. Tucker.

10 A Yes, sir.

11 Q Flip over to the next line -- next page.

12 A All right.

13 Q It says, Arrest is not appropriate for all
14 persons and may even be counterproductive in many cases as
15 has been noted.

16 Is that right?

17 A Correct.

18 MR. HARTER: Thank you. Excuse me.

19 MR. LUGINBILL: Extremely briefly, Your Honor.

20 THE COURT: Okay.

21 MR. LUGINBILL: So we can let the jury get out
22 of here.

23 THE COURT: Yes, sir.

24 REDIRECT EXAMINATION

25 BY MR. LUGINBILL:

MEL TUCKER-REDIRECT BY MR. LUGINBILL

1 Q In order to see physical manifestation,
2 sometimes you have to ask, correct?

3 A Correct.

4 THE COURT: Yes, sir?

5 MR. HARTER: I'm sorry, I'm finished.

6 Thank you, Mr. Tucker.

7 Sorry.

8 THE WITNESS: Thank you.

9 THE COURT: Go ahead.

10 BY MR. LUGINBILL:

11 Q In order to find physical manifestation,
12 sometimes you have to ask, correct?

13 A That's correct.

14 Q And these officers did not ask, did they?

15 A That's right, they did not.

16 Q If you are arrested and you're in jail, that
17 stops further abuse; does it not?

18 A Yes. You can't do anything when you're in jail.

19 Q Incarceration breaks the cycle?

20 A That's right.

21 MR. LUGINBILL: No further questions.

22 THE COURT: Any recross, sir?

23 MR. HARTER: I'll elect not to, Your Honor, in
24 light of the juror's situation.

25 THE COURT: All right. Thank you, Mr. Tucker, I

MEL TUCKER-REDIRECT BY MR. LUGINBILL

1 appreciate you being here. Have a great evening.

2 Well, that was like magic, wasn't it?

3 MR. HARTER: Judge, they know how to shorten
4 things.

5 A JUROR: I was worried about her and she was
6 worried and I was like, it's okay.

7 THE COURT: All right, ladies and gentlemen,
8 again, if you'll be back at 9:15 again tomorrow
9 morning and we'll try to start as promptly as
10 possible. Again, please don't discuss the case,
11 don't do any self help and I will see y'all tomorrow
12 morning. Hope you have a good evening.

13 (WHEREUPON, the jury left open court at
14 approximately 5:11 p.m.)

15 THE COURT: All right. Counsel, anything
16 additional this afternoon?

17 MR. LUGINBILL: Not from us, Your Honor.

18 THE COURT: How many additional witnesses do you
19 intend to call?

20 MR. WILSON: Judge, we -- Judge, we have four
21 witnesses, maybe five. And I don't think any of them
22 will take more than 15 minutes, 10 or 15 minutes from
23 us. I don't know how long Mr. Harter will be, but
24 they're not long.

25 THE COURT: Okay.

MEL TUCKER-REDIRECT BY MR. LUGINBILL

1 MR. WILSON: I mean, we would be able to finish
2 by lunch or very shortly after lunch tomorrow.

3 THE COURT: All right. Good enough.

4 Mr. Harter?

5 MR. HARTER: Okay. I have my person coming
6 tomorrow.

7 THE COURT: After lunch, you think?

8 MR. HARTER: I'm going to have him here in the
9 morning.

10 THE COURT: Okay.

11 MR. HARTER: If we run into a problem, we might
12 have to do him out of order if you will accommodate
13 us.

14 THE COURT: How many witnesses do you anticipate
15 calling?

16 MR. HARTER: I probably have two maybe.

17 THE COURT: Okay.

18 MR. HARTER: Two maybe.

19 THE COURT: All right. So, we can reasonable
20 anticipate that we can finish with the introduction
21 of evidence tomorrow?

22 MR. HARTER: I would say for surely by Thursday,
23 maybe Thursday.

24 THE COURT: Okay.

25 MR. HARTER: It could spill over into Thursday.

MEL TUCKER-REDIRECT BY MR. LUGINBILL

1 THE COURT: Okay. All right, good enough.

2 Yes, sir.

3 MR. WILSON: That's kind of -- when we talked on
4 Monday, I said we might spill into Thursday morning
5 just very briefly with testimony, but.

6 MR. HARTER: But not y'all's case?

7 MR. WILSON: We'll finish tomorrow.

8 We have one witness, Judge, the medical examiner
9 that's going to be here tomorrow afternoon.

10 MR. LUGINBILL: We'll call him now to see if he
11 can be available tomorrow.

12 THE COURT: That's that marriage thing going on
13 again. You just finished his sentence.

14 MR. WILSON: We have the medical examiner,
15 Judge. We told him Wednesday afternoon. Of course,
16 he set his schedule based off of that. We'll try to
17 get him here a little bit earlier, but we may have to
18 do him after lunch.

19 THE COURT: I'm not too worried about it. As
20 long as we are on the path for finishing on Thursday,
21 then I'm comfortable. What I'd like to do is be in a
22 position where we argue and charge before lunch, send
23 them out, perhaps, order them lunch and let them
24 deliberate for lunchtime and the afternoon.

25 MR. WILSON: I think we can make that work.

MEL TUCKER-REDIRECT BY MR. LUGINBILL

1 THE COURT: Great. Y'all have a good evening.

2 MR. WILSON: Thank you, Judge.

3 MR. HARTER: Thank you, Judge.

4 (WHEREUPON, Court was adjourned for the day to
5 be reconvened on Wednesday, September 30, 2015.)

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MEL TUCKER-REDIRECT BY MR. LUGINBILL

1 in between those witnesses, but just for the
2 scheduling, we may have. . .

3 THE COURT: We'll be all right. We'll be all
4 right.

5 MR. WILSON: Okay. Let me get Mr. Farnsworth
6 and we'll be ready.

7 THE COURT: Okay. All right. While you're
8 doing that, I'm going to go ahead and get them in
9 motion, okay.

10 MR. WILSON: Sure.

11 THE COURT: You can go ahead and bring them in.

12 (WHEREUPON, the jury came into open court at
13 approximately 9:20 a.m.)

14 THE COURT: All right. Good morning, everybody.
15 Hope you had a good evening. Thank you for being on
16 time. Y'all have been very good about that. Not all
17 juries are, but y'all have been, so I appreciate it.

18 Okay. Mr. Wilson, Mr. Farnsworth,
19 Mr. Luginbill, you may call your next witness.

20 MR. WILSON: Thank you, Your Honor. We would
21 call Ms. Barbara Headen.

22 THE BAILIFF: Ma'am, place your left hand on the
23 Bible, raise your right hand and face the clerk.

24 BARBARA HEADEN, after being duly
25 sworn, testified as follows:

BARBARA HEADEN-DIRECT BY MR. WILSON

1 THE CLERK: State your name, please.

2 THE WITNESS: Barbara Headen.

3 THE CLERK: Please be seated.

4 DIRECT EXAMINATION

5 BY MR. WILSON:

6 Q Ms. Headen, I think I pronounced it wrong when I
7 called you in, I said Heeden. Ms. Headen, how are you
8 doing this morning?

9 A I'm doing fine, sir.

10 Q Good. You're going to have to speak up, you're
11 kind of soft-spoken. So, make sure all these ladies and
12 gentlemen can hear you.

13 A I'm doing all right.

14 Q Okay. Good. I know you're a little bit nervous
15 this morning about testifying?

16 A Yeah.

17 Q Well, don't be. Ms. Headen, tell the jury where
18 you live and a little bit about yourself.

19 A I live at 415 South Welcome Road. I've been a
20 cashier at Wal-Mart for 14 years.

21 Q Okay.

22 A And I've got two sons and a husband.

23 Q Okay. So, were you working at Wal-Mart back in
24 December of 2011 when Lilia Blandin was stabbed to death?

25 A Yes, I was.

BARBARA HEADEN-DIRECT BY MR. WILSON

1 Q And I think your cashier station is pretty close
2 to the Wood Forrest Bank?

3 A It's directly across from it.

4 Q So, you can look in and see everything that's
5 going on in Wood Forrest?

6 A Yes, sir.

7 Q And anybody in there can kind of look out and
8 see you?

9 A Yes, sir.

10 Q Okay. Were you -- were you on duty that day?

11 A Yes, I was.

12 Q Okay. Had you known or had interaction with
13 Lilia Blandin prior to that day?

14 A Just through checking her out for a candy bar or
15 a drink.

16 Q So y'all just crossed paths?

17 A Just crossed paths.

18 Q How did you find her to be?

19 A She was a nice lady.

20 Q What was her personality like?

21 A Very sweet.

22 Q Okay. Now, the day of this incident, you were
23 there at your cashier?

24 A Yes.

25 Q Okay. Did something -- something catch your

BARBARA HEADEN-CROSS BY MR. HARTER

1 attention, what happened?

2 A My customer who was in my line said, Them
3 people's over their fighting in the bank and I turned
4 around, that's when I seen it.

5 Q Okay. Did you see Mr. Avery Blandin stabbing
6 Lilia Blandin?

7 A Yes, sir.

8 Q When he was stabbing Mrs. Blandin, did you hear
9 her say anything or did you see her doing anything?

10 A Just quit, please, quit.

11 Q Okay. And as he was stabbing her, she was
12 saying, Quit, please, quit.

13 A Yes.

14 Q Okay. Did you see her with her arms up in the
15 air?

16 A She was trying, but the way he was stabbing her
17 so quick, it was just horrible.

18 Q But you heard her saying, Quit, please, quit?

19 A Yes, sir.

20 MR. WILSON: That's all the questions I have,
21 Ms. Headen. Mr. Harter may have some questions for
22 you.

23 CROSS-EXAMINATION

24 BY MR. HARTER:

25 Q Ms. Headen, it happened just like that, right?

KIM SELVY-DIRECT BY MR. FARNSWORTH

1 A Yes, sir.

2 Q And he was on her, it was all over with?

3 A It was all over with.

4 Q Just a split second?

5 A Yes, sir.

6 MR. HARTER: Okay. Thank you, very much.

7 Appreciate it.

8 THE WITNESS: Thank you.

9 THE COURT: Anything further?

10 MR. WILSON: We ask Ms. Headen be excused.

11 THE COURT: Thank you for being here, ma'am.

12 You may call your next witness.

13 MR. FARNSWORTH: The Plaintiff would call

14 Kimberly Selvy, Your Honor.

15 THE BAILIFF: Place your left hand on the Bible,

16 raise your right hand.

17 KIM SELVY, after being duly sworn,

18 testified as follows:

19 THE CLERK: State your name, please.

20 THE WITNESS: Kim Selvy.

21 THE CLERK: Thank you. Please be seated.

22 DIRECT EXAMINATION

23 BY MR. FARNSWORTH:

24 Q Kim, thanks for being here this morning. Can
25 you tell the members of the jury what you know about the

KIM SELVY-DIRECT BY MR. FARNSWORTH

1 Wal-Mart incident back in December of 2011?

2 A Yes. I had come in, actually, to get a
3 coffeemaker and do a little bit of shopping. When I
4 walked in -- I made the choice to go to the Whitehorse
5 Road Wal-Mart and when I walked in, I saw the Lilia and I
6 knew her. So, I made kind of a beeline over there to talk
7 to her. And I decided to make a deposit at the time
8 because that was my bank.

9 Q Let me kind of go step by step with you on this.
10 How long had you known Lilia?

11 A About two years.

12 Q Okay. How did you meet her?

13 A I had opened an account at Wood Forrest and she
14 was the one that opened it for me.

15 Q Okay. So, how often would you see her at the
16 bank?

17 A At least weekly.

18 Q Okay. And when you saw her, did you remain sort
19 of strangers, informal or did you get to know her and make
20 a bond with her?

21 A No, we had formed a bond in the beginning. I
22 was going through a divorce and when I went in, she was
23 the one that helped me. I was upset. And we started
24 talking about our children and we realized that we both
25 had three and they were almost exactly the same age. So,

KIM SELVY-DIRECT BY MR. FARNSWORTH

1 at that point, I was upset. She kind of reached over and
2 grabbed my hand, gave me some tissues. We talked and we
3 immediately formed a bond.

4 Q So, there was several years that passed between
5 the time you first met her --

6 A Oh, yes.

7 Q -- and then this incident we're going to talk
8 about today?

9 A Yes.

10 Q That morning at the Wal-Mart, you said you had
11 gotten there to do some shopping and you went in to see
12 her first?

13 A I did.

14 Q What did you talk about?

15 A I could tell she wasn't quite herself, so I
16 immediately mentioned her kids. And she kind of smiled
17 really big. And she said had I done my Christmas
18 shopping.

19 And I said no, I had not started. And I said,
20 Have you?

21 And she said, Oh, yes, I've gotten it all.

22 I said, Oh, my goodness, I feel like a bad mom.
23 You know, I'm --

24 Q This was December 10th?

25 A Yes, yes, it was right before Christmas. So, we

KIM SELVY-DIRECT BY MR. FARNSWORTH

1 smiled about that and talked. But I could tell she just
2 wasn't quite herself. So, then after I made my deposit, I
3 went into the store.

4 Q What else did you notice about her that you
5 thought wasn't normal?

6 A I knew immediately -- I thought it was odd that
7 she had no make-up on and she was disheveled. I remember
8 her shirt distinctly being wrinkled. It just didn't look
9 like Lilia. It didn't look like the Lilia that I knew.
10 She was very sad.

11 Q Okay. Then you went and did your shopping?

12 A I did.

13 Q For -- how long did that take you?

14 A Probably 15 minutes. I really had gone in for a
15 coffeemaker and grabbed just a few other things. It was
16 not long.

17 Q Okay. Then what? You were checking out?

18 A Yes. So, then I came up to the checkout and did
19 not look back over, but I just happened -- I did not
20 realize it at the time, but I happened to check out at the
21 very end cap in front of Wood Forrest. So, I was at the
22 one right facing it, but I didn't even look over and
23 notice anything.

24 And the Wal-Mart checkout lady -- I had a big
25 heavy thing of water and she reached around to scan it for

KIM SELVY-DIRECT BY MR. FARNSWORTH

1 me and I remember both of us -- I heard this terrible,
2 terrible screaming, moaning that I'd never heard my entire
3 life. Like it was something I've never heard actually.
4 And I turned and looked and there was Lilia. And a man,
5 at the time I didn't know who it was, had her from the
6 back of her hair up against the wall and he was -- at
7 first, I thought he was punching her in the stomach. And
8 she had her face covered with her hands and she was
9 screaming. And then I noticed the butcher knife and he
10 was just on and on and on and on. And I just -- at first,
11 I thought oh, my God, I've got to help Lilia. I mean,
12 this is Lilia, I've got to get over there and help her.
13 And I knew he was in such a rage. I mean, it was just so
14 terrible, the anger and the way he was -- his motions were
15 so terrible.

16 So, I started running for help. I turned around
17 and I ran to the jewelry counter to try to get help. I
18 said, Please call 911 --

19 Q And that's in the back of the store, further to
20 the back of the store?

21 A It's in the middle.

22 Q Okay.

23 A I stopped in the middle and stopped at the
24 jewelry counter.

25 Q And you did what? Go on.

KIM SELVY-DIRECT BY MR. FARNSWORTH

1 A Well, at first, I thought -- honestly, I thought
2 it was a bank robbery. I had no clue who that was. So, I
3 thought, oh, my gosh, maybe there's more. I didn't know
4 if it was going to be two. I just thought it was a bank
5 robber and the man was trying to kill her. But it was --
6 I didn't think at the time how severe it was, his anger.
7 But I stopped at the jewelry counter and I said, Please --
8 everybody was screaming. I think there was an alarm going
9 off at the time. It was chaos everywhere. People were
10 running. And I said --

11 And the lady said, What's going on? What's
12 going on? The employee.

13 And I said, There's a lady being murdered, it's
14 Lilia and she's at Wood Forrest, please call 911. And I
15 was looking for a place to hide because I didn't know if
16 there were multiple people and they were going to come
17 after me or anybody.

18 So, then I made it to the opposite end and
19 decided to run out. That's when I got in the car, called
20 my best friend and she called the police.

21 Q Okay. When you turned to run to the jewelry
22 counter, was Lilia still moaning?

23 A She was. She was still up against the wall.
24 And she was -- the whole entire time, she had hands like
25 this covering her face and he had her up back -- I guess

KIM SELVY-DIRECT BY MR. FARNSWORTH

1 he was holding her against her hair because he had that
2 hand and then he was using this hand. You could see that
3 blade and he was just (indicating) as hard as he could.

4 Q Did you attend the funeral of Lilia?

5 A I did. I did. I went to the funeral and her
6 brother, who I did not know -- but I talked to the family
7 and went up to her mom, tried to console her mom. Then
8 her little kids were just kind of lost. They were crying.
9 One of them had a little baby doll, a little girl. So,
10 they were standing over there in the corner, the oldest
11 little boy and a little girl. And I went over and I told
12 them who I was, you know, and I was friends with their
13 mom. So, I held the little girl and she started crying.

14 And she said, Did you know my mommy?

15 And I said, I did, baby, I did know your mommy.
16 And I said, She loved you so much. We talked you about
17 you all the time.

18 And she said, Really?

19 And I said, Yes, we did.

20 Q Kim, did you get to know Lilia, did you --
21 extend out and tell me what you've already told us today
22 about her?

23 A I just remember now, looking back, knowing that
24 she was going through so much trouble, the thing that
25 touches me the most is she always was concerned about me

KIM SELVY-CROSS BY MR. HARTER

1 and my life and my children. You know, even that day
2 after everything she had been through, she still was
3 asking me about my kids and Christmas. I mean, totally,
4 the sweetest, most kind person I have probably ever met.
5 And the minute I met her the first day, just the fact that
6 she reached over and got me some tissues and held my hand
7 and said, You're going to be okay. You know, you're okay.
8 You're going to make it. So, then over the next years,
9 she just -- she constantly was asking me how my life was
10 going and -- you know, it was more just making sure I was
11 okay.

12 MR. WILSON: Okay. Thank you for answering
13 those questions. Mr. Harter may have some for you.

14 CROSS-EXAMINATION

15 BY MR. HARTER:

16 Q Ms. Headen, I'm sure this is very painful, but I
17 want to followup on a couple of things.

18 A Okay.

19 Q This happened very quickly, didn't it?

20 A Yes.

21 Q And you said you saw -- heard a scream, you
22 looked over and you saw somebody holding her by the hair
23 and throwing something in?

24 A It was a knife.

25 Q A knife?

KIM SELVY-CROSS BY MR. HARTER

1 A Yes.

2 Q Okay. And her face was covered?

3 A With her hands.

4 Q With her hands, okay. Could you tell what part
5 of her body he was throwing the knife in, to her chest?

6 A You know, he was standing in front, like his
7 back was facing me and she was up against the wall. He
8 was here.

9 Q Okay.

10 A But I thought he was punching her in the stomach
11 at first.

12 Q Yeah. But you --

13 A I saw the blade.

14 Q Okay. You saw the blade going into her chest
15 region?

16 A I did.

17 Q Okay. And it happened very quickly. You didn't
18 go over to her, did you, after that?

19 A No. There was no way I could get near him, he
20 was in a rage.

21 Q When did you find out that her husband had done
22 that?

23 A When I went to the police department.

24 Q Okay. And you assisted and provided information
25 to the sheriff's office?

KIM SELVY-CROSS BY MR. HARTER

1 A I did.

2 Q Who did a murder investigation?

3 A Yes.

4 Q And you know they investigated the case and,
5 ultimately, charged Mr. Blandin -- and Mr. Blandin was
6 found some distance away. They found him that very day,
7 charged with him with murder and he's in prison, do you
8 know that?

9 A I was shocked that he got such a small sentence,
10 but, yes.

11 Q He got what?

12 A I didn't think it was deserving, you know, his
13 sentence, but yes, I read the paper.

14 Q What sentence did he get?

15 A I think he got 30 years.

16 Q Did you know a Judge sentenced him and he pled
17 guilty?

18 A Yeah, yeah, yeah. I was just shocked the way
19 that everything went down.

20 Q Okay. Thank you.

21 MR. FARNSWORTH: No questions, Judge.

22 And thank you, Kim.

23 Thank you, Judge.

24 THE COURT: Thank you, ma'am, I appreciate your
25 being here.

KIM SELVY-CROSS BY MR. HARTER

1 MR. WILSON: Judge, may approach one moment?

2 THE COURT: Sure, yeah.

3 (WHEREUPON, an off-the-record bench conference
4 was held in the presence of the jury but out of
5 the hearing of the jury.)

6 THE COURT: All right. Ladies and gentlemen,
7 I'm going to ask you to retire to your jury room for
8 just a few minutes. Two issues. We're waiting for
9 the next witness to show up. There was a witness who
10 had been subpoenaed to be here and she had either
11 some car troubles or children troubles, so she's
12 running a little bit late.

13 MR. WILSON: Sick child, Judge.

14 THE COURT: Sick child. Okay. So, she's
15 running a little bit late.

16 And also, what we're going to do is there's an
17 evidentiary issue that I need to take up outside of
18 your presence in any event and a legal issue and
19 determination that I need to make about the
20 admissibility of certain evidence. So, we're going
21 to use this time to take care of that issue, so that
22 when the witnesses get here, we can just move forward
23 as efficiently as possible. I hope it doesn't take
24 very long. But as soon as we're ready, I'll bring
25 you back in. Please don't discuss the case. Thank

1 you.

2 (WHEREUPON, the jury left open court at
3 approximately 9:37 a.m.)

4 THE COURT: Okay. Counsel, y'all ready to
5 discuss that or do y'all need a little bit of time to
6 talk it through before you bring it before the Court?

7 MR. HARTER: Maybe we can talk and see where we
8 are, Judge. I don't know which two they're talking
9 about.

10 MR. WILSON: Judge, it's two. It's a photograph
11 and the video surveillance tape that Mr. Harter
12 hasn't been agreeable with admitting. But if we can
13 take maybe five minutes, we can talk about it and see
14 where we are.

15 THE COURT: Y'all talk about one other thing,
16 too. The jury who said she needed to leave last
17 night, she's going to have that recurring problem
18 every day. So, I'm not suggesting that we remove her
19 from the jury, but if tomorrow, depending on where we
20 are when we argue and charge, if we anticipate that
21 the jury might go beyond 5:00, you know, y'all might
22 entertain the notion of replacing her with one of the
23 alternates. Because if not, I'm going to have to
24 send them home, then bring them back on Friday. And
25 I suspect y'all don't want to do that.

1 MR. WILSON: No, sir.

2 MR. HARTER: I agree.

3 THE COURT: Okay. All right. Well, y'all let
4 me know when you're ready, okay?

5 MR. HARTER: Okay.

6 (WHEREUPON, a short break was taken.)

7 THE COURT: Y'all have an agreement?

8 MR. WILSON: Yes, sir, we do. Judge, as a
9 matter of housekeeping, we need to move in
10 Plaintiff's Exhibit No. 24, which I believe is with
11 consent of Mr. Harter. It is the economic analysis
12 report of Dr. Richard G. Thompson. It's a document
13 here. Mr. Harter had stipulated to the economist
14 report for us not to have bring him over from Clemson
15 to testify. So, we just need to move that into
16 evidence.

17 THE COURT: Okay.

18 Without objection?

19 MR. HARTER: We're good with that.

20 THE COURT: All right, without objection the
21 same is moved into evidence as Plaintiff's Exhibit
22 24.

23 (WHEREUPON, Plaintiff's Exhibit No. 24 was
24 marked for identification and received into
25 evidence.)

1 MR. HARTER: You have this unique ability to
2 navigate resolutions.

3 THE COURT: Is that right?

4 MR. HARTER: You must have learned that from the
5 senior judge in your family.

6 THE COURT: No, here's the deal. I know when
7 there are good lawyers in the courtroom that y'all
8 are going to come to a reasonable accommodation with
9 one another. And ordinarily, that reasonable
10 accommodation is better than an arbitrary decision
11 that some dude wearing a dress is going to make.

12 MR. HARTER: Well, let's see where we are, okay,
13 and see if we need the guy in the dress.

14 MR. WILSON: Judge, with respect to the next
15 witness, Ms. Jenna Spencer, she is here. We don't
16 have any evidentiary issues with respect to her. One
17 exhibit is going to be in, one's going to be out, so
18 we've worked that out.

19 The next witness, Your Honor, is going to be the
20 medical examiner, Dr. Ward. And there's three
21 autopsy photos that we intend to introduce through
22 him that I think Mr. Harter has objection to. So, I
23 don't know if you want take Ms. Spencer up, let her
24 go, then take up or if you want --

25 THE COURT: Let's go ahead talk about it.

1 MR. HARTER: You said one exhibit's in, one's
2 out, what are we talking about?

3 MR. WILSON: I'm not putting 17 in, the
4 surveillance video.

5 MR. HARTER: Okay. On the break, what I thought
6 we talked about, we talked about the surveillance
7 video and some autopsy photographs. He's withdrawing
8 the surveillance video, so that's not an issue.
9 There's three autopsy photographs that I've got in my
10 hand. I agree for one of them to come in, not three.
11 I mean, pick one and I think it's fine.

12 THE COURT: Okay. All right. Let me look at
13 them. Are they marked?

14 MR. WILSON: They're not marked yet, Your Honor.

15 MR. HARTER: Do you need him to look -- are
16 y'all -- do you agree to just put one in?

17 MR. WILSON: Yeah, I'm fine with that.

18 MR. LUGINBILL: The only reason we have three is
19 so we would have the least objectionable option.

20 THE COURT: Well, y'all pick one then. Pick one
21 together and tell me which one you want to put in.
22 Okay. Y'all want to go ahead and pre-mark that?

23 MR. LUGINBILL: Mark that as whatever our next
24 number is.

25 MR. WILSON: It would be 28, Your Honor.

1 (WHEREUPON, Plaintiff's Exhibit No. 28 was
2 marked for identification and received into
3 evidence.)

4 THE COURT: Okay, so without objection
5 Plaintiff's Exhibit No. 28 is moved into evidence.
6 Is that correct, gentlemen?

7 MR. WILSON: Yes, sir.

8 MR. HARTER: Yes, sir.

9 THE COURT: Okay. All right. Good enough.
10 Okay, y'all ready for the jury?

11 MR. WILSON: We are.

12 THE COURT: Will you bring them in, please.

13 (WHEREUPON, the jury came into open court at
14 approximately 9:57 a.m.)

15 THE COURT: Okay. All right, you may call your
16 next witness.

17 MR. WILSON: Thank you, Your Honor, we call
18 Ms. Jenna Spencer.

19 THE BAILIFF: Okay. Ma'am, place your left hand
20 on the Bible, raise your right hand, face the clerk,
21 please.

22 JENNA SPENCER, after being duly sworn,
23 testified as follows:

24 THE CLERK: State your name, please.

25 THE WITNESS: Jenna Spencer.

1 THE CLERK: Thank you. Please be seated.

2 DIRECT EXAMINATION

3 BY MR. WILSON:

4 Q Ms. Spencer, you've had a rough morning this
5 morning I think, haven't you?

6 A Yes.

7 Q Sick child, but you've got that taken care of?

8 A Yes.

9 Q Appreciate you doing that to be here. Will you
10 tell the jury a little bit about yourself, please, where
11 you live, what you do?

12 A Sure. My name is Jenna. I live in Greenville.
13 I was in banking previously and I now own my own virtual
14 staffing agency.

15 Q Now, back in 2011, were you with Wood Forrest
16 National Bank?

17 A I was.

18 Q What was your position?

19 A Branch manager.

20 Q So, you would have been the manager of the
21 branch there at Whitehorse Road?

22 A Yes.

23 Q And that's the branch where Lilia Blandin was
24 employed?

25 A Yes.

JENNA SPENCER-DIRECT BY MR. WILSON

1 Q Okay. And I think you actually hired Lilia; is
2 that correct?

3 A I did.

4 Q Okay. Tell me about that or tell the jury about
5 that.

6 A Well, I was promoted from assistant branch
7 manager to branch manager in September of 2009, so I
8 moved -- relocated to Greenville. I started staffing for
9 my new branch and Lilia was the second person that I
10 hired.

11 Q Okay. Tell the jury a little bit about Lilia as
12 a person and as an employee.

13 A She was a great employee. She was very gentle
14 spirited, she was very kind. She was a great mother, so
15 we talked about our children all the time. She rarely
16 ever called out. You know, she just came in, did her job,
17 was very, very pleasant, a great employee.

18 Q Okay. She got along well with all your
19 customers?

20 A Uh-huh, yes. A lot of our customers really
21 liked her.

22 Q Got along well with her fellow employees?

23 A Uh-huh, yes, we were a great team.

24 Q She was dependable, showed up to work on time?

25 A Absolutely. And if something came up with her

JENNA SPENCER-DIRECT BY MR. WILSON

1 kids, she always let me know that morning if she was
2 running late.

3 Q Could you tell what her relationship with her
4 children was like?

5 A Great relationship. I mean, she was a wonderful
6 mother. She was always doing birthday parties. She was
7 always talking about her kids. She was, you know, making
8 cakes all the time. You know, her life was her kids.

9 Q And that's something you and she would have
10 talked about?

11 A Absolutely.

12 Q Now, you weren't on duty -- you weren't at the
13 bank when this incident happened?

14 A I was not. I was home.

15 Q Okay. And I guess you got a phone call?

16 A Yes. Telena, my assistant branch manager at the
17 time, she was there when it happened. She called me. So,
18 I immediately left and got on the phone with the regional
19 manager while I was driving to the branch.

20 Q And when Telena called you, what did she tell
21 you?

22 A She said -- if I remember correctly, she said
23 something like, Oh, my god, he stabbed her. Lilia has
24 been stabbed. And I hung up and left.

25 Q Now, Lilia had told you about the incident

JENNA SPENCER-DIRECT BY MR. WILSON

1 between her and Avery where Avery had hit her back in
2 October of 2011, hadn't she?

3 A Yes.

4 Q And what did she tell you in connection with
5 that incident?

6 A She said that he had hit her, that he was going
7 to rehab. She had called -- you know, he was in jail, but
8 that he was going to rehab and that they were taking care
9 of the situation because his drinking had gotten out of
10 control.

11 Q So, she told you that he had been arrested and
12 gone to jail?

13 A Yes.

14 Q But that he had gotten out and was going to
15 rehab?

16 A Yes.

17 Q Did it appear to you she was trying to keep her
18 family together?

19 A Absolutely. It appeared to me that there was --
20 you know, there were clear steps put in place that
21 something bad happened, but these things were being put in
22 place so that it wasn't going to happen anymore. He was
23 taking steps to rectify the situation.

24 Q Now, you also were aware that Avery and Lilia
25 had had some money problems?

JENNA SPENCER-DIRECT BY MR. WILSON

1 A Yes.

2 Q She had taken out some loans, I think, and you
3 had been involved in the transfer of some monies?

4 A Yes.

5 Q So, you were aware of that?

6 A Yes.

7 Q Okay. All right. When you got --

8 MR. WILSON: Hold on just one moment, please,

9 Your Honor.

10 THE COURT: Sure.

11 BY MR. WILSON:

12 Q That morning, the morning that Lilia was killed,
13 did she call you that morning?

14 A She did.

15 Q Why did she call you?

16 A Because she was going to be late to work.

17 Q And did she tell you why she was going to be
18 late for work?

19 A Yes. She said that the tires on her van had
20 been slashed.

21 Q Did she tell you she was making arrangements to
22 get to work?

23 A Yes. She said her car was already being fixed.
24 She was only going to be about 15 minutes late.

25 Q Okay. Did she tell you anything about the

JENNA SPENCER-DIRECT BY MR. WILSON

1 incident that had happened at her home with Avery on the
2 night of December the 8th and the morning of December the
3 9th?

4 A No.

5 Q Did you find it unusual that she didn't tell you
6 that?

7 A No. Because, you know, not everyone shares
8 every intimate detail. So, I figured at that point that
9 if there was, you know, some pertinent information that I
10 needed to know, then she would have told me.

11 Q Okay. But in your job supervising employees,
12 you find that employees don't tell you every intimate
13 detail of their personal lives?

14 A No.

15 Q And you don't find that to be uncommon or
16 abnormal?

17 A No. I don't share every detail of my life with
18 the supervisor, so.

19 Q Now, when Lilia called you that morning and said
20 her tires had been slashed and she was going to be late
21 for work, did she tell you that Avery had hit her in the
22 stomach the night of December the 8th and the morning of
23 December the 9th.

24 A No.

25 Q Did she tell you that he had threatened to kill

JENNA SPENCER-DIRECT BY MR. WILSON

1 her?

2 A No.

3 Q She just told you her tires were slashed and she
4 was making arrangements to get to work and she would be
5 there?

6 A Correct.

7 Q Now, you got the phone call from Telena about
8 what had happened?

9 A Yes.

10 Q And you went to the branch?

11 A Yes.

12 Q Okay. When you arrived there, was Lilia still
13 there?

14 A No.

15 Q Was law enforcement still there?

16 A Yes.

17 Q Was the scene all taped off?

18 A Yes.

19 Q Were there a number of people from law
20 enforcement there investigating?

21 A Yes. When I got there, I think there were two
22 or three standing at the front.

23 Q Okay. And there were people standing around,
24 customers, what have you?

25 A Yes.

JENNA SPENCER-DIRECT BY MR. WILSON

1 Q I think y'all had to shut the branch down that
2 day?

3 A Yes.

4 Q I want to show you what's entered into evidence
5 as Plaintiff's Exhibit No. 14. And we don't like to have
6 to look at these things, but we must. I want to show you
7 what's marked as Plaintiff's Exhibit No. 14. Does that
8 accurately depict the area where this incident took place?

9 A It does.

10 Q Okay. Is that what it looked like when you got
11 there?

12 A Yes.

13 Q So, what we're looking at there on the screen
14 behind you, Ms. Spencer, that's the area where Lilia would
15 have been working that day?

16 A Yes.

17 Q Okay. And that's what it looked like after the
18 attack?

19 A Yes.

20 Q Now, that's an area up towards the front of the
21 store?

22 A Yes.

23 Q Or front of the bank?

24 A Yes.

25 Q Okay. Did Lilia usually work up in that front

JENNA SPENCER-CROSS BY MR. HARTER

1 station?

2 A Yes, we all rotated. So, we would be out there
3 in front of the teller line throughout the day.

4 MR. WILSON: All right. Ms. Spencer, that's all
5 the questions I have for you. Mr. Harter may have
6 some questions. Thank you.

7 THE COURT: Mr. Harter.

8 MR. HARTER: May it please the Court?

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. HARTER:

12 Q Ms. Spencer, when you talked to her that morning
13 and she told you the tires on her car had been slashed,
14 she said everything was fine, though, right?

15 A Yes.

16 Q Okay. And did you later learn that there was a
17 report that Avery Blandin had called the bank 20 times
18 that morning?

19 A I did learn that after the fact, yes.

20 Q You learned that had happened on the morning of
21 December the 10th, correct?

22 A Correct.

23 Q Okay. Did anybody contact law enforcement to
24 report that Avery Blandin had called the bank 20 times
25 that morning to your knowledge?

JENNA SPENCER-CROSS BY MR. HARTER

1 A Not to my knowledge. I do not know.

2 MR. HARTER: Thank you.

3 MR. WILSON: No further questions, Your Honor.

4 THE COURT: Thank you for being here, I
5 appreciate it. Have a great day.

6 MR. HARTER: Ms. Spencer was here under my
7 subpoena, too, Judge, so she is released. Thank you.

8 THE COURT: All right. Are you ready to proceed
9 with your next witness?

10 MR. WILSON: Your Honor, our next witness is
11 Dr. Michael Ward, who is the medical examiner. And
12 we had him scheduled to come today at 2:00. We've
13 moved along quicker than we thought we would, so we
14 bumped him up to 11:00. He's teaching a class until
15 10:15 or so. We've asked him if he could try to get
16 here a little bit before that. But we're kind of at
17 a point where we need to wait on him if we can. I
18 apologize for the time constraints to you and the
19 jury, but we really anticipated we wouldn't need him
20 until this afternoon. His schedule is pretty tight.

21 THE COURT: All right. Do you have any short
22 witnesses that you want to call in the interim period
23 out of order?

24 MR. HARTER: No, sir, I don't have anybody here
25 to do that. We sequestered the witnesses and I've

1 kept them all away, so I don't have any of my short
2 witnesses here.

3 THE COURT: Okay.

4 All right. Ladies and gentlemen, you know what
5 I know now, okay.

6 Now, that will be your last witness; is that
7 correct?

8 MR. WILSON: That will be our last witness, Your
9 Honor.

10 THE COURT: Then you anticipate having, you
11 said, four or five witnesses?

12 MR. HARTER: I'm going to whittle it down.

13 THE COURT: Okay.

14 MR. HARTER: When he finishes, I'm going to kind
15 of regroup and see if I can't whittle it down.

16 THE COURT: Okay. All right.

17 Okay. So, ladies and gentlemen, this is what
18 I'm thinking. We're going to have to take a short
19 break. We can't accomplish anything if the witnesses
20 aren't here. And that's nobody's fault, just
21 sometimes that happens. So, after that witness takes
22 the stand and testifies, then we'll move forward with
23 the Defense's case. I anticipate that we'll be done
24 with our -- the introduction of evidence today.
25 Based on where we stand now, I don't know that we're

1 going to be at a spot where we'll be able to go to
2 argue and charge today. We'll probably be done a
3 little bit early based on what the attorneys have
4 told me. But I don't want -- I don't want to begin
5 argument and charge after 3:00.

6 The reason for that is once we begin argument
7 and charge, that's going to take anywhere from an
8 hour to an hour and a half, depending on how long
9 argument is. I'll give the attorneys some latitude
10 in that regard. Then once we finish argument and
11 charge, then you begin your deliberations. Your
12 deliberations are going to take as long as you take
13 to deliberate. Meaning, it could take half an hour
14 or it could take 10 hours. It can take any amount of
15 time. It just depends on how long y'all are
16 deliberating. I don't want to start the
17 deliberations process at 4:30 in the afternoon
18 because I don't want you to stay until 2:00 in
19 morning deliberating, okay.

20 So, if we end up finishing with the introduction
21 of evidence a little bit early this afternoon, what
22 we'll do is we'll -- I'll release y'all and ask you
23 to come back tomorrow morning at 9:00 and we'll begin
24 argument -- closing arguments and charge. And in the
25 intervening period, what we'll do is make sure that

1 we have an agreement on the charges, the charge on
2 the law and that we are ready to move forward on
3 closing arguments before you. Okay.

4 So, I'm just thinking out loud. You've heard
5 exactly what I've heard, that's kind of the way I
6 think we'll proceed going forward. I'm going to give
7 y'all a break. I'm going to ask you to be back at 10
8 till the hour, okay, at 10 till the hour. Y'all can
9 take a walk up Main Street. You can do whatever it
10 is that you want to do. I have no interest in
11 keeping you confined in that jury room for half an
12 hour, 45 minutes while we're waiting.

13 So, y'all just relax. Go have a cup of coffee.
14 I'd appreciate it if you wouldn't start drinking beer
15 this early in the morning. I promise you I won't.
16 So, y'all please be back at 10 till the hour. Don't
17 discuss the case.

18 (WHEREUPON, the jury left open court at
19 approximately 10:11 a.m.)

20 THE COURT: All right, counsel, I don't think
21 we're in bad shape on timing. Given what we've got
22 left to accomplish and the time left in the week, I
23 think we're okay. All right. So, when the jury gets
24 back, hopefully, we'll be ready to move forward.

25 MR. WILSON: We texted him. We'll see if he can

1 get here a few minutes early.

2 THE COURT: All right, we'll keep our fingers
3 crossed.

4 MR. WILSON: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 (WHEREUPON, a short break was taken.)

7 THE COURT: Okay, ready for the jury?

8 MR. WILSON: Yes, sir:

9 THE COURT: Okay, bring them in, please, sir.

10 (WHEREUPON, the jury came into open court at
11 approximately 10:56 a.m.)

12 THE COURT: All right, Mr. Wilson.

13 MR. LUGINBILL: Thank you, Your Honor. We call
14 Dr. Ward to the stand.

15 THE BAILIFF: Please your left hand on the Bible
16 and raise your right hand.

17 MICHAEL WARD, after being duly sworn,
18 testified as follows:

19 THE CLERK: State your name, please.

20 THE WITNESS: Michael Eugene Ward.

21 THE CLERK: Thank you. Please be seated.

22 DIRECT EXAMINATION

23 BY MR. LUGINBILL:

24 Q Good morning, Dr. Ward?

25 A Good morning.

MICHAEL WARD-DIRECT BY MR. LUGINBILL

1 Q I appreciate you taking time out of your day to
2 come help us today. Can you tell the jury what you do
3 here in Greenville County?

4 A I am a forensic pathologist and I employed by
5 Pathology Associates of Greenville, which is a local
6 pathology group. For the Pathologist Associates, I do
7 medical legal autopsies for the counties of Greenville,
8 Pickens and Laurens County. I am the chief medical
9 examiner for Greenville County. And we also do hospital
10 autopsies for the Greenville Hospital System.

11 Q Now -- and you are, of course, an M.D., correct?

12 A That is correct.

13 Q Okay. How does one become a forensic
14 pathologist?

15 A Well, after medical school, I did a four-year
16 anatomic pathology residency at the Medical University of
17 South Carolina in Charleston. And following my residency,
18 I did a one-year fellowship in forensic pathology at the
19 University of New Mexico.

20 Q Now, you have done a autopsy in this case on
21 Lilia Blandin; is that right?

22 A That is correct.

23 Q As a result of that autopsy, did you prepare a
24 report?

25 A I did.

MICHAEL WARD-DIRECT BY MR. LUGINBILL

1 Q And this is just the basic information. She was
2 pronounced December 10th, 2011, and you did the autopsy,
3 looks^c-like, two days later; is that correct?

4 A That is correct.

5 Q All right. If you would, just tell the jury
6 sort of how you go about doing the autopsy and then what
7 your findings were.

8 A Well, an autopsy is a detailed physical
9 examination which is performed on someone who has died.
10 In this case, we're specifically looking for trauma on the
11 outside of the body and the extension of that trauma on
12 the inside of the body. So, the first thing we do is an
13 external examination documenting any injuries that are
14 present on the outer surface of the body. And then during
15 the dissection portion of the autopsy, we continue those
16 injuries into the internal surface of the body seeing
17 which organs are traumatized, if there's any hemorrhage or
18 bleeding associated with that in order to determine the
19 cause and the manner of death.

20 Q All right. And in this case, what injuries did
21 you find?

22 A Mrs.-Blandin had 12 separate and distinct stab
23 wounds to various regions. They were to the -- many to
24 the upper back, to the extremities and to the sides. And
25 these are listed here in no particular order. I could not

MICHAEL WARD-DIRECT BY MR. LUGINBILL

1 tell which stab wounds came first. So, they are listed in
2 order of severity. So, listed as number one is stab wound
3 to the left upper back, which in my labeling was actually
4 stab wound number four. Again, that doesn't mean it was
5 the fourth stab wound that she received, just that by
6 convenience, this was labeled as number four. Stab wound
7 number four went through the right pleural cavity into the
8 upper lobe -- I'm sorry, should be the left pleural
9 cavity, upper lobe of the left lung and into the aorta.
10 The aorta is the great vessel that takes blood from the
11 heart to the rest of the body.

12 So, this stab wound went through the skin of the
13 left upper back, through the left upper lobe of the lung
14 and into the aorta with resulting 1,200 milliliters of
15 blood in the left chest cavity. So, where there should be
16 nothing but a potential space, there is now over a liter
17 of blood in the left chest cavity. And this wound was
18 measured to a depth of approximately 4.5 inches.

19 Q Is this most likely the fatal wound?

20 A Yes, most likely.

21 Q How long would it have taken from the actual
22 occurrence of the injury until she expired?

23 A Well, Mrs. Blandin is going to essentially bleed
24 to death internally from this wound. I would say in the
25 order of minutes.

MICHAEL WARD-DIRECT BY MR. LUGINBILL

1 Q Okay. You found several perforating stab wounds
2 to the upper and lower extremities. That would be the
3 arms?

4 A That's correct.

5 Q And you characterized them as defensive-type
6 injuries. Why do you characterize those as defensive
7 injuries?

8 A Mrs. Blandin has stab wounds to the upper
9 extremities as well as incised wounds to the upper
10 extremities. A stab wound is a sharp injury that is
11 deeper than it is long. And an incised wound is a sharp
12 force injury that's longer than it is deep. It's sort of
13 a semantic. Sharp force injuries, either stab wounds or
14 incised wounds to the extremities, especially to the
15 hands, to the wrists and arms are often seen in
16 individuals as they try to avoid their attacker or to
17 defend themselves. And often, if the attack is happening
18 up around the chest or head, we put our hands up like this
19 in a defensive posture. We may grab the knife. We may
20 see the knife coming and put our hand in the way. So,
21 that these defensive injuries occur as we try to ward off
22 the blows.

23 Q And you found several of those on Mrs. Blandin,
24 correct?

25 A Yes, I did.

MICHAEL WARD-DIRECT BY MR. LUGINBILL

1 Q Okay. Dr. Ward, I'm going to show you what's
2 been marked as Plaintiff's Exhibit 28. Is that an example
3 of a defensive-type injury that you found on Mrs.-Blandin?

4 A Yes, Plaintiff's Exhibit 28 is a photograph
5 which shows the inner portion of the right upper arm and
6 the right forearm, which shows multiple perforating stab
7 wounds, and I believe that's an incised wound to the
8 wrist.

9 Q And this is what you're talk about here, the
10 incised wounds and then these, these and these would all
11 be defensive-type wounds; is that right?

12 A That's correct. These are sharp force injuries
13 to Mrs.-Blandin's right arm. Stab wound here, stab wound
14 here, stab wound here. This may be an exiting portion of
15 the stab wound, but this looks very much like an incised
16 wound or a cut.

17 Q Okay. All these defensive wounds, obviously,
18 the subject has to be alive when that's happening,
19 correct?

20 A The -- yes. These are defensive-type injuries
21 and she would be alive at the time they occurred.

22 Q And I realize that's something of an obvious
23 one, but there was some period of time she was fending off
24 her attacker, being injured and then there was a final
25 fatal blow that, ultimately, within minutes, she passed

MICHAEL WARD-CROSS BY MR. HARTER

1 away?

2 A Not necessarily in that order. She certainly
3 could have received what would have been her fatal injury
4 first. She's not going to become immediately
5 incapacitated from that wound, so that could have been one
6 of the first wounds with the resulting other wounds
7 occurring after that and she subsequently bleeds out.

8 Q All right.

9 MR. WILSON: That's all I have, Dr. Ward. Thank
10 you.

11 THE COURT: Mr. Harter.

12 CROSS-EXAMINATION

13 BY MR. HARTER:

14 Q Morning.

15 A Good morning.

16 Q How are you doing?

17 A I'm well, thank you.

18 MR. HARTER: Can we pull up the autopsy report a
19 minute?

20 BY MR. HARTER:

21 Q Mike, let me go ahead. You have no idea which
22 of these wounds came first; is that right?

23 A That's correct.

24 Q Okay. And let me ask you, in terms of --

25 MR. HARTER: Can you scroll it up just a hair?

MICHAEL WARD-CROSS BY MR. HARTER

1 BY MR. HARTER:

2 Q It says pronounced at December 10, 2011 at 2:00
3 p.m. When she's actually pronounced, that's certainly not
4 the time of death, right?

5 A That's when she's pronounced by EMS, that's
6 correct. That's going to be after her physiological
7 death.

8 Q After her physiological death that she would be
9 pronounced?

10 A That's correct.

11 Q And you described the wounds that she had.

12 MR. HARTER: And if we can look at the opinion
13 down at the last section.

14 BY MR. HARTER:

15 Q If you've got your report, Mike, just look at
16 it, if you will. And this is basically the conclusion.
17 In the conclusion, did you say at autopsy that there were
18 12 multiple -- excuse me, multiple 12 superficial deep
19 stab wounds involving the chest, back, upper and lower
20 extremities?

21 A Yes, I did.

22 Q Okay. And then I think you specifically noted
23 two stab ones penetrated --

24 MR. HARTER: If we can get there. Thank you
25 very much. Okay. Whoa. Okay.

MICHAEL WARD-CROSS BY MR. HARTER

1 MR. WILSON: That's what you want?

2 MR. HARTER: Yeah.

3 BY MR. HARTER:

4 Q Two stab ones penetrated into the left and right
5 chest cavity, perforating lobes of lung and aorta
6 resulting in extensive hemorrhage within the left and
7 right pleural cavities, right?

8 A That's correct.

9 Q That's a massive catastrophic bleed that's going
10 to cause death very quickly, right?

11 A The stab wound to the aorta is going to result
12 in massive blood loss. It's not going to be correctable,
13 short of being in the operating room when it occurs. The
14 blood loss is going to happen relatively quickly. She
15 will bleed to death within minutes.

16 Q And literally, we have no way of knowing whether
17 she was conscious or responsive at all -- she would be
18 conscious or responsive for any significant interval of
19 time after this wound, would she?

20 A After the wound, she's certainly not going to
21 become immediately incapacitated, but as she loses more
22 and more blood, she will subsequently become unconscious,
23 eventually lose so much blood that her cardiac function is
24 no longer there and she would die from that.

25 Q Have no way of knowing how long that was?

MICHAEL WARD-CROSS BY MR. HARTER

1 A I do not know.

2 Q But it was a short time?

3 A Correct.

4 Q And you know she was -- EMS responded to the
5 call; is that right?

6 A That's my understanding, yes.

7 Q Have you looked at the EMS report?

8 A I do not believe so.

9 Q Can I just show it to you and make sure when EMS
10 did get there, they assessed her and --

11 MR. HARTER: Can we pull that up?

12 BY MR. HARTER:

13 Q And EMS, these are -- of course, these are First
14 Responders that are there and they do this patient care
15 form that we're looking at, right?

16 A That's correct.

17 Q And they note significant things about what they
18 find and what they observe or know what they're told when
19 they get there, right?

20 A That's correct.

21 Q Okay.

22 MR. HARTER: And if you will, can we pick up on
23 this. Go up a little bit, please. Up a little bit.

24 Okay. Hold up.

25 BY MR. HARTER:

MICHAEL WARD-CROSS BY MR. HARTER

1 Q Down here, it says history of present illness.
2 That's what EMS reports. Says, Patient was reported to be
3 at work when she was stabbed with knife that had a long
4 blade, estimate 12 inches. Reported patient immediately
5 was unconscious and quickly lost pulse and stopped
6 breathing.

7 Is that the patient history that EMS took?

8 MR. LUGINBILL: Your Honor, may we approach?

9 THE COURT: Sure.

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

13 BY MR. HARTER:

14 Q Dr. Ward, are you familiar with that document,
15 with that report?

16 A I'm familiar with the format of this report and
17 have seen numerous EMS reports. To say that I am to this
18 specific report, I may have seen it in the past, but I
19 have not reviewed it prior to today -- for review today.

20 Q Okay. But you've looked at it now. And we've
21 accurately identified what this report says. You weren't
22 there, but this is what the report says, right?

23 A That is correct.

24 Q Can we scroll up to the next line. Next page.
25 Is there a thing called Glasgow Coma Score?

MICHAEL WARD-CROSS BY MR. HARTER

1 A Yes.

2 Q Are you familiar with that?

3 A Yes, I am.

4 Q And this patient information sheet shows a
5 Glasgow Coma Score of a -- initially of a three; is that
6 right?

7 A That is correct.

8 Q And a Glasgow Coma Score of three -- three is
9 the absolute worst there can be, right?

10 A I'm not sure of that. I don't know if it can be
11 lower than three, but it is just about as low as you can
12 go and still have any signs of life, yes, sir.

13 Q Okay. And three -- and number one -- number one
14 stands for the eyes; is that right?

15 A Yes, sir.

16 Q Best eye response. Number two is best verbal
17 response and number three is best motor response, right?

18 A That's correct.

19 Q And this is a three. And do you know if Glasgow
20 Coma Score goes from three to 15?

21 A To 15, correct.

22 Q So, if it goes from three to 15, three is
23 absolutely the lowest it can be?

24 A That's correct.

25 Q Okay. The worst somebody can be and still be

MICHAEL WARD-REDIRECT BY MR. LUGINBILL

1 alive?

2 A That's correct.

3 Q Do you have any idea how long Mrs. Blandin
4 actually was conscious following this?

5 A I do not know.

6 Q No way to tell?

7 A Not by me at the time of autopsy, no.

8 Q Okay. And did you see -- aside from the stab
9 wounds that you identified in your autopsy, I think at the
10 bottom of the opinion, it says, No other significant
11 natural disease process or trauma is noted, right?

12 A That is correct.

13 Q You didn't notice anything of significance to be
14 trauma to this lady's body other than the stab wounds,
15 correct?

16 A Other than the sharp force stab wounds and the
17 incised wounds, that is correct.

18 MR. HARTER: Okay. Thank you. That's all we
19 have.

20 THE COURT: Followup, sir?

21 MR. LUGINBILL: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 REDIRECT EXAMINATION

24 BY MR. LUGINBILL:

25 Q Dr. Ward, it is true that people who suffer a

MICHAEL WARD-REDIRECT BY MR. LUGINBILL

1 punch level of blunt force trauma to the stomach generally
2 don't bruise because that area of the body has enough flex
3 and cushion in it that it often doesn't leave bruises?

4 A That is correct.

5 Q Now, in the EMS document that you looked at, the
6 EMS person wrote in there that -- the EMT that responded,
7 that were reports that she became unconscious very quickly
8 or even immediately, I think it said.

9 I'll read it out, Patient was reported to be at
10 work, was stabbed with a knife, was long, reported
11 immediately was unconscious and quickly lost pulse.

12 That's just what the EMS worker was told by
13 somebody else, correct?

14 A I would assume by a bystander, that's correct.

15 Q And that bystander was not a pathologist,
16 correct?

17 A That's correct.

18 Q And it's your testimony today that those
19 defensive wounds, she was conscious when she was fighting
20 him off?

21 A That is correct. I believe that she is -- that
22 Mrs. Blandin is alive while she receives these stab
23 wounds, that she has some response to these wounds in an
24 effort to try to avoid these wounds for a period of time
25 until she loses enough blood so that she subsequently

1 becomes unconscious. How long that is, I'm uncertain. I
2 think it would be in the level of minutes until -- just a
3 few minutes until she becomes unconscious and just a few
4 more minutes until she's basically dead.

5 Q Okay. And during those few minutes, Dr. Ward,
6 you would agree with me that while she's conscious and
7 she's being stabbed she is, in fact, suffering some pain?

8 A These would be painful injuries injury, yes.

9 Q And she was conscious during that time and she
10 felt that pain?

11 A Until she lost enough blood to where she passed
12 out, she would have been conscious, yes.

13 Q Over the course of some minutes?

14 A Some, yes.

15 MR. LUGINBILL: That's all I have, Doctor.

16 Thank you.

17 THE COURT: Recross, sir?

18 MR. HARTER: Yes, sir.

19 RE CROSS-EXAMINATION

20 BY MR. HARTER:

21 Q Very few minutes, right?

22 A I would think.

23 Q You were asked about stomach, the trauma to the
24 stomach?

25 A Yes, sir.

1 Q If a person is subjected to a blow to the
2 stomach or a punch to the stomach in a domestic abuse or
3 argument and actually an officer on scene has the reason
4 to inspect her stomach for a wound or a bruise, they
5 wouldn't see anything, would they?

6 A Most often, blunt force trauma to a soft area,
7 like the stomach, especially if that area is covered by
8 clothing, does not result in what we would call a bruise.
9 And a bruise being disruption of the capillaires or the
10 blood vessels of the skin with escape of blood out into
11 the soft tissue, that is a bruise. You can have red
12 area. So, if I have hit my arm, it may make a red area
13 and not leave a bruise. That red area will relatively
14 quickly go away. We've all had that type of injury. But
15 generally, blows to the abdomen do not bruise. And
16 Mrs. Blandin did not have any bruises to her abdomen at
17 the time of autopsy.

18 THE COURT: Okay. Any further questions?

19 MR. HARTER: No, thank you. That's it,
20 appreciate it.

21 THE COURT: All right. Thank you, Dr. Ward, for
22 being here. I appreciate it, sir.

23 THE WITNESS: Thank you.

24 THE COURT: Hope you have a great day.

25 MR. LUNGINBILL: Your Honor, that would be the

1 end of the Plaintiff's case.

2 THE COURT: Okay. Good enough.

3 All right. Mr. Harter do you have motions you
4 need to put on the record, sir?

5 MR. HARTER: I do, Judge. We'll do it at your
6 discretion.

7 THE COURT: Ladies and gentlemen, I don't like
8 to start and stop, but at the close of either party's
9 case, it's necessary for me to hear legal motions
10 from the attorneys from either side should they elect
11 to make those motions. So, I ask you to retire to
12 your jury room for just a few minutes. I need to
13 take up those legal matters and we'll come back in
14 and we'll resume testimony. Please don't discuss the
15 case.

16 (WHEREUPON, the jury left open court at
17 approximately 11:18 a.m.)

18 (WHEREUPON, the jury left the courtroom at
19 approximately 11:18 a.m.)

20 THE COURT: Okay, yes, sir.

21 MR. HARTER: Judge, at this time, we move for a
22 non-suit and/or directed verdict on the issue of
23 liability in this case. And let me say that,
24 obviously, that the testimony has shown a very tragic
25 set of circumstances. But the claim against the

1 sheriff's office here is based -- is subject to the
2 Tort Claims Act. But before I go to the Tort Claims
3 Act, the first question that we have to grapple with,
4 the first ground for my motion would be that there
5 was no duty owed, no special duty owed, to
6 Mrs. Blandin in this particular situation.
7 Mrs. Blandin did report that she was -- or did make a
8 call to 911. EMS responded -- I mean, sheriff's
9 office responded. And investigated the circumstance.
10 Spoke with him, spoke with her.

11 And as relates to a special duty, they need to
12 show several things. And based on the case of
13 Rayford and other cases, they need to show one,
14 whether there was a essential purpose of a statute.
15 And public duty is based, of course, on a statute.
16 And whether there's going to be liability that flows
17 from a statute. And the statute, I assume, they're
18 relying on is the criminal domestic violence statute
19 which we've talked about.

20 But they're six components of that. And that is
21 number one, the essential purpose of the statute is
22 to protect against a particular kind of harm.
23 Whether the statute either directly or indirectly
24 imposes on public officials a duty to guard against
25 or cause the harm. Whether the class of person

1 statute intends to protect is identified. Whether
2 the Plaintiff is within the protective class. And
3 whether a public official knows or had reason to know
4 the likelihood of harm to members of a class if he
5 fails to do his duty. And whether the official is
6 given sufficient authority to act in circumstances or
7 he undertakes to act in exercise of his office.

8 Simply put, Judge, the statute that we're
9 dealing with does not create a special duty for these
10 officers necessarily to arrest Mr. Blandin in a
11 criminal domestic violence call. That there's a
12 criminal domestic violence call, they respond and
13 they have the discretion to evaluate what's going on.
14 And they have to make an arrest if they're certain
15 facts that are known to them at the time. But based
16 on the facts known to them at the time, I submit that
17 this was not a case where they were required to make
18 an arrest mandatorily. There's contradictory
19 evidence about that. But the Plaintiff has the
20 burden of presenting evidence that this was a case
21 where there was a mandatory arrest requirement by --
22 from the sheriff's office. Now, I understand
23 Mr. Tucker has offered his opinions but we don't have
24 to accept that and I'm just going to submit to you
25 that the facts don't support that.

1 Now, the issue as to the duty would flow from
2 the criminal domestic violence statute. And we
3 submit that based on the facts of this case, there's
4 no duty. Now, we haven't talked about whether there
5 was any breach of that duty yet but first of all my
6 first arguments is that there's no duty. Okay.

7 THE COURT: Okay.

8 MR. HARTER: Now, my second argument goes beyond
9 that. And then if you do assume for the sake of an
10 argument -- and, you know, the courts have -- the
11 Edwards case and the Arthurs case are cases -- are
12 cases that speak to this and I'm sure you're probably
13 familiar with those. But Arthurs is 551 S.E.2d 579.
14 And the Edwards case was 688 S.E.2d 125.

15 So, our first position is that there's no duty
16 that exist here, Judge. But even if there is, even
17 if there is, the provisions of the Tort Claims Act
18 kick in and apply to this case. And under
19 15-78-60(6), government entities are not liable for
20 the failure to provide police protection. And that
21 is specifically what we are talking about here when
22 we get -- if you get past the duty issue. Is whether
23 or not there can be liability for the sheriff's
24 office for it's role in providing police protection.
25 And we submit that under 15-78-60(6), that there

1 is -- there's an exception from liability and
2 immunity for the sheriff's office in this case.

3 We also submit, Judge -- and that's clearly an
4 exception that applies. We also submit that the
5 other subsections as well as five and six and -- I'm
6 sorry, five and four and three and two and one apply.
7 And also, the Tort Claims Act provides an exclusion
8 for liability for criminal acts of third parties and
9 that's under Subsection 20. We respectfully submit
10 that based on all of those exceptions to liability,
11 all of them, or at least some of them, apply to make
12 the sheriff's office immune from liability in this
13 case.

14 Now, further, to the extent the Plaintiff does
15 rely on the CDV statute, which is 16-25-10, as a
16 basis for liability, we contend and would submit that
17 there can be no liability for any law enforcement
18 officer or agency under the criminal domestic
19 violence statute unless the act or omission
20 constitutes gross negligence, recklessness,
21 willfulness and/or wantonness. And as you know,
22 Judge, the definition of gross negligence is the
23 conscious failure -- the conscious failure to
24 exercise due care or the failure to exercise even
25 slight care. And there's no evidence of that here,

1 Judge. The best scenario with this case is that
2 these officers go out and -- actually, the best
3 scenario for the Plaintiff would be that this was --
4 that they should have done more. But that does not
5 reach the level of conscious failure to exercise due
6 care or the failure to exercise even slight care.

7 The testimony is undisputed about what they did.
8 They came out, they spoke with both parties. The
9 statute does not require that they do more than that.
10 And we submit that they did everything they were
11 required to do under the CDV statute. But also, that
12 there's no evidence of fault -- or no evidence of
13 gross negligence in this case.

14 The other point we make, Judge, is that as to
15 causation. These parties, Mrs. Blandin, made a call
16 to 911 on the morning of December the 9th at 10:13.
17 Officers came back. There was, obviously, further
18 conflict between Mrs. Blandin and her husband. We
19 have evidence that he had called the bank some 20
20 times. We have evidence that Mr. Blandin had
21 apparently slashed Mrs. Blandin's tires and she knew
22 about it. And her mother's tires. And she knew
23 about it. And so, any failure of the sheriff's
24 office to arrest Mr. Blandin or to use their
25 discretion not to arrest Mr. Blandin on December 9th.

1 was not the cause of Mr. Blandin's -- or
2 Mrs. Blandin's death, the criminal act of Mr. Blandin
3 was. And it's clear that that was the case. And we
4 submit that based on the evidence, Judge, that you
5 should granted our motion.

6 THE COURT: Okay, thank you, very much.

7 Mr. Wilson.

8 MR. WILSON: Thank you, Your Honor. Your Honor,
9 I appreciate Mr. Harter's argument very much. And I
10 think that he made part of my argument for me when he
11 said there is contradictory evidence. And as you
12 well know when there's contradictory evidence it
13 becomes a matter of fact for the jury's
14 determination. But Judge, I'll address each one of
15 the points he made and submit to Your Honor.

16 Your Honor, the issue of this type of case,
17 whether the public duty rule or public duty rule
18 precludes or forecloses this kind of case has already
19 been considered by our courts. By our Supreme Court
20 in the Arthurs case that Mr. Harter refers to
21 earlier. It's 551 S.E.2d 579. And in that case the
22 Supreme Court indicated that the Tort Claims Act and
23 the public duty rule are not compatible --
24 incompatible, excuse me. Not incompatible with each
25 other. And that the public duty rule would not

1 preclude. And that was actually a case very similar
2 to this. It was a domestic violence call where an
3 arrest wasn't made. They find no liability on the
4 part of the government under some factors that just
5 aren't present in this case.

6 But in the reasoning in that case, they found
7 that the special duty rule or public duty rule did
8 not preclude liability. For the fact that the facts
9 of these kind of cases, and in this case in
10 particular, meet those six factors that Mr. Harter
11 referenced a little bit earlier. The purpose of the
12 statute is to protect against this particular type
13 harm. It specifically references protecting victims
14 of domestic violence like Ms. Lilia Blandin.

15 The statute imposes directly or indirectly on an
16 officer a duty to guard against that harm. The
17 statute specifically imposes upon the duty -- upon
18 the officers duty pertaining to arrests. The class
19 of persons is identifiable. It is criminal domestic
20 violence victims. Mrs. Blandin was a protective
21 member of that class. The officer knows or has
22 reason to know the likelihood of harm if he fails to
23 act. And the officers clearly understood and knew
24 the danger that would exist to members of a class to
25 that action. And the officers given sufficient

1 authority. Clearly with the authority to arrest.

2 So, the public duty rule, because it meets those
3 six factors, goes out the window so-to-speak, Your
4 Honor. And the courts already, as I said already,
5 consider that in this Arthurs case. Arthurs vs.
6 Aiken County. And come to that conclusion.

7 So, we get down, Your Honor, to the Tort Claims
8 exceptions that Mr. Harter has referenced in his
9 answer in reference to his arguments to the Court,
10 Judge. The statute, Your Honor, does -- let me back
11 up. The 1578, Your Honor, contains a number of
12 different exceptions to liability of the government
13 as you well know. And the Steinke case, Your Honor,
14 and the Proctor case indicate that whenever you are
15 looking at those exceptions, when any of those
16 exceptions contain a gross negligent standard,
17 they're all to be read in conjunction with each
18 other. And so, you read these exceptions with a
19 gross negligence standard. So, the standard in this
20 case is going to be gross negligence. And that's a
21 factor for the jury to consider, Your Honor.

22 Gross negligence is generally a factor for jury
23 consideration for the jury to make a determination
24 whether the officers were grossly negligent in their
25 conduct as a factual determination as evidence before

1 the jury that would allow the jury to consider and
2 make that determination. It may be contradictory but
3 it is evidence, Your Honor, that we submit there's a
4 factual determination. And Mr. Harter's right, the
5 arrest, the warrantless arrest statute 16-25-70, does
6 provide that officers -- this is the mandatory
7 arrest, discretionary arrest.

8 THE COURT: Okay.

9 MR. WILSON: And it does provide that the
10 officers or agency are only liable if you prove gross
11 negligence recklessness, wilfulness or wantonness.
12 And as Your Honor is well aware from the case law,
13 Wooddale vs. Marion School, Smart vs. Hampton School,
14 Madison vs. Badcock Center. In most cases gross
15 negligence is a factual determination for the jury.
16 It's been defined as a failure to exercise slight
17 care. The conscious -- the intentional failure to do
18 something that is incumbent upon someone to do. And
19 in this case we have evidence of that, Your Honor.

20 Mr. Tucker's testimony is that the actions of
21 the officers was a reckless disregard for the safety
22 of Mrs. Blandin. Reckless goes beyond gross
23 negligence, Your Honor. We have the officers own
24 testimony that if there was probable cause, they
25 would have had to make an arrest. And, Your Honor,

1 we have testimony from the officers that if Lilia had
2 told them that she had been hit in the stomach or
3 that she had been threatened, they would have made an
4 arrest. And we have evidence and testimony from
5 Lilia's mother, Madel, that Lilia told them just that
6 thing.

7 So, they've indicated, Your Honor, the action
8 that they would have to take if presented with a set
9 of facts and circumstances. And they consciously and
10 intentionally failed to take that act under those
11 facts and circumstances. Now, I understand
12 Mr. Harter and the Greenville sheriff dispute whether
13 those facts are accurate. But those are facts for a
14 jury's determination. And that would lead to a
15 jury's ability to determine whether or not there was
16 a gross negligence issue here.

17 And, Your Honor, in addition to that they failed
18 to follow their own general set of Orders 238 in the
19 way that this was investigated. Failure to follow
20 your own policy constitutes unreasonable conduct.
21 It's evidence of negligence. And a failure to do
22 that would also be an element of consideration. When
23 it comes to causation, Your Honor, I think the
24 testimony viewed in the light most favorable to the
25 Plaintiff is that, and this is considering the

1 testimony of the 911 directors, Mr. Logan -- or
2 excuse me, 911 call takers, Mr. Logan and also
3 Ms. Sullivan and also considering our expert
4 Mr. Tucker. This set of circumstances was set in
5 motion by the mischaracterization of this call. And
6 the handling of this call. And that's what put the
7 officers out there under a set of circumstances that
8 caused them to go a certain direction instead of the
9 appropriate or proper direction.

10 In addition, to that, Your Honor, we have the
11 officers testimony concerning their failing to arrest
12 under the circumstances that we submit consist of
13 probable cause and evidence from Lilia and her mother
14 that Mr. Blandin should have been arrested. And the
15 testimony has been that if Mr. Blandin had been
16 arrested, he would most likely had been in jail.
17 That he either would have not received a bond or
18 received a significant bond that he would not made.
19 And he would not be released or out to have been able
20 to kill Mrs. Blandin the next day. This was a
21 situation, I think the evidence was that there was a
22 situation with Mrs. Blandin where things would heat
23 up. I think even Officer Tyner testified to this.
24 Things would heat up, he would drink, they would
25 escalate, then things would calm back down.

1 And, Your Honor, that's the testimony and the
2 evidence in this case. And that's evidence of
3 causation to submit to the jury. For all those
4 reasons we believe the motion to be denied.

5 THE COURT: Okay.

6 Any response?

7 MR. HARTER: No, sir.

8 THE COURT: Okay. I'm going to take it under
9 advisement. I'm going to go back and reread the
10 Arthur case to which you've each referred. I
11 apologize to you, I don't have the ability to
12 memorize it. So, I'll go back and read it before we
13 go to argument and charge and we can talk through
14 some of those issues, okay.

15 MR. WILSON: You want me to email you a copy,
16 Judge?

17 THE COURT: I can pull up it.

18 MR. WILSON: Okay.

19 THE COURT: You see that I'm caught short
20 without either a clerk or a secretary this week. So,
21 I'm wearing many hats.

22 How many witnesses do you intend to call?

23 MR. HARTER: Judge, I tell you what, I'm going
24 to try to whittle it down a little bit.

25 THE COURT: Yes, sir.

1 MR. HARTER: And if we can maybe take a minute
2 and get set up and then I can put up a witness then I
3 think I can decide.

4 THE COURT: Okay, sir.

5 MR. HARTER: I've got maybe three -- maybe three
6 or four potentials.

7 THE COURT: Yeah.

8 MR. HARTER: But I'm continuing to look at it.

9 THE COURT: Okay. Well, in any event, I don't
10 know that I'm going to be ready to charge today.

11 MR. HARTER: Okay, I don't think we'll -- we
12 won't do that today.

13 THE COURT: Yeah.

14 MR. LUNGINBILL: I would specifically ask -- I
15 would specifically ask, Judge, that we argue and
16 charge in the morning.

17 THE COURT: I appreciate that, I appreciate
18 that. During breaks and during testimony I'm trying
19 to put the charge together but it changes all the
20 time based on the evidence, so. And we all need to
21 talk about it, too. Because, you know, not
22 withstanding the fact that we discussed charges and
23 how it will be fairly standard, this is a fairly
24 non-standard case and we need to determine, okay, if
25 we're proceeding under the CDV statute, if, that's the

1 cause of action under which you're proceeding and
2 that's the duty that's imposed and establishes the
3 gross negligence standard, then what portions, what
4 salient portions of that statute do we all
5 collectively think should be charged? And under the
6 Tort Claims Act, do we think after looking at the
7 same, they're any salient portions of the same that
8 need to be charged? So, we do need to talk through
9 all of that.

10 MR. WILSON: Judge, we do --

11 MR. HARTER: And I will tell you the Steinke
12 case, I agree with what the Steinke case says if you
13 put -- I mean, I don't agree with it.

14 THE COURT: Yeah, I understand.

15 MR. HARTER: It doesn't make any sense, you
16 know. I'm going to tell you it doesn't make any --
17 it stinks, it doesn't make any sense. But I
18 understand where the state of -- the erroneous state
19 of the law -- but gross negligence is still --

20 THE COURT: Right.

21 MR. HARTER: Yeah.

22 THE COURT: So, that would suggest to us that
23 it's a gross negligence standard.

24 MR. HARTER: Yeah.

25 THE COURT: Even if we disagree with that

1 jurisprudence, right?

2 MR. HARTER: Yeah.

3 THE COURT: Yeah. Okay. All right. Well,
4 we'll take a short break.

5 Mr. Wilson, is there something else that you
6 wanted to say?

7 MR. WILSON: No, sir.

8 THE COURT: Okay. Let's take a short break, and
9 we'll come back in.

10 MR. HARTER: We'll get set up and we'll do --
11 we'll proceed.

12 THE COURT: All right, just let me know when
13 you're ready, okay?

14 MR. HARTER: Yes, sir.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: Okay, we ready to go?

17 MR. HARTER: We are, Judge, but we've got one
18 exhibit that we're going to introduce without
19 objection, but I'll put it on the record when the
20 jury comes in.

21 (WHEREUPON, Defendant's: Exhibit No. 1 was
22 marked for identification only.)

23 THE COURT: Okay, good enough.

24 Bring them in, please.

25

1 (WHEREUPON, the jury came into open court at
2 approximately 1:33 p.m.)

3 THE COURT: All right. Ladies and gentlemen,
4 welcome back. It's my anticipation, my expectation
5 that we will finish our testimony today. The Defense
6 will offer evidence into the record. Then when the
7 Defense has put all their evidence into the record,
8 we'll probably adjourn for the day and come back
9 tomorrow morning and argue and charge.

10 I am going to give y'all a little homework
11 before you leave today or at any break that we take.
12 Ordinarily, I go through the list of jurors and I
13 appoint a foreperson of the jury and I base it on a
14 lot of factors. It may have to do with age. It may
15 have to do with years in your present employment. It
16 may have to do with children. It may have to do with
17 educational level. It may have to do with your type
18 of employment. But in this instance, y'all are an
19 exceptional bunch and there are about -- well,
20 probably over half of you I would consider as
21 potential forepersons of the jury.

22 So, in that event, what I'm going to do is I'm
23 going to let y'all elect and determine who your
24 foreperson would be. So, when y'all go back into
25 chambers, I don't want y'all to discuss the case,

1 obviously, but I do want y'all to select among the
2 initial 12 a foreperson, someone who will act as
3 foreperson of the jury.

4 Now, I will tell you generally that a foreperson
5 of the jury is given the responsibility for ensuring
6 that everyone has a voice in the jury's
7 deliberations. Now, I can't tell you how to conduct
8 deliberations and I don't think any juries do it
9 exactly alike because everybody comes to a decision
10 in their own way, that is every jury does in its own
11 way. And I will tell you honestly, I've never been
12 on a jury and I'm not allowed to go into a jury room
13 during deliberations. It's an automatic mistrial.
14 So, I don't know how juries conduct deliberations.
15 But I can tell you that the foreperson's
16 responsibility is to ensure that everyone has a
17 voice. You know in a group of 12 people, there are
18 going to be some people who are louder and more
19 opinionated than others and others who may be a
20 little more reserved. A foreperson ensures that
21 everyone has the opportunity to offer their opinion,
22 everyone has the opportunity to speak in the jury's
23 deliberations.

24 So, you elect among the initial 12 who will be
25 the foreperson of the jury and just let me know when

1 you have decided. Okay.

2 Mr. Harter.

3 MR. HARTER: Thank you very much, Judge. Our
4 first order of business is we would like to move into
5 evidence Defendant's Exhibit No. 1, which has been
6 marked. I understand there's no objection.

7 THE COURT: Okay. Any objection?

8 MR. LUGINBILL: No objection from us, Your
9 Honor.

10 THE COURT: All right, without objection, the
11 same is moved into evidence as Defendant's Exhibit
12 No. 1.

13 (WHEREUPON, Defendant's: Exhibit No. 1 was
14 admitted into evidence.)

15 MR. HARTER: Your Honor, this is an arrest
16 warrant dated July 8th, 2010, and an accompanying
17 affidavit of non-prosecution dated July 29th, 2010,
18 disposing and dismissing that case.

19 THE COURT: Okay.

20 MR. HARTER: It involved these parties,
21 Mr. and Mrs. Blandin.

22 Your Honor, we call Jack Ryan.

23 THE BAILIFF: Sir, place your left hand on the
24 Bible, raise your right hand and face the clerk.

25 JACK RYAN, after being duly sworn,

1 testified as follows:

2 THE CLERK: State your name, please.

3 THE WITNESS: John J. Ryan.

4 THE CLERK: Thank you. Please be seated.

5 DIRECT EXAMINATION

6 BY MR. HARTER:

7 Q Mr. Ryan, you go by Jack, too?

8 A I sure do.

9 Q I think we're going to figure out pretty quickly
10 you're not from around here, so I'd like you to introduce
11 yourself to the jury and tell us you where you live and
12 your line of work.

13 A My name is Jack Ryan and I live up in Rhode
14 Island, place called Smithfield, Rhode Island. I have an
15 office in Indianapolis, Indiana, but when I do get home,
16 it's in Rhode Island.

17 Q And what kind work do you do?

18 A You know, I do a variety of things. I probably
19 spend about 40 weeks of the year doing training for law
20 enforcement around the country. I can tell you that I
21 started a week this week in Illinois and when I leave here
22 tonight, I'm going to out to Owensboro, Kentucky, to do
23 some training for attorneys on legal issues and high risk
24 events that happen in law enforcement and how we analyze
25 those kinds of things.

JACK RYAN-DIRECT BY MR. HARTER

1 Q Now, Jack, would you give the jury the benefit
2 of your educational background?

3 A Yeah, I was a -- I became a police officer in
4 1982, but I got my Bachelor's Degree while on the police
5 department from a place called Roger Williams University.
6 I got a Master's Degree in criminal justice from a place
7 called Salve Regina University in Newport, Rhode Island.
8 And then in 1994, I got my law degree from Suffolk
9 University Law School in Boston, Massachusetts. So, I do
10 some additional things. And I don't know if you want me
11 to explain those as well.

12 Q Go ahead.

13 A In addition to the training issues, I also get
14 involved, for lack of a better term, in audits. Audits
15 come out to mean a couple of different ways. Sometimes a
16 chief or a sheriff wants an outside set of eyes to come in
17 and look at their agency, make recommendations on how they
18 can improve performance, better policies, better training,
19 things of that nature. I also sometimes get involved in
20 those after there's been a problem. So, sometimes I get
21 called in after something really bad has happened to look
22 at the event, to look at the way the agency handles those
23 kind of events.

24 Also, I get involved in writing policies. I
25 write policies in about 23 different states, maybe 24 now.

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1 But a lot of agencies are small, they don't have the
2 resources to write their own polices. So, my group goes
3 in and writes the policies. My group is pretty big.
4 We're the largest private provider of training for law
5 enforcement in the country. My group does about 900
6 trainings a year. There is about 70 of us that do that.
7 And they're all different subject matter experts in their
8 area. So, some may be experts in investigating homicides,
9 some will be experts in interrogation, and then some will
10 do leadership training, those kinds of things. So, a
11 variety of different things.

12 In addition to that, I also get involved in what
13 I'm doing here today, reviewing cases. And if I think
14 that I can offer testimony that would help you understand
15 our business, then offer opinions to that.

16 Q Thank you, Jack. Now, will you tell the jury --
17 I mean, you started out as a police officer back in 1982
18 up in Providence; is that right?

19 A That's correct.

20 Q And you were actually a police officer working
21 in the field, on the ground or doing that type of work for
22 a number of years, right?

23 A I did. I spent 20 years with the Providence
24 Police Department, various ranks. Almost half of the
25 career was in the patrol division, although it was at

JACK RYAN-DIRECT BY MR. HARTER

1 various ranks, so I started out like everybody else as a
2 patrol officer. At one point, I went to what they called
3 a tactical unit that dealt with just high crime areas as a
4 patrolman still assigned to a patrol division. Probably
5 within about four, four and a half years, I made
6 detective, so I was a detective for about a year. In
7 Providence, we investigate all the major crimes, so
8 anything that's a felony would be turned over to a
9 detective to investigate and charge.

10 And then after about a year in detectives, I had
11 the opportunity to promote to sergeant. And once you
12 promote to sergeant, you go back to uniform, so I was a
13 sergeant uniform where I'm in a district of, I guess,
14 about 12 officers, one of the bigger districts in the
15 city. And then made lieutenant and as a lieutenant, you
16 actually run the entire city. So, you would be
17 responsible for all the officers working on a given shift.

18 Somewhere around 1994, 1995, I ended up getting
19 detailed to the police academy and took over as the
20 director of the Providence Police Academy. Unlike most
21 departments, Providence, because of its size, has it's own
22 academy, so we train all of our own people. We don't send
23 them, for example, to the state academy like many agencies
24 do here in South Carolina. Providence police officers
25 actually go to the Providence Police Academy. So, I ran

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1 that as well. And then I made captain and at that point,
2 I was the administrative captain for the police
3 department.

4 Q And did you stay as an active police officer
5 with Providence until about 2002?

6 A That is correct.

7 Q And then what changed then?

8 A Well, then I started doing what I do now. As I
9 said, I do a large amount of training, about 40 weeks a
10 year. I have about 200 hotel room nights every year. So,
11 a lot of that time is spent doing training. And I train
12 on what we call a high risk tasks, things like search and
13 seizure arrest, use of force, domestic violence, pursuits,
14 all of the things that are what we call a high risk task.
15 So, I provide that training around the country nearly on a
16 weekly basis, not quite a weekly basis, but nearly on a
17 weekly basis.

18 Q Have you worked at any schools, universities,
19 been on staff or taught there?

20 A Yes, I was an adjunct professor for 10 years
21 while I was still a police officer at the same place that
22 I got my Master's Degree. I was an adjunct at Salve
23 Regina University for about 10 years. And then when I
24 started doing the traveling was unable to keep a schedule
25 that I could continue to do that, obviously.

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1 Q And I gather that law enforcement -- and have
2 you had exposure to administration of law enforcement
3 agencies?

4 A Oh, yeah, absolutely. You know, as a captain,
5 that was my function. I was the administrator of the
6 agency.

7 Q Training?

8 A Training, I ran the academy and I was
9 responsible for both in-service as well as the basic
10 academy when people came onto the police department.

11 Q Actual operations?

12 A Well, as I said, I spent more than half my
13 career, right around half my career in the patrol division
14 and a lot of that was daily operations.

15 Q And did you have -- did you work in a related
16 area of training and supervision and operations of all
17 phases of a law enforcement agency, including 911
18 communication specialists and dispatchers?

19 A Well, particularly, when I directed -- two
20 things. One, when I was responsible as the lieutenant in
21 charge of the city, the 911 center came under my
22 authority, so I had to obviously supervise that. But also
23 as the director of training, I had to develop and write
24 training related to the 911 system, sure.

25 MR. HARTER: Your Honor, at this time, we would

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1 offer Jack Ryan as an expert witness in law
2 enforcement practices, procedures and policies
3 involving the investigation of crimes, specifically
4 CDV offenses, as well as department operations and
5 administration and the related area of training,
6 supervision and operations of 911 systems and
7 communication specialists and dispatchers.

8 THE COURT: Any voir dire or exceptions to that?

9 MR. LUGINBILL: No exceptions to that, Your
10 Honor.

11 THE COURT: All right. I will accept him as an
12 expert in the recited field. I'm not going to try to
13 recite all of that. It would be easier for you to
14 say.

15 MR. HARTER: I can if you want me to.

16 THE COURT: No, sir, please.

17 Ladies and gentlemen, I told you yesterday that
18 someone may be qualified as an expert witness because
19 of his or her respective education, experience and
20 expertise in a given field. Again, I will remind you
21 that just because someone may be qualified as an
22 expert witness does not mean that they have -- that
23 their testimony has any greater weight or value. You
24 value, you judge the weight and credibility of an
25 expert witness's testimony in the exact same manner

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1 that you judge the weight and credibility of any
2 other piece of evidence that you receive in the trial
3 of the case.

4 Go ahead, Mr. Harter.

5 MR. HARTER: Thank you, Your Honor.

6 THE COURT: Yes, sir.

7 BY MR. HARTER:

8 Q And Jack, I mean, you're basically an expert in
9 law enforcement practices, right?

10 A Yes.

11 Q Do you appreciate that throughout the country,
12 there are certain standards, practices and customs that
13 are basically a set of guidelines for agencies throughout
14 the country and United States?

15 A Essentially, we call them generally accepted
16 practices. Other than what the U.S. Supreme Court says,
17 there's really no standard that everybody has to follow.
18 Because things will differ slightly from state to state.
19 But there are generally accepted practices that -- you
20 know, that most agencies do follow.

21 Q And in this case, you reviewed this case at my
22 request; is that correct?

23 A Yes, sir.

24 Q And you reviewed material related to the case
25 that we're going to talk about in a few minutes; is that

JACK RYAN-DIRECT BY MR. HARTER

1 right?

2 A Yes, sir.

3 Q Okay. Just in a nutshell, will you tell me
4 whether or not you have an opinion as to whether or not
5 the communication specialist involved in this call, this
6 case, this 911 encounter deviated from any accepted
7 practices of law enforcement in the community and in the
8 states?

9 A I do have an opinion.

10 Q What is that opinion?

11 A Yeah, my opinion is that the call taker did not
12 deviate from the standard of practice.

13 Q Okay.

14 A For a number of different reasons.

15 Q Okay. And we're going to talk about that in a
16 minute. Did you also look at the case from the standpoint
17 of whether or not Deputies Tyner and Picone responded to
18 the incident, followed and/or complied with accepted
19 expected practices and policies and standards within the
20 law enforcement community in the United States?

21 A Yes, I did.

22 Q What's your opinion about that?

23 A My opinion is that their actions were also
24 consistent with all generally accepted practices, policies
25 and training in this area.

JACK RYAN-DIRECT BY MR. HARTER

1 Q Okay. If you will, Jack, tell the jury then
2 what you looked at and how you went about evaluating this
3 case?

4 A You know, I look at this case like I do any
5 case. What happens is I'm given a set of materials.
6 They're usually voluminous materials. That will include
7 police reports, that will include, for example, in this
8 case, the 911 tapes. It will include depositions of
9 several of the folks that you've already heard give
10 testimony, CAD reports, which is computer-aided dispatch,
11 so the typing that goes on into the system as to how the
12 call develops and the incident recalls, documents related
13 to the policies of the agency itself. In this particular
14 case, I have a number of policies that I looked at,
15 particularly that relate to the actions that occurred
16 here.

17 So again, I review all of those documents and,
18 generally, I have a conversation with the lawyer I'm
19 working with. And in this case, Mr. Harter. And I advise
20 them whether I think I can help the jury understand the
21 police practice at issue. And sometimes somebody like
22 Mr. Harter says well, I really don't like what you have to
23 say, so that's the end of the discussion. But in other
24 cases, somebody like Mr. Harter says absolutely, I would
25 love to have you testify or I would like you to testify

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1 and help the jury understand this particular event.

2 Q Okay. And let me turn now to the initial 911
3 call --

4 MR. HARTER: Can you put up the incident recall?
5 BY MR. HARTER:

6 Q -- that came in on December the 9th, 2011. And
7 you know what this document is, the incident recall,
8 correct?

9 A Correct.

10 Q Okay. Now, before we talk about that, let me
11 ask you, Jack, did you listen to the 911 tape, the first
12 call that came in at 10:13 from Mrs.-Blandin that was
13 answered by Patricia Sullivan?

14 A I did. I certainly listened to that call.

15 Q Okay. And it's been played in front of the jury
16 here a couple of times, so I'm not going to ask it be
17 replayed right now. But let me ask you, when you listened
18 to that tape, did you have any difficulty whatsoever
19 understanding Mrs.-Blandin and her communications with
20 Patricia Sullivan over the phone?

21 A What I'd say is listen to the tape. At some
22 points, it's very difficult to understand, at other
23 points, it's not. In fact, there was a -- and I don't
24 know if it's in evidence, but there was a transcript that
25 I got that followed along with it. And frankly, when I

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1 listened to the tape, I heard things differently than that
2 transcript.

3 Q Let me stop you. That was the transcript the
4 sheriff's office did in connection with the murder
5 investigation that was done?

6 A Correct. I think that's what it was for, yes.

7 Q Go ahead.

8 A I heard some of the things --

9 Q Let me stop you. Have you reviewed a more
10 recent transcript that was provided just a few days ago
11 that's dated September 24?

12 A I don't believe I've seen that.

13 Q Okay. That's fine. But go ahead, I'm sorry.
14 You mentioned that you reviewed the transcript.

15 A So, I think there are points where it's
16 difficult to understand, there's other points where it's
17 not difficult to understand. There's points where
18 Mrs. Blandin becomes calmer, if you will, and then it's
19 easier to understand. So I think you need to listen to
20 that yourself.

21 Q Okay. Any particular language issue that you
22 appreciated from that or?

23 A Well, you know, I was kind of fortunate. I
24 worked in an agency in Providence, Rhode Island, where
25 just a couple of weeks ago USA Today said we're one of the

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1 12. most densely populated cities in the country. And it's
2 often said that there's 65 different dialects between the
3 Hispanic dialects and the Southeast Asian dialects spoken
4 in our public schools. So, I would like to think that I
5 have an ear for it. So, I think probably what I heard was
6 probably better than what the average person might have
7 heard on that tape.

8 Q Okay. Now, if you will, Jack --

9 THE BAILIFF: Your Honor.

10 A JUROR: Excuse me. I have a question. I
11 don't know if it's appropriate for now, but when we
12 do go to deliberate --

13 THE COURT: Yes, ma'am.

14 A JUROR: -- like I believe before you said that
15 there is no standardization across the country as far
16 as criminal domestic violence protocol?

17 THE COURT: Don't worry about that yet.

18 A JUROR: Don't worry about that yet? Okay.

19 THE COURT: I'm going to give you what you need
20 during your deliberations, okay?

21 A JUROR: Perfect. Thank you.

22 THE COURT: Okay. Go ahead.

23 BY MR. HARTER:

24 Q Is there training across the country for law
25 enforcement officers as to how to address criminal

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1 domestic violence issues?

2 A Absolutely. And what I said was it's a
3 generally accepted practice. But, for example, believe it
4 or not, which is -- which some states don't have mandatory
5 arrests. Some do. So, what I was trying to say is the
6 standard is not exact for every state.

7 Q The laws could be different from state to state?

8 A The laws, which would change the protocols as
9 well.

10 Q Got you. But law enforcement is trained in CDV
11 cases throughout the country basic -- certain basic --

12 A Absolutely.

13 Q -- investigative techniques?

14 A There's no question there is a lot of generally
15 accepted practices.

16 Q Thank you. Now, Jack, let me ask you, when you
17 reviewed the 911 tape, you remember that there was a
18 dispatch call that came in -- a communications call that
19 came in to Patricia Sullivan at 10:13. And you listened
20 to that tape. And did you understand from what you've
21 learned in the case that that call was categorized by
22 Ms. Sullivan as a child custody call?

23 A Yes, sir.

24 Q Okay. Now, based on your review of the tape and
25 your review of the call, tell the jury, do you have an

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1 opinion as to whether or not she properly evaluated that
2 call and responded to that call and categorized it as a
3 custody call?

4 A You know, that was clearly a reasonable
5 interpretation. Again, I would say you guys, I'm sure,
6 will have the tape, so if you listen to it, you hear that
7 the main concern of the caller is she wants to get her
8 child who's on the second floor. And that becomes clear
9 as the call goes on. Sometimes these call takers, they
10 get so many calls and they're coming in and they have to
11 go through and ask questions to try to determine exactly
12 what's taking place at the time, not what took place
13 earlier. You know, certainly, if somebody's in danger,
14 they have to try to make that determination because that's
15 going to prioritize the call. But again, in this
16 instance, it was certainly a reasonable interpretation
17 that she wanted to go into the house and get her child and
18 she was staying outside.

19 Q Now, let me ask you this, what are the real life
20 challenges for communication specialists when they handle
21 calls like this?

22 A Well, there's a combination of issues. One,
23 they have to get information fairly quickly. And
24 sometimes people will go on and on. And sometimes it will
25 sound almost callous on the part of the dispatcher's part.

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1 And when we listen to a call through the eyes of somebody
2 who may be calling the police, we might say oh, that
3 sounds kind of rough. What the dispatcher is trying to do
4 is they're trying to get the immediacy of the information.
5 What's taking place right now? Is this something I have
6 to get an officer to immediately? Is this something that
7 they're going to report what's taking place?

8 And then, in addition to that, they have to be
9 aware that they have to get -- there will be more calls
10 coming in. So, a more serious call maybe coming in next.
11 So, those are both challenges that they have to try to get
12 information quickly and they have to try to get the best
13 information they can get and get it out to the officers.

14 Q Okay. Now, if we listen to the 911 call,
15 there's reference to a prior arrest. There's reference to
16 somebody being punched in the stomach. There's reference
17 to a threat. There's reference to children or clothing.
18 How does a call -- how do you feel Patricia Sullivan
19 filtered through that call and concluded it was a child
20 custody call? How could that be reasonable?

21 A Well, again, I think that was by asking specific
22 questions, by asking specific questions. You know, one of
23 the things at the beginning of the call, it's reported
24 that he had previously been in jail. So, you know, did
25 that indicate that the assault that she's talking about

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1 occurred at some prior time? But really, she stopped and
2 she asked questions. What is it we're trying to do here?
3 Are we trying to get clothes? Because it was clear that
4 she was outside. So, there's all of those things going on
5 and she's filtering through that information to try to get
6 what kind of call is this that I put out to our officers.

7 Q And there's some reference to the five W's, who,
8 what, when and where --

9 A Why, how.

10 Q Why. Did she do that, did she cover those
11 points?

12 A She does in a sense. Some of it's offered, some
13 of it's offered. So, for example, it's my husband and
14 he's in the house. So, we've got a location, we've got
15 who it is. Some of it is I'm trying to get into the house
16 to get my baby, my child, I don't know if she said baby or
17 child, I'd have to look back at it, who's on the second
18 floor. So, a great deal of that is covered.

19 And again, is this -- you know, one of the
20 things we have to be careful of in law enforcement is to
21 make what they call a cookie cutter approach to everything
22 because if you have officers just check off the box in a
23 cookie cutter approach, they might miss something. By the
24 same token, you know, they may just ask those questions
25 and not pick up on something else they should have.

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1 Q As to the tone of voice and the inflexion of
2 voice on the tape and as to any background information,
3 did you note anything significant about that?

4 A I don't understand your question.

5 Q In terms of did you hear any background noise,
6 any yelling, any screaming, did this caller sound
7 hysterical at the moment?

8 A No, I mean, I think if you listen to the tape,
9 there's a couple of points where she's obviously upset,
10 but -- and there's points where she's calm. But you don't
11 hear any -- you know, sometimes in an ongoing domestic,
12 you're going to hear yelling and screaming in the
13 background. You're going to hear -- you know, I've
14 listened to hundreds of them over time, but you will hear
15 the spouse saying who are you calling, hang up that phone.
16 Sometimes the phone will be ripped out of their hands.
17 So, you've got a lot of other stuff going on in the
18 background and you don't hear any of that in this case.

19 Q And when that -- when that call is taking place,
20 is it apparent that Ms -- or does it indicate on the call
21 that Mrs. Blandin is mobile or she's in a car, she's not
22 in an immediate area of danger at that time?

23 A Yeah, I mean, I think that's clear that she's
24 not in the house and that he is. That's clear.

25 Q And as a custody or items call, you know, based

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1 on your work on the case, it got categorized as a 1021
2 call, right?

3 A Correct, custody of child.

4 Q And if it's that kind of call, is it appropriate
5 to refer it to a sergeant or followup phone call?

6 A Yes. Let me -- can I explain?

7 Q Sure.

8 A One of the tragic cases in this country dealing
9 with child custody, where you have mom and dad who aren't
10 getting along and law enforcement goes and intervenes and
11 says okay, the child is going with dad. And then,
12 unfortunately -- and I've seen several of these myself,
13 dad then kills the child. So, law enforcement has
14 intervened and changed the custody situation. So, we
15 always want a supervisor involved in that determination of
16 where custody belongs, which is exactly why you take that
17 step of having a supervisor get involved in the child
18 custody situation.

19 Q Now, I think later down on the incident recall
20 at 1028, there's another call. And you listened to this
21 call, too, from Juana Hamby, correct?

22 A Absolutely.

23 Q And this is a crystallization or summary of what
24 the Juana Hamby call include, correct?

25 A Correct.

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1 Q Okay. Now, would you comment to the jury
2 about -- well, Neil Logan is the one that receives this
3 call; is that right?

4 A Correct.

5 Q Okay. What did you understand to be the nature
6 of this call that comes in at 10:28 and Neil Logan's
7 handling of that call then?

8 A I think when you listen to that one, it becomes
9 clear that that report is clearly a domestic. And
10 clearly, that's why he changed the response and, clearly,
11 that was a reasonable thing to do. Because it's -- on
12 that one, it's clear. I wouldn't make any other
13 determination either.

14 Q Now, the information communicated is a threat
15 from a husband to kill a wife, right?

16 A Correct.

17 Q Now, does that call -- in listening and
18 deciphering through that call, is it clear that Ms. Hamby
19 is not with Mrs. Blandin and Ms. Hamby is not in the
20 residence with Mrs. Blandin?

21 A Well, I think also on that call, the sister does
22 report that she slept in the car all night. So, that's
23 also -- even in that call, it's clear that she's not in
24 the house. But clearly, it's not the same -- there's a
25 different tenor to that call when you listen to it.

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1 Q And the call -- the incident recall shows that
2 that call was changed from a 21 to an 80, right?

3 A Correct.

4 Q Okay. Now, based on Neil Logan's assessment of
5 that call, was that appropriate?

6 A Absolutely.

7 Q And the priority of response was changed from a
8 three to a one. Okay. What's the significance of that,
9 Jack?

10 A Well again, some agencies swap those around,
11 some agencies, code three is your biggest priority. Some
12 agencies is code one. In this case, switching it to code
13 one was to kick it up to a higher priority call to cause a
14 response forget the phone call by the sergeant, now we're
15 going to send deputies right to the scene.

16 Q And that was a call where two deputies were
17 dispatched without delay?

18 A Absolutely.

19 Q Okay. Now, if we look further down -- do you
20 have any information that that dispatch of those two
21 deputies was ever countermanded or canceled by anybody?

22 A No. I don't think the response was
23 countermanded at all.

24 Q Okay. And so at that time, two deputies were
25 dispatched to the Blandin residence?

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1 A Correct.

2 Q Okay. Now, later, there is another call that
3 we -- did you listen to the call with Patricia Sullivan
4 when she called Mrs.-Blandin back later that morning?

5 A Absolutely.

6 Q Okay.

7 A She called after the change in status.

8 Q Okay. And you listened to that call as well?

9 A I did.

10 Q Okay. And what was the tone of that
11 conversation -- and that would have been before officers
12 arrived, correct?

13 A Correct.

14 Q What was the tone of the parties in that
15 conversation at 10:38 between --

16 A I think --

17 Q I'm sorry, between Patricia Sullivan and
18 Mrs.-Blandin at 10:37?

19 A I think clearly the call taker, Ms. Sullivan,
20 was trying to make a determination if she was, in fact,
21 outside. Because I mean, I don't know, maybe second
22 guessing herself on the initial call, you know, are you,
23 in fact, outside, you're not with him, those kinds of
24 things. You can listen to the call. So, it's a
25 verification that she's not in imminent danger at that

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1 point is what I hear.

2 Q Do you think that there was any necessity for
3 Patricia Sullivan to call her back since two units had
4 been dispatched?

5 A Well, I think if you think there's potentially a
6 crime in progress that it's always good to have the person
7 on the phone to try to figure out what's going on as the
8 call's continuing.

9 Q Okay. Now, if we look down at the incident
10 recall a little further, we see that there's -- there was
11 some officers dispatched, I think Ron Suber and Joey
12 Seigers who were initially dispatched, but it was changed
13 and it appears that Kevin Tyner and David Picone, as you
14 know, responded to the call?

15 A Correct.

16 Q Okay. And David Picone shows up at 10 --

17 MR. HARTER: We have to go up a little further,
18 I think.

19 BY MR. HARTER:

20 Q At 10:40 --

21 MR. HARTER: I'm sorry, that's the wrong page.

22 BY MR. HARTER:

23 Q On scene, 10:47, a unit is on scene, correct?

24 A Correct.

25 Q Okay. Then at 10:48, Kevin Tyner is on scene?

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1 A Correct.

2 Q Do you have any information that suggests that
3 between the time this call came in and the time officers
4 got there to respond that anything happened to
5 Mrs. Blandin or there was anything about the time sequence
6 that had any interplay or affect on this case?

7 A There's certainly nothing in the materials that
8 I saw that anything was changed by what type of call it
9 was or the time it took them to get there. Nothing had
10 changed.

11 Q Now, I want to go -- circle back around. I
12 asked you before if you had an opinion as to whether or
13 not Patricia Sullivan's handling of this call was in
14 keeping with applicable police practices and policies and
15 procedures and I want you to tell the jury why.

16 A Yeah, it is consistent. Because what she did
17 was she gathered information, she did ask certain
18 questions. She did -- it may sound like an interruption,
19 but dispatchers need to do that. They need to stop the
20 person and try to get the crystallized information so that
21 they can get either -- say hey, we need to get a car out
22 there right away, hey, this is not a priority, nobody's in
23 danger at this moment. So, she was pulling together that
24 bit of information. And when you listen to the tape --
25 and again, obviously, I know you've heard it, but it is

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1 clear that she does want to get her child out of the
2 house. That seems to be the focus point of what she's
3 saying to the dispatcher.

4 Q The fact that the call was changed from a 1021
5 to 1080 by Neil Logan, would that mean or suggest that
6 Patricia Sullivan was wrong?

7 A No.

8 Q And did anything wrong with the way she handled
9 it in the first place?

10 A No. And again, just the fact that she decides
11 to call and refer to a sergeant in the first instance
12 tells me that she believed that this was, in fact, a child
13 custody that. That's why you would call the sergeant, the
14 very reason I told you, because of these tragic cases that
15 happen. More importantly, when you get new information,
16 then certainly, that can change the status of the call.
17 So, when Logan gets that further information, additional
18 information that this may be ongoing, then, certainly,
19 that's a reason to kick it up. So that's perfectly
20 reasonable and consistent with generally accepted
21 practices as well.

22 Q Can you look is General Order 238, please? And
23 General Order 238 has a provision that relates to
24 responsibilities of the communications center. You see
25 that, Jack?

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1 A Yes, sir.

2 Q Okay. Now, I want to ask you is that a typical
3 type of general order that -- or directive that you would
4 see in most agencies?

5 A Very typical. That's general accepted
6 practices.

7 Q Now, do you have an opinion as to whether or not
8 Patricia Sullivan had a responsibility to follow General
9 Order 238 as to the particulars which are indicated on
10 this general order as it relates to communication center's
11 responsibilities?

12 A Okay, once she made the determination that it
13 was a child custody matter and not a criminal domestic
14 violence case, then this really doesn't apply as such.
15 But a lot of these things, she would have known just from
16 the call.

17 Q And it says communication specialist is not to
18 cancel response to domestic violence complaint based on
19 solely followup call from the residence, right?

20 A Correct. And the concern there is that
21 sometimes you'll get the 911 call of the domestic and then
22 the husband will grab the phone -- I'm sorry, it's usually
23 the husband. I don't mean to be -- the husband or the
24 boyfriend -- more often than not, it's the male part to
25 the equation. And they'll grab the phone or call back and

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1 say hey, we're all set here. Well, we don't want to
2 cancel a domestic violence call, a criminal domestic
3 violence call when somebody in the house who may be the
4 assailant calls us from the same phone and says cancel the
5 call. So, that's really the purpose of that provision.

6 Q And nothing -- nobody canceled the response to
7 the call by Deputies Tyner or Picone, did they?

8 A No, once that call went out, they responded to
9 the scene.

10 Q Okay. Now, let's talk about the response to the
11 scene for a minute. And let's jump back to the incident
12 recall. I think we determined that Deputies Picone and
13 Tyner arrived at 10:37 in the morning?

14 A 10:38, correct.

15 Q All right. Now, what did you understand they
16 did when they got there, Jack?

17 A Well, they did a several things. I mean, one is
18 remember -- again, my understanding -- you've heard
19 testimony, but my understanding from the documents is that
20 when Officer Picone gets there, he finds the parties in
21 two distinct vehicles arguing in the driveway. At that
22 point, as soon as Tyner gets there, they separate the
23 parties, which is something you always do. One of the
24 things you want to do is get them out of sight and sound
25 of each of each other to the degree you can safely. And

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1 that was done. Mr. Blandin was taken in the house by
2 Picone. He had a conversation with him. Tyner has a
3 conversation with Mrs. Blandin out in the driveway. And
4 essentially, then the officers compared notes as to what
5 seemed to be going on at the place and what the custody
6 situation was going to be.

7 Q Okay. Now, let me back up just a teeny bit.
8 What impact, if any, should the information on -- incident
9 recall information over -- information over dispatch have
10 to do with an officer's response when they get there to a
11 location like this?

12 A It shouldn't have any. The officer really has
13 an obligation to reinvestigate the entire matter. That's
14 the officer's responsibility who gets it. Because quite
15 often -- and again, this is not in any way condescending,
16 but sometimes people call the police -- and I'll just give
17 you this example, they said I've just been robbed. Now,
18 to the citizen who's calling, robbed means one thing. To
19 law enforcement, it means something very, very different.
20 So, the dispatcher may put out robbery.

21 Now, robberies, generally, they actually steal
22 something from your person by force, fear or intimidation,
23 so that's a very serious crime. When the person may be
24 trying to report that their bicycle was stolen from their
25 background. So, in every case, the officer has this

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1 obligation to basically start at ground zero again and
2 make the determination as to what is occurring from the
3 standpoint of the parties who called the police.

4 Q Okay. Based on your review of the case, what
5 did Picone and Tyner do? They got there and separated
6 Mr. and Mrs.-Blandin and interviewed them separately?

7 A Absolutely.

8 Q Okay. And what did they do after that?

9 A Well, once they made the determination that
10 there was no criminal event here, they basically, I
11 think -- you know, Mrs.-Blandin left with the children
12 with her mom. And I think Mr. Blandin just went back in
13 the house.

14 Q Let me ask you, did you see any indication where
15 when the officers arrived that they questioned
16 Mr. and Mrs.-Blandin about what the nature of the
17 disturbance or issue was?

18 A Well, I did. There's information in the
19 materials that indicated there was an issue about finances
20 and there was an issue about -- an argument over finances
21 and Mrs.-Blandin wanting to leave. So, I did see those
22 materials. There was other things in the materials that
23 would indicate that there was this argument going on.

24 Q And how are -- officers investigating CDV calls,
25 how are they trained to question participants or possibly

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1 subjects in a situation like this?

2 A Well, I mean, the important thing is separate
3 them and create a safe sound barrier so that you can
4 hopefully get both people to open up as to what occurred.
5 Not in front of the other because that sometimes leads to
6 further argument or, you know, somebody may be afraid to
7 talk in front of the spouse. So, you want to create this
8 separation of sight and sound, which they did.

9 You also want to look for physical evidence that
10 will support whether or not a crime as occurred. You
11 know, some of the classics we look for is, for example,
12 the phone ripped out of the wall. Some of the classics
13 are clumps of hair on the floor. So, we look for certain
14 things. Any evidence of injury that can be seen, physical
15 injury. So, we're looking for anything that will support
16 a victim's statement that they've been assaulted, for
17 example.

18 Q Okay. And in this case, did you see or indicate
19 anything from any witness or anybody to suggest that there
20 was any physical evidence or physical manifestation of any
21 injury that would have been observable?

22 A There's nothing in any of the materials that I
23 reviewed that showed any physical manifestation whatsoever
24 of an injury, redness, anything. There's nothing like
25 that in the materials.

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1 Q Now, so these officers each interview
2 Mr. and Mrs. Blandin separately and away from the
3 children; is that correct?

4 A That's correct.

5 Q Is that appropriate?

6 A It is appropriate.

7 Q Okay.

8 A It's appropriate to get each one's story.

9 Q Okay. All right. Now, did you see if Deputies
10 Picone and Tyner did anything to investigate these
11 parties' background, do anything to find out if there was
12 anything out there that would be of importance at that
13 time?

14 A I think there was certainly what we call an NCIC
15 run. So, they did run what we call National Criminal
16 Information Center information. That information
17 generally tells us if somebody has warrants or things of
18 that nature, so they're wanted, for example, under a
19 preexisting charge or something like that.

20 Q Okay. Now, an NCIC check, is that going to tell
21 them if there is an Order of Protection that's issued?

22 A The database should tell an Order of Protection
23 or what's otherwise referred to as a protective order or a
24 Restraining Order. It's not going to tell in most cases
25 what we call a no contact order.

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1 Q Okay. Let me ask you about it, did you
2 determine from reviewing the materials and reading the
3 depositions of Deputies Picone and Tyner that they, in
4 fact, got information that Mrs. Blandin had been the
5 victim of domestic violence on another occasion?

6 A I think she might have said that she had been
7 and that there had been a previous arrest. I think they
8 did have that information.

9 Q Okay. And if there had been, in fact -- I
10 believe you later learned that there was an arrest and the
11 charge that been brought back in October of 2011, October
12 30th?

13 A Correct. I don't know, eight or 10 weeks
14 before, something like that.

15 Q Okay. But October 30th of 2011, a month or two
16 before?

17 A Correct.

18 Q Six weeks before. Okay. Now, did you
19 understand also that Mr. and Mrs. Blandin had reunited
20 after October 30th of 2011?

21 A I think there is things in the material that
22 would indicate that. And I also heard one of the
23 witnesses testify this morning about he had gone to rehab
24 and they were trying to get things worked out.

25 Q If that had, in fact, been the case, would there

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1 be any way that any Judge would enforce a no contact order
2 when two people have gone back together by consent and
3 mutual agreement?

4 A I've never seen that happen.

5 Q Okay. Jack, is that one of the issues that
6 confront law enforcement, that parties do have these
7 issues, they go back together and sometimes they stay
8 together, sometimes they don't? Is that one of the things
9 that makes it difficult?

10 A Well, I mean, it makes it difficult from a
11 prosecution standpoint because we do see that happen quite
12 often.

13 Q Now, there's been some discussion that Mr --
14 excuse me, that Mrs. Blandin made a report to somebody
15 about having been punched in the stomach. Are you aware
16 of that?

17 A Correct. I mean, I hear some of that, that
18 there's an indication about a punch in the stomach,
19 absolutely.

20 Q Okay. Are you aware that that was -- that the
21 event -- or that was -- that was the complaint for the
22 report that she made in October of 2011, that she had been
23 punched in the stomach?

24 A I know that that was the report that that's how
25 she was assaulted in October, yes.

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1 Q Okay. Now, let me ask you about that for a
2 minute. In your experience as a law enforcement officer,
3 is there anything that is particularly unique about
4 criminal domestic violence and men deliberately choosing
5 to hit a woman in the stomach as some kind of mode of
6 operation?

7 A I have never seen a documentation that that's
8 something that happens. Now, I have learned that in child
9 abuse cases, because the kids are going to be going to
10 school, if they have injuries, they may be seen, we see
11 that in child abuse cases, that sometimes child abuses do
12 that. But generally, in the domestic cases because
13 there's such acts of range, I never seen where somebody
14 takes that degree or that step to try to hide the
15 injuries. I've just never seen that in any documentation
16 that I've looked at.

17 Q All right. Did you also note from the incident
18 recall how long Deputies Picone and Tyner were actually at
19 the scene?

20 A I think it was close to half an hour, somewhere
21 between 25 and 30 minutes at the scene doing their
22 investigation.

23 Q Okay. Is that a reasonable length of time in
24 your opinion to delve into the type of event that they
25 were confronted with in this case based on what you know?

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1 A Absolutely. You know, I think it's important to
2 stress that, you know, the fact that Picone took
3 Mr. Blandin into the house is an important thing because
4 you get to see if there's any physical evidence in the
5 house, too. So, I think that those steps, that separation
6 and then taking him into the house, those were important
7 things to do, sure.

8 Q And I believe based on the incident recall, it
9 looks like the NCIC inquiry indicated there had been a
10 cancellation of somebody's insurance and these parties
11 could not drive from the location?

12 A Well, it said driver's license status and the
13 reason why the driver's license status was changed, yes.

14 Q Now, let's look down to the time 11:15. Is that
15 when Picone and Tyner cleared the scene or left? I'm
16 sorry, 11:15?

17 A Yes, it's right here at free line incident.

18 Q Right.

19 A I think that's it.

20 Q Okay. So, they were there from 10:47, 10:48 to
21 11:15?

22 A Correct, so just under a half hour.

23 Q All right. Now, did you also note what Deputy
24 Tyner did to assist Mrs. Blandin when he was there and
25 before he left?

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1 A Well, I think there is an indication that he
2 told her about the possibility of getting a protection
3 order and some of the things that she could do while he
4 was there.

5 Q And you think that was appropriate?

6 A Of course.

7 Q You think it was mandatory?

8 A Based on this call, I don't think it was
9 mandatory because they determined that no criminal
10 domestic violence had occurred. But I do think it was an
11 appropriate thing to do.

12 Q Okay. Now, let's look a General Order 238
13 because it has a section in it that relates to officers
14 that get to a scene or dispatched to a scene on a criminal
15 domestic violence call. You see that?

16 A Yes, sir.

17 Q Okay. Now, down at the bottom, we have a
18 section that says responding unit's responsibilities, see
19 that?

20 A Yes, sir.

21 Q Okay.

22 MR. HARTER: Can we scroll up on that?

23 BY MR. HARTER:

24 Q And it says, When responding to domestic
25 violence calls, deputies will make every effort to -- and

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1 it clicks off a series of things. Can you see those?

2 A Yes, sir.

3 Q I think the jury has seen these before. Now, in
4 terms of those things, Jack, tell the jury, based on your
5 experience and your training, were these officers, Picone
6 and Tyner, obligated and/or should they have done these
7 things while they were out there that day on December the
8 9th?

9 A They weren't because they determined it was not
10 a criminal domestic violence case. So, they weren't
11 required to do these things.

12 Q Okay. Were they required to do an incident
13 report?

14 A No, because it's not a criminal domestic
15 violence. Once they made that determination, then they're
16 not required to follow the steps in this particular
17 policy.

18 Q All right. In other words, if you determine
19 that it didn't happen, it is not a criminal domestic
20 violence call, doesn't make any sense to do these things,
21 does it?

22 A Well, no. A lot of these things -- remember
23 what their purpose is, for example, you know, collecting
24 and reporting evidence. You do that when you make the
25 determination a prosecution is going to occur, not if you

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1 determine there's no crime. So again, the written
2 statements, you know, medical attention wasn't a
3 particular issue, but arrange for photographs where
4 there's visible signs of injury. They're not required to
5 do that. Those are all things that are evidentiary in
6 nature. So, if you made a determination there's no
7 criminal charge to be brought, then you're not going to do
8 these things that are for the very purpose of prosecution.

9 Q Okay. It's been a suggestion in the case in
10 that Deputies Picone and Tyner should have interviewed or
11 talked to the three -- or some of the Blandin children
12 that were there. What is your opinion about that, Jack?

13 A Again, once they determined that no crime had
14 occurred, there's really no reason to get the children
15 involved in that, number one. But more importantly, one
16 of the things that's well recognized in law enforcement is
17 children are not the best witnesses, particularly young
18 children. I think in this case, one was three and one was
19 maybe six. You know, when I first went on, they actually
20 trained us that anybody under the age of seven could not
21 be a witness in a case because they weren't competent to
22 be a witness or because they didn't understand the oath to
23 tell the truth. So, you know, they're easily led and
24 that's one of the problems.

25 So, where you don't have any criminal event --

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1 certainly, if they made the determination it was a
2 criminal event and they're trying to develop the
3 prosecution, then you probably would bring a specialist in
4 to interview the kids and the specialist would then build
5 up the idea of their ability to understand the difference
6 between truth and nontruth.

7 Q Well, I think it was indicated that one of the
8 children was 10 years old. Do you have an opinion about
9 that?

10 A Again, not once they determined there was no
11 criminal domestic violence. It wasn't necessary.

12 Q Now, let me back up to the top of General Order
13 238. It says right here, next page, says, There are South
14 Carolina is a mandatory arrest state.

15 And I think you were talking about that before.
16 Some states have mandatory arrest laws and some don't,
17 right?

18 A That's correct.

19 Q And here in South Carolina, we have mandatory
20 arrest in three situations. And what this means is that
21 there must be an arrest, there's no discretion and that
22 you can and have to arrest this person without a warrant,
23 correct?

24 A Correct, if you can legally do so. There may be
25 circumstances where you can't because of other

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1 Constitutional issues you can't legally do so, but the law
2 of a state requires that if you can legally make the
3 arrest, if you've got probable cause, then you don't need
4 a warrant to make the arrest.

5 Q And under number one, Physical manifestation
6 injury to a victim, domestic violence with probable cause.
7 Now, did that happen here? Did these officers have that
8 in front of them then and there on the ground at the time
9 they responded to this call to make it a mandatory arrest?

10 A I guess two things. One, they made a
11 determination that it was no probable cause. But in
12 addition to that, there was no physical manifestation of
13 injury that they saw. So, it really lacks both of those.

14 Q And the next requirement would be violation of
15 restraining order under harassment and stalking act.
16 Didn't have that?

17 A No, my understanding that Mr. Blandin from
18 everything that I have read did not have a Restraining
19 Order.

20 Q Next violation of Order of Protection under
21 protection from Domestic Abuse Act with physical
22 manifestation and probable cause?

23 A Yes. Again, my understanding from all the
24 material is she did not have an Order of Protection.

25 Q So, this was clearly not a mandatory arrest

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1 situation based on what you know?

2 A Based on the Information that's been made
3 available to me, it was not.

4 Q Okay. Now, that's not the only thing or time
5 when law enforcement can make a arrest in a CDV under
6 these particular three things, right?

7 A Well, this is when it's mandated.

8 Q Right. But other than that, they can determine
9 there's probable cause and they can arrest somebody and
10 take them to jail, right?

11 A Correct.

12 Q Okay. Now, I want to ask you, Jack, do you have
13 an opinion as to whether or not Deputies Picone and Tyner,
14 based on their interaction with these people and their
15 investigation and/or what a reasonable investigation would
16 have indicated or required at the time, was there probable
17 cause that day to arrest Avery Blandin for anything?

18 A Based on all of the information that I have seen
19 in this case and reviewed in this case, there was not.

20 Q Okay. And I want you to tell jury what probable
21 cause is from your perspective as a law enforcement
22 office.

23 A The technical definition that we train officers
24 is that it's facts and circumstances based on the
25 officer's observation or information they receive that

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1 would led a reasonable officer to believe that a crime has
2 been committed and the person that they're going to arrest
3 is the one who committed it. That's the technical
4 definition.

5 Q All right. Do you train law enforcement
6 officers on probable cause?

7 A Every week.

8 Q Okay. Tell the jury how you train law
9 enforcement officers on probable cause and what they're
10 taught?

11 A Yeah. You know, I think the technical
12 definition doesn't really do it for us. And the example
13 that I use on a weekly basis is a measuring cup. When
14 that measuring cup is empty, that officer has absolutely
15 no power to even stop somebody and talk to them. They can
16 consensually contact them, hey, can I talk to you for a
17 minute. But if there's no facts or circumstances -- and I
18 use liquid drops to train officers. If there's no facts
19 and circumstances based on observation or information in
20 the cup, the officer is powerless to stop someone.

21 But then the first measuring line in the cup is
22 something we call reasonable suspicion. When officers
23 have reasonable suspicion, they can actually use force to
24 stop somebody in their tracks and investigate further, but
25 they can't take them to the police station. They can only

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1 stop them and investigate further.

2 Now, reasonable suspicion requires some facts
3 and circumstances in the glass as well. So, what kinds of
4 facts and circumstances? What has the officer been told
5 by way of information? Now, we get a lot of different
6 kinds of information. We get information from anonymous
7 sources. In some cases, not applicable to this case, we
8 get information from paid informants or somebody's trying
9 to trade up on a charge. We've got them charged with
10 something and they want to beat that charge, I'm sure
11 you've seen something like that before, so we give them a
12 break on their charge so they squeal on somebody else so
13 we get the bigger fish. Then we have witnesses and
14 victims that provide information. So, typically,
15 eyewitnesses or victims, right.

16 So, we have all this different kinds of
17 information. All of those are drops of water that go into
18 the glass. We've got to get this glass up to a certain
19 level before we have power to arrest one. And if we don't
20 get the facts and circumstances in the glass up to
21 probable cause, it's an illegal arrest. So, if we arrest
22 somebody without probable cause and take them to the
23 police station, we could be sitting in a room just like
24 this for a lawsuit for a bad arrest because an arrest that
25 lacks probable cause is illegal.

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1 So again, the officers would have to get enough
2 facts and circumstances in this glass to arrive at
3 probable cause. That's where they would need to be.

4 Q And in this case, what facts and circumstances
5 would Deputies Picone and Tyner have to go into the drops
6 of the measuring cup?

7 A Well, again, drops of -- are different size.
8 For example, there's certainly some information that was
9 provided by Mrs. Blandin's sister. So, that's some water,
10 but she's not at the scene. She's not what we call an
11 eyewitness because she didn't see anything. She's a third
12 party. She's reporting it, it's hearsay. And hearsay can
13 go in the glass, some hearsay can go in the glass, but it
14 doesn't give us very much information, particularly when
15 we have the victim themselves telling us that no assault
16 occurred.

17 So again, if, you know, the officers' story is
18 that they were told no assault occurred and if, in fact,
19 that's true, then that would almost take the water out of
20 the glass, if you will. And it would take the water out
21 from Mrs. Blandin's sister, would take that out of the
22 glass because she wasn't there. She was reporting that
23 Mrs. Blandin is telling her one thing and Mrs. Blandin is
24 telling the officers something very different. So, they
25 really don't have that. They talk to Mr. Blandin, he said

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1 no assault occurred. Mrs.~Blandin said no assault
2 occurred. So, we don't have really anything filling up
3 that glass to the level of probable cause to make an
4 arrest. Without that, the arrest would be illegal.

5 Q And what are the consequences if you arrest --
6 well, in terms of arresting somebody without probable
7 cause, what are the net results? What are the
8 consequences?

9 A Well, you can find yourself in federal court for
10 violating their civil rights. Even find yourself getting
11 fired from the law enforcement agency for violating
12 Constitutional rights.

13 Q And it's wrong?

14 A It's wrong. It's a violation of the
15 Constitution which you were sworn to uphold, sure.

16 Q Okay. And it's a violation of an officer's
17 oath?

18 A Absolutely.

19 Q Jack, what are the unique problems that law
20 enforcement officers have when they respond to a CDV call
21 trying to filter out and to determine how many drops of
22 water do we have in the measuring cup or where are we with
23 that?

24 A I mean, they have to do several things. In many
25 cases, you're going to get two very opposing sides of the

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1 story. You're going to have to try to make a
2 determination as to credibility. There's something that
3 we commonly refer to as the primary aggressor. Sometimes
4 there's mutual combat between the two individuals, so you
5 try to make a determination as to who was the real
6 aggressor in the case because you don't really want to
7 lock up a victim -- for example, has defended herself, you
8 don't want to lock up the victim because in the course of
9 defending herself she injured the assailant. So, there's
10 this primary aggressor challenge that you have to try to
11 look at.

12 And obviously, you have to look at -- you know,
13 the statute itself calls for physical manifestation of
14 injury. So, you have to kind of look for other physical
15 evidence that would even support a statement that
16 something did occur. When you have no statement that
17 anything occurred, now you can't even -- you know, even in
18 some cases, if there was a physical manifestation but the
19 person denied that an assault had taken place, that's a
20 much closer call. That's a difficult call to make.

21 Q Now, let me ask you, you saw the Deputies Picone
22 and Tyner stayed at the scene until Mrs. Blandin left; is
23 that correct?

24 A Correct.

25 Q Now, did you also see that later the next day

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1 that it was discovered that Mrs.~Blandin had been brutally
2 murdered at her place of work by Mr. Blandin?

3 A Absolutely terrible tragic, absolutely terrible.

4 Q Any indication that Mr. Blandin ever before had
5 followed through and injured Mrs.~Blandin with anything to
6 require her to have medical care or treatment or anything
7 like that?

8 A Not that I'm aware of. There was this previous
9 assault where he was charged by the same agency.

10 Q Does an arrest of a CDV offender ensure that the
11 victim is going to be safe and not going to be harmed and
12 not going to have a bad as a result?

13 A No, unfortunately, it's not.

14 Q Sometimes counterproductive?

15 A I think there's cases where, at least, the
16 person who commits the final act will tell you that the
17 reason they did it was because they were angrier because
18 they were arrested. We hope that's not the case. We hope
19 it's the other way around, that that's the critical point
20 that stops it, but you can have it go in both directions,
21 there's no question. There's no question that people have
22 been released after being charged and then have gone out
23 and killed their spouse.

24 Q Any assurance or any guarantee that Mr. Blandin
25 is not going to be released on bond at some point in time?

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1 A No.

2 Q That's a Constitutional right, isn't it?

3 A Constitutional right to bail, absolutely.

4 Q Excuse me just a minute. Jack, I want to ask
5 you, you saw a report from Kevin Tyner, who did a write-up
6 and explained what he had done and observed at this call,
7 right?

8 A Yes, sir.

9 Q Okay. Now, I want to ask you, based on that
10 report, based on the information in that report, is there
11 anything in there in that report which would indicate that
12 the investigation that was done by Deputies Tyner and
13 Picone was not thorough and complete and appropriate for
14 the call they responded do?

15 A No, I think it's just the opposite. It was a
16 complete investigation.

17 Q And the being on the scene for 28 minutes, is
18 that significant time to do this kind of investigation?

19 A Absolutely. Yeah, I mean, in some places, you
20 never have that kind of time to actually stay on the scene
21 in a case like this.

22 Q And some --

23 A Just let me add this one thing. If you
24 determine there's probable cause to make an arrest, then
25 that time is going to be elongated out..

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1 Q But sometimes, you make a determination of
2 probable cause and they're off in a patty wagon in 30
3 minutes, right?

4 A Oh, yeah, they'd be gone from the scene. I'm
5 talking about the officers being tied on the event. The
6 officer would be in the station doing paperwork.
7 Sometimes, it much less than that.

8 Q Okay. Now, did you note -- did you see that
9 Deputy Picone did a report, that report could not be
10 located. What's your take on that?

11 A You know, my take is that it's always better if
12 we have the documents, there's no question about it, but
13 have I seen documents go missing in law enforcement
14 agencies before? They get in the lieutenant's basket.
15 They get put in the captain's basket. They get put in
16 somebody's file for approval and then something happens.
17 They go kind of missing. Sometimes, they turn up later,
18 sometimes, they don't.

19 I don't really assume anything from that. I
20 know that it happens in the normal course of business that
21 documents sometimes disappear. Is it ideal in a business
22 that -- you know, a profession where we try to document
23 things? It's not ideal.

24 Q With regard to Deputy Picone, you heard him
25 testify about or heard him discuss or testify about his

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1 microphone and how his dash cam records?

2 A Correct.

3 Q What's your comment about that?

4 A Again, a lot of this stuff is overwritten in
5 time. Would it be much better if we had it? Absolutely.
6 If somebody had thought to download it, if somebody add
7 kept it, absolutely, it would be better. But one of the
8 issues in law enforcement is storage of this information.
9 And in a case like this, would we rather have had it
10 downloaded? Of course. I can't sit here and tell you no.
11 But in the routine course of business, a lot of times that
12 stuff gets redone because of the storage issue that we
13 have. You know, you have a couple hundred cars and things
14 get turned over pretty quickly.

15 Q If that happened in your department, would you
16 just expect your officer, whoever he or she is, to explain
17 what happened and determine if they believe -- you believe
18 that or not?

19 A Of course.

20 Q Now, was there any indication that you became
21 aware of that the Greenville County Sheriff's Office or
22 Deputies Picone and Tyner were attempting to keep the news
23 media from gathering information about their interaction
24 with these people at the Blandin residence on December the
25 9th?

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1 A I didn't see any information in anything that I
2 read that would indicate that.

3 Q The fact that Deputy Tyner's report may not have
4 a case number on it, what does they have to do with
5 anything?

6 A It would still be a record -- it would still be
7 a record that the news media should be able to get because
8 the report exist in the record bureau. Generally, when --
9 and I was the spokesperson for the department for a number
10 of years, so this was pretty close to something that I
11 did. They don't come in and ask you for a report number,
12 they come in and ask you for information and records
13 relating to a particular event. So, that event would have
14 been --

15 Q Did you see in this case where there were --
16 there was media coverage and news coverage and sheriff's
17 office folks people were responding to the media and
18 talking about this event and what had happened and their
19 officers having been at the scene that day?

20 A I believe I did have some news items as well,
21 yes.

22 Q I think Mr. Farnsworth was in some of those news
23 items?

24 A I don't recall, but that may be the case.

25 Q Okay. Is there anything about the fact that

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1 these deputies went to the Blandin residence on December
2 the 9th and did their investigation there and were called
3 to that location and responded, is there anything about
4 that would be a red flag, alert, a warning, a suggestion
5 that hey, there's going to be a civil lawsuit some day
6 over this matter or this case and we better hold onto our
7 evidence or else?

8 A No. I mean, there's no red flag in that, even
9 when you have the murder, there's no red flag in that.
10 Officer about shooting, yeah, absolutely. Those pretty
11 much all end up in lawsuits. But a case like this, no.

12 Q Jack, what do you believe the Greenville County
13 Sheriff's Office could have done or should have done to
14 prevent the murder of Lilia Blandin?

15 A I don't think there's any way to prevent a
16 murder that somebody has decided they're going to
17 commitment other than lock them up forever. So, I don't
18 think there's anything that they could have done. But
19 more importantly, under the particular facts that has been
20 reported and what I read, the officers didn't have the
21 power to do anything because they didn't have probable
22 cause to make the arrest.

23 Q And the actions of these deputies should be
24 judged based on what happened then and there that day and
25 not in hindsight 20/20?

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1 A Yeah, I realize this becomes an easy case --
2 everything's always easy when you look at it in hindsight.
3 You know, if these deputies had a crystal ball and they
4 said well, there's no crime here tonight, but he's going
5 to go out and murder his wife tomorrow, then that's easy,
6 but that's not what they know. We've got to look at what
7 they know at the time. And we never judge any law
8 enforcement action with 20/20 hindsight. I mean, that's a
9 basic ruling, even in discipline in the police agencies or
10 sheriff's offices. We don't look at anything with 20/20
11 hindsight. It's a terrible case after the fact, of
12 course, it is. Nobody's going to ever dispute that.

13 Q Do you believe that Patricia Sullivan, David
14 Picone and Kevin Tyner reasonably throughout this process?

15 A Absolutely.

16 MR. HARTER: Excuse me.

17 BY MR. HARTER:

18 Q Let me just pose -- before I leave and turn
19 things over to my colleague, let me ask you a hypothetical
20 question. If officers responded to the scene and spoke
21 with Mrs. Blandin and Mr. Blandin and neither one of them
22 had indicated that there had been an assault or a threat
23 or anybody hit anybody or pushed anybody or hurt anybody,
24 and if those officers had spoken with any children on the
25 scene and the children had indicated they didn't see

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1 anything or that their mother had not been assaulted, hurt
2 or punched, and if Ms. Hamby reported that she was not
3 there with Mrs.~Blandin, she did not see anything, but
4 that she had heard there was a threat to kill
5 Mrs.~Blandin, would those officers have probable cause to
6 make an arrest of Mr. Avery Blandin for CDV or any other
7 crime?

8 MR. LUGINBILL: Your Honor, I would object to
9 that hypothetical. It states facts not in evidence.
10 It's not an appropriate question to the witness.

11 THE COURT: Okay, I'll overrule the objection.
12 You may answer it.

13 BY MR. HARTER:

14 Q Go ahead.

15 A No, that clearly would not be probable cause if
16 that were the case.

17 Q Okay. Did you see that in Mr. Tucker's
18 deposition that he came to a different result in that
19 hypothetical?

20 A Yes.

21 Q Tell the jury why.

22 A Why he --

23 MR. LUGINBILL: Now, I'm going to really object.
24 He just asked this witness why a different witness
25 testified the way he did. I'm going to object to

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1 that as speculative and purely way beyond the --

2 THE COURT: Okay, you want to restate your
3 question, sir?

4 MR. HARTER: Yes, sir.

5 BY MR. HARTER:

6 Q Why would you say that would not be probable
7 cause under the same factual scenario?

8 A Because you have a person who was not a witness
9 to any of the events that took place who's getting
10 third-hand information, who's reporting one thing and yet,
11 all of the participant witnesses, all the people that were
12 there are telling you something totally different. Those
13 people are actually kind of taking all the water out of
14 the glass, what little tiny bit there is. Because a
15 person who didn't witness anything in the first instance
16 is just getting it third-hand and reporting it back. That
17 doesn't have the reliability necessarily to get us up to
18 probable cause. Particularly, in light of the fact that
19 it's been disputed by the very people who are there.

20 MR. HARTER: Thank you.

21 Your Honor, those are all the questions I have
22 of Mr. Ryan at this point.

23 THE COURT: Okay. Cross, sir?

24 MR. LUGINBILL: Your Honor, I anticipate being a
25 little while, I would ask that we take a short

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1 A I'm not sure what you mean.

2 Q That's what you do, what you are? That's what
3 you do 24/7, 365 a year, you are in law enforcement?

4 A Well, I certainly do a lot of training for law
5 enforcement, but I also take plaintiff cases as well. I'm
6 not sure if that's what you're trying to say.

7 Q No, I appreciate that you take them on both
8 sides, but at the end of the day, you consider yourself a
9 cop?

10 A I think probably that's part of my identity
11 after all these years, sure.

12 Q Okay. You've never issued an opinion against an
13 officer in South Carolina, have you?

14 A Not to my knowledge, I have not.

15 Q And you've never issued an opinion against a 911
16 operator ever, have you?

17 A I have not -- in a deposition or testimony, I
18 have not.

19 Q When you were going through your audits, the
20 things that you do -- you said you do audits, when
21 something bad has happened, you come in behind and try to
22 figure out why, right?

23 A Sure.

24 Q That could be audits as to how a call was
25 handled or how a department is set up or whether they have

JACK RYAN-CROSS BY MR. LUGINBILL

1 management problems, structure problems or training
2 problems, right?

3 A More generally, it's not a management type of
4 audit. More generally, what I do, for example, there may
5 be a mass demonstration and there's an allegation it was
6 improperly handled or there may be some particular tasks
7 that led to a big lawsuit, so I'll come in on the backside
8 of those. I don't really do the management-type studies.

9 Q All right. But you write policies for
10 management, correct?

11 A I write policies for agencies all over the
12 country, yes.

13 Q And you do offer opinions as to whether
14 somebody -- or a certain law enforcement agency was or was
15 not training their people appropriately?

16 A I have done that, yes, absolutely.

17 Q You told this jury that Patricia Sullivan's
18 action in this case were clearly reasonable. I wrote that
19 down, that was your words, clearly reasonable. You stand
20 by that?

21 A I think it's clearly a reasonable interpretation
22 of the call, absolutely.

23 Q Okay. Well, let's look at the transcript of
24 that call. You indicated in your testimony that a
25 reasonable interpretation of this paragraph right here was

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1 that she was primarily concerned about getting her child,
2 correct?

3 A Well, I don't think you read just that paragraph
4 in isolation. You have to look at the whole transcript.

5 Q Well, let's stop there --

6 A Then again, when we look even starting here, she
7 says that her husband has been arrested before. And
8 again, it's unclear whether she means he beat her in the
9 stomach today or the last time, but she's indicating she
10 wants to get her baby who's on the second floor, that's
11 what she wants to do.

12 Q When a 911 operator is presented with unclear
13 information, it is her responsibility -- his or her
14 responsibility to ask questions to clarify the confusing
15 elements of that call, correct?

16 A Well, it's their responsibility to try to clear
17 up the information, which is exactly what she tries to do
18 when she begins to ask a question, are you trying to get
19 your clothes, are you trying to get the baby, what is it
20 you're trying to do.

21 Q You also testified earlier that danger is
22 prioritized over items of custody?

23 A I'm sorry, say that again.

24 Q You testified earlier today that danger calls
25 are prioritized over items or custody calls?

JACK RYAN-CROSS BY MR. LUGINBILL

1 A I don't think that's what I said exactly. What
2 I said was that in the custody situation where we're just
3 trying to go and get the child because somebody's making
4 claim that they should have the child that we send a
5 sergeant because of the danger in transferring the
6 custody.

7 Q So, it's prioritized -- danger calls, somebody's
8 in danger now are prioritized over I want to get my stuff
9 out of my house calls?

10 A Imminent danger is always prioritized, correct.

11 Q So, we can agree on that?

12 A Absolutely.

13 Q So, what she's saying here is he's been arrested
14 for domestic violence. That would indicate to a
15 reasonable person or call taker that he's a violent
16 person, correct?

17 A He's been arrested in the past for domestic
18 violence, sure.

19 Q Okay. He's out of jail?

20 A Right.

21 Q So, he's at large. He's at my house now. At
22 this point, the call taker doesn't know where the caller
23 is, right?

24 A So, he's not at large, but again, I think she
25 makes it clear that she's not in the house.

JACK RYAN-CROSS BY MR. LUGINBILL

1 Q Okay.

2 A So, that changes the imminence of it.

3 Q Let's just keep going through. I tried to leave
4 the house so I don't have to stay with him and I tried to
5 get my stuff and he beat me on the stomach. So, all of
6 this is at the same time. A, I tried to leave the house
7 so I don't have to stay with him. B, I tried to get my
8 stuff. And C, he beat me on the stomach and told me he
9 was going to kill me.

10 A And he also just got out of jail. So again,
11 timing context, I'm not sure. But she does indicate she's
12 out of the house, so it changes the imminence.

13 Q Does the 911 operator at any point here ask when
14 did all this happen?

15 A No, I don't think she does..

16 Q And that's one the W's, right, the who, what,
17 why, when?

18 A Well, I think when the certainly important, but
19 the when in this case -- once she determines that it's
20 child custody, the when is right now. She wants to get
21 her child right now.

22 Q For the safety of the officer -- I mean, for the
23 safety of the caller, don't you need to know if this
24 beating and threats to kill are happening right now?

25 A Yeah, but she says she's not in the house.

JACK RYAN-CROSS BY MR. LUGINBILL

1 Q No, sir --

2 A She said she's staying out of the house because
3 of the threat.

4 Q Let's look at it. My baby's on the second floor
5 and I have to go get her, but I don't want to go inside
6 because I know he's going to put me in that room and he's
7 going to beat me up?

8 A Correct.

9 Q Okay.

10 MR. LUGINBILL: Go up.

11 BY MR. LUGINBILL:

12 Q Now, Patricia Sullivan testified that right here
13 after this, she did not know where Lilia Blandin was. And
14 I think you would agree with me that that first paragraph,
15 Mrs. Blandin makes -- she doesn't say anything about where
16 she is other than you can infer she's not inside?

17 A Correct, he's at the house and she's not inside.

18 Q But you don't know where she is?

19 A No, she could be down on the corner. She could
20 be at her sister's house. She could be anywhere.

21 Q And the next question that's ask is not about
22 when did he try to kill you? Where are you? Are you
23 okay? When did this happen? It was, Do you want to get
24 your things.

25 And she says, Yes.

JACK RYAN-CROSS BY MR. LUGINBILL

1 Because that's true, she does want to get her
2 things?

3 A Correct.

4 Q But he has threatened me all night. Now, all
5 night is not six weeks ago, right?

6 A Oh, that's true, right.

7 Q It's last night?

8 A Correct.

9 Q And I had to sleep in my car. My baby went to
10 the top. She was lying asleep in the bedroom, but I'm not
11 at the house. Now, she gets sort of cut off there. Like
12 you said, the 911 operator is now going to ask her some
13 more information. You would agree with me that at this
14 point, the 911 operator is directing the follow of the
15 conversation?

16 A There's no question that the 911 operator is
17 trying to filter the call, there's no question.

18 Q Okay. So, in the 911 operator's second
19 response, she says, Listen to me, you're going to get your
20 clothing or you're going to get your child. Nowhere --
21 she still don't ask where you are, she still didn't ask
22 are you okay, and she still doesn't ask when was this
23 threat to you, correct?

24 A But she's indicated that she's not at the house.
25 In other words, that changes the imminence and the

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1 dispatcher does exactly what a dispatcher is supposed to
2 do, is filter through questions what the call is about.

3 Now, we can say well, she -- it would have been
4 reasonable to interpret is as a domestic as well, but it's
5 just as reasonable to determine that it's a child custody
6 matter.

7 Q And when we're filtering that information, we
8 don't want to prejudge, do we?

9 A Of course not.

10 Q We don't want to prejudge and say you either
11 want clothing or you want a child, when really what you
12 want is somebody to come protect you from your husband,
13 right?

14 A Well, the difference is, the reason why there's
15 this distinction between clothing or child and the reason
16 the dispatcher is asking that goes back to what I said
17 before, is that when we're talking about the potential of
18 taking a child from one parent and passing the child to
19 another parent, it's an extremely dangerous situation for
20 law enforcement because they don't know if one of the
21 parents may be dangerous. So, that's why those questions
22 are being asked because that's going to determine how the
23 call is handled.

24 Q Does she ask if he's dangerous?

25 A What she's saying is she's going to have the

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1 sergeant make that determination. Dispatch is not going
2 to make that determination.

3 Q If she has a concern that this person, this
4 husband who has the child is dangerous, if that's a
5 concern of hers and how she's going to ask the questions,
6 shouldn't she find out if he is dangerous because he's in
7 the house with the child?

8 A She's indicating that the child is sleeping in
9 the house.

10 Q With a dangerous person?

11 A She's not indicating there's any danger to the
12 child, but the sergeant has to get involved in that to
13 decide. There's all these cases and I've been involved in
14 some of them where police show up and they determine that
15 because of a prior custody arrangement that they should
16 turn the child over to mom or dad and then, unfortunately,
17 mom or dad decides to do terrible things. And then law
18 enforcement is blamed for having changed the custody
19 situation of the children causing the tragic event to
20 happen.

21 So again, this is why the nature of the call
22 changes and we want to make sure -- if it's just to get
23 clothes, that's one kind of call. If it's imminent
24 danger, that's a different kind of call. She indicates
25 she's out of the house, so the imminent danger is not

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1 there. If we're talking child custody, then that changes
2 it because we've got to get a supervisor involved.

3 Q The operator needs to make sure that nobody is
4 in danger, not just the caller, correct?

5 A Well, certainly, you're going to make sure the
6 caller is not in danger. She's reporting she's afraid to
7 go back into the house because of what her husband may do
8 to her.

9 Q And a reasonable interpretation of that would be
10 that he's a dangerous person?

11 A I don't think that we would see that most
12 domestic abusers are also child abusers. I don't see that
13 that's a necessary correlation. I don't know of anything
14 in law enforcement that would make that the case.

15 Q I want to go inside to the house because he's
16 already hit me in the stomach and he's told me he's going
17 to kill me and I'm not going back in there?

18 A Right. But up above it, she's indicating that
19 the baby is sleeping.

20 Q She does.

21 A Right. So, we've got to put it all in context.
22 You can't take this in isolation. You've got to take the
23 whole ball. If we were to just take the call, he hit me
24 in stomach -- I'm calling because he hit me in the stomach
25 and he's threatening to kill me, then it's coded as a

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1 domestic violence call. That's why the second call is
2 that way. But if she's indicating what she really wants
3 to do is get her child and that becomes the focal point of
4 the call, then that changes it.

5 Q Isn't it true, Mr. Ryan, that the only reason
6 that she keeps saying I want to get my child is because
7 that's what the operator keeps asking her? Do you want
8 your clothes or do you want your child?

9 A I think that would be speculative, but it
10 appears that she really wants to get the child.

11 Q She's given a choice between A or B and she
12 chose the child. She was never given a choice of is your
13 husband there, when did he hit you, are you in danger?
14 She was never asked any of those questions; would you
15 agree?

16 A I would agree that she wasn't asked those
17 questions and that's why the officers when they arrived at
18 the scene, they're going to start this thing from ground
19 zero.

20 Q All right. Let's go to the incident recall.
21 You were looking at the incident recall earlier with
22 Mr. Harter and it's all over this. The jury has seen it
23 several times. I'll give it to you so you'll have it in
24 front of you. The second call that comes in, Ms. Hamby,
25 she's reporting that the little girl's inside, he's

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1 threatened to kill her, she had to sleep in her car,
2 right?

3 A He didn't threaten to kill the little girl, he
4 threaten to kill Mrs.-Blandin.

5 Q Correct. Thanks with any confusion about that.
6 So, in that call, you have also a request to get a child,
7 had to sleep in the car all night, and he's threatened to
8 kill her, and he just got out of jail, and he's crazy?

9 A Yeah, I don't know that there's a request for
10 the child in this one. I'd have to listen to it again.
11 She made mention that the child is in the house.

12 MR. LUGINBILL: Go back up. Scroll down.

13 BY MR. LUGINBILL:

14 Q You've got the call in front of you. Go ahead
15 and read it to the jury.

16 A Okay. 10:24, sister, which would be
17 Mrs.-Blandin -- I mean, 10:24, sister, so the original
18 party's sister, Juana Hamby, called to advise that her
19 sister -- because it says 10:24 again, is outside the
20 house and her husband has threatened to kill her. They
21 used the code for it. And that she has slept in the car
22 all night because husband won't let her in and was 1081.

23 Q And 1081 was causing disturbance?

24 A Right. I just don't see where she says anything
25 about the baby. I don't recall that.

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1 Q That's what was entered. Now, let's go ahead --
2 now that you've got it, go ahead and switch to the second
3 one. I'm going to show you the second transcript. This
4 will be the Hamby transcript, which would be this one
5 right here. All right.

6 So, the very first then is, she says, My sister,
7 who lives at this address, she's having a problem with her
8 husband. She's tried to get inside the house. She left
9 the little girl inside, but her husband says he wants to
10 kill her.

11 So in that call, we also have custody, right?
12 Somebody's got the little girl and somebody else wants to
13 go in and he wants to kill her?

14 A Correct.

15 Q Okay.

16 MR. LUGINBILL: Let's go down.

17 THE WITNESS: She does mention the little girl,
18 there's no question.

19 BY MR. LUGINBILL:

20 Q All right. Keep going. She's in the car?

21 A Yep, she's outside, outside in the car.

22 Q Right. Because --

23 MR. HARTER: Your Honor, let him finish his
24 answer.

25 THE WITNESS: She said that her husband wants to

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1 kill her and she said she asleep here all night in
2 the car. That she lived there, yeah, with her
3 husband, so she's back living with her husband in the
4 house.

5 BY MR. LUGINBILL:

6 Q Keep going.

7 A He's crazy. He's in prison before and he got
8 out and now he's like crazy.

9 Q So, you have there's a child involved and he's
10 threatened to kill her, she's had to sleep all night in
11 the car, she does live there and her husband's in prison,
12 he's out and now he's crazy. And what does Officer Logan
13 do?

14 A Again, presence information and he interprets it
15 reasonably as a domestic. No question. I agree 100
16 percent.

17 Q Okay. So, we agree that Neil Logan got it
18 right?

19 A No, I think they both reasonably interpreted it
20 based on the information they were receiving. And at the
21 end of the day, the deputies went to the house and nothing
22 happened in between.

23 Q All right. Now, let's go to the incident recall
24 again. So, based on that, he reasonably at 10:28 changes
25 it to a domestic disturbance call.

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1 MR. LUGINBILL: Just scroll down if you can
2 manage.

3 MR. FARNSWORTH: I'm having trouble.

4 MR. LUGINBILL: You'll get there.

5 BY MR. LUGINBILL:

6 Q You've still got it in front of you?

7 A I have the transcript. I've got to be honest
8 with you, even with my glasses, I apologize, but it's
9 tough to see.

10 Q We'll look at it together. Now, we're cooking
11 with gas. All right. 10:28, he changes it in the system,
12 correct?

13 A Correct.

14 Q And you have no trouble that?

15 A Absolutely not. His interpretation is perfectly
16 reasonable as well.

17 Q What information did Ms. Sullivan have at 10:29
18 to change it from a domestic back to an items custody
19 call?

20 A I think what she did was she made a phone call
21 back to Mrs. Blandin and Mrs. Blandin told her she was
22 outside and, essentially, was not in imminent danger. So
23 again, you know, from her original information, her
24 original information was a perfectly reasonable
25 interpretation of the call. But once again, the deputies

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1 went there and nothing happens in between. The deputies
2 still got to the scene.

3 Q You would agree with me that it is appropriate,
4 as you just said it was, that when an operator gets new
5 information, you update the situation? If you have new
6 information, then you give that, you share that and you
7 change the call, right?

8 A Of course, that's perfectly reasonable.

9 Q Isn't the opposite side of that coin also true,
10 that if you don't have any information, you don't go
11 behind another operator and change it back?

12 A Well, if you're the original operator -- I mean,
13 I've this as a supervisor. You know, a call will get
14 upgraded to a really high priority call and I know that
15 I've got police cars flying to this call and I will make a
16 call back, say to the caller, and I'll say hey, what's
17 going on this minute and I may downgrade that call. You
18 know, we do downgrade calls, so to suggest that we can't
19 do that, that's wrong.

20 She's outside. You know, the first call taker,
21 Ms. Sullivan, she has indication that she's not in danger
22 in the first call -- in the first instance. She calls her
23 back to verify that in the second instance and there's no
24 reason why she can't downgrade that call. At the end of
25 the day, the deputies still get there. It doesn't really

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1 change what the deputies have to do when they get there.
2 They've got to still investigate the matter from start to
3 finish. So, we're really arguing about -- you know, from
4 the standpoint of getting there, we're arguing about
5 something that didn't change a single fact in this case.

6 Q That's to be determined. But my question is,
7 you have said what I think is exactly what an officer
8 should do. We would agree this is exactly what a 911
9 operator should do, you would make that call, get the new
10 information and then change the call back if that was
11 appropriate, correct?

12 A Correct. And she verified that she was outside
13 and not imminently threatened because of the fact that she
14 was outside.

15 Q She didn't do that until nine minutes later?

16 A Well, we don't know when she found out that the
17 call had been upgraded. I mean, I don't know exactly when
18 that happened.

19 Q But she changed it one minute after it was
20 changed.

21 A Perhaps, based on her original information.

22 Q Here you go, right. 10:28, changed to a
23 domestic. The testimony earlier was that the system
24 automatically changes it. One minute later, she changes
25 it back. Not after she made the phone call, not after she

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1 conferred with anybody, she changed it on her own with no
2 new information?

3 A I don't know if she knew -- and again, you guys
4 will know this better than I do. I'm sorry to use that
5 term. We don't say y'all, we say you guys, so I apologize
6 for that. That was a mistake on my part. I don't know if
7 she knew from the other dispatcher that the second call
8 had been made and said hey, wait a minute, that's not the
9 information that I have. So, I don't know exactly how
10 that transpired. But there's no question it looks like --
11 and again, part of this is being typed in. So, you know,
12 it looks like that call was made then.

13 Q If Ms. Sullivan admitted in her testimony from
14 that same witness chair that she didn't have any new
15 information, would you be critical of that decision to
16 change it with no new information?

17 A Only -- and the only reason I say no is because
18 she had her original information. I think she should
19 have -- ideally, she could have conferred with that other
20 call taker. I would have to concede that point. She
21 should have conferred with that other call taker. Now,
22 whether she did that or not, I don't know.

23 Q Is it important that the call takers put in
24 accurate information on these?

25 A To the extent that time allows them to do that,

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1 yes. But remember, the call taker has a lot of stuff
2 going on at the same time. They're listening to a call,
3 they're typing everything in, so they should do it as
4 accurately as possible.

5 Q When she types this in, she says that the 1024,
6 right, Lilia, is outside and that the second caller was
7 not aware of this and was referring to a prior incident.
8 Can you go back to Ms. Hamby's deposition or her
9 transcript right there, please?

10 A Okay.

11 Q Can you show me anywhere on that transcript
12 where Ms. Hamby tells Mr. Logan that Lilia is inside?

13 A All right. I think she clearly says she's
14 outside.

15 Q She clearly says it's outside, correct?

16 A Yes, absolutely.

17 Q So, the information entered by Ms. Sullivan is
18 erroneous, correct? Right there, outside the house,
19 outside in her house?

20 A Right. So, go back to the information because I
21 don't think it is erroneous.

22 Q She is outside and 1024, that's the second 1024,
23 would be the second caller, that would be Ms. Hamby,
24 correct?

25 A Correct.

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1 Q Was not aware of this and was referring to a
2 prior incident?

3 A Again, I don't know what offline discussion took
4 place. The bottom line is -- I mean, what she's saying --
5 and again, I don't want to interpret because you guys have
6 heard the testimony, so you know what it is. I wasn't
7 sitting in the courtroom to hear it. But here's the idea,
8 is that if the second caller believes that she's in the
9 house and she's imminently threatened, there's certainly a
10 reason for us to race to that house. If the dispatcher
11 believes that the second caller didn't know that, that
12 there is an imminent threat and that's why it got
13 upgraded, I mean, that may be -- you guys would have to
14 know the testimony. I don't know that testimony.

15 Q You have the transcript in front you?

16 A Correct.

17 Q And that's what Mr. Logan would have had,
18 correct?

19 A That's what Mr. Logan would have had, but that's
20 not what Patricia Sullivan would have had.

21 Q Confirm that Lilia, the original caller, is
22 outside. She did that by the call back?

23 A Correct.

24 Q The second caller was not aware of this -- she's
25 saying that the second caller was not aware that Lilia was

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1 inside?

2 A And that may be an assumption on her part
3 because the call got kicked up to this kind of imminent
4 threat type of call. And again, ultimately, is it in
5 accurate? Based on this transcript, I would say it is.

6 Q Okay. Clearly it's -- it's inaccurate?

7 A It's accurate based on this transcript.

8 Q Let's go to the next transcript. This is the
9 transcript of the actual call that the dispatcher made to
10 Lilia. Would it ever be appropriate for a 911 operator to
11 be dishonest with the caller?

12 A You'd have to show me what you're talking about.

13 Q All right. First thing she does is she says,
14 Are you at the house, right?

15 A Right.

16 Q And Lilia says, I'm not, I'm outside?

17 A Right.

18 Q So, we have a difference in what at means
19 between the two of them, so there was some confusion
20 there. And I'll give her that.

21 Just wait outside, don't go back into the house
22 because I think that's what I told you the last time.

23 Now, you've read the transcript and you've heard
24 the 911 tape. Can we agree that she does not tell her do
25 not go back in the house on that initial call?

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1 A Right. I think that's probably why she says, I
2 think I told you to not go back in the house the last
3 time.

4 Q Keep going down. Who is your sister, about your
5 sister. Okay. Keep going. Is she with you?

6 No. I spoke with her and she says she's going
7 to call the police because, you know, he's being
8 aggressive with me.

9 They know he's being aggressive, right? Well,
10 if you're outside, you need to let your sister know that
11 what you're referring to happened before and that you're
12 not in the house with him because she called back and she
13 thought you were in the house with him.

14 That's not at all what Lilia Hamby said, is
15 it -- or what Juana Hamby said?

16 A Say that again. I'm sorry.

17 Q Okay. Well, if you're outside, you need to let
18 your sister know that what you're referring to happened
19 before, that you're not house in the house with him
20 because she called back and she thought you were in the
21 house with him.

22 That's not what Ms. Hamby said to Neil Logan at
23 all?

24 A In that transcript absolutely not, no. But
25 again, there's an assumption that there's been an

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1 immminence in Logan's call, that's why he kicked it up to
2 begin with. He believes that there's an imminent threat.

3 Q Your testimony today is you're assuming --

4 A And Ms. Sullivan is going back and saying, Are
5 you outside?

6 Because then there's no imminent threat.

7 Q And you're assuming that the first 911 operator,
8 Ms. Sullivan, also made an assumption about what another
9 operator did or didn't do and then assumed what the caller
10 meant from that, that's what your testimony is based on
11 today?

12 A She may have made an assumption, but then she
13 made a call back to verify that she was outside and not in
14 danger. And by the way -- I mean, again, not to continue
15 to say this, but it doesn't change anything, the officers
16 get there and nothing happens in between.

17 Q There was a lot of talk in your direct
18 examination about whether or not this changed the tone of
19 the call, correct?

20 A I don't remember. Change in tone, I'm not sure.

21 Q Did whether or not the actions of the 911
22 operator in setting it, changing it and changing it back,
23 calling the victim, whether all these things changed in
24 any way how the officers, who are seeing all this on the
25 CAD system back and forth, back and forth, would have

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1 dealt with that case once they got there?

2 A First off, I doubt the officers are reading all
3 of these particular things at every minute on the CAD
4 system because they're trying to drive to the call, so
5 that's number one. But more importantly, it shouldn't
6 change a thing they do when they get there as far as
7 investigating what took place. They have an obligation to
8 look and see what's going on at that time.

9 Q All right. On that, we can agree. So, when
10 they get to the scene, what they should have known is
11 there's an allegation that the husband had threatened to
12 kill her, correct? Because that was clearly there for
13 them to see.

14 A I think, at least, one of them was aware of
15 that.

16 Q They testified they heard that traffic, the
17 radio traffic come across?

18 A Correct.

19 Q What they didn't know initially was that
20 Mrs.-Blandin had stated that he had -- what he didn't know
21 is that Mrs.-Blandin had initially stated that he had
22 punched her in the stomach, correct?

23 A They did not have that information.

24 Q They didn't know that she was scared to go back
25 inside?

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1 A I think that's information they could have
2 gathered once they got there. Again, they may not have
3 had that information going in, but it doesn't change what
4 they should do when they get there.

5 Q And they didn't know that the child -- that one
6 child had been inside while two stayed out in the car,
7 correct?

8 A I don't believe they knew that.

9 Q All right. Before we get into sort of the
10 actions of the officers, I want to cover just a few things
11 you've said going forward. You said, the initial thing,
12 that CDV's can be frustrating for officers because they
13 don't always get the cooperation after the fact?

14 A I don't know that I said that. I said sometimes
15 there's a lack of cooperation and difficult to prosecute
16 because of that.

17 Q I put it in quotes, it frustrates officers?

18 A I think I was talking about prosecution-wise.

19 Q Prosecution-wise, it frustrates them.

20 A I think it frustrates them when they can't get a
21 disposition against the abuser, yeah.

22 Q And once upon a time in American history, that
23 frustration led to a lot of officers just refusing to make
24 those arrests because the wife would back out, she needed
25 the husband to keep a roof over her head and so they knew

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1 she wasn't going to get any corporation. So, as long as
2 she wasn't beaten half to death or seriously, seriously
3 injured to where she had to go to the emergency room, they
4 just wouldn't make an arrest. They'd cool everybody off,
5 maybe send them to separate places and no arrest would
6 ever be made? I'm talking about back in the 70's and the
7 80's?

8 MR. HARTER: Objection to the question. That's
9 not a question, it's a statement and it's a speech.

10 THE COURT: And there's a certain narrative
11 quality to it. I would advise the jury that
12 lawyers's questions aren't evidence, responses are.

13 So, you can ask the question, Mr. Luginbill.

14 MR. LUGINBILL: Thank you. I certainly didn't
15 mean to do that.

16 BY MR. LUGINBILL:

17 Q Do you recall that was a problem in the past?

18 A I recall it being a problem that arrests were
19 not made, but the training wasn't because of the lack of
20 corporation. It was because there was this thought -- and
21 I remember this, I was trained this way. Prior to the
22 change in thinking in law enforcement, I was trained that
23 these were family matters and you didn't want to disrupt
24 family life with an arrest. And that was why it was --
25 you know, there was a lack of arrest in these cases. Now,

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1 there may be other cases where it was different, but that
2 was the training that I received in 1981.

3 Q And to combat that reluctance to arrest, we came
4 up with mandatory arrest statutes. That's why they came
5 into being; wasn't it?

6 A I think there was some cases out there where
7 that's why the legislature passed mandatory arrest laws
8 and also mandatory training for law enforcement around the
9 country. That started probably late 80's, early 90's, not
10 long after I was on.

11 Q When these officers arrived, we have some
12 differing testimony on some of the details. Ms. Rivero
13 was not here because she had to go get the children from
14 school. But she testified that when she came on the scene
15 and the daughter, who was here, you didn't get to hear her
16 either, but she testified that when the police arrived,
17 the children were in the van and that Mr. Blandin was
18 inside and that Mrs. Blandin was outside in the van
19 waiting on officers. The officers say when they got
20 there, there was an active argument going on between the
21 two of them. If there was an active argument going on
22 between the two of them, does that lend itself to being a
23 domestic violence incident?

24 A Not necessarily. It could be an argument over
25 the custody.

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1 Q When you look at it in the totality of the
2 circumstances with the prior threats, the prior he
3 threatened to kill her, which the officers were aware
4 of -- at least, one of them was aware before they arrived,
5 you know, that the man has threatened to kill the woman
6 and you walk up and they're in a heated argument, that
7 doesn't sound like a domestic disturbance call?

8 A It could be a domestic disturbance. There is a
9 huge difference between a domestic disturbance and a
10 criminal domestic violence. There's lot of spouses that
11 get into very heated arguments, but it doesn't rise to the
12 level of a criminal domestic violence case. So again, I
13 don't want to confuse those two.

14 Q A threat to kill your spouse takes it from
15 disturbance to domestic violence; does it not?

16 A It could very well take it to that. Again,
17 assuming the spouse doesn't deny the threat took place
18 that day.

19 Q Well, that's the crux of this case, Mr. Ryan,
20 and that's where we're getting to.

21 A And that's their job. They'll have to make that
22 decision.

23 Q Your opinion that the officers did nothing wrong
24 is predicated on the information in the supplemental
25 report being correct?

JACK RYAN-CROSS BY MR. LUGINBILL

1 A Not just the supplemental report.

2 Q The depositions?

3 A The deposition, not just of the officers, but of
4 other parties in this case or other witnesses in this case
5 and other information that was in the materials that I
6 have no idea have been introduced into evidence or not.
7 So not just that supplemental report.

8 Q But you did read the deposition prior to coming
9 here today of Ms. Rivero, correct, the mother?

10 A Yes, of course.

11 Q And Ms. Rivero specifically says, I asked the
12 officers why they weren't arresting Mr. Blandin?

13 A I know she gave that testimony, yes.

14 Q And she asked why they weren't because he hit
15 her in the stomach, correct?

16 A She believed that there was a domestic violence
17 assault that had occurred, absolutely.

18 Q And she testified in here today that Lilia said,
19 Yes, he hit me in my tummy, and pointed to where he hit
20 her.

21 And that the officer's response was, That's not
22 evidence, that's just your version.

23 Assuming that to be true, would that be an
24 appropriate law enforcement response.

25 A No, it would not.

JACK RYAN-CROSS BY MR. LUGINBILL

1 Q And if that occurred, should they have done more
2 investigation as to the allegations?

3 A Absolutely.

4 Q And if they had done that initial investigation,
5 should that include speaking to the children who were
6 witnesses at the time?

7 A Again, I think the ages were about 10, seven and
8 three. Seven and three, I doubt you're going to talk to
9 them. Again, there's always an issue, particularly, at
10 the scene. You may get somebody with more training in to
11 talk to the seven-year-old. There's a real issue and you
12 may have seen this in some of the wrongful conviction
13 cases where children who are asked questions tend to try
14 to please the person that they're talking to. So, you
15 bring a very special type of investigator to talk to them,
16 to interview them. If there was probable cause to arrest
17 and you were trying to build that case, then you may have
18 taken those steps.

19 Q If there was probable cause to arrest. Let
20 assume we haven't decided that yet. But we have two
21 probably competent eyewitnesses. I'll freely agree that
22 the two year old or three year old, whatever she was at
23 the time, is not going to be a competent witness. You're
24 not going to get much from that witness. But a seven year
25 old and a 10 year old, you could talk to them and see what

JACK RYAN-CROSS BY MR. LUGINBILL

1 they say and then use your discretion to decide do they
2 really understand what they're telling you, correct?

3 A Generally, the seven year old --

4 Q Could be borderline?

5 A Generally, no, a seven year old is not competent
6 to give proper --

7 Q What if she was eight?

8 A -- information.

9 MR. HARTER: I'm sorry, let him finish.

10 THE WITNESS: Again, that's kind of the staging
11 point, eight, yes, seven, no, six, no.

12 BY MR. LUGINBILL:

13 Q So, if she was eight, she should have been
14 interviewed?

15 A Again, if we change the whole fact pattern and
16 say that these other witness who were present --
17 remember -- and again, I'm not disputing that because I
18 can't -- you guys have to make the credibility
19 determinations. But Lilia's mother was not there and
20 present when all this occurred. She wasn't there, so
21 she's not an eyewitness. Lilia is the key witness in this
22 particular event when you decide this. What did Lilia
23 say? You know, that's what you have to decide. I can't
24 decide that for you. I wasn't there and you've heard the
25 testimony. But she wasn't there either. So again,

JACK RYAN-CROSS BY MR. LUGINBILL

1 assuming that what she says is correct, I can see that
2 further investigation should have taken place.

3 Q So, we agree on that?

4 A Absolutely. I said that five minutes ago.

5 Q I didn't want to cut you off. If they had
6 interviewed the children, let's assume they did, an eight
7 year old and an 11 year old, and the children both say I
8 saw my father punch my mother in the stomach twice with
9 the same arm and then spit in her face on the night of the
10 8th. And then the 10 year old says my father came down
11 into the bathroom, punched my mother into the stomach and
12 we all ran out into the car, would that have been probable
13 cause to make an arrest?

14 A Absolutely.

15 Q And when looking at it in the totality of the
16 circumstances, prior CDV, out of jail, threat to kill,
17 four witnesses -- three eyewitnesses now saying this
18 happened, that man should have been arrested, placed in
19 the back of a patrol car and taken to jail, correct?

20 A Because now that measures with what's going on
21 with all that additional information, yes.

22 Q And if he had gone to jail, given his criminal
23 history, given the fact he had a bond currently for the
24 October 30th incident and that bond had a no contact
25 provision, it's not likely he would have been given a PR

JACK RYAN-CROSS BY MR. LUGINBILL

1 bond and just released the next morning, correct?

2 A I would hope not that night, or that next
3 morning, I would hope not, but he would have been released
4 eventually.

5 Q Well, let's talk about that for a minute.
6 Mr. Harter made a very big deal about the fact that we
7 have a Constitutional right to bond. And I agree with
8 that completely and I've argued it in favor of some pretty
9 bad people. I've gotten up and said he's accused of some
10 bad stuff, but he's entitled to a bond.

11 MR. HARTER: Your Honor, that's not a question.

12 MR. LUGINBILL: I'm getting ready to ask it, I'm
13 trying to be like you. I want to be as good as you.

14 MR. HARTER: Well, you're not doing a good job.

15 THE COURT: All right, gentlemen.

16 Ask the question, Mr. Luginbill.

17 MR. LUNGINBILL: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 BY MR. LUGINBILL:

20 Q You have a right to a bond, but like all rights,
21 you can waive that right, correct?

22 A Of course.

23 Q And one of the ways that a bond is waived is if
24 you're given a bond but it has a condition on it and you
25 fail to follow that condition, correct?

JACK RYAN-CROSS BY MR. LUGINBILL

1 A No, they revoke that first bond if that's the
2 case. That's not the waiver, at least, not in my mind.
3 It's a revocation.

4 Q It's a revocation. You have lost due to your
5 behavior and your actions the right to be out of jail on
6 that charge, correct?

7 A The revoked on the first bond?

8 Q Right.

9 A Right.

10 Q So, once he's arrested for the new offense and
11 he's brought back to jail, he'll have a
12 regularly-scheduled bond hearing, correct?

13 A Correct.

14 Q And that Magistrate is going to know about the
15 pending charge because one of the things that goes into
16 whether or not you get a bond and how much it's supposed
17 to be is whether or not you're a threat to the community,
18 correct?

19 A Correct.

20 Q And one of the ways you determine threat to
21 community is whether or not you are a prior offender,
22 correct?

23 A Correct.

24 Q Okay. So, if you have had other arrests and
25 you're currently on a bond for the same crime against the

JACK RYAN-CROSS BY MR. LUGINBILL

1 same victim, would you agree with me that it is unlikely
2 that you're going to be granted a bond in those
3 circumstances?

4 A I think at some point you will be granted a
5 bond. It will be a much higher bond than you originally
6 got. That's generally what happens. People aren't held
7 without bail for long periods of time.

8 Q For long periods of time. Well, what could
9 happen is your bond would initially be denied and be
10 reviewed by a Circuit Court Judge somewhere down the road,
11 correct?

12 A In South Carolina, that may be the process.

13 Q Happens all the time. Okay. And if he's going
14 to be in there for a few days, a week or so even, then
15 he's not able to, while he's incarcerated, get out and
16 kill her on the 10th, is he?

17 A Of course not. If he's incarcerated, he can't
18 go out and kill her, of course not.

19 Q Now, I want to back up just a minute. And if
20 I'm plowing old ground, I apologize. I apologize to you
21 and the jury. But if Lilia Blandin said, Yes, he hit me
22 in the stomach, he hit me in the tummy. And her mother
23 said, Why aren't you arresting him? 238 gets triggered
24 then, doesn't it?

25 A I think it gets triggered and further

JACK RYAN-CROSS BY MR. LUGINBILL

1 investigation needs to be done.

2 Q And if the officers have testified that they --
3 they've both testified that they didn't follow 238 and
4 they've given their reasons why because they dispute that
5 that conversation took place, but they both testified they
6 didn't follow 238. Would you agree with me that
7 information, if they should have, that violating their own
8 policy is a deviation from recognized law enforcement
9 standards?

10 A They should have. Not further investigating if
11 she made that report would have been a deviation,
12 absolutely.

13 Q All right. And when you have those kind of
14 deviations, law enforcement agencies can be held liable
15 for that, correct?

16 A That's a legal issue, but I think certainly.

17 Q Would putting false information in a
18 supplemental report be a violation of generally recognized
19 law enforcement standards?

20 A You should not knowingly put false information
21 in any report knowingly. If you have an accidental memory
22 or something, that's something different.

23 Q Well, would you agree with me that the differing
24 versions of the events of that night that we have in this
25 case aren't failures of memory, they're diametrically

JACK RYAN-CROSS BY MR. LUGINBILL

1 opposed from each other?

2 A As far as --

3 MR. HARTER: Your Honor, I object. Credibility
4 is for a jury to determine and he's trying to pit
5 witnesses against each other. This is an expert.
6 Stay on topic.

7 THE COURT: I'll overrule.

8 MR. LUGINBILL: I'll rephrase.

9 THE COURT: You can ask him the question
10 specifically about the statement and then when he's
11 armed with the information, he can respond.

12 MR. LUGINBILL: Yes, sir, Your Honor, I'll be
13 glad to that.

14 BY MR. LUGINBILL:

15 Q This is the supplement report. This is Exhibit
16 23, correct?

17 A Okay. Got it.

18 Q In that report, Deputy Tyner specifically says
19 that Ms. Hamby denied that she was hit the night before,
20 correct?

21 A She denies it, correct.

22 Q It makes no reference whatsoever to her saying
23 that she was hit in stomach or to her mother asking that
24 he be arrested, correct?

25 A Absolutely makes no reference to that.

JACK RYAN-CROSS BY MR. LUGINBILL

1 Q In fact, it says the exact opposite?

2 A Correct.

3 MR. FARNSWORTH: Which number?

4 MR. LUGINBILL: Don't worry about it.

5 BY MR. LUNGINBILL:

6 Q You will agree with me that both Ms. Hamby's
7 statement -- or Mrs. Blandin's statement and Officer
8 Tyner's supplemental report cannot both be correct?

9 A That's true.

10 Q And you've already said that if Ms. Rivero's
11 version of facts is correct, then an arrest should have
12 been made?

13 A What I said was they absolutely should have
14 investigated further.

15 Q And if the children corroborated that initial
16 information they got, then an arrest should have been
17 made?

18 A If they got enough water in the glass, an arrest
19 should have been made, absolutely.

20 Q Would making false statements in a supplemental
21 report be a violation of the officer's oath?

22 A Of course.

23 Q Would it be --

24 A You know, if it's that diametrical, of course.

25 Q And would it be a violation of the victim's

JACK RYAN-CROSS BY MR. LUGINBILL

1 rights?

2 A There may be. It would clearly be a violation
3 of the officer's oath and a violation of rules and
4 regulations. So again, whether or not it would be a
5 rights is a different issue.

6 Q Now, the case number issue that came up on the
7 supplemental report that you looked at and it doesn't have
8 a case number. And then you kind of went off into a
9 discussion of whether or not it was reasonable for the
10 officers to assume that there may have been a civil case
11 arising out of this. I want to follow up on that just a
12 little bit. The testimony by Officer Tyner was that the
13 missing tape, he said that -- Officer Picone rather did a
14 supplemental report as he was asked to do after the murder
15 and he sent it into the central printer and he doesn't
16 know what happened to it after that?

17 A Correct.

18 Q The usual way --

19 A And I remember him saying that's in the
20 lieutenant's office or something.

21 Q Right. It's remote, some central location.
22 Would you agree with me that in the normal course of doing
23 reports that the officer in the field does the report, he
24 reviews it and he signs it and then it's reviewed by some
25 superior to make sure it's okay and then it goes into the

JACK RYAN-CROSS BY MR. LUGINBILL

1 file?

2 A I tell you that is not agency specific. Some
3 agencies do not do it that way at all. Again, just I'll
4 use my experience in my old agency. We called our reports
5 in, somebody else typed them and there was -- and it
6 became a problem at some point because there was no review
7 process of that report, whereby we could even verify what
8 was said. It would sometimes get typed two or three days
9 after the event. So again, there's not a standard
10 practice on that is my point.

11 Q Nationally?

12 A Right. It differs from department to department
13 depending upon what type of records management system they
14 use.

15 Q In your preparation to give an opinion in this
16 case, you reviewed the materials provided from the
17 Greenville County Sheriff's Department from the murder
18 itself, correct?

19 A Correct.

20 Q You would agree with me that every single
21 supplemental report in that murder investigation is signed
22 by the person making it and is reviewed by an officer?

23 A It may very well have been, yes.

24 Q Would you agree with me that that is how the
25 Greenville County normally in the normal course of

JACK RYAN-CROSS BY MR. LUGINBILL

1 business does it?

2 A It may very well be. Again, I'm not going to
3 dispute that. I don't know that off the top of my head.

4 Q If the supplemental report in this case that was
5 done after the fact, after the murder, is there any
6 legitimate law enforcement reason not to include this in
7 the murder investigation?

8 A I don't know if somebody determined that it
9 wasn't relevant to that investigation, wasn't necessary.
10 Would I include it? Yeah, I would include it in the file.

11 Q They have a logical connection, do they not?

12 A I think the fact that there was this issue a
13 couple days before, you know, if you're trying a murder
14 case, you would want all the information you had
15 available.

16 Q And if at Mr. Blandin's bond hearing -- because
17 everybody gets a bond hearing, correct?

18 A Correct.

19 Q If at that bond hearing, the family appeared as
20 the victims and they were represented by counsel at that
21 time, would it have been logical to assume that the family
22 was, at least, contemplating bringing an action civilly?

23 A I don't think you would necessarily assume that.
24 I mean, the family certainly has an interest in seeing the
25 husband who murdered their sister and daughter, certainly

JACK RYAN-REDIRECT BY MR. HARTER

1 had a reason to be there and be at that bond hearing and
2 sometimes gets represented by counsel for a number of
3 different reasons.

4 Q If there was a concern that there was going to
5 be civil case later, should the law enforcement agencies
6 have kept that information, the tape and supplemental
7 report?

8 A To the extent that they were aware it existed,
9 yes.

10 MR. LUGINBILL: Can I take a brief minute, Your
11 Honor?

12 THE COURT: Sure.

13 MR. LUGINBILL: That's all the questions I have
14 right now, Your Honor.

15 THE COURT: Redirect, sir?

16 REDIRECT EXAMINATION

17 BY MR. HARTER:

18 Q Jack, I'm going to show you an index of
19 investigative reports that is more GCSO Blandin MB case
20 two. And this is investigative reports in connection with
21 the murder?

22 A Yes, sir.

23 MR. LUGINBILL: Your Honor, may we approach?

24 THE COURT: Sure.

25 MR. LUGINBILL: I've not seen that document

JACK RYAN-REDIRECT BY MR. HARTER

1 introduced at all today, I don't know what he's
2 showing.

3 MR. HARTER: It's been shown to you in
4 discovery.

5 MR. LUGINBILL: Okay.

6 BY MR. HARTER:

7 Q In connection with the murder investigation, is
8 it indicated anywhere in there that Deputy Tyner's report
9 is part of the murder investigation?

10 A Yes.

11 Q Where?

12 A Right -- I'm sorry, right here.

13 Q Okay. But it says supplemental report, then it
14 says responded to home on 12/09/11, right?

15 A Right.

16 Q Okay. So, nobody's hiding this report, are
17 they?

18 A No, in fact, it was included in the murder
19 investigation, I had just forgotten that.

20 Q Now, wait a minute, let me ask you about report
21 writing. What are officers trained to include in reports
22 they write, generally?

23 A Well, they write the factual basis of what
24 occurred at the time of the event.

25 Q Based on their recollection at the time of the

JACK RYAN-REDIRECT BY MR. HARTER

1 event, what's --

2 A Of course, based on what they saw, what they
3 perceived and what information they received.

4 Q Do they write down in every incident report or
5 every code five every single thing that happens?

6 A They couldn't possibly do that. They don't have
7 incident recall like Monday night football, for lack of a
8 better analogy.

9 Q The report is based on what they perceived to be
10 the case at the time, why they're reporting at the time,
11 correct?

12 A Of course, and that's why we don't view things
13 with 20/20 hindsight.

14 Q Okay. Now, you were asked and given some
15 hypothetical questions about what Mrs. Blandin -- what
16 Ms. Rivero may have said in the presence of these
17 officers. Now, it's not your job and it's not any
18 witness's job to evaluate credibility about what was said
19 or what was done, is it?

20 A Absolutely. I think that's why I made reference
21 a couple of times to that.

22 Q Okay. That's why these folks are here today,
23 right?

24 A Absolutely.

25 Q And you're not here to try and bolster anybody's

JACK RYAN-REDIRECT BY MR. HARTER

1 side of things, you're offering your opinions to help
2 these people understand how law enforcement works?

3 A I think I specifically avoided doing that.

4 Q Okay. I remember when you were in a dialogue
5 with Mr. Luginbill, there was reference to this report and
6 somebody got talking kind of fast talking about Deputy
7 Tyner's report. Does this report make any mention of a
8 Ms. Hamby?

9 A I don't believe so.

10 Q I'm going to suggest to you that that report
11 doesn't make any reference to Ms. Hamby, does it?

12 A No, it does not.

13 Q Okay.

14 A It doesn't even make any mention that she was
15 even present.

16 Q Okay. I think the names might have gotten mixed
17 up. Now, Jack, I also recall that you -- or Mr. Luginbill
18 spent almost 45 minutes talking about the transcripts or
19 transcript of Patricia Sullivan's call with Mrs. Blandin.
20 And I think he went over several lines devoting a lot of
21 discussion to the words that were said in those
22 transcript, right?

23 A Yes, sir.

24 Q Okay. Now, we go back here today and we're
25 looking at this transcript and we're playing it over and

JACK RYAN-REDIRECT BY MR. HARTER

1 over and over and we're putting it up on an overhead and
2 we're analyzing what people are doing and thinking at the
3 time. Is that hindsight? Is that Monday morning
4 quarterback?

5 A Well, it is hindsight. And remember that the
6 dispatcher doesn't have 45 minutes to keep playing the
7 call back and forth to decide what the appropriate action
8 is. That doesn't happen that way. The dispatcher is
9 doing that in real time. You know, they don't have the
10 luxury of going back and hey, let me interpret this a
11 second time. They're interpreting it in real time.

12 Q And in this call, we do have dialect -- I mean,
13 accent, we have information that -- with some broken
14 English. And is it fair to say that dispatcher doesn't
15 have the luxury of going back over this thing like we do,
16 they have to make a judgment call then and there based on
17 what they're hearing and how they filter that call at the
18 moment?

19 A Absolutely. They have to make the
20 interpretation. Of course, they do.

21 Q Now, the response to the call, when these
22 deputies responded, they had an obligation to do an
23 appropriate investigation based on what they knew and saw
24 at the time, right.

25 A Absolutely. They have to decide ground zero.

JACK RYAN-REDIRECT BY MR. HARTER

1 Q And does it appear they did that?

2 A Based on everything I read, it appears they did.

3 Q Okay. Now, Deputies Picone and Tyner spend 28
4 minutes on the scene?

5 A Yes, sir.

6 Q Even if you talk to the children about what
7 happened, do you always get accurate information or the
8 same information?

9 A Of course not. You don't always get accurate
10 information in any case.

11 Q If Mrs. Blandin had been hit or punched on the
12 evening or the night of December the 9th between
13 8:00 o'clock and 11:00 o'clock, did you ever see any
14 transcript or any information where that night she called
15 and spoke to someone at the Greenville County Sheriff's
16 Office at 911 to make a report that she had been assaulted
17 or punched in the stomach that night?

18 A No. The call would have been the next day when
19 she actually spoke to someone.

20 Q And I want to show you what's marked as
21 Defendant's Exhibit No. 1.

22 MR. LUGINBILL: Your Honor, may I approach?

23 THE COURT: Sure.

24 MR. LUGINBILL: On this particular document?

25 MR. HARTER: Yeah.

JACK RYAN-REDIRECT BY MR. HARTER

1 (WHEREUPON, an off-the-record bench conference
2 was held in the presence of the jury but out of
3 the hearing of the jury.)

4 BY MR. HARTER:

5 Q Defendant's Exhibit 1 is an affidavit that shows
6 where Lilia Blandin signed to dismiss the charge against
7 Mr. Blandin, dated July 29, 2010?

8 MR. LUGINBILL: Your Honor, renew my objection.
9 That question has nothing to do with what he just
10 told me he was going to ask.

11 MR. HARTER: It's the disposition.

12 THE COURT: I'll let you can ask that question,
13 but don't go into any --

14 BY MR. HARTER:

15 Q Is that what it is?

16 A Yes, it's affidavit dismissing the charges
17 signed by her.

18 Q Now, you mentioned that officers have a
19 responsibility when they respond to a call to be
20 completely objective?

21 A Of course.

22 Q Talk to both sides?

23 A Absolutely.

24 Q A person's criminal history or arrest history or
25 their race has nothing to do with probable cause, does it?

JACK RYAN-RE CROSS BY MR. LUGINBILL

1 A Standing alone, it cannot.

2 Q You should not -- you cannot and should not
3 consider a person's race or ethnicity in terms of making a
4 determination about probable cause for a CDV arrest?

5 A You could never do that. The only time you
6 could consider it would be like, for example, let's
7 suppose that somebody said a white male just robbed a
8 liquor store. Then obviously, the fact that you've got a
9 white male stopped fits the description, so race is an
10 issue in that case, but not in a CDV arrest, no, of course
11 not.

12 Q The fact that Avery Blandin may be
13 African-American should not have anything to do with an
14 assessment of whether or not he would be more prone to
15 criminal domestic violence in this case; would it?

16 A Of course not.

17 MR. HARTER: Thank you.

18 THE COURT: Recross?

19 MR. LUGINBILL: Have one question.

20 THE COURT: Yes, sir.

21 RE CROSS-EXAMINATION

22 BY MR. LUGINBILL:

23 Q You said that based on everything you read, the
24 officers did everything right, correct?

25 A The way it's reported, yes.

JACK RYAN-RECROSS BY MR. LUGINBILL

1 Q Not everything you read?

2 A Assuming that credibility issue, but that's
3 something that the jury will have to decide.

4 Q You said everything you read, the officers did
5 everything right, correct?

6 A Based on the report, yes.

7 Q The deposition of Ms. Rivero, which you did
8 read, does not support the officers, correct?

9 A Correct. And that's the credibility issue that
10 the jury has to determine, which I've said multiple times.

11 MR. LUGINBILL: Nothing further. Thank you.

12 THE COURT: Thank you. I appreciate your being
13 here, sir.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Do you intend to call any additional
16 witnesses?

17 MR. HARTER: Can we have a few minutes?

18 THE COURT: Sure. Let's take a break, a comfort
19 break. Again, please don't discuss the case.

20 (WHEREUPON, the jury left open court at
21 approximately 4:09 p.m.)

22 (WHEREUPON, a short break was taken.)

23 MR. HARTER: Your Honor, the Defense rests.

24 We'll do it when the jury comes in.

25 THE COURT: All right.

JACK RYAN-RE-CROSS BY MR. LUGINBILL

1 Do y'all intend on putting up anything in reply
2 or are you good?

3 MR. LUGINBILL: We do not, Your Honor.

4 THE COURT: All right. Good enough.

5 Bring them in.

6 Gentlemen, I will tell you for the record that
7 they have informed me that they have elected
8 Ms. Robin Burns, Juror No. 5, as the Foreperson of
9 the jury.

10 (WHEREUPON, the jury came into open court at
11 approximately 4:20 p.m.)

12 THE COURT: All right, ladies and gentlemen, the
13 Defense has entered in all of the evidence it intends
14 to introduce. The Plaintiff has indicated he will
15 not call anymore witnesses in reply. Therefore, we
16 will adjourn for the day. If you will please be back
17 here at 9:00 in the morning, we will move to closing
18 arguments and charge on the law at that time. Please
19 have a good evening. Please don't discuss the case.
20 Again, somebody may offer to discuss it with you.
21 Come back in the morning and we will see you then.
22 hope you have a great evening.

23 (WHEREUPON, the jury left open court at
24 approximately 4:21 p.m.)

25 THE COURT: All right, motions?

1 MR. HARTER: Your Honor, I would renew the same
2 motions that we made earlier since we have the same
3 grounds, same arguments.

4 THE COURT: Yes, sir.

5 MR. HARTER: I would also move to dismiss the
6 survival claim.

7 THE COURT: Okay, on what grounds?

8 MR. HARTER: On the ground that taking the
9 evidence as a whole, there's no indication of any
10 conscious pain and suffering. It was just horrible
11 injury, it was an assault that lasted only -- she
12 lived only less than a minute he said after the wound
13 was inflicted. I don't believe that the state of the
14 law right now says that we do have pre-impact fear.
15 I know that Mr. Wilson tried to argue that but we
16 don't know when any of these wounds occurred. So, I
17 move to dismiss the survival claim based on the
18 failure to come forward with conscious pain and
19 suffering.

20 THE COURT: Okay. All right.

21 MR. HARTER: My argument on additional grounds
22 for directed verdict are also, Judge, based on the
23 same things I stated before. Public duty rule,
24 there's no duty in this particular case. Also, with
25 regard to the issue of Tort Claims Act, I submit that

1 there's no liability, no showing of negligence, gross
2 negligence or conscious failure to exercise due care
3 or failure to exercise even slight care. That's not
4 here. They've done that. And so, I respectfully
5 move to -- for a directed verdict on that ground as
6 well as the CDV statute which also requires for there
7 to be any -- there's an insulation from liability
8 except when somebody acts with gross negligence and
9 that's not here either on the CDV statute.

10 Now, also, I would renew my position about the
11 causation issue. And clearly, there were intervening
12 acts here which involved additional threats by
13 Mr. Blandin against Mrs. Blandin. Via acts of 20
14 telephone calls to her bank and slashing her tires
15 and slashing her mother's tires. And we submit that
16 those are intervening acts of negligence that are --
17 or acts of malicious criminal acts by Mr. Blandin
18 that would break the chain of causation to anything
19 that these deputies did or didn't do or that the
20 communication specialists did or didn't do.

21 And further, I would point out we do -- she did
22 have an obligation to protect herself from harm. She
23 was made aware of these threats. Her mother actually
24 told her, you need to call the police, he's going to
25 kill you. She ignored that. So, you know, her

1 comparative fault plays into this.

2 THE COURT: Okay. All right. I'm going to
3 respectfully deny your motions for directed verdict.
4 The standard which the Court must apply is to view
5 the evidence in the light most favorable to the
6 non-moving party. Not to weigh or determine the
7 value of the evidence but determine whether the
8 evidence exists. With respect to special duty versus
9 public duty, I think that the case of Arthur that we
10 have previously talked of discusses that. And the
11 CDV statute, although there can be a semantic
12 argument that she was not in the class of people to
13 be protected, I don't think I'll necessarily agree
14 with that semantic argument. That's a matter to be
15 taken up by the appellate courts of this state. I
16 think that she does meet the six criteria which would
17 invoke special duty under that specific statute. In
18 keeping with Arthur.

19 Also, with respect to the state Tort Claims Act,
20 I think you -- I think you agreed that Steinke,
21 however you pronounce it, pretty much cuts your feet
22 out from under you. And that argument suggest that
23 the standard is gross negligence for all the
24 enumerated exceptions. And I think that's clearly
25 set forth in that case.

1 With respect to -- with respect to breach of the
2 duty, with respect to causation and damages, I think
3 those are quintessentially jury questions. And I do
4 recognize that you made a -- you've offered a
5 affirmative defense of comparative negligence and you
6 certainly have the opportunity to argue that. For
7 all those reasons I respectfully deny the motion for
8 directed verdict.

9 MR. HARTER: Okay, thank you.

10 THE COURT: Yes, sir. Okay.

11 MR. WILSON: Judge.

12 THE COURT: Yes, sir.

13 MR. WILSON: Not to try to push you but on the
14 survival claim.

15 THE COURT: Oh, yeah.

16 MR. WILSON: Are you going to rule on that,
17 also?

18 THE COURT: Yeah, I'm going to deny that as
19 well. I think that, again, there is evidence in the
20 record that she suffered conscious pain and suffering
21 as a conscience of the stabbing. It may have been
22 for a very short period of time but the evidence
23 suggests that it may have occurred. And based on,
24 again, the analysis that I must view the evidence in
25 the light most favorable to the non-moving party, the

1 evidence is there.

2 Now, we're going to have to talk about how we
3 deal with that on our verdict form, okay? And how I
4 charge that. And distinguish it from the wrongful
5 death damage.

6 MR. HARTER: And let me add a little caveat to
7 that to kind of refine my argument a little bit more
8 for you.

9 THE COURT: Yeah.

10 MR. HARTER: And I appreciate, you know, that
11 what you said, what Mr. Wilson says. But under the
12 Tort -- the claim that she would have for a survival
13 claim against us for any pre-impact fright, would
14 be -- and I don't believe the Court has recognized
15 that as an element of damage, okay. I guess what I'm
16 saying is I don't believe that they can argue
17 pre-impact fright as an element of damage.

18 THE COURT: Yes, sir.

19 MR. HARTER: And if they did, what we're talking
20 about here would be essentially intentional
21 infliction of emotional distress because of the
22 event. And that is one of the things that
23 distinguishes us here is under the Tort Claims Act.
24 That is an exclusion, that is not -- the is excluded
25 as a claim under 15-78-30. Intentional infliction of

1 emotional distress.

2 THE COURT: I understand. I understand. And
3 make sure that I'm correct on this, I think we all
4 may agree, is that you're saying that the only
5 damages they can aminate from the survivorship
6 action, based on the evidence that's been presented
7 in this case, is the actual pain and suffering
8 incident to the stabbing?

9 MR. HARTER: That's it.

10 THE COURT: Okay.

11 MR. HARTER: That's it.

12 THE COURT: Okay.

13 Is that what you intend to argue, sir?

14 MR. WILSON: Yes and no. Your Honor, I think we
15 can -- I've been the pre-impact fear route as
16 Mr. Harter well knows through the Rutland case. That
17 went all the way up to the Supreme Court. And he's
18 right, that's not recognized in this state as of now.
19 I don't think we can argue a fear or the -- those
20 things that she experienced prior to the attack. But
21 from the time the attack started occurring, going
22 forward. However short that might have been. And we
23 have evidence about that. And I think we can argue
24 not only the pain and suffering that she was
25 experiencing but also the fear and the anguish that

1 she was experiencing during that time. Once he
2 stabbed her the first time. Once he put his hands on
3 her. We've got that impact. From that point forward
4 I do believe. We're not going to argue the fear that
5 she felt as he approached her or the anguish she felt
6 as he approached her. Once he started attacking her
7 I think we can go from there.

8 THE COURT: The presence sensation of anguish,
9 pain or suffering.

10 MR. WILSON: Yes, sir.

11 THE COURT: Okay.

12 Do you have an issue with that?

13 MR. HARTER: No, I don't think so.

14 THE COURT: Okay. Yeah, ultimately, I think
15 that's a very fine distinction that, perhaps, we as
16 attorneys might understand and appreciate. I'm not
17 so sure the jury is going to really give -- well, I
18 won't say the cloak to listen that I have in mind but
19 I don't think that they're going to recognize the
20 distinction.

21 MR. WILSON: Judge, I don't think it will be a
22 issue with way we argue.

23 THE COURT: Okay. All right. Good enough.

24 Well, if y'all want to --

25 Go ahead, I'm sorry.

1 MR. HARTER: No, go ahead.

2 THE COURT: I was going to say if y'all want to
3 come back to chambers and we'll just talk through the
4 charge real quick. Okay.

5 (WHEREUPON, Court was adjourned for the day to
6 be reconvened on Thursday, October 1, 2015.)

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1 up? You sent me an email on probable cause, I
2 included the standard bench book probable cause and
3 it included the language, Mr. Wilson, that you had
4 sent.

5 MR. WILSON: Sure.

6 THE COURT: Okay.

7 MR. HARTER: Well, I didn't see what -- I'm
8 sorry.

9 THE COURT: You asked me to charge on probable
10 cause. And I put the standard bench book charge on
11 probable cause in there.

12 MR. HARTER: Okay.

13 THE COURT: Then Mr. Wilson, at least, on email,
14 had an objection. I don't know if you have a
15 remaining objection to it, but I added the language
16 that you requested.

17 MR. HARTER: I didn't see what -- I apologize,
18 can I see?

19 THE COURT: I'll tell you what it is.

20 MR. HARTER: Okay.

21 THE COURT: The additional language of probable
22 cause in addition to the bench book charge was in
23 assessing rather an officer has probable cause, the
24 totality of the circumstances surrounding the
25 information to the officer's disposal must be

1 considered. Which I think is an accurate recitation
2 of the law.

3 MR. HARTER: Does the charge say that probable
4 cause would be determined at the time, Judge?

5 THE COURT: It doesn't say that specifically,
6 no.

7 MR. HARTER: I think that's important.

8 THE COURT: Well, here's the deal. Listen to
9 it, okay, and you tell me after the fact whether you
10 think it is an appropriate recitation of the law as
11 probable cause. Now, obviously, you're going to be
12 able to argue at the time. And I'm not -- again

13 MR. HARTER: Could I --

14 THE COURT: I don't have a photographic memory
15 of exactly what it is, but it's going to say -- it's
16 going to have language that says that it has to be
17 made contemporaneously in the context of all of the
18 circumstances, which is another way of saying exactly
19 what you said. It may not just say verbatim at the
20 time.

21 MR. HARTER: Okay.

22 THE COURT: Okay.

23 MR. HARTER: The only thing -- and I don't mean
24 to belabor, you may have it in there, I apologize,
25 but I do believe the well settled law says for you to

1 determine the time of the arrest. Okay. And that's
2 what I -- all I'm asking that you do, be considered
3 at the time of the arrest.

4 THE COURT: Okay. Got you. Got you.

5 MR. HARTER: And one more request, if you don't
6 mind.

7 THE COURT: Yes, sir.

8 MR. HARTER: Can I step to the men's room and
9 come right back before we get going so --

10 THE COURT: I think Mr. Wilson has something he
11 wants to say.

12 MR. HARTER: Oh, okay.

13 MR. WILSON: Couple of little matters, Your
14 Honor, but I don't mind waiting a minute.

15 THE COURT: Well, here's the deal, I told the
16 jury to be here at 9:00 and we're 10 past 9:00.

17 MR. HARTER: I'm sorry, go ahead. I apologize.

18 MR. WILSON: Judge, I'm going to hand up just
19 some revised language on that internal policies
20 charge that we requested yesterday.

21 THE COURT: I'm going to tell you, I've included
22 that verbiage. The verbiage that you gave me I think
23 is a correct statement of law and I've included it in
24 there. Okay.

25 MR. WILSON: Judge, just for purposes of

1 protecting the record, we do object to a probable
2 cause charge being given. I don't think it's
3 necessary with the testimony from really every
4 witness that if the officers had been told Lilia was
5 hit in the stomach by Lilia or the children, they
6 would have arrested him. So, I don't know that
7 probable cause definition is necessary, but I respect
8 your position and your language and we're fine with
9 that. We just object to it.

10 THE COURT: The reason that -- and I was
11 thinking about it during the conduct of the trial and
12 I was just curious as to whether either of you were
13 going to request it. I wasn't going to do it sua
14 sponte, but you had two competing experts, each of
15 whom offered a definition of probable cause, each of
16 which were very, very similar. But I think given the
17 fact that they offered the definition and it could be
18 relevant in the jury's analysis of the evidence, I
19 think it's important for the Court to give the
20 definition. All right.

21 MR. WILSON: Judge, just one more brief matter.

22 THE COURT: Yes, sir.

23 MR. WILSON: We have not moved to strike or move
24 the defense of comparative negligence because I do
25 think that Mr. Harter has some evidence that he can

1 argue to the jury as comparative negligence. But I
2 do think that in the same vein where he asked to
3 limit us on the conscious pain and suffering
4 arguments that we might be able to make, not make a
5 pre-impact fear, this limitation is reasonable under
6 the evidence.

7 If he's going to argue that Lilia somehow is
8 comparatively negligent in causing her own death by
9 not calling law enforcement at the bank after Avery
10 made some phone calls to the bank or not calling law
11 enforcement after her tires were slashed, there's no
12 evidence in the record that would indicate -- he
13 didn't elicit any testimony from anybody that
14 anything would have been done in response to any
15 contact by Lilia with law enforcement about those two
16 matters.

17 And specifically, with respect to the bank and
18 the phone calls made there, he didn't elicit any
19 testimony or put any evidence in that she even knew
20 that Avery had called the bank. So, I don't know
21 that there's any causation or link between those two
22 types of inaction on Lilia's part in any result in
23 death.

24 Now, he's also put forward that she didn't seek
25 a protective order back in October. And if there

1 would have been a protective order in place, he would
2 have been arrested right there on December the 9th.
3 And I do think he gets to make that argument. But
4 instead of objecting in the middle of his argument,
5 I'd like to go ahead and get some consideration from
6 the Court about him going into telephone calls after
7 slashed tires, him going into telephone calls at the
8 bank. And I think maybe even the slashed tires of
9 Ms. Madel's he asked you didn't call or she didn't
10 call after that. I don't know that her inaction in
11 making a phone call can be attributed to Lilia.
12 There's just no evidence of proximate cause on those
13 issues.

14 THE COURT: Okay. All right.

15 Yes, sir?

16 MR. HARTER: Judge, I mean, I believe I'm
17 entitled to argue whatever inferences there are from
18 the facts that come out in the trial. And there was
19 no objection to that information. And, in fact,
20 Mrs. Rivero, I believe said she discovered the tires
21 slashed, she told her daughter she'd call the police
22 right now because he's going to use that same knife
23 to hurt you. I think whatever inferences there are
24 from the evidence, it is what it is. And I intend to
25 argue based on the record we have in the case and I

1 don't plan to go beyond that.

2 THE COURT: Okay. All right.

3 I deny your motion, Mr. Wilson. I do think that
4 the causation issue is subsequently a jury question.
5 And I do believe that it's fair game for either side
6 to have the opportunity to comment on the evidence
7 that's been presented and suggests what inferences
8 should be drawn from the evidence that's been
9 submitted.

10 MR. WILSON: Thank you, Your Honor.

11 THE COURT: Okay. All right. How long do y'all
12 intend to argue?

13 Mr. Harter's got to use the restroom. I'll look
14 at him --

15 MR. HARTER: I'm being on the safe side before
16 we get going.

17 THE COURT: I understand. And I don't want to
18 limit y'all in any substantial way, but I do want to
19 limit you in a practical way. I will tell you that
20 when y'all turn over half an hour on your respective
21 arguments, the jury kind of starts thinking yeah,
22 I've heard this already.

23 MR. LUGINBILL: Your Honor, I think I would
24 argue somewhere 20 and 30 minutes as long as I don't
25 get off track or lose my place. But normal case and

1 I do okay, will be 20, 30 minutes.

2 THE COURT: So, you're going to open and then
3 ultimately close?

4 MR. LUGINBILL: Open and close, yes, sir.

5 THE COURT: And you think collectively 30
6 minutes?

7 MR. LUGINBILL: No, the 20 minutes for me to do
8 the full opening and then reply is always hard for me
9 to gauge because I have no idea what Rusty may or may
10 not say.

11 THE COURT: I understand.

12 Mr. Harter, what do you think?

13 MR. HARTER: I'll probably be finished in three
14 hours, Judge. No --

15 THE COURT: Our rules says two hours. And a
16 Supreme Court ruling says it is not an abuse of
17 discretion to limit you significantly.

18 MR. HARTER: Look, I'm going to try to keep it
19 very short. I will try to stay within the same
20 parameters. I would say 20, 30 minutes.

21 THE COURT: This is what I'm going to tell the
22 jury. I'm going to tell the jury that y'all have
23 said 30 minutes. Then I'm not going to tap the desk
24 or stand up or anything, I'm just telling the jury
25 and they're going to be looking at the clock

1 determining whether, in fact, you've met your
2 representation.

3 MR. HARTER: That's fine.

4 THE COURT: Okay. Okay. Well, good enough.
5 With respect to the verdict form -- he's got to
6 go.

7 MR. LUGINBILL: I'm going to do the same thing.

8 MR. HARTER: Because he might go over, Judge.

9 THE COURT: Somebody needs to project the form,
10 if you will.

11 MR. WILSON: We'll take care of that, Your
12 Honor.

13 THE COURT: All right. Now, let's go to the
14 restroom.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: Counsel, ready for the jury?

17 MR. LUNGINBILL: Yes, sir.

18 MR. HARTER: Yes, sir.

19 THE COURT: All right. Bring them in,
20 Mr. Anderson.

21 (WHEREUPON, the jury came into open court at
22 approximately 9:24 a.m.)

23 THE COURT: All right. Good morning, ladies and
24 gentlemen. I hope you're doing well. Welcome back.
25 We're going to proceed now to closing arguments and

1 charge on the law.

2 Now, when we first started the case, I told you
3 that the opening statements from attorneys are not
4 evidence to be considered by you. Closing statements
5 are the same. They're not evidence to be considered
6 by you. You've already heard all of the evidence
7 that you will receive in this case. Closing
8 arguments are simply that, arguments presented by the
9 parties in an attempt to persuade you to their
10 respective sides. They're not to be considered
11 evidence, but can be considered in the light in which
12 they're offered, that is as argument.

13 Each party will have the opportunity to argue.
14 The Plaintiff will open. The Plaintiff will open
15 because the Plaintiff has the burden of proof. The
16 Defense will have the opportunity then to argue its
17 case. And then briefly, the Plaintiff will have the
18 opportunity to reply. After that argument has taken
19 place, then I will give you a closing charge on the
20 law.

21 Now, the attorneys have represented to me that
22 they anticipate collectively that each of them will
23 take about 30 minutes. So, that's what you can
24 expect. That is approximately an hour or so of
25 argument and then approximately 20 minutes of charge

1 on the law. Don't hold me to that precisely because
2 it could end up we take a break in between, depending
3 on where we stand and whether we need to. But I'm
4 guessing that everything should be concluded in about
5 an hour and a half from now.

6 All right. Ladies and gentlemen, having said
7 that, I will defer to Mr. Luginbill.

8 Sir, you may present your argument.

9 MR. LUGINBILL: Thank you, Your Honor.

10 THE COURT: Yes, sir.

11 CLOSING STATEMENT

12 MR. LUGINBILL: May it please the Court?

13 Mr. Harter.

14 Good morning. Folks, everyone in this courtroom
15 has a job to do. The bailiffs make sure we get where
16 we're supposed to go and keep us from going where
17 we're not supposed to go. The court reporter takes
18 down what everybody says. And the clerk makes sure
19 the cases keep moving. Judge Stilwell makes sure
20 that everybody gets a fair trial. My job, along with
21 Mr. Wilson and Mr. Farnsworth, is to try to get
22 justice for Lilia Blandin and her three kids.

23 In a little while, you all are going to have
24 three jobs. One of your jobs is to answer the
25 questions that the Judge is going to give you. Your

1 Because I truly and honestly do not have an opinion
2 about what your decision should be.

3 Now, ladies and gentlemen, first of all, this is
4 a case wherein the Defendant -- or excuse me, the
5 Plaintiff alleges that she suffered damages as a
6 proximate cause of the Defendant's gross negligence.
7 Now, the Plaintiff has the burden of proof. The
8 Plaintiff must prove each and every element of its
9 case by the preponderance of the evidence.

10 Now, you may have had prior experiences in
11 courtrooms. You may have had the opportunity to
12 watch TV and you've probably heard of different forms
13 of or standards of proof. You may have heard in
14 criminal trials, you have a standard of proof which
15 is which beyond a reasonable doubt, which is the
16 highest standard that there is in America
17 jurisprudence and it's a standard by which a criminal
18 defendant would be convicted. You also have an
19 intervening burden of proof called clear and
20 convincing evidence, which is just that, clear and
21 convincing evidence. And in certain types of trials,
22 a party must prove his or her case by clear and
23 convincing evidence. In a fraud case, for instance,
24 or if someone were asking for punitive damages, the
25 standard would be clear and convincing evidence.

1 Ladies and gentlemen, as I've told you, this is
2 a case wherein the Plaintiff alleges gross negligence
3 on the part of the Defense. Generally, in a case for
4 negligence, the moving party must prove by a
5 preponderance of the evidence that there was a duty
6 owed to the aggrieved party, that there was a breach
7 of that duty, that they suffered damages as a
8 proximate cause of the breach of that duty. Okay.
9 Duty, breach, causation, damages. And I'm going
10 explain that to you in some additional detail. But
11 just know generally that in a case for negligence,
12 you must prove four things by a preponderance of the
13 evidence, duty, breach, causation and damages.

14 Now, ladies and gentlemen, in a simple
15 negligence action, negligence is defined as that a
16 person has done something that a reasonable person
17 would not have done in the same circumstances or that
18 a person has failed to do something that a reasonable
19 person would have done in the same circumstances.

20 Ladies and gentlemen, this is a case not of
21 simple negligence, but gross negligence. Under the
22 law in this case, the Plaintiff must prove gross
23 negligence on -- that the Defendant acted with gross
24 negligence.

25 So having said that, ladies and gentlemen, I'm

1 going to define for you, read the definition of gross
2 negligence. Gross negligence is the failure to
3 exercise a slight degree of care. A person who is so
4 indifferent to the consequences of his conduct as to
5 not give a slight care as to what he is doing acts
6 with gross negligence.

7 All right. Ladies and gentlemen, the first
8 thing that the Plaintiff must prove by the
9 preponderance of the evidence is that there was a
10 duty. Now, duty is whether there was a duty not as a
11 function of law. That means the Court makes a
12 determination as to whether there is a duty or not.
13 I have determined that there is a duty in this case.
14 The duty emanates from statutory law. I am going to
15 read to you the relevant statutory law.

16 Now, before I read to you that specific
17 statutory law, I do want to read for you, just to
18 help you put things in context, the definition of
19 criminal domestic violence. In the State of South
20 Carolina, it is unlawful to cause physical harm or
21 injury to a person's own household member or offer or
22 attempt to cause physical harm or injury to a
23 person's own household member with the apparent
24 present ability under circumstances reasonably
25 creating fear of imminent peril.

1 Now, ladies and gentlemen, the statute which
2 gives rise to the duty in this case is section
3 16-25-70 of the South Carolina Code of Laws. And I'm
4 going to read to you the salient portions of that
5 statute.

6 Subsection A, A law enforcement officer may
7 arrest with or without a warrant a person at the
8 person's place of residence or elsewhere if the
9 officer has probable cause to believe that the person
10 is committing or has freshly committed a misdemeanor
11 or felony pursuant to relevant statutes even if the
12 act did not take place in the presence of the
13 officer. The officer may, if necessary, verify the
14 existence of probable cause related to a violation
15 pursuant to the provisions of this chapter by
16 telephone or radio communication with the appropriate
17 law enforcement agency. The law enforcement agency
18 must complete an investigation of an alleged
19 violation of this chapter even if the law enforcement
20 agency was not notified at the time the alleged
21 violation occurred. If an arrest warrant is sought,
22 a law firm agency must present the results of the
23 investigation and any other relevant evidence to a
24 Magistrate who may issue an arrest warrant that
25 probable cause is established.

1 Ladies and gentlemen, Subsection B of that same
2 statute, a law enforcement officer must arrest with
3 or without a warrant a person at the person's place
4 of residence or elsewhere if physical manifestations
5 of injury to the alleged victim are present and the
6 officer has probable cause to believe that the person
7 is committing or has freshly committed a misdemeanor
8 or felony under the provisions of relevant statutes
9 even if the act did not take place in the presence of
10 the office. A law enforcement officer is not
11 required to make an arrest if he determines probable
12 cause does not exist after consideration of the
13 factors set forth in Subsection D, which I will read
14 for you, and observance that no physical
15 manifestation of injury is present. The law
16 enforcement officer may, if necessary, verify the
17 existence of an Order of Protection by telephone or
18 radio communication with the appropriate law
19 enforcement agency.

20 Ladies and gentlemen, Subsection D states If a
21 law enforcement officer receives conflicting
22 complaints of domestic or family violence from two or
23 more household members involving an incident of
24 domestic or family violence, the officer must
25 evaluate each complaint separately to determine who

1 was the primary aggressor. If the officer determines
2 that one person was the primary physical aggressor,
3 the officer must not arrest the other person accused
4 of having committed domestic or family violence. In
5 determining whether a person is the primary
6 aggressor, the officer must consider the following
7 factors and any other factors he considers relevant.

8 These are the factors. One, prior complaints of
9 domestic or family violence. Two, the relative
10 severity of the injuries inflicted on each person
11 taking into account injuries alleged which may not be
12 easily visible at the time of the investigation; the
13 likelihood of future injury to each person. Four,
14 whether one of the persons acted in self-defense.
15 And five, household member accounts regarding the
16 history of domestic violence.

17 Ladies and gentlemen, under Subsection E, The
18 law enforcement officer must not threaten, suggest or
19 otherwise indicate the possible arrests of all
20 parties to discourage a party's request for
21 intervention by law enforcement.

22 And ladies and gentlemen, finally, Subsection I,
23 A law enforcement officer is not liable for an act,
24 omission or exercise of discretion under this section
25 unless the act, omission or exercise of discretion

1 constitutes gross negligence, recklessness,
2 willfulness or wantonness.

3 Ladies and gentlemen, under the law in the State
4 of South Carolina, generally speaking, a government
5 enjoys immunity from suits. However, in this case,
6 the State of South Carolina has determined that
7 immunity may not apply. And there are exceptions to
8 immunity.

9 Now, under the relevant statute, the legislature
10 sets out potential exemptions that the State may
11 have. I will read for you those potential exemptions
12 under the law. Except where the Plaintiff proves
13 gross negligence, the governmental entity is not
14 liable for a loss resulting from adoption,
15 enforcement or compliance with any law or failure to
16 adopt or enforce any law whether valid or invalid,
17 including but not limited to any charter, provision,
18 ordinance, resolution, rule, regulation or written
19 policy.

20 The governmental entity is not liable for a loss
21 resulting from except in the case of gross negligence
22 the exercise of discretion or judgment by the
23 governmental entity or employee or the performance or
24 failure to perform any act or service which is in the
25 discretion or judgment of the governmental entity or

1 employee. Except where the Plaintiff proves gross
2 negligence, the governmental entity is not liable for
3 loss resulting from civil disobedience, riot,
4 insurrection or rebellion or the failure to provide
5 the method of providing police or fire protection.

6 Finally, except where the Plaintiff proves gross
7 negligence, the governmental entity is not liable for
8 the loss resulting from an act or omission of a
9 person other than employee, including but not limited
10 to the criminal actions of third persons.

11 Ladies and gentlemen, failure of a company or
12 entity to follow its own internal policies and
13 guidelines could be evidence of negligence, gross
14 negligence or reckless conduct. All right. That's
15 duty. All right. You will determine whether the
16 Plaintiff -- excuse me, the Defendant has breached
17 that duty under the standard of gross negligence.
18 The Plaintiff must prove that the Defendant breached
19 its duty by a preponderance of the evidence.

20 After you have determined whether or not the
21 Plaintiff has breached its duty to -- excuse me, the
22 Defendant has breached its duty to the plaintiff,
23 then you will determine whether that breach of duty
24 proximately caused the damages sustained in the
25 action. The Plaintiff has the burden of showing by a

1 You may return to your jury room.

2 (WHEREUPON, the jury left open court at
3 approximately 11:39 a.m.)

4 THE COURT: Okay. Exceptions to the charge?

5 MR. WILSON: Can we have just one second?

6 THE COURT: Sure.

7 MR. WILSON: None from the Plaintiff, Your
8 Honor, other than what we had already put forth.

9 THE COURT: Yes, sir, I understand.
10 From the Defense?

11 MR. HARTER: No, sir. We're fine.

12 THE COURT: All right. Gentlemen, thank you
13 very much. I want to congratulate all of you on
14 having tried an excellent case. Both the parties and
15 the attorneys and everyone in the courtroom, everyone
16 has been civil and professional. And it certainly
17 makes my job a lot easier when you conduct yourselves
18 in that manner. I don't know what the outcome of
19 this case will be, but whatever the outcome, it won't
20 be a consequence of anybody not having performed
21 their job exceptionally because y'all did. And I
22 appreciate it. Good luck to both of you.

23 Y'all want to inventory the evidence? I'm going
24 to ahead and send back the verdict form and I'm going
25 to release the alternates from chambers.

1 MR. HARTER: Can we do that, check and make
2 sure?

3 THE COURT: Yeah. And y'all can -- what you can
4 do is you can decide and you can send all the
5 remaining stuff back until you check that.

6 (WHEREUPON, the jury began deliberations at
7 approximately 11:43 a.m.)

8 THE COURT: Okay. We're back on the record.
9 The attorneys in their inventory of the evidence
10 determined that one of the CDs which had been
11 admitted lacked a small portion of the original taped
12 911 call, therefore Plaintiff's Exhibit 3 and 4,
13 which is a CD recording, has been substituted by the
14 full and entire recording of that 911 call and that
15 is by consent of the parties. Am I correct?

16 MR. HARTER: Correct for the Defense.

17 MR. WILSON: Correct for the Plaintiff.

18 THE COURT: Good enough.

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

21 THE COURT: All right, counsel, as you know, we
22 received a note which asks for a definition of gross
23 negligence versus negligence. So, pursuant to the
24 discussion we had in chambers, I will define it for
25 them again on the record.

1 So, pull them back out, please.

2 (WHEREUPON, the jury came into open court at
3 approximately 1:17 p.m.)

4 THE COURT: All right. Ladies and gentlemen, I
5 got your note wherein you asked me to define for you
6 negligence versus gross negligence. They're very
7 simple and short definitions. So, what I'm going to
8 do is I'm going to read both of them for you and I'm
9 going to read it twice slowly and deliberately, okay.

10 Negligence means that a person has done
11 something that a reasonable person would not have
12 done or has failed to do something that a reasonable
13 person would have done in the same situation. Gross
14 negligence is the failure to exercise a slight degree
15 of care. A person who is so indifferent to the
16 consequences of his conduct as to not give a slight
17 care as to what he is doing acts with gross
18 negligence.

19 So, I'll read it one more time to you, okay.
20 Negligence means that a person has done something
21 that a reasonable person would not have done or has
22 failed to do something that a reasonable person would
23 have done in the same situation. Gross negligence is
24 the failure to exercise a slight degree of care. A
25 person who is so indifferent to the consequences of

1 his conduct as to not to give a slight care as to
2 what he is doing acts with gross negligence.

3 All right. Thank you, ladies and gentlemen.
4 You may return to your jury room and continue
5 deliberations.

6 (WHEREUPON, the jury left open court at
7 approximately 1:18 p.m.)

8 THE COURT: All right. We'll be in recess.

9 (WHEREUPON, deliberations continued.)

10 (WHEREUPON, Court was in recess awaiting a
11 verdict.)

12 (WHEREUPON, Court's Exhibit No. 2 was marked for
13 identification and received into evidence.)

14 THE COURT: All right, bring the jury in. We
15 received another note from the jury asking for
16 clarification on gross negligence or a copy of the
17 written charge. So, I'm going to give them -- after
18 consultation with counsel, an alternate definition of
19 gross negligence, but not a substantially different
20 definition of gross negligence.

21 MR. HARTER: Your Honor, we would ask they just
22 rehear the same thing, but I understand that you're
23 going to expound on it.

24 THE COURT: Yes, sir.

25 Bring them in whenever they're lined up and

1 ready.

2 (WHEREUPON, the jury came into open court at
3 approximately 4:00 p.m.)

4 THE COURT: All right. Ladies and gentlemen,
5 welcome back. I got your note. And I recognize that
6 you are trying to come to terms with gross
7 negligence. Let me tell you that these terms,
8 negligence, gross negligence and a lot of other terms
9 under the law are broad concepts that in law school,
10 we spent the better part of a year discussing and
11 studying. If you go through cases from the Supreme
12 Court of South Carolina or the United States Supreme
13 Court, you can find a host of different types of
14 definitions and discussions of the concept. You can
15 also go to Horn Book, which is law encyclopedias, and
16 find various definitions of gross negligence. It's a
17 concept and sometimes these broad concepts are
18 difficult to distill into simple definitions.

19 Now, I've given you a definition which is simple
20 and it's a definition that has been approved by and,
21 actually, specifically published by the Supreme
22 Court. Now, I'm going to give you an alternate
23 definition, but I want to make you understand that in
24 substance, it does not vary or differ from the
25 previous definition that I've given you of gross

1 negligence.

2 Ladies and gentlemen, gross negligence is the
3 intentional conscious failure to do something which
4 it is incumbent upon one to do or the doing of a
5 thing intentionally that one ought not to do. It is
6 the failure to exercise slight care.

7 All right. Ladies and gentlemen, I don't know
8 if that's helpful to you. I can tell you that as you
9 walk away from this lawsuit and your service on jury
10 duty, it's not my intention and I'm sure it's not
11 your intention to be lawyers. Again, these
12 concepts -- and you've been given the definition
13 that's appropriate. And I'm afraid that I'm not
14 going to be able to give you any greater dissertation
15 on the concept than what I've already done.

16 I ask you to return to your jury room and
17 continue your deliberations.

18 (WHEREUPON, the jury left open court at
19 approximately 4:01 p.m.)

20 THE COURT: All right. We'll be in recess until
21 we hear back from the jury.

22 (WHEREUPON, deliberations continued.)

23 (WHEREUPON, court was in recess awaiting a
24 verdict.)

25 THE COURT: All right. Counsel, as we discussed

1 in chambers, the jury has indicated that they are at
2 a impasse. I intend to give them an Allen charge and
3 send them back to deliberate.

4 Would you please ask the jury to come back in?

5 (WHEREUPON, the jury came into open court at
6 approximately 5:26 p.m.)

7 (WHEREUPON, Court's Exhibit No. 3 was marked for
8 identification and received into evidence.)

9 THE COURT: All right, ladies and gentlemen, I
10 know y'all didn't anticipate that jury service was
11 going to be this hard work. I appreciate all the
12 hard work and effort that you've put into this case.
13 I truly do. I know this isn't an easy decision.
14 There are some cases that juries can return a verdict
15 in a matter of minutes but there are some cases that
16 are just difficult. And I recognize that you're
17 dealing with some difficult issues in this case. And
18 I also recognize that you've indicated to me that
19 you're at an impasse. I understand and I appreciate
20 that.

21 Let me explain to you what happens when and if a
22 jury comes to an impasse and gives up. What happens
23 is that all of the parties to this case are left to
24 deal with and struggle with the very same issue that
25 they came to trial on. All of the parties to the

1 case will simply have to come back to court at a
2 later date and time. The very same witnesses will be
3 subpoenaed. They will come and they will take the
4 stand. The very same issues will be presented to a
5 jury and the trial will be conducted yet again.

6 Ladies and gentlemen, I submit to you that all
7 of the resources of the State and of the county have
8 been marshaled to put this case together. All of the
9 efforts and all of the time of the parties in this
10 case also have been brought to bear in this trial
11 this week. I suggest to you that there are no other
12 11 people in the County of Greenville who are any
13 more capable or competent to come to a decision in
14 this case than the 11 of you. We can try this case
15 again, but we won't find another 11 who are any
16 better equipped or have any additional or different
17 information than what you have in this case.

18 Now, as I told you, I know it's hard. And I
19 recognize that you're struggling to come to a
20 consensus of a unanimous verdict. And I recognize
21 that there are closely-held opinions either way. And
22 it's hard for 12 people to come together. I know in
23 my household, sometimes it's hard for two people to
24 agree. But you should consider in your deliberations
25 those in the majority consider the views of minority

1 and those in the minority consider the views of the
2 majority and continue to try to work towards a
3 unanimous verdict.

4 Now, ladies and gentlemen, I'm -- this is not
5 punishment to y'all. And I don't intend to make this
6 an exercise and torture. I really don't. But as I
7 suggested to you, if we give up, then all of this
8 just happens again. And that, ladies and gentlemen,
9 I would submit to you is a waste of time and
10 resources and it really is a tragic occurrence for
11 the parties who have come this far. So, I'm going to
12 ask you, please, would you return to your jury room
13 and continue to try to come to a unanimous verdict in
14 this case. Thank you very much.

15 (WHEREUPON, the jury left open court at
16 approximately 5:31 p.m.)

17 (WHEREUPON, deliberations continued.)

18 THE COURT: All right. Counsel, wait and see
19 what we hear.

20 MR. HARTER: Okay.

21 THE COURT: I'll kind of send a canarion to the
22 coal mine in about half an hour and ask if they want
23 me to order supper for them. Sometimes that tells me
24 where they're headed.

25 (WHEREUPON, court was in recess awaiting a

1 verdict.)

2 THE COURT: I've been informed that we have a
3 verdict. Are y'all ready to receive the verdict?

4 MR. WILSON: Before we do, can we get on the
5 record that the jury still -- now consist of 11 and
6 we've both agreed to go with 11?

7 THE COURT: That's fine. And that's by
8 agreement, yes, sir.

9 MR. HARTER: I would also like to get on the
10 record there was a settlement with Wal-Mart, Your
11 Honor.

12 THE COURT: Yes, sir.

13 MR. HARTER: I know that was confidential, but
14 I'd like to know that amount and that allocation now
15 before we receive a verdict. I believe that was
16 approved by an Order. There was another settlement
17 recently with Wood Forrest Bank that has not been
18 approved as far as I know. And I believe there's an
19 understood allocation --

20 MR. WILSON: It has been approved. It was
21 approved by Judge --

22 MR. HARTER: I was never notified about it, so I
23 would like to know the breakdown on that.

24 THE COURT: Okay. Okay. Good enough.

25 Do you want to tell him?

1 MR. WILSON: Judge, I don't know that it matters
2 whether it's before or after the verdict. I think
3 those Orders require us to be ordered to disclose
4 those things. If we can just take that up after we
5 receive the verdict.

6 MR. HARTER: Just so I know.

7 THE COURT: And I'm going to tell you, I'm not
8 going to require you to publish it on the record, but
9 I am going to require you to tell Mr. Harter. And
10 that's not outside of the bounds of the
11 confidentiality because that is something that he
12 needs to know. Ultimately, that may be something
13 that I need to know.

14 MR. WILSON: Just one other thing, Judge, if you
15 feel it's appropriate and want to, Ms. Madel hasn't
16 been able to come back because of the children, but
17 she wanted us to get you to tell the jury that it's
18 not out of disrespect to the jury no matter what
19 their decision. She just had to take care of the
20 children.

21 THE COURT: Okay. Good enough.

22 MR. WILSON: Thank you, Judge.

23 MR. HARTER: Nothing.

24 THE COURT: Okay. Bring them in, please.
25

1 (WHEREUPON, the jury came into open court at
2 approximately 7:35 p.m.)

3 THE COURT: All right, welcome back, ladies and
4 gentlemen. Counsel for the Plaintiff has advised me
5 that Ms. Rivero was not able to stay because she has
6 to take care of the children. But she wanted to let
7 y'all know that regardless of what your verdict is,
8 she wanted them to ensure that you didn't see that as
9 a sign of disrespect toward you. She had business to
10 attend to.

11 Okay. So, Ms. Burns, has the jury reached a
12 unanimous verdict?

13 MADAM FORELADY: We have, Your Honor.

14 THE COURT: Would you pass the verdict form to
15 the bailiff, please?

16 Madam Clerk, will you publish the verdict,
17 please, ma'am?

18 VERDICT

19 THE CLERK: Your Honor, this is case number
20 2013-CP-23-6522. Madel C. Rivero, as personal
21 representative of the Estate of Lilia Loraina Blandin
22 v. Sheriff Steve Loftis in his capacity as Sheriff of
23 Greenville County. Number one, was the Defendant
24 grossly negligent? Yes. Number two, was the
25 Defendant's gross negligence a proximate cause of the

1 Plaintiff's injuries? Yes. Number three, was the
2 Plaintiff negligent? Yes. Number four, was the
3 Plaintiff's negligence a proximate cause of the
4 Plaintiff's injuries? No. Number seven, please
5 state the amount of damages, if any, sustained by the
6 Plaintiff. Actual damages for the survival action is
7 \$750,000. Actual damages for the wrongful death
8 action is \$500,000. Signed Robin Burns, foreperson.

9 If this is your verdict, so say you all. Please
10 signify by raising your right hand, if so.

11 (WHEREUPON, all the jurors raised their right
12 hand.)

13 THE CLERK: Thank you.

14 THE COURT: All right. Counsel, anything
15 additional for this jury?

16 MR. WILSON: Not from the Plaintiff, Your Honor.

17 MR. HARTER: No, sir.

18 THE COURT: All right. Ladies and gentlemen, I
19 appreciate your work in this case. I know it was
20 hard work. Y'all put a lot of effort into it and I
21 appreciate it. So, I'll ask you to retire to your
22 jury room. You get all of your stuff back and I'm
23 going to dismiss you, obviously, for the week.

24 Before you go, I'm going to come back and stick
25 my head in your jury room and dismiss you informally

1 and give you the opportunity to ask any questions
2 that you might have, any outstanding questions that
3 you might have, and even offer any critiques,
4 criticisms or suggestions as well. But I promise
5 you, I'm not going to keep you here any longer than
6 absolutely positively necessary. I know you're ready
7 to get home, as am I. So, thank you and I'll talk to
8 you in just a few seconds.

9 (WHEREUPON, the jury came into open court at
10 approximately 7:39 p.m.)

11 THE COURT: All right. Counsel, under the
12 rules, you have 10 days to make any post-trial
13 motions. And I'll be happy to receive those in
14 writing. However, you may make any motions that you
15 think are appropriate now or you may reserve that.

16 MR. HARTER: Judge, I would like if I could get
17 the information about the settlement with the
18 allocation.

19 THE COURT: I understand. I think that's
20 appropriate.

21 Y'all have a discussion and then you're court
22 ordered to exchange that information and give it to
23 Mr. Harter because, obviously, it may be an issue.

24 MR. HARTER: I'd like to get it today so I can
25 report to who I need to report to.

1 THE COURT: I think you've got it in your head,
2 don't you?

3 MR. WILSON: Yes, sir.

4 MR. HARTER: Thank you, Your Honor. We'll
5 submit our motions within 10 days.

6 MR. WILSON: We'll like the same, 10 days, Your
7 Honor.

8 THE COURT: Absolutely. I know that Mr. Harter
9 will submit his and you'll have the opportunity to
10 respond and reply.

11 MR. WILSON: Judge, do you anticipate we'll need
12 to come back and argue those or can we just brief it?

13 THE COURT: I do not. I know that when you
14 submit those motions that I intend to rely upon the
15 written submissions and enter a decision. I'm not
16 going to reconvene a court hearing for that purpose,
17 okay.

18 MR. WILSON: Thank you.

19 THE COURT: All right. Y'all have a great
20 evening.

21 MR. HARTER: Thank you, Judge.

22 MR. WILSON: Thank you, Judge.

23 (WHEREUPON, the proceedings were concluded.)
24
25

Plaintiff's Trial Exhibit #1

**CD of December 9, 2011
Lilia Blandin 911 Call**

*To Be Transferred from
Greenville County Clerk of Court's Office*

911 TRANSCRIPT

1 GCSO: Greenville County 911. What's the
2 address of the emergency?

3 LILIA: Yes, I need some help because my
4 husband has been arrested for domestic violence and
5 he's out of jail and he -- he's at my house now and
6 he -- I take my clothes. I tried to leave the
7 house so I don't have to stay with him, and I tried
8 to get my stuff from it, and he beat me on the
9 stomach, and he told me he was going to kill me.
10 Now my baby is on the second floor and I have to go
11 get her, but I don't want to go inside because I
12 know he's going to put me in that room and he going
13 to beat me up --

14 GCSO: Okay, wait. Slow down. You say that
15 your husband is at the house and you wanted to go
16 get your things? Is that what you're saying?

17 LILIA: Yes, but he has threatened me all
18 night and I had to sleep in my car, so my baby went
19 back on the top and she was lying asleep on the
20 bedroom, but I'm not at the house --

21 GCSO: But listen to me. You're going to get
22 your clothing or you're going to get a child?

23 LILIA: I want to get my child.

24 GCSO: You want to get your child?

25 LILIA: Yeah, because I -- she's sleeping, but



ADAMS REPORTING & VIDEO

911 TRANSCRIPT

1 I don't want to go inside the house because he
2 already hit me in the stomach, and he told me he's
3 going to kill me --

4 GCSO: Okay --

5 LILIA: -- and I'm not going back in there.

6 GCSO: What is your home address?

7 LILIA: [REDACTED]

8 GCSO: [REDACTED] what?

9 LILIA: [REDACTED]

10 [REDACTED]

11 GCSO: [REDACTED] ?

12 LILIA: Yes, ma'am.

13 GCSO: What is your name?

14 LILIA: My name is Lilia Blandin.

15 GCSO: Say your name again.

16 LILIA: Lilia, L-I-L-I-A.

17 GCSO: L -- excuse me, you said L-I-L-I-A?

18 LILIA: Yes, ma'am.

19 GCSO: And what's the the last?

20 LILIA: Blandin, B as in Boy, L-A-N-D-I-N.

21 GCSO: Okay. What is your phone number you
22 can be reached back at?

23 LILIA: 864-376-0563.

24 GCSO: Okay, you'll need to wait 'til the
25 sergeant call you back.

ADAMS REPORTING & VIDEO

911 TRANSCRIPT

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LILIA: Okay. Thank you.

GCSO: Okay, the sergeant will have to call
you back.

LILIA: Okay.

GCSO: Thank you.

[END OF CALL]

911 TRANSCRIPT

C-E-R-T-I-F-I-C-A-T-E

SOUTH CAROLINA

AIKEN COUNTY

I hereby certify that the foregoing transcript was transcribed by **LISA M. ADAMS**. I am not a relative, employee, attorney, or counsel of any of the parties, nor am I financially interested in the action.

This, the 24th day of September, 2015.

LISA M. ADAMS, CVR

CERTIFIED COURT REPORTER

NVRA CERTIFIED

ADAMS REPORTING & VIDEO

Plaintiff's Trial Exhibit #3

**CD of December 9, 2011
Juana Hamby 911 Call**

*To Be Transferred from
Greenville County Clerk of Court's Office*

Plaintiff's Trial Exhibit #4

**CD of December 9, 2011
Juana Hamby 911 Call**

*To Be Transferred from
Greenville County Clerk of Court's Office*

911 TRANSCRIPT

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GCSO: Greenville County 911.

JUANA: My sister, she live in the [REDACTED]
[REDACTED], in Simpsonville, and she say
she had a problem with -- with her husband and she
tried to get -- to go inside their house for the
little girl. She left the little girl inside, but
her husband, he say he want to killer her.

GCSO: What's -- what -- what is her name?

JUANA: Lilia Blandin. She said she already
called the police, she's outside because she has
kids.

GCSO: When did she call the police?

JUANA: I don't know. She called me, and she
said she called the police already.

GCSO: Where is your sister at?

JUANA: Outside the house. Outside in her
house --

GCSO: Outside --

JUANA: -- in the car.

GCSO: In the car?

JUANA: Yeah, because she say that her
husband, he tell her that he wanted to killer her.
She said she'll sleep here all night in the car.

GCSO: Does she live there?

JUANA: Yeah. Yes, with her husband. He

PLAINTIFF'S
EXHIBIT
5 AB
9.28.15

ADAMS REPORTING & VIDEO

911 TRANSCRIPT

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crazy. He in prison before and he got out and now
he's, like, crazy.

GCSO: What is your name?

JUANA: My name is Juana Hamby.

[END OF CALL]

911 TRANSCRIPT

C-E-R-T-I-F-I-C-A-T-E

SOUTH CAROLINA

AIKEN COUNTY

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This, the 24th day of September, 2015.

LISA M. ADAMS, CVR

CERTIFIED COURT REPORTER

NVRA CERTIFIED

ADAMS REPORTING & VIDEO

Plaintiff's Trial Exhibit #6

**CD of December 9, 2011
Patricia Sullivan 911 Call**

*To Be Transferred from
Greenville County Clerk of Court's Office*

911 TRANSCRIPT

1 LILIA: Hello..
2 GCSO: Hello. Lilia?
3 LILIA: Yes.
4 GCSO: Okay, this is Greenville County
5 Sheriff's office. I spoke to you a little bit ago.
6 Okay --
7 LILIA: Okay.
8 GCSO: -- you're not at your house, though;
9 correct?
10 LILIA: I'm not. I'm outside.
11 GCSO: You're outside?
12 LILIA: Um-huh, [yes].
13 GCSO: Okay, just wait outside. Don't go back
14 into the house because I think that's what I told
15 you last time.
16 LILIA: Yeah, I'm outside.
17 GCSO: Okay, your sister called. Who is
18 Juana?
19 LILIA: Outside -- I'm still outside waiting
20 but he tried --
21 GCSO: Who is --
22 LILIA: I'm sorry.
23 GCSO: Who is Juana?
24 LILIA: Juana is my sister. I --
25 GCSO: Okay. She's with you?



ADAMS REPORTING & VIDEO

911 TRANSCRIPT

1 LILIA: No, I spoke with her, and she said
2 she's going to call the police because they know
3 how he's being aggressive with me ==

4 GCSO: Okay, well, if you're outside you need
5 to let your sister know that's -- what you're
6 referring to happened before, that you're not in
7 the house with him.

8 LILIA: Okay.

9 GCSO: Because she called back and she thought
10 you were in the house with him. She doesn't --

11 LILIA: No, I --

12 GCSO: -- need to call, also, just because you
13 --

14 LILIA: I understand.

15 GCSO: -- you already called.

16 LILIA: I promise --

17 GCSO: You didn't need to let her call, also.
18 That's what I'm trying to say.

19 LILIA: She probably misunderstand. I told
20 her that I already called but she's -- you know,
21 she worry about us, so --

22 GCSO: Well, she --

23 LILIA: -- I'm outside. I'm just waiting to
24 somebody help me get my little girl.

25 GCSO: Okay, well, then officer -- the

911 TRANSCRIPT

sergeant will be calling you back. Okay?

LILIA: Okay. Thank you.

GCSO: Thank you.

[END OF CALL]

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ADAMS REPORTING & VIDEO

911 TRANSCRIPT

C-E-R-T-I-F-I-C-A-T-E

S O U T H C A R O L I N A

A I K E N C O U N T Y

I hereby certify that the foregoing transcript was transcribed by **LISA M. ADAMS**. I am not a relative, employee, attorney, or counsel of any of the parties, nor am I financially interested in the action.

This, the 24th day of September, 2015.

LISA M. ADAMS, CVR

CERTIFIED COURT REPORTER

NVRA CERTIFIED

ADAMS REPORTING & VIDEO

GREENVILLE CO SHERIFF'S OFFICE
 Date: 12/10/11 Time: 17:19

PAGE: 000002
 Requested By: KING, STACY

INCIDENT: ABNORMAL

Incident	Time	Type	Pri/Dispo	Address Location	Bldg/Apt	Callers Name Callers Address Callers Phone	P-unit	Close Date/ Time	Operator
				BEAT TRM/DIST AREA					
	11/12/09 10:43	Primary Unit	CHANGED PR: SO/D04	SO/D02			11	SULLIVAN, PATRICIA	
	11/12/09 10:47	Stat SO/D02	06-ON SCENE	Loc: [REDACTED]				WILSON, THERESA	
	11/12/09 10:47	Officer 1 Name:	PICONE, DAVID	Officer 2 Name:				WILSON, THERESA	
	11/12/09 10:48	Stat SO/D03	06-ON SCENE	Loc: [REDACTED]				WILSON, THERESA	
	11/12/09 10:48	Officer 1 Name:	TYNER, KEVIN	Officer 2 Name:				WILSON, THERESA	
	11/12/09 10:53	Unit's Recommended						HENDRIX, ELEANOR	
	11/12/09 10:54	OO Information: Reply ID:	5636879	Date:	12/9/11 11:01:31		04	WILSON, THERESA	
	11/12/09 10:54	Attachment:					04	WILSON, THERESA	
	11/12/09 10:54	Reply Text:	GVLS0204 DMV	1640019332			04	WILSON, THERESA	
	11/12/09 10:54	D057C920111209	10:53:38				04	WILSON, THERESA	
	11/12/09 10:54	0508JA20111209	10:53:38				04	WILSON, THERESA	
	11/12/09 10:54	TRERF	SC02300A41640019332				04	WILSON, THERESA	
	11/12/09 10:54	KRRF					04	WILSON, THERESA	
	11/12/09 10:54	ID NO	0008681903				04	WILSON, THERESA	
	11/12/09 10:54	BLANDIN, AVERY	LOUIS				04	WILSON, THERESA	
	11/12/09 10:54						04	WILSON, THERESA	
	11/12/09 10:54	GREENVILLE	SC 296116614 GREV CNTY				04	WILSON, THERESA	
	11/12/09 10:54	SEX F	HGT 5'07" WGT 215 BIRTH				04	WILSON, THERESA	
	11/12/09 10:54	SSN	RACE BLACK				04	WILSON, THERESA	
	11/12/09 10:54	STATUS-DL	SUSPENDED CDL DISQUALIFIED				04	WILSON, THERESA	
	11/12/09 10:54	DRIVER LICENSE	CLASS: 0 ISSUED 07/07/2004				04	WILSON, THERESA	
	11/12/09 10:54	**** IDENTIFICATION ONLY ****	ISSUED 02/02/1995				04	WILSON, THERESA	
	11/12/09 10:54	** MORE **					04	WILSON, THERESA	
	11/12/09 11:01	Unit's Recommended						HENDRIX, ELEANOR	
	11/12/09 11:01	DL NO					02	HENDRIX, ELEANOR	
	11/12/09 11:01	BLANDIN, LILLIA L					02	HENDRIX, ELEANOR	
	11/12/09 11:01						02	HENDRIX, ELEANOR	
	11/12/09 11:02	GREENVILLE	SC 296116614 GREV CNTY				02	HENDRIX, ELEANOR	
	11/12/09 11:02	SEX F	HGT 5'07" WGT 190 BIRTH				02	HENDRIX, ELEANOR	
	11/12/09 11:02	SSN	RACE HISPAN				02	HENDRIX, ELEANOR	
	11/12/09 11:02	STATUS-DL	SUSPENDED CDL DISQUALIFIED				02	HENDRIX, ELEANOR	
	11/12/09 11:02	DRIVER LICENSE	CLASS: B ISSUED 06/23/2009				02	HENDRIX, ELEANOR	
	11/12/09 11:02	** MORE **					02	HENDRIX, ELEANOR	
	11/12/09 11:02	OLS -	00141769				02	HENDRIX, ELEANOR	
	11/12/09 11:02	SUSP FR ACCIDENT		END 10/15/2011	END INDEFINITE CAU		02	HENDRIX, ELEANOR	
	11/12/09 11:02	04/13/2011					02	HENDRIX, ELEANOR	
	11/12/09 11:02	SUSP CANCELLATION OF INSURANCE		END 11/16/2010	END 12/13/2010 CAU		02	HENDRIX, ELEANOR	
	11/12/09 11:02	09/08/2010					02	HENDRIX, ELEANOR	
	11/12/09 11:02	SUSP CANCELLATION OF INSURANCE		END 11/16/2010	END 12/13/2010 CAU		02	HENDRIX, ELEANOR	
	11/12/09 11:02	09/08/2010					02	HENDRIX, ELEANOR	
	11/12/09 11:02	** END OF INQUIRY **					02	HENDRIX, ELEANOR	
	11/12/09 11:15	Unit SO/D02	Proceed From Incident					HENDRIX, ELEANOR	
	11/12/09 11:15	Officer 1 Name:	PICONE, DAVID	Officer 2 Name:				HENDRIX, ELEANOR	
	11/12/09 11:15	Primary Unit:	CHANGED PR: SO/D02	SO/D03			02	HENDRIX, ELEANOR	
	11/12/09 11:15	Stat SO/D03	08					HENDRIX, ELEANOR	
	11/12/09 11:15	Officer 1 Name:	TYNER, KEVIN	Officer 2 Name:				HENDRIX, ELEANOR	
	11/12/09 11:15	Route Closed	MAIN				02	HENDRIX, ELEANOR	
	11/12/09 11:15	Disposition	CHANGED	03	MAIN		02	HENDRIX, ELEANOR	
	11/12/09 11:15	Incident Closed:	11/12/09 11:15				02	HENDRIX, ELEANOR	

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-8 FEB 2012 11 06

GREENVILLE CO. SHERIFF'S OFFICE
Date: 12/10/11 Time: 17:19

PAGE: 000003
Requested By: KING, STACY

INCIDENT RECALL

Incident	Time	Type	Pri	Dispo	Address Location	Bldg/Apt	Callers Name Callers Address	P-unit	Close Date/ Time	Operator
					BEAT	TEAM/Dist	AREA			Callers Phone
11/12/10	14:44	Incident Associated to:			LS0111210186876 (A)			04		KING, STACY
11/12/10	14:44	Incident Associated to:			LPR11210005828 (A)			04		KING, STACY
11/12/10	14:44	Incident Associated to:			LS0111210186876 (A)			04		KING, STACY
11/12/10	14:55	IAAssocInc			LS0111210186876 UPDATE PriUnt			to:SO/D49	03	HENDRIX, ELEANOR
11/12/10	15:04	IAAssocInc			LS0111210186876 UPDATE Dispo			to:08	03	HENDRIX, ELEANOR
11/12/10	15:22	IAAssocInc			LPR11210005828 UPDATE Dispo			to:FR	02	PATTERSON, JOE
11/12/10	16:36	IAAssocInc			LS0111210186876 UPDATE PriUnt			to:SO/D37	03	HENDRIX, ELEANOR
11/12/10	16:45	IAAssocInc			LS0111210186876 UPDATE Dispo			to:05	03	HENDRIX, ELEANOR

==== Vehicle / Subject Information ====

NO VEHICLE OR SUBJECT RECORDS FOR EVENT LS0111209166213

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18 FEB 2012 11 06

Incident Detail

Incident Number LSO111209188213	Address [REDACTED]	Caller Name LILIA BLANDIA	Caller Phone 884-376-0
Incident Type 80	Incident Type Description DOMESTIC TROUBLE	Location Not Entered	

Create Time Dec 9, 2011 10:13 AM	Dispatch Time Dec 9, 2011 10:14 AM	Arrival Time Dec 9, 2011 10:47	Closed Time Dec 9, 2011 11:15 AM
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Dispo Code 03	Disposition Text HANDLED BY OFFICER
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Primary Officer TYNER, KEVIN	Star Number 1245	Beat S03B	Agency SO
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Other Officers Assisting:

Officer	Star Number	Officer	Star Number	Officer	Star Number
None		None		None	

Comments:

12/09/2011 10:13:56 Primary Event MAIN Opened: 11/12/09 10:13

12/09/2011 10:13:56 Incident Initiated By: SO/SULLIVAN, PATRICIA

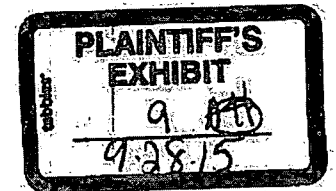
12/09/2011 10:13:56 REF CHILD CUSTODY

12/09/2011 10:28:05 1024'S SISTER (JUANA HANDBY) CALLED TO ADVISE THAT 1024 IS OUTSIDE THE

S/TPB 04/22/2014

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WM RIVERO GCSD000526

12/09/2011 10:28:05 //1024 HAS SLEPT HOUSE AND THAT THE HUSBAND HAS THREATENED 1089B TO HER

12/09/2011 10:28:05 AND WAS 1081 IN THE CAR ALLNIGHT BECAUSE HUSBAND WOULDN'T LET HER IN

12/09/2011 10:30:22 SISTERS PHONE 373-1059

12/09/2011 10:37:53 CONFIRMED THAT LILIA THE ORIG 10-24 10-12 SHE IS OUTSIDE AND 10:11 FOR

12/09/2011 10:37:53 CALL 72ND 10-24 WAS NOT AWEAR OF THIS AND WAS REFERRING TO PRIOR INCIDENT

12/09/2011 10:54:10 OQ Information: Reply ID: 5636879 Date: 12/9/11:11:01:31

12/09/2011 10:54:11 Attachment

12/09/2011 10:54:11 Reply Text: GVLSO204 DMV 1640019332

12/09/2011 10:54:11 D357C920111209 10:53:38

12/09/2011 10:54:11 050E3A20111209 10:53:38

12/09/2011 10:54:12 TXREF SC02300A41640019332

12/09/2011 10:54:12 XREF

12/09/2011 10:54:12 ID NO [REDACTED]

12/09/2011 10:54:12 BLANDIN AVERY LOUIS

12/09/2011 10:54:13 [REDACTED]

8/1PB 04/22/2014

12/08/2011 10:54:13 GREENVILLE GC 296116314 GREV CNTY

12/08/2011 10:54:13 SEX M HGT 5 07 WGT 215 BIRTH [REDACTED]

12/08/2011 10:54:14 GGN [REDACTED] RACE BLACK

12/08/2011 10:54:14 STATUS-OL SUSPENDED COL DISQUALIFIED

12/09/2011 10:54:14 DRIVER LICENSE CLASS D ISSUED 07/07/2004

12/08/2011 10:54:14 *** IDENTIFICATION ONLY *** ISSUED 02/02/1996

12/08/2011 10:54:15 "MORE"

12/08/2011 11:01:59 DL NO [REDACTED]

12/08/2011 11:01:59 BLANKET LIA L

12/08/2011 11:01:59 [REDACTED]

12/08/2011 11:02:00 GREENVILLE GC 296116614 GREV CNTY

12/08/2011 11:02:00 SEX F HGT 5 07 WGT 190 BIRTH 11/15/1979

12/09/2011 11:02:00 GGN [REDACTED] RACE HISPAN

12/08/2011 11:02:00 STATUS-OL SUSPENDED COL DISQUALIFIED

12/09/2011 11:02:00 DRIVER LICENSE CLASS D ISSUED 08/23/2009

SV138 84/22/2014

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WM RIVERO GCSD000528

12/09/2011 11:02:00 ** MORE **

12/09/2011 11:02:10 OLN = [REDACTED]

12/09/2011 11:02:10 SUSP FR ACCIDENT BEG 10/15/2011 END INDEFINITE
CAU

12/09/2011 11:02:10 08/13/2011

12/09/2011 11:02:10 SUSP CANCELLATION OF INSURANCE BEG 11/16/2010 END
12/13/2010 CAU

12/09/2011 11:02:10 09/08/2010

12/09/2011 11:02:10 SUSP CANCELLATION OF INSURANCE BEG 11/16/2010 END
12/13/2010 CAU

12/09/2011 11:02:10 09/08/2010

12/09/2011 11:02:10 ** END OF INQUIRY **

12/09/2011 11:15:46 Route Closed: MAIN 03

12/09/2011 11:15:46 Incident Closed: 11/12/09 11:15

12/10/2011 14:55:21 IAAssocInc LSO111210186878 UPDATE PriUnit to SO/D49

12/10/2011 15:04:39 IAAssocInc LSO111210186878 UPDATE Dispo to 08 MAIN

12/10/2011 15:32:13 IAAssocInc LFR111210005828 UPDATE Dispo to FR MAIN

12/10/2011 16:36:41 IAAssocInc LSO111210186878 UPDATE PriUnit to SO/D37

S/JPB 8/22/2014

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WM RIVERO.GCSD000529

12/10/2011 16:45:28 IAAssocinc LSO111210186876 UPDATE Dispo to 06 MAIN

12/10/2011 19:05:53 IAAssocinc LSO111210186965 UPDATE Dispo to 03 MAIN

12/10/2011 20:47:18 IAAssocinc LFR111210005828 UPDATE Dispo to FR MAIN

Incident Detail

Incident Number LSO111210186985	Address [REDACTED]	Caller Name Not Entered	Caller Phone <nil>
Incident Type 29	Incident Type Description FOLLOW UP INVESTIGAT	Location Not Entered	

Create Time Dec 10, 2011 5:29 PM	Dispatch Time Dec 10, 2011 5:29	Arrival Time Dec 10, 2011 5:29	Closed Time Dec 10, 2011 7:05 PM
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Diapo Code 03	Disposition Text HANDLED BY OFFICER
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Primary Officer TYNER, KEVIN	Star Number 1245	Beat S03B	Agency SO
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Other Officers Assisting:

Officer	Star Number	Officer	Star Number	Officer	Star Number
None		None		None	

Comments:

- 12/10/2011:17:29:04 Primary Event: MAIN Opened: 11/12/10:17:29
- 12/10/2011:17:29:04 Incident Initiated By: SO/PATTERSON, JOE
- 12/10/2011:19:05:53 Route Closed: MAIN 03
- 12/10/2011:19:05:53 Incident Closed: 11/12/10:19:05

S/TPB 84/22/2514

12/10/2011 20:57:18 [Accessed: UPR 1121000000] UPDATE DISC: 10 FR. HAVI.

7/18/22/19: 641/5

8/1/2014

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WMA RIVERO GCSD000002

Incident Detail

Incident Number	Address	Caller Name	Caller Phone
LSO111217180300	[REDACTED]	DIAZ, JACOB	8842830341
Incident Type	Incident Type Description	Location	
53C	INVESTIGATE VEHICLE	Not Entered	

Create Time	Dispatch Time	Arrival Time	Closed Time
Dec 17, 2011 1:24 PM	Dec 17, 2011 1:29	Dec 17, 2011 1:37	Dec 17, 2011 1:50 PM

Dispo Code	Disposition Text
03	HANDLED BY OFFICER

Primary Officer	Star Number	Badge	Agency
MANSEL, CONRAD	1034	S03B	SO

Other Officers Assisting:

Officer	Star Number	Officer	Star Number	Officer	Star Number
None		None		None	

Comments:

12/17/2011 13:25:32 Primary Event MAIN Opened: 11/12/17 13:25

12/17/2011 13:25:32 Incident Initiated By: SO/SMITH, ANN

12/17/2011 13:25:32 BLK TK IN YARD SUBJ CHECKING WINDOWS AND GARAGE/2 HISP MALES/

12/17/2011 13:25:47 NEG 10-19 10-24

S-IPB 04/22/2016

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WM RIVERO GCSD000533

6/17/2014 04/22/2014

6 Apr 2014

12/17/2011 13:50:55 Race: Grand LEON CS
12/17/2011 13:50:56 Incident: Change: 11/12/17 13:50

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WM RIVERO CCS D00053A



GREENVILLE COUNTY
SHERIFF'S OFFICE

GO - 238

**GENERAL
ORDERS**

**CRIMINAL DOMESTIC
VIOLENCE**

PURPOSE:

It is policy of the Greenville County Sheriff's Office to provide immediate assistance to victims of domestic violence, protect victims from further abuse, and take appropriate action against offenders. To facilitate its efforts in combating domestic violence, the Sheriff's Office maintains a Family Violence Unit in the Criminal Investigations Division.

LEGAL OVERVIEW:

Definitions: For purposes of this directive, Family/Household member means:

1. Spouses.
2. Former spouses.
3. Persons who have a child in common.
4. A male and female who are co-habiting or formerly co-habited.

CRIMINAL DOMESTIC VIOLENCE: Pursuant to §16-25-20 of the Code of Laws of South Carolina, 1976 as amended (hereafter the S.C. Code:

(A) It is unlawful to:

(1) cause physical harm or injury to a person's own household member;

(2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

Order of Protection is an order issued to protect the Petitioner or minor household members from the abuse of another family or household member where the Respondent has received notice of the Proceedings and has had an opportunity to be heard.

1. Order of Protection is issued through Family Court, or through Magistrates Office when Family Court is closed.
2. An Order of Protection and Restraining Orders are kept on file in the warrant division and entered on NCIC. These orders are normally valid for six months to one year.
3. An Order of Protection issued by another County, State, Tribe, or Territory is afforded full faith and credit if it is valid on its face. It is valid on its face when parties are named, it has a



Judge's signature, and it has not expired. A copy is sufficient, or its entry on NCIC showing a valid expiration date.

South Carolina is a "mandatory arrest" state. **Mandatory arrest is applicable in three situations:** (Pursuant to S.C. Code §16-25-70):

1. **Physical manifestations of injury** to a victim of domestic violence with **probable cause**;
2. Violation of a Restraining Order issued under the Harassment and Stalking Act;
3. Violation of an Order of Protection issued under the Protection From Domestic Abuse Act with physical manifestation of injury to the victim with probable cause.

§16-25-70 (A) Warrantless Arrest –

A law enforcement officer may arrest, with or without a warrant, a person at the person's residence or elsewhere if the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony under the provisions of §16-25-20 (A) or (E), or 16-25-65 even if the act did not take place in the presence of the officer. A Law Enforcement Agency must complete an investigation of an alleged violation of this chapter, even if they were not notified at incident time. If an arrest warrant is sought, the Law Enforcement Agency must present the results of the investigation and any other relevant evidence to a Magistrate who may issue an arrest warrant.

§16-25-70 (B) Mandatory Arrest –

A Law Enforcement Officer must arrest with or without a warrant, a person at the person's place of residence or elsewhere if physical manifestations of injury to the alleged victim are present, and the Officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony under the provisions of §16-25-20(A) or (E), or §16-25-65, even if the act did not take place in the presence of the Officer. The Officer may, if necessary, verify the existence of an Order of Protection by telephone or radio communication with the appropriate Law Enforcement Agency." The Officer is not required to make an arrest if (s)he determines probable cause does not exist after consideration of the factors set forth in section (D) and no physical manifestation of injury is present.

*Note: **physical manifestation of injury** means evidence that supports an allegation that the injury occurred, whether or not the injury is visible.*

Criminal Domestic Violence of a High Aggravated Nature:
Pursuant to S.C. Code §16-25-65 -

(A) A person who violates 16-25-20(A) is guilty of the offense of criminal domestic violence of a high and aggravated nature when one of the following occurs:

(1) the person intentionally commits an assault and battery which involves the use of a deadly weapon, OR results in serious bodily injury to the victim; OR

(2) the person intentionally commits an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death.

**COMMUNICATIONS
SPECIALISTS'
RESPONSIBILITIES:**

Communications specialists are to give domestic violence priority over other routine calls for service, and dispatch at least two deputies to each incident when possible.

An effort is to be made to determine and relay the following information to the responding deputies:

1. Any serious injury requiring EMS.
2. Whether the suspect is present, the suspect's description, vehicle description and possible whereabouts.
3. Whether weapons are involved or accessible.
4. Whether the suspect is under the influence of drugs or alcohol.
5. Whether there are children currently present in the home.
6. Whether the victim has a current Protection Order or Restraining Order.
7. The complaint history at the dispatched location.

A communications specialist is not to cancel response to a domestic violence complaint based solely on a follow up call from the residence requesting cancellation. The complainant's request to cancel the call is aired to the responding deputy.

**RESPONDING UNIT'S
RESPONSIBILITIES:**

When responding to a domestic violence call, deputies will make every effort to:

- Use caution when approaching the incident location.
- Restore order by gaining control of the situation.

- Take control of all weapons used or threatened for use in the crime.
- Assess the need for medical attention and call for medical assistance, if indicated.
- Identify all persons, including children present during the crime by full name, address, social security number, birth date, sex, race, height, and weight.
- Privately interview all parties, out of sight and sound of each other. Never tell a suspect what a victim or child witness said.
- Attempt to take written statements from all witnesses, especially the victim, at the time of the initial response.
- Collect and record evidence to include pulled out hair, weapons, torn or bloody clothing, telephones pulled from the wall, and any other pertinent evidence.
- Arrange for photographs whenever there are visible signs of injury to persons or property to include the victim and the suspect, and any evidence at the scene showing the conditions of the incident.
- Incident reports will be completed on all allegations of criminal domestic violence.
- Make an arrest when appropriate. If suspect is gone on arrival and cannot be located, obtain arrest warrant without delay.

Incident reports should, if possible:

1. Include the five factors used to determine primary aggressor according to 16-25-70.
2. Describe the relationship between the victim and subject.
3. Accurately describe emotional state of parties involved.
4. Document physical condition of both the victim and suspect, including alleged injuries that may not be visible.
5. Accurately document the crime scene.
6. Include verbal statements made by persons present using quotes when possible. Include the person's name who made the statement, as well as others who may have heard the statement. Take written statements if possible.
7. Include prior instances of emotional, physical or sexual abuse by the suspect reported by victim or children at the scene to include where and when prior incidents occurred.
8. Include information of weapons used, any evidence seized, photographs taken and by whom.
9. Include documentation if EMS is called to the scene, or if victim refused medical treatment. Include if a safe haven was offered.

10. Document all persons present at the scene, using full names, and unit numbers to include emergency medical, fire, and law enforcement personnel.
11. Document giving the victim a report case number, victim assistance form, and order of protection instruction form.

**MULTIPLE
DOMESTIC VIOLENCE
COMPLAINTS:**

Pursuant to S.C. Code §16-25-70, if a deputy receives multiple complaints of domestic violence from the same household, the deputy is to evaluate each complaint separately to determine who is the **primary aggressor**. If the deputy determines that one person was the primary physical aggressor, the deputy must not arrest the other person accused of having committed domestic violence or family violence. A deputy who arrests two or more persons for the crime of domestic violence (stemming from the same incident) must include in the incident report the grounds for arresting both parties and a statement that the deputy attempted to determine which party was the primary aggressor but could not.

In determining primary physical aggressor, the deputy is to consider:

1. *Prior complaints of domestic violence or family violence.*
2. *The relative severity of the injuries inflicted on each person, taking into account injuries alleged which may not be easily visible at the time of the investigation.*
3. *The likelihood of future injury to each person, considering the relative size of the parties, criminal history, and access to weapons;*
4. *Whether one of the parties acted in self-defense, noting if any injuries are consistent with self-defense wounds;*
5. *Household member accounts regarding the history of domestic violence.*

Pursuant to 16-25-70, a deputy must not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage a party's request for intervention by law enforcement.

**OFFENDER GONE
ON ARRIVAL:**

If the offender left the scene and a crime has been committed, deputies are to attempt the following, if possible:

1. Obtain information from victims and witnesses as to the offenders physical description, full name, birth date, social security number, weapons in the offenders possession,

- description of any vehicle used by the offender, and location where the offender might be.
2. With existence of imminent danger, remove the complainant and family from the scene.
 3. Conduct a search of the immediate area.
 4. Attempt to locate offender.
 5. Review details and evidence of the case, and make all appropriate charges. (Other possible charges of burglary, pointing/presenting firearm, malicious damage, etc.)
 6. If the offender cannot be located and probable cause exists, the deputy is to immediately seek a magistrate and obtain the appropriate arrest warrant. The signed warrant is to be placed in Judicial Services. If a magistrate is unavailable, it is incumbent upon the deputy to notify his/her supervisor who will ensure a warrant is secured.
 7. If injuries to the victim are of a serious nature (such as attempted murder) or a number of witnesses or victims are present requiring multiple interviews, the on call investigator for Family Violence can be called to the scene at the discretion of a supervisor.

ARRESTS:

When probable cause and legal authority exist to make an arrest, deputy sheriffs are to make the arrest and transport the offender to the appropriate magistrate's office for arraignment. If a magistrate is not available, the offender is placed in the Detention Center on a temporary commitment. Unless extenuating circumstances exist, deputies are prohibited from recommending a personal recognizance bond on behalf of the offender. The extenuating circumstances are to be noted in the incident report.

In complying with the Victim's Bill of Rights, notify the victim of the offender's arrest. If victim requests to be present at the bond hearing, notify the Magistrate so arrangements can be made in the courtroom.

Deputies should attempt to get a written statement from the offender. (Remember Miranda requirements)

Arresting deputies should emphasize to the victim and the offender that the criminal action taken (i.e. the arrest) is being initiated by the State of South Carolina, not the victim.

VICTIM ASSISTANCE & CRIME PREVENTION:

Many domestic violence victims feel trapped in violent relationships because they are unaware of the resources available to help them or that domestic violence is a crime. Additionally, the offender may have threatened further violence if the victim attempts to leave or seek assistance. Deputies are therefore required to provide the following assistance to victims, batterers, and where appropriate, the children:

1. Whenever possible, all parties should be advised about the criminal nature of family violence, it's potential for escalation, and that help is available.
2. Secure medical treatment for victims.
3. Ensure the safety of children.
4. Remain on the scene until satisfied there is no further threat to the victim.
5. Remain on the scene to preserve the peace while one of the parties removes necessary personal items such as medicine, change of clothing, change of clothing for the children, etc.
6. Provide the victim with referral information for available shelters, (*the phone number, not the address*) legal aid, social assistance, assistance through the Victims Assistance Fund, and support available through the Family Court System.
7. If necessary, make arrangements to transport the victim and children to a safe place.

**COMMUNICATIONS
CENTER
TAPE REQUESTS:**

With supervisor approval, the arresting deputy is to request a copy of incoming calls received by the Communications Center regarding incidents charged as General Sessions court cases such as Criminal Domestic Violence 3rd and above, Criminal Domestic Violence High Aggravated Nature, Assault and Battery with Intent to Kill. This does not preclude a deputy from requesting a copy of calls received by the Communications Center on any domestic violence arrest in which the deputy determines the tape may assist in the successful prosecution of the charges.

Requests are made to a communications supervisor on a **Tape Search Request Form** available through the Communications Center. This forms requires a supervisor's approval. Because tapes are only available for 60 days from date of call, requests are to be made as soon as possible.

A Communications Center supervisor will copy the tape and notify the requesting deputy when the tape is ready. When retrieving the tape, the deputy is to have the Communications supervisor that copied the tape sign a property sheet to maintain chain of custody. This copy will be marked as the "original copy" and will be placed in P&E. This tape will be marked with the case number and signed by the person pulling the tape.

Tapes stored in Property and Evidence are to include the following documentation on the Property and Evidence sheet:

1. Identity of the Communications Specialist that answered the telephone call.
2. Date and time of the call.
3. Identity of the person who made the copy.
4. A statement indicating the tape is a true and accurate copy of the original call.

**EMPLOYEE
DOMESTIC
MISCONDUCT:**

Domestic issues involving employees directly affect an employee's work performance. Due to the nature of law enforcement, employee work performance is not only vital to that employee, but to those working with the employee. In more serious cases, domestic issues can result in disruptions at work, workplace safety issues, and events which could compromise the morale of the agency. In extreme cases, the stress of domestic issues could lead to an employee making grave decisions he or she would not make under normal conditions.

**DOMESTIC
MISCONDUCT
DEFINED:**

For purposes of this policy, domestic misconduct is defined as *an incident of assault, battery, stalking, intimidation, or other criminal act involving an employee of the Sheriff's Office with a spouse, another household member, a current or former co-habitant, an individual whom the employee has a child in common, or currently or previously involved in an intimate relationship.*

**REQUIRED
REPORTING:**

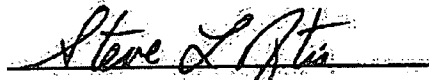
Whether an employee is a victim or suspect, a Sheriff's Office employee is required to report to his or her supervisor:

1. Incidents of actual or potential domestic misconduct.
2. Service of any type of order of protection or restraining order.
3. Contact with law enforcement regarding domestic issues.

NOTE – Employees are to report any contact with law enforcement outside of their job function. Additionally, employees are required to immediately report any criminal allegations or the imminent arrest of an employee to the Office of Professional Standards.

The Office of Professional Standards will be notified and respond to any allegation of Domestic Misconduct when the suspect is a member of this office.

NO CONTACT ORDER: In certain situations, a supervisor or OPS official may deem it necessary to issue an Administrative No Contact Order; see Appendix A. An Administrative No Contact Order can be used in most circumstances, except those involving married or co-habiting individuals. In these situations, OPS has the latitude to modify the order. Administrative No Contact Orders may be modified to be used in cases other than domestics.


Steve Loftis, Sheriff

Appendix A

ADMINISTRATIVE NO CONTACT ORDER

You are the subject of a personnel complaint relating to your alleged misconduct regarding _____ . An administrative investigation into this allegation is being conducted. You are ordered to immediately refrain from any contact, direct or indirect, with the above listed individual. This encompasses any communication, being oral, written, telephonic, or electronic.

You are further ordered to refrain from visiting the above listed individual's home, place of employment, friends or relatives homes, or any other location the above listed individual may be located. Should you find yourself in a location or situation which subjects you to a violation of this order, you are ordered to immediately notify your supervisor and the Office of Professional Standards.

You are also to refrain from any indirect attempt to communicate with the above listed individual through intermediaries other than a member of the Office of Professional Standards.

This order shall remain in effect until rescinded in writing by a member of this agency with competent authority. Violation of the terms of this order can result in disciplinary action for insubordination.

Employee Signature

Date

Supervisor or OPS Investigator

Date

Criminal Charging Document No. 5005
1-17-12

**BAIL PROCEEDING
FORM II:**

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

IN THE Chick Springs Summary Court

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Blandin, Avery Louis
NAME OF DEFENDANT

Offense Charged: Domestic / Criminal Domestic Violence - 1st offense (M990151)

At a bail proceeding conducted by undersigned Judge, for the defendant named above, it was determined by the court (check one or both):

- The release of the defendant on recognizance will not reasonably assure his appearance as required.
- The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact:

[Considerations: Nature and Circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows:

CASH IN LIEU OF BOND

The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of \$ _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of \$ _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits \$ _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the state.

APPEARANCE RECOGNIZANCE WITH SURETY

The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of \$ 5,242.00.

3. That the defendant shall appear at (check one):

the term of COURT OF GENERAL SESSIONS beginning on _____ at _____ o'clock AM, at _____ and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

the session of MAGISTRATE COURT MUNICIPAL COURT beginning on December 05, 2011 at 10:00 o'clock AM, at Chick Springs Summary Court - 2801 Wade Hampton Blvd, Suite 302/Taylor, SC 29687 / (864) 244-2922. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Bond Amount(s): \$5,242.00 (CS) or \$5,242.00 (SB) INITIALS OF DEFENDANT X ALD

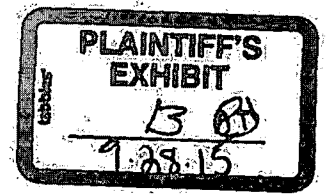
NO CONTACT WITH VICTIM

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions hereinafter in the Order.

Wood
SIGNATURE OF JUDGE

10.31.11
DATE

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED.
Original Copy For: The Trial Court - Copy For: The Defendant



PLAINTIFF'S EXHIBIT
Paul D. Walker
Clerk of Court
Greenville County, SC
Dated

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ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.
I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.
It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

ADDRESS: Simpsonville, SC 29681
CITY/STATE/ZIP:
TELEPHONE: (864) 378-0563
DATE: 10/31/11
SIGNATURE OF DEFENDANT: Amy B. [Signature]
SOCIAL SECURITY NUMBER:
DRIVER'S LICENSE OR ID NUMBER:
ATTORNEY REPRESENTING ACCUSED (IF KNOWN):

SPECIAL CONDITIONS OF RELEASE

- a. Placement in custody. The defendant is placed in the custody of:
b. Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:
c. Part-time Release. The defendant will be released from custody from [TIME] o'clock [AM/PM] to [TIME] o'clock [AM/PM] on [DATE(S)] on condition that he return to the custody of [NAME OF PERSON OR ORGANIZATION] at [LOCATION] as designated.
d. Other conditions. The defendant will comply with the following other conditions of release: No Contact With Victim

APPEARANCE RECOGNIZANCE WITH SURETY

On the 31st day of October, 2011, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$ 5,242.00, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.
The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

NAME OF SURETY BONDSMAN: Bowen, Tracy
TELEPHONE: (864) 834-1183
ADDRESS OF SURETY BONDSMAN: 105 N. Main Street
CITY/STATE/ZIP: Travelers Rest, SC 29690
SIGNATURE OF SURETY BONDSMAN: [Signature]
SIGNATURE OF JUDGE: [Signature]
DATE: 10/31/11

Professional

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OF

AGENCY I.D.
SC0230000

Greenville County Sheriff's Office
SUPPLEMENTAL REPORT

CASE NUMBER

000

ORIGINAL REPORT STATUS CHANGE ADDITIONAL VICTIMS ADDITIONAL STOLEN PROPERTY INCIDENT TYPE

SUPPLEMENTAL REPORT OTHER ADDITIONAL OFFENDERS ADDITIONAL RECOVERED PROPERTY PATROL DISTRICT

PAGE _____ OF _____ PAGES

December 9, 2011, myself and Deputy Picone (D32) responded to [redacted] around 1030 hours in reference to a domestic dispute involving custody of their children. I arrived on scene shortly after Deputy Picone. As I arrived on scene, Avery Blandin (B/M, [redacted]) was sitting in a Mitsubishi Montero SUV and Lilia Blandin (H/F, [redacted]) was sitting in a white minivan along with her children. Avery and Lilia were both sitting in the driveway at [redacted] Deputy Picone was standing between the two vehicle and there was an argument taking place between Avery and Lilia. At that time, Deputy Picone and I separated the two parties and I spoke with Lilia while Deputy Picone spoke with Avery.

I asked Lilia what had taken place and Lilia stated that she and Avery had argued the night before. She stated that the argument had been heated but that it had been mutual. The argument had been over Lilia deciding to leave the home and Avery became angry over that. Lilia stated that after the argument she began to pack her car because she decided that she was going to leave. As she packed her vehicle, she stated that Avery locked the door. Lilia also stated that Avery refused to let her have the children, which were all still inside at that time. Lilia stated that she did not want to go back into the house because she was worried that the incident may escalate, but she also did not want to leave her children, so she slept in the driveway in her white minivan during the night. Lilia stated that she woke up the next morning and Avery would still not give her the children so she decided to call us the next morning in order to handle this issue of custody of the children. Lilia stated that shortly before we arrived, Avery came out of the home and the children got into the car with her. I asked Lilia if any threats had been made or if Avery had assaulted her and she stated that neither had occurred. She stated that Avery has made threats to hurt her or kill her in the past, but she could not state a time or exact wording that had been used. She stated that these things had occurred in the distant past and she discussed with us an incident that had occurred a month before when Avery was arrested for Criminal Domestic Violence. I asked Lilia why she had not called the night before and she stated that she did not feel as though she needed to at that point.

I then spoke with Deputy Picone who advised that Avery was stating that the incident had been only an argument and no assault had occurred. He stated that Avery told him that he wanted to pay rent, but Lilia did not want to because she was leaving the marriage and she was moving out of the home. We both decided that there was no evidence of criminal activity and that it was a child custody/items call.

We asked Lilia if she needed to get some items from the home before she left. At that time, Lilia went into the home and collected a few items for she and the kids. Myself and Deputy Picone then stood by with her in the driveway while she was waiting for her mother to arrive and pick her up. Lilia had to call her mother because her license was suspended and therefore could not drive her van. As we were waiting side with Lilia, she stated that she was leaving for good this time and that she did not plan to return. She discussed with us her intention to rent a new home and pursue an Order of Protection against Avery. We advised Lilia of the process to obtain an Order of Protection from the Family Court and how she could obtain a copy of the incident report from the pending CDV to help in this process. Lilia stated that Avery had undergone Alcohol treatment programs and that she had hoped to give him another chance, but he was continuing to drink heavily and she had now decided that she could not stay with him any longer. We ran both Lilia and Avery on NCIC and for local warrants with negative results. I asked Lilia if she needed assistance finding a safe place to stay and she stated no. She stated that she would be going to stay with her mother until she could find a place to rent. We then remained on scene until Lilia's mother arrived and they left the home.

Nothing Further

ADMIN	SUBJECT IDENTIFIED	SUBJECT LOCATED	ACTIVE <input type="checkbox"/> ADMIN. CLOSED <input type="checkbox"/>	ARRESTED UNDER 18 <input type="checkbox"/>	EX-CLEARED UNDER 18 <input type="checkbox"/>
	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ARRESTED 18 AND OVER	<input type="checkbox"/> EX-CLEARED 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: <input type="checkbox"/> OFFENDER DEATH <input type="checkbox"/> NO PROSECUTION <input type="checkbox"/> VICTIM/DECLINES COOPERATION <input type="checkbox"/> EXTRADITOR DENIED <input type="checkbox"/> JUVENILE NO ARREST				
REPORTING OFFICER(S)	DATE	UNIT NO. / STAR #	APPROVING OFFICER	DATE	UNIT NO. / STAR #
K.J. Tynar	12/11/11	D32/1245			
			FOLLOW-UP INVESTIGATION	<input type="checkbox"/> YES <input type="checkbox"/> NO	(OFFICER)

PLAINTIFF'S EXHIBIT

23 810

9-29-15

GCSO Blandin MB 000024

ARREST WARRANT

1-481264

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

THE STATE 10-106178 against

Avery Louis Blandin

Address: Greenville, SC 29611-

Phone: (000)834-9828 SSN

Sex: M Race: B Height: Weight:

DL: SC DL #: Agency ORI #: SC0230000

DOB: Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: J.A. Walters - 1105

Offense: Domestic / Criminal Domestic Violence - 1st offense

Offense Code: 2671

Code/Ordinance Sec: 16-25-0020, 0030

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant Avery Blandin on 7-8-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: West Greenville Summary Court 6247 White Horse Road Greenville, SC 29611

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

Personally appeared before me the affiant J.A. Walters who

being duly sworn deposes and says that defendant Avery Louis Blandin

did within this county and state on or about 07/08/2010 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Greenville

in the following particulars:

DESCRIPTION OF OFFENSE Domestic / Criminal Domestic Violence - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The Defendant (Avery Louis Blandin) did strike the victim (Lilia Blandin) in the face with a closed fist causing visible physical injury. The Defendant and Victim have co-habitated together for approximately ten years and have three children in common. The Affiant has a written statement from the Victim. This offense did occur in Greenville County, SC.

CERTIFIED COPY DIANE D. CAGLE, JUDGE

Signature of Affiant

J. Walters B-17 *1/10/25

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

Affiant's Address 4 Mcgee Street Greenville, SC 29601-

Affiant's Telephone (864)271-5210

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/8/2010 defendant Avery Louis Blandin

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Greenville as set forth below:

DESCRIPTION OF OFFENSE: Domestic / Criminal Domestic Violence - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 07/08/2010

Signature of Issuing Judge Shirley Keaton (L.S.) Judge Code: 5701

Judge's Address: 20 Mcgee St Greenville, SC 29601-

Judge's Telephone

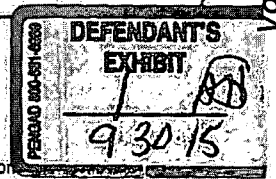
Issuing Court: Magistrate Municipal Circuit

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AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SCCA 510



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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

AFFIDAVIT

Personally appeared before me Lilia Blandin
who first being duly sworn states:

That on or about the date of 7-3-10 he/she
signed an arrest warrant against Avery Blandin
charging him/her with CDU 1st J481204
before Magistrate Cagle.

That it is now his/her wish that this case be
dismissed; that he/she does hereby request that the Court dismiss
this warrant; that even if the case is not dismissed that he/she
will not cooperate with the Prosecution and he/she will not
testify; that he/she has not been threatened nor promised
anything to request the dismissal of this warrant.

Lilia Blandin
PROSECUTING WITNESS

Sworn to before me this
the 29th day of July, 2010

Nancy Burkett
Notary Public for South Carolina

My commission expires: 6-21-2015

CERTIFIED COPY
DIANE D. CAGLE, JUDGE

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

- and -

RUSSELL W. HARTER, JR.
CARLY H. DAVIS
CHAPMAN, HARTER
& HARTER, P.A.
Post Office Box 10224
Greenville, South Carolina 29603
(864) 233-4500


Counsel for Appellant

July 28, 2017

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant Sheriff Steve Loftis certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

DAVIDSON & LINDEMANN, P.A.

BY: 
ANDREW F. LINDEMANN
1611 Devonshire Drive
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(864) 233-4500

Counsel for Appellant

July 28, 2017

RECEIVED

AUG 17 2017

SC Court of Appeals