

VOLUME I of II

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
The Honorable George C. James, Jr., Circuit Court Judge

Appellate Case No: 2017-000280

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S.C. SUPREME COURT

VLADIMIR PANTOVICH,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

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ATTORNEYS FOR PETITIONER

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) 06-GS-22-126
 COUNTY OF GEORGETOWN)

The State,)
)
 Plaintiff,)
)
 vs.) TRANSCRIPT OF RECORD
)
 Vladimir Pantovich,) February 4-8, 2008
)
 Defendant.) Volume 1: Pages 1-200
 _____)

B E F O R E :

Honorable Benjamin H. Culbertson
 Georgetown County Courthouse
 Georgetown, South Carolina

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

William Bryan, Esquire
 Attorney for Plaintiff

Stuart Axelrod, Esquire
 Chris Castro, Esquire
 Attorneys for Defendant

Grace L. Hurley, CVR-CM
 Circuit Court Reporter

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RANDOM STRIKE SHEET

JUDGE NAME: Culbertson, Benjamin H
 TRIAL TYPE: CIRCUIT COURT
 PANEL ID: 2006GS2200126
 COURTROOM CTR

11
 Sorted by: Random Nbr
 Trial

DESCRIPTION: STATE VS. VLADMIR PANTOVICH

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Lindsay, Linda P	11	W	F	☒	☒	()	(needs tomorrow of,
2 Fuerneisen, Carol H	68	W	F	☒	☒	()	
3 Davis, Gladys	5	W	F	☒	☒	()	(EX-330)
4 Butler, Marshall A	31	W	M	☒	☒	()	
5 Thornell, Henry D	135	W	M	☒	☒	()	
6 Turner, Spencer E	139	W	M	☒	☒	()	
7 Powell, Jessica L	115	W	F	☒	☒	()	
8 Hayes, Jo A	77	W	F	☒	☒	()	
9 Wragg, Javanghn E	149	B	M	☒	☒	()	
10 Creel, Irene R	44	W	F	☒	☒	()	
11 Collington, Shavonne S	37	B	F	☒	☒	()	
12 Hudson, Clarence L	85	W	M	☒	☒	()	
13 Wendt, Hannah B	143	W	F	☒	☒	()	
14 Lusby, Carol A	97	W	F	☒	☒	()	
15 Coley, Diadrian	36	B	M	☒	☒	()	
16 Cameron, Stella M	33	W	F	☒	☒	()	
17 Shubrick, James D	124	B	M	☒	☒	()	
18 Eldreth, Ricky T	6	W	M	☒	☒	()	
19 Alford, Linda S	16	W	F	☒	☒	()	
20 Collins, Michael E	2	W	M	☒	☒	()	
21 Canteen, James A	34	B	M	☒	☒	()	
22 Sessions, Doris J	12	B	F	☒	☒	()	
23 Miller, Raymond	107	B	M	☒	☒	()	
24 Collins, Perry R	3	W	M	☒	☒	()	

Georgetown County Circuit Court RANDOM STRIKE SHEET

JUDGE NAME : Culbertson, Benjamin H

Sorted by: Random Nbr

TRIAL TYPE : CIRCUIT COURT

PANEL ID : 2006GS2200126

DESCRIPTION : STATE VS. VLADMIR PANTOVICH

Trial

COURTROOM CTR

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Goude, Jeffrey L	72	W	M	(✓)	(X)	()	
26 Scott, Emily J	123	B	F	(✓)	(✓)	()	
27 Cox, Elbert H	41	W	M	(✓)	(X)	()	
28 Foy, David L JR	67	W	M	(✓)	(✓)	()	
~~28~~ 29 Murrow, Faye	110	W	F	(✓)	(X)	()	
30 Mccray, Janice	100	B	F	(✓)	(✓)	()	Alt. 1
31 Palmer, Sandra D Graham	112	B	F	(✓)	(✓)	()	Alt. 2
32 Ford, James C	66	W	M	()	()	()	
33 Tilton, Tommie Ann	136	W	F	()	()	()	
34 Irvin, Berneda R	9	B	F	()	()	()	
35 Stewart, Miranda L	133	W	F	()	()	()	
36 Elliott, Baylis Earl	62	W	M	()	()	()	
37 Hemingway, Pamela E	80	B	F	()	()	()	

Total Number of Jurors:

37

** END OF REPORT **

Motions

1

1 (On the record, Monday, February 4, 2008.)

2 THE COURT: All right, Mr. Axelrod, Mr. Bryan, I
3 understand we've got some pretrial motions we need to deal
4 with first? Is that what we're doing first is dealing with
5 those?

6 MR. BRYAN: Yes, sir.

7 MR. AXELROD: Your Honor, at this time they're getting
8 my client for me.

9 MR. BRYAN: Your Honor, just so the record is clear
10 I'll go ahead and state that this is pretrial motions in 06-
11 GS-22---

12 MR. AXELROD: Your Honor, I would ask that the
13 State wait until my client is here for whatever he puts on the
14 record at this point.

15 THE COURT: All right, we'll do that.

16 All right, Mr. Bryan.

17 MR. BRYAN: Thank you, Your Honor. This is pretrial
18 motions on the State versus Vladimir Pantovich. He is charged
19 in indictment 06-GS-22-126 with murder. This indictment was
20 true billed by the Georgetown County Grand Jury on 4-5-06 and
21 we're ready to proceed with pretrial motions.

22 THE COURT: All right, before we get started is there
23 any members, anybody present in the courtroom who has been
24 summoned for jury service for General Sessions Court in
25 Georgetown County for the week of February the 4th?

Motions

2

1 All right, before we get to these pretrial motions I
2 wanted to make sure we didn't have any potential jurors
3 present in the courtroom. All right, what motion do we want
4 to take up first?

5 MR. BRYAN: I don't have any preference, Your Honor.
6 I've got two motions. We can handle them or we can start with
7 the defense motions.

8 THE COURT: All right, Mr. Axelrod.

9 MR. AXELROD: Yes, sir, Your Honor, at this time, Your
10 Honor, I would make a motion for a change of venue and then
11 ultimately a motion for a continuance in this case due to that
12 motion for the change of venue. Your Honor, it concerns me
13 about the length of information, the length of time and the
14 amount of information that has been disseminated to the small
15 county of Georgetown concerning this case. Your Honor, I want
16 to direct the Court's attention, Your Honor, back in July
17 30th, 2007, we had a hearing in this courtroom. I have a copy
18 of the transcript and the court reporter was the same and what
19 it was was that the Solicitor decided to bring Walt into the
20 courtroom to tell Walt that his plea offer had expired and he
21 wasn't going to get another plea offer.

22 THE COURT: All right, Walt being the Defendant in
23 this case?

24 MR. AXELROD: Yes, sir, Mr. Pantovich.

25 THE COURT: Okay.

Motions

3

1 MR. AXELROD: I told the Solicitor in the hallway, I
2 said, ``There's no reason to bring him into the courtroom. We
3 rejected the offer. I'm an officer of the court. We reject
4 the offer and we don't need to make it a public record that
5 way.'' Well, he wants to bring it in, and the Solicitor says
6 to protect the record and for -- he's concerned about my well-
7 being and he's concerned about PCR issues that might effect me
8 ultimately down the line. He wanted to protect me and he felt
9 it was important that he put that on the record. So, they
10 have a little colloquy. I believe there might have been -- it
11 was Judge Baxley was here for this hearing, and he puts on the
12 record, the Solicitor puts on the record that -- so, the
13 Solicitor says, ``So, for purposes of PCR and protection of
14 the record we're here to make sure that Mr. Pantovich is aware
15 that his plea offer has expired and we're preparing to go to
16 trial. We will not make any other offers.'' So, I asked him
17 not to do it. He does that. So, then at that point, this is
18 on July 30th of '07. The next day and for subsequent days
19 after that all over the television on Channel 13, Channel 15
20 and the Sun News it's nothing but having Walt's picture all
21 over the media that about what occurred in this courtroom. I
22 called up Channel 13. I spoke to Channel 13 and asked them,
23 to the reporter, I said, ``You know, how did you find out
24 about this,'' and she said to me, ``Well, we just happened to
25 be in the courtroom that day,'' and I say that's hogwash, Your

1 Honor. Somebody called them, somebody told them the purpose
2 that -- what the State did in this instance was nothing more
3 than to create publicity. There was no reason that Walt be
4 brought into the courtroom on July the 30th, 2007. I'd like
5 to make this a Court's Exhibit One at this point and hand up
6 to the Court.

7 THE COURT: Any objection?

8 MR. BRYAN: I don't know what it is. I hadn't seen
9 it, Your Honor. I guess I'd like to look at it before we --
10 can I have a copy of it?

11 THE COURT: Okay.

12 MR. AXELROD: I don't have a copy. That's the only
13 copy I have.

14 THE COURT: That's all right. That's all right. I
15 think what we're going to do, I just sustain it. We don't, we
16 don't need to put it into evidence at this point in time. Mr.
17 Axelrod, what I'm going to do at this point in time is deny
18 your motion but we may very well readdress it. We're going to
19 get into jury selections this afternoon, and I think when we
20 get into jury selections we'll find out how much pretrial
21 publicity has influenced this venue.

22 MR. AXELROD: Your Honor, I still have more on this
23 motion I'd like to go into if I may.

24 THE COURT: All right.

25 MR. AXELROD: Your Honor, as the Court is well aware in

1 Georgetown County we have a newspaper called the Georgetown
2 Times and on Wednesday, January the 16th, a couple of weeks
3 ago the headline says, "Accused murderer to stand trial."
4 Your Honor, this is an inflammatory statement. It's one thing
5 to say that a man is going to stand trial accused of a crime,
6 but to put on the front page accused murderer to stand trial
7 inflames this jury, disqualifies this jury.

8 THE COURT: Well, we don't know that at this point.
9 We haven't even started jury selection process. We'll find
10 out this afternoon whether it inflames the jury or not.

11 MR. AXELROD: And also, Your Honor, in today's Sun News
12 article on it as well.

13 THE COURT: And I understand that and you may very
14 well be right, Mr. Axelrod. I just don't know at this point
15 in time until this afternoon when I question the jury to find
16 out if anybody has read anything, heard anything, knows
17 anything about this case, has formed any opinion about this
18 case and that's when we'll find out how much pretrial
19 publicity has prejudiced this jury pool.

20 MR. AXELROD: Yes, sir, Your Honor.

21 THE COURT: We'll find that out this afternoon and
22 that's why I'm denying your motion at this point in time but
23 I'll readdress it this afternoon when the jury panel comes in.

24 MR. AXELROD: Yes, sir, Your Honor.

25 THE COURT: All right.

1 MR. AXELROD: Your Honor, to put on the record for some
2 other motions, a motion to sequester the witnesses in this
3 trial.

4 THE COURT: All right, Mr. Bryan.

5 MR. AXELROD: We would ask that, I would ask that both
6 defense witnesses, if there are any, and whatever State
7 witnesses they plan to call be totally sequestered. The
8 Defense is not opposed to the State having its lead
9 investigator in the trial present.

10 THE COURT: All right, Mr. Bryan.

11 MR. BRYAN: Your Honor, I don't have any objection to
12 the sequestration request. Obviously, we'd ask the Defense to
13 police its own witnesses and make sure that if any of their
14 witnesses are in the courtroom that they're aware that they
15 will not be allowed to be called in their case. The only
16 issue that I would raise is that we -- I believe sequestration
17 obviously applies only to witnesses we would call in our case
18 in chief. We have four victims who are present in the
19 courtroom. That's Rex McPherson, the victim's brother; his
20 wife, Lisa McPherson; Crystal Collins, who is a cousin of
21 Sheila McPherson, the victim; as well as Chris Collins who is
22 her husband. They're all here, as well as the father who is
23 going to be here tomorrow. The father obviously comes
24 expressly under the statute which says that they're -- that
25 he's entitled to be in the courtroom, but these folks are here

Motions

7

1 from North Carolina. They've got a deceased love one and ---

2 THE COURT: Are they testifying though as witnesses?

3 MR. BRYAN: They are not testifying in the case in
4 chief. So, if anything becomes an issue as far as reply they
5 could possibly be called to testify but they wouldn't know
6 unless they were in the courtroom.

7 THE COURT: Yeah, but I'm going to grant the motion
8 to sequester the witnesses except for those that are
9 specifically stated by statute. If they -- I mean, the
10 purpose of sequestering witnesses is that they not hear the
11 testimony of the other witnesses to help them form the basis
12 of theirs and I've got to insure that that's done.

13 MR. BRYAN: Okay, so, these people are victims, a
14 victim is any person who is an individual who suffers direct
15 or threatened physical, psychological or financial harm as a
16 result of the commission or attempted commission of a crime;
17 and therefore, we would cite the statute which states that
18 victims are not to be excluded from witnessing the trial of
19 the case.

20 THE COURT: Yeah.

21 MR. BRYAN: And as close relatives of the decedent
22 we would ask that they all be allowed to remain in the
23 courtroom.

24 THE COURT: Okay, not if they're going to testify as
25 witnesses they're going to be sequestered because I don't

1 think they meet that definition of the victim. Now, I mean,
2 the victims, certainly the decedent, if anybody was present
3 and was robbed or got assaulted or something of that nature,
4 but when you're talking about a distant relative I don't know
5 that that meets the contemplated definition of a victim.

6 MR. BRYAN: A brother? How about a brother, is it?

7 THE COURT: I don't think that -- I'll take a look at
8 that statute, but I don't think that is what the Legislature
9 intended when they were talking about that victims do not have
10 to be sequestered. When you have a brother who was not
11 present at the time the crime was committed, was not a party
12 to the alleged assault or the crime, then I don't know that
13 that's what they were contemplating. When they said victim
14 they were talking about the actual victim, the person against
15 whom the crime was perpetrated.

16 MR. BRYAN: Well, it also, victim also means the
17 individuals under 16-3-1510 that also includes a spouse,
18 parent, child, lawful representative.

19 THE COURT: All right, let me see that. Let me see
20 that.

21 MR. BRYAN: And we'd ask that you just read that in
22 conjunction with the Rule of Court, Rules of Evidence 701,
23 excuse me, Your Honor, 615, exclusion of witnesses. So, Rule
24 615 states that at the request of a party the Court may order
25 witnesses excluded so they cannot hear the testimony of other

1 witnesses and may take the order of its own motion. The rule
2 does not authorize exclusion of a party who is a natural
3 person or officer, employee, and it also states that the
4 exclusion of witnesses would rest solely within the sound
5 discretion of the trial court and you can grant the motion or
6 not grant the motion, and all we're saying is these people are
7 not witnesses to the case in chief. They will not be called
8 as witnesses against the Defendant. They will only be called
9 if for some reason the Defense puts an issue into the trial or
10 injects an issue into the trial which they could reply to; and
11 so, we're stating that they are not witnesses in our case in
12 chief, they will not be witnesses unless the Defendant
13 testifies to something, and I think it would be unfair to the
14 loved ones of the victim to not be able to witness the trial
15 on the off chance that the Defendant says something that they
16 may be called as a witness to reply to, and I don't believe
17 that it would be prejudicial to the Defense. It's not as if
18 we're going to be getting our story straight or trying --
19 they're not fact witnesses to the incident. So, there's no
20 need for the sequestration.

21 MR. AXELROD: Your Honor, what the Solicitor first
22 handed you up to read about concerning the brother, it says
23 you can't keep out the spouse, the parent or the child. The
24 brother does not fit into that category, first of all. Second
25 of all, it's -- the reason to sequester witnesses as the Court

1 said it says that one witness cannot get their story straight
2 based on what they've heard. So, the state says they're not
3 going to call these witnesses possibly in their case in chief,
4 but if they hear something from the Defense side, that they're
5 going to call it as a reply witness. So, now, if that witness
6 had been sequestered originally, the reply witness, they
7 wouldn't have been allowed to hear it anyway. The Solicitor
8 would not be allowed to tell him anyway what a witness said if
9 they're sequestered.

10 THE COURT: All right, let me finish reading this.

11 MR. BRYAN: Your Honor, I'm not sure ---

12 THE COURT: All right, Mr. Bryan, yeah, I mean, I'm
13 reading this, and number one, the victim means an individual
14 who suffered a direct or threatened physical, psychological or
15 financial harm. So, first, if they're not going to be
16 sequestered, you're going to have to show that they suffered a
17 direct or threatened physical, psychological or financial harm
18 as a result of the alleged crime. Now, certainly the victim,
19 who is the decedent in this case, the spouse, the parent, the
20 child or a lawful representative of the decedent can be
21 present. Otherwise, if they're going to testify they're going
22 to be sequestered.

23 MR. BRYAN: Okay, and of course, none of them have to
24 be sequestered. The sequestration under State v. Sullivan and
25 State v. Boyd are within your sound discretion.

Motions

11

1 THE COURT: Right.

2 MR. BRYAN: You could sequester all of them or none
3 of them based upon whether you think it's fair for them to be
4 in the courtroom and watch the trial of the case or not, and
5 secondly, I just I would point out -- do you have 16-3-1550?
6 It says a victim, a person must not be sequestered from
7 proceeding adjudicating an offense of which they were a
8 victim, but you're finding that the -- that they are not ---

9 THE COURT: Well, you tell me that they ---

10 MR. BRYAN: --- that they're not victims.

11 THE COURT: You tell me who you want in the courtroom
12 and you tell me how they have suffered a direct or threatened
13 physical, psychological or financial harm as a result of this
14 alleged crime.

15 MR. BRYAN: Well, the primary thing that I want to
16 tell you is that they're not being called as witnesses.

17 THE COURT: Okay, if they're not being called as
18 witnesses then they can stay in the courtroom.

19 MR. BRYAN: But you won't allow them to be called on
20 reply if they bring up something in the Defense case.

21 THE COURT: That's right.

22 MR. BRYAN: Thank you, Your Honor.

23 THE COURT: That's right. If they're going to be
24 called as witnesses, I mean, if they stay in the courtroom
25 then you're not going to call them as a witness.

1 MR. BRYAN: I understand the Court's ruling. Thank
2 you, Your Honor.

3 THE COURT: All right.

4 Now, we do have a decedent in this case. So, if there is
5 a representative, whether it's a representative of the estate
6 or whatever, then that person under the definition is allowed
7 to be in the courtroom.

8 MR. AXELROD: Without objection, Your Honor, on that.

9 MR. BRYAN: Thank you, Your Honor.

10 THE COURT: All right.

11 All right, so, your motion to sequester is granted.

12 MR. AXELROD: Your Honor, I would ask that the
13 Solicitor, if the Court could ask the Solicitor if they have
14 identified the representative and who that representative will
15 be or that that will be done prior to.

16 THE COURT: Well, I mean, I don't know that they have
17 to. It's just if they're in the courtroom then they're going
18 to have to -- they're greatly limited in whether they can call
19 them as a witness unless, you know, I guess that would make
20 sense if you want to identify who is going to be in here as a
21 representative that would still be allowed to be called as a
22 witness. I'm not going to require ---

23 MR. BRYAN: I don't wish to, Your Honor.

24 THE COURT: All right. All right, next motion.

25 MR. AXELROD: Your Honor, concerning the limiting of

1 photographs in this case, I don't know how the Court wants to
2 handle it. I'm not going to try to slow down this trial, but
3 at some point we're going to have to have some type of
4 conference I believe with the Court to go over whatever
5 photographs the State plans to introduce.

6 THE COURT: All right, we'll do -- if you can get
7 your photographs together we'll go through them in chambers
8 and then I can come out and make a ruling on this one as to
9 whether or not it's granted, denied, partially granted or
10 whatever the case may be. All right?

11 MR. BRYAN: Yes, sir.

12 MR. AXELROD: I requested in chambers that three-page
13 yellow letter that was addressed to Walt. I would ask the
14 Court to ask the Solicitor to make sure that's here prior to
15 the trial if we could.

16 THE COURT: All right, any objection to providing the
17 three-page letter to Walt, is how it was ---

18 MR. BRYAN: No, Your Honor, just to make sure that
19 the record is clear, the letter was made available, and I'd
20 like ---

21 MR. AXELROD: I take full, I take full responsibility,
22 Your Honor, for not having that letter or seeing that letter.
23 It's not as if the Solicitor tried to hold that letter from
24 me. It was my fault that I did not see it or get a copy of
25 it. I'm just asking to perfect the record prior to trial that

1 I do receive that copy.

2 THE COURT: All right.

3 MR. BRYAN: Thank you, Your Honor. We'll have it --
4 make a copy right now.

5 THE COURT: All right, that motion is granted.

6 MR. AXELROD: Your Honor, I do -- let me show you this.
7 I am going to make -- ask that this be made a Court Exhibit.
8 This -- Your Honor, under Section 17-23-170 it is titled
9 admissibility of evidence concerning battered spouse syndrome,
10 foundation, notice, lay testimony, and under Section E, "A
11 defendant who proposes to offer evidence of the battered
12 spouse syndrome shall file written notice with the Court
13 before trial," no deadline, no dates. On January the 31st,
14 last week, we served Mr. Bryan, we clocked a copy, we served
15 on Mr. Bryan and notice that, this is written notice that I
16 propose to offer evidence of the battered person syndrome
17 relative to Walter Pantovich's trial. It's clocked. It's
18 signed by Mr. Bryan. I'd like to make this part of the court
19 record at this point. He's been served notice.

20 THE COURT: Okay, this is just so you can present
21 your defense?

22 MR. AXELROD: That I'm not precluded from if I choose
23 to present that defense.

24 THE COURT: All right, any argument in opposition to
25 that, Mr. Bryan?

1 MR. BRYAN: No. Just one question, Your Honor, isn't
2 a very meaningful notice inasmuch as I don't know what witness
3 they'd be calling. I'd ask to know the name of the expert.

4 MR. AXELROD: Your Honor, to further go through this,
5 it says under Section 17-23-170, it says, "Lay testimony as
6 to the actions of the batterer and how those actions
7 contributed to the facts underlying the basis of the criminal
8 charge shall not be precluded as irrelevant or immaterial if
9 it is used to establish the foundation for evidence on the
10 battered spouse syndrome." The statute specifically does not
11 require an expert.

12 THE COURT: Okay, but what -- I think what Mr. Bryan
13 is saying is if you are going to be calling an expert he's
14 entitled to know who the expert is.

15 MR. AXELROD: I'm not going to be calling an expert on
16 that.

17 THE COURT: Okay.

18 MR. BRYAN: Thank you, Your Honor.

19 MR. AXELROD: I will use lay testimony, and I would ask
20 that we just make that, if the Court would, make that Court's
21 one. We can hand it up to the Court to see it. I just wanted
22 to put -- make sure we have that in.

23 THE COURT: Any objection to making this a Court
24 Exhibit?

25 MR. BRYAN: No, sir, Your Honor, and just to speed

1 the trial along as we get going, I'll need date of birth and
2 Social Security numbers of all witnesses that the Defendant is
3 planning on calling. So, he can provide them to me now or
4 later, whatever the Court rules. Of course, before I cross
5 examine them I'll need to have the rap sheet run, and so, if
6 we need to take a break so be it. I just call that to Mr.
7 Axelrod's attention so he can have that available for us.

8 THE COURT: All right, first we're dealing with this
9 other issue, Court's Exhibit Number One is admitted into
10 evidence without objection.

11 (Court's Exhibit Number One, Notice Letter dated 1-31-08
12 appropriately marked.)

13 THE COURT: All right, Mr. Axelrod, any other
14 Defendant's motions?

15 MR. AXELROD: To answer the Solicitor's concern, Your
16 Honor ---

17 THE COURT: Well, we'll get to that in just a minute.
18 I want to -- he said he was holding off on his motions and his
19 requests. Let's finish up with the Defense side first. We'll
20 let Mr. Bryan make his requests when it's -- the Prosecution
21 goes.

22 MR. AXELROD: Your Honor, at this point the rest of the
23 motions that I plan to make will be made once jeopardy
24 attaches after the jury is sworn.

25 THE COURT: Okay.

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1 MR. AXELROD: And at this point I believe I don't have
2 any unless I come up with one after the Solicitor addresses
3 the Court.

4 THE COURT: All right, so, on the Defendant's motions
5 for change of venue it's denied at this point in time but I
6 reserve the right to readdress it once we get into the jury
7 selection. The Defendant's motion to sequester the witnesses
8 is granted. The Defendant's motion to limit autopsy
9 photographs I'm going to review those in chambers and we'll
10 address those when I come back out. Defendant's motion for
11 the Prosecution to produce three-page letter to Walt is
12 granted, and it's not really a motion, just acknowledging the
13 Defendant's privilege, authority, right to present the
14 battered spouse syndrome defense should they choose. All
15 right, Prosecution motions?

16 MR. BRYAN: Your Honor, I apologize. This is not
17 exactly a motion. I just wanted to call the Defense's
18 attention to the fact that I'm going to need date of birth,
19 Social Security numbers on the lay witnesses. So, I don't
20 know if the Court wants to make a ruling with respect to that.
21 I'm not asking for that. I'm just asking them to be aware
22 that we'll need the date of birth and social and that we're
23 going to have to stop and take a break if we can't get them
24 before the witness is called.

25 THE COURT: All right, Mr. Axelrod, let me hear from

1 you on that.

2 MR. AXELROD: Your Honor, as soon as I'm able to
3 contact my witnesses I will come up with that list. I'm not
4 going to try to keep that from them.

5 THE COURT: Okay, but we've got to get it to them in
6 plenty of time for them to run their records checks and prior
7 to trial; okay?

8 MR. AXELROD: Yes, sir, yes, sir, Your Honor, and the
9 same token that I would ask that the State provide me at that
10 same time whatever NCICs they run on their lay witnesses as
11 well. I'm not requesting on the police officers or stuff like
12 that, but just I believe the State has 40 or 50 witnesses
13 according to Mr. Bryan.

14 THE COURT: All right, Mr. Bryan, what's your
15 position on that?

16 MR. BRYAN: I have some case law. If I need to look
17 it up I will, but they're not entitled to have us run their
18 rap sheets for them. They can run their own rap sheets, but I
19 don't think I -- I've given them rap sheets on the people that
20 I believe are lay witnesses who may have criminal records.

21 THE COURT: Say that again now. You have ---

22 MR. BRYAN: I've given them what I believe are the
23 NCICs on the people who would be lay witnesses.

24 THE COURT: All right.

25 MR. AXELROD: I was a little confused by what the State

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1 said, but if a lay witness is going to testify I'm entitled to
2 see a copy of an NCIC to determine whether ---

3 THE COURT: Well, he can provide you with their date
4 of birth and Social Security number. He's not required to run
5 the check for you.

6 MR. AXELROD: I'm unable to run the check myself, Your
7 Honor. I believe that they have to provide that for me if
8 there's any criminal charges.

9 THE COURT: All right, how can he run the check?

10 MR. BRYAN: He can go to the State website and run
11 it, Your Honor, the South Carolina Law Enforcement Division,
12 State website, SLED. He can run it.

13 THE COURT: All right, Mr. Axelrod, he says you can
14 do it.

15 MR. AXELROD: Your Honor, I would take objection to
16 that. I would put on the record I believe the State has to
17 provide me with an NCIC. After the witness testifies he has
18 to hand me whether he has any criminal record or charges. I
19 can't get that. I'm unable to find out what his criminal
20 record is. To run an NCIC you have to be a Solicitor.

21 THE COURT: All right, give me the authority that
22 says they have to run the check.

23 MR. BRYAN: It's a public site, Your Honor, and, of
24 course, I won't go any further into that. The ---

25 THE COURT: Okay, well, I'll address it. I mean, if

1 he's got authority that says you have to run it.

2 MR. BRYAN: Fair enough.

3 THE COURT: I mean, it can't be a novel issue.

4 MR. BRYAN: Thank you, Your Honor.

5 THE COURT: It has to have come up before.

6 MR. AXELROD: Well, Your Honor, every case I've ever
7 tried the Solicitor has to give me an NCIC. That's what it
8 comes down to because I'm not privy to what a criminal record
9 is. I can't run an NCIC on any public site in the State of
10 South Carolina.

11 THE COURT: All right, well, I can find it. If you
12 all don't know the answer I can certainly find out the answer.

13 MR. AXELROD: Thank you.

14 THE COURT: Okay, so, I'll find that out for you all
15 and I'll let you all know and either you're going to have to
16 produce it ---

17 MR. BRYAN: Yes, sir.

18 THE COURT: --- or you're going to have to get it on
19 your own, Mr. Axelrod. I can't believe that this is a novel
20 issue and I can't believe it's going to be that hard for me to
21 find out the answer, if you all don't have the answer ready.
22 If you don't have your authority that says he has to produce
23 it or if you don't have your authority that says you don't
24 have to produce it, I'll find the authority. All right, next
25 motion.

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1 MR. BRYAN: The next issue, Your Honor, is simply to
2 -- I would ask that -- the Defense attempted to hand up some
3 Court's Exhibits on his motion of change of venue, including
4 an article from the Georgetown Times he referred to, as well
5 as some kind of a transcript, and I would ask that so that we
6 can address the issue in a timely fashion that we be allowed
7 to have a copy of it. If not, I'll ask at the time that we
8 stop the motion at that time and get a copy of it, but I want
9 a copy of whatever he's going to make a Court's Exhibit.

10 THE COURT: Okay, well, I don't know that I made it a
11 Court's Exhibit. I think I just -- you were just talking
12 about a newspaper article ---

13 MR. AXELROD: Yes, sir, Your Honor, the Court ---

14 THE COURT: --- and the transcript from a prior ---

15 MR. AXELROD: Yes, sir, Your Honor, the Court did not
16 make that a record.

17 THE COURT: Yeah, I mean, it's ---

18 MR. BRYAN: It's clearly not in -- it's not a Court
19 Exhibit right now. If his intention is to offer it as a
20 Court's Exhibit this afternoon, we have two options. He can
21 give it -- he can make copies in advance or he can -- we can
22 stop after I request to have a copy.

23 THE COURT: Are you going to try to introduce it in
24 some evidentiary way?

25 MR. AXELROD: Your Honor, I don't understand where the

1 State's coming from because I understood the Court's ruling,
2 it denied my motion for a change of venue pending what we hear
3 from the jury and I believe the Court's ruling was it didn't
4 see the necessity of this becoming a Court's Exhibit. I
5 acquiesced to that. I didn't plan to make it a Court's
6 Exhibit, Your Honor.

7 THE COURT: All right, if you're going to, if you're
8 going to re-try to get it into evidence at a later time or
9 something like that, you've got to produce him a copy.
10 Otherwise, I'm just going to wait until we start the jury
11 selection process to see if anybody has been tainted by a
12 newspaper article or having the Defendant come into court at
13 an earlier time. So, certainly if you're going to use it as
14 evidence you need to get the State a copy. If you're not, so
15 be it.

16 MR. BRYAN: Thank you, Your Honor. The next motion
17 is a motion in limine to ask the Court to instruct Mr. Axelrod
18 not to make mention of the possible punishment for the
19 Defendant in any direct way or any creative way, in other
20 words, under State v. Poindexter, the consequences of the
21 verdict is no concern of the jury. Under State v. McGee
22 punishment is -- where a punishment is exclusively the
23 consideration of the Court, it is not properly before the
24 jury, and so it would simply be prejudicial and irrelevant;
25 and therefore, we would ask that he not make mention of it in

1 the form of opening arguments, closing arguments or have any
2 of his witnesses testify to the fact that the penalty is 30
3 years to life or that anything that references the potential
4 penalty in the case, like the Defendant is on trial for his
5 life or some such reference.

6 THE COURT: Okay, Mr. Axelrod, I'm inclined to agree
7 with him on that. Do you have any position?

8 MR. AXELROD: No, Your Honor. I don't believe I'm
9 going to mention that my client is facing life in prison
10 because he's charged with this murder. I think that if the
11 Solicitor opens the door in some area it might be able to come
12 in. I think it -- depending on what ---

13 THE COURT: Well, I'm going to grant the motion.
14 There's to be no reference to possible penalties.

15 MR. AXELROD: And but if the door opens, Your Honor, I
16 would say I'd be allowed to walk through it.

17 THE COURT: If he, if he opens the door we'll address
18 it at that point in time, but right, at this point in time, I
19 will grant your motion.

20 MR. AXELROD: Yes, sir, Your Honor.

21 THE COURT: I mean, grant the State's motion. All
22 right.

23 MR. BRYAN: My final motion is just in reference to a
24 request that the Defense counsel be instructed that he not
25 mention anything about drug use on behalf of the victim until

1 and unless it becomes relevant in the trial of the case.

2 THE COURT: All right, Mr. Axelrod.

3 MR. AXELROD: Well, I think the -- I think the victim's
4 drug use is going to be relevant in the case, and I believe
5 it's going to come out through the pathology report that she
6 was -- she had drugs in her system even after death and I
7 think I'm entitled in my opening statement to bring that out
8 to the jury.

9 THE COURT: Why? How is it relevant?

10 MR. AXELROD: To show her demeanor, her actions based
11 on what happened that evening and we're going to present
12 evidence that certain things occurred when she came to Walt's
13 house that evening, and I think it's relevant to show -- she's
14 legally drunk, as an example. She has a blood alcohol of .10.
15 So, she's ---

16 THE COURT: I'm assuming by your prior motion for
17 battered spouse syndrome you're going to say she was high on
18 drugs and was beating him up and that ---

19 MR. AXELROD: Yes, sir, Your Honor.

20 THE COURT: All right, Mr. Bryan, let me hear from
21 you as to why that's not relevant.

22 MR. BRYAN: I believe it to be argument and I don't
23 believe it's necessarily going to come out in the trial of the
24 case; and so, I don't think it's -- the purpose of opening is
25 to make a statement. It is not to make argument, and I think

1 until it becomes an issue in the case it would not be properly
2 before the jury.

3 THE COURT: Well, and I instruct the jury at the
4 outset of trial that opening statements are not evidence,
5 cannot be considered as evidence and if anything is made
6 during opening statements that is contrary to the testimony
7 and evidence they see in the trial then they are to disregard
8 the opening statement, but if his defense is going to be that
9 she beat his client up while she was high on drugs, then I
10 think it is a relevant issue. Now, if he was saying she was a
11 drug addict to, I guess, lessen her value then I agree with
12 you, then that's -- that's irrelevant but based upon what
13 his defense is in this case I think it might be a relevant
14 issue.

15 MR. BRYAN: Thank you, Your Honor.

16 THE COURT: All right.

17 MR. BRYAN: I understand the Court's ruling and I
18 have a second part of that which I think you basically
19 addressed which is the fact that she was on drugs at the time
20 potentially can come into evidence and be relevant and an
21 issue concerning the jury. However, her history of drug abuse
22 I do not believe is necessarily going to be an issue and I
23 would ask that Defense counsel be instructed not to make an
24 issue of her history of drug abuse to impugn her character.

25 THE COURT: Mr. Axelrod.

1 MR. AXELROD: Well, Your Honor, I think the history of
2 the drug abuse is going to be able to come in and to show the
3 amount, the hostility that occurred between Walt and Sheila
4 for quite a period of time. I think it's relevant. This is
5 not just -- it was not just an isolated one time incident.
6 This has been going on for quite a while, and there's going to
7 be defense witnesses to corroborate that.

8 THE COURT: Well, I can see where it would be
9 relevant if there is a history of using drugs, becoming
10 violent and battering your client, but if you're talking about
11 just incidences of drug use where there is no battery, there
12 is no violence, there is no threat, then I agree, it's not --
13 isn't relevant.

14 MR. AXELROD: No, I agree with Your Honor. It would be
15 raised in the context that she was high on drugs and she was
16 hitting Walt. I'm not going to stand up there and tell the
17 jury that she was a drug addict. I plan not to do that.
18 That's not where I'm coming from. If it's relevant to the
19 case and to my defense I think it's pertinent.

20 THE COURT: Yeah, where the drug use is relevant to
21 and I'm assuming, you know, I know you still have to try your
22 case, but I'm assuming the drug use comes in only in the
23 window of the battered spouse syndrome defense that you're
24 putting up.

25 MR. AXELROD: Yes, it also will come in, I believe,

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1 through the pathologist's report testifying to what drugs were
2 actually in her body when they did the autopsy. I think that
3 will come in.

4 THE COURT: Okay, all right, so, I think we all
5 understand, you know, under what instances drug use is
6 admissible, where it is a basis or used as evidence to support
7 the defense of the battered spouse syndrome. However, any
8 other context I don't see where it would be relevant.

9 MR. AXELROD: I plan not to attack character ---

10 THE COURT: Yeah, you can't do that.

11 MR. AXELROD: --- through drugs.

12 THE COURT: You can't do that. I agree.

13 MR. AXELROD: I will not do that, Your Honor,
14 absolutely.

15 THE COURT: All right, all right, so, I guess that
16 would be partially granted, partially denied motion, but I
17 think we're all on the same wavelength as to when it can come
18 up. All right, anything else?

19 MR. BRYAN: That's all I have at this time, Your
20 Honor. The only other thing I have is I have several
21 witnesses coming from North Carolina. They're probably going
22 to be here any time, but we have a Jackson v. Denno to take up
23 before the testimony of Officer McKinney from the Alexander
24 County Sheriff's Office in North Carolina. He's probably
25 going to be here any minute or we can take it up after the

1 jury is selected this afternoon.

2 THE COURT: Whichever you all want to do.

3 MR. AXELROD: Your Honor ---

4 THE COURT: Yes, sir.

5 MR. AXELROD: Your Honor, I have, I had several motions
6 concerning that whole issue that's going to have to be
7 attached once the jeopardy has come into this case.

8 THE COURT: Okay.

9 MR. AXELROD: So, I would think after the jury is sworn
10 then I can make those motions to suppress certain statements.

11 THE COURT: All right, we'll go -- we'll do the jury
12 selection, then we'll do Jackson v. Denno.

13 MR. BRYAN: Thank you, Your Honor.

14 THE COURT: All right.

15 Autopsy photos, when can you get those or when do you all
16 want to look?

17 MR. BRYAN: Yeah, I've got them. We can do it right
18 now, Your Honor.

19 THE COURT: Do you all want to do that now, Mr.
20 Axelrod?

21 MR. AXELROD: Your Honor, if I may hand up a little bit
22 of housekeeping. I do have some proposed jury voir dire
23 questions.

24 THE COURT: Okay, all right, Mr. Bryan, I will give
25 you an opportunity to look over those. You don't have to make

1 a decision right now. I'm going to give him the opportunity
2 to look over them and then we'll address it at voir dire time
3 ---

4 MR. AXELROD: That'd be fine.

5 MR. BRYAN: Thank you, Your Honor.

6 THE COURT: --- as to which ones you agree with,
7 which ones you disagree with. Likewise, if you have any voir
8 dire, let's go ahead and get them to Mr. Axelrod so that
9 nobody is caught off-guard when the jury comes in.

10 MR. BRYAN: I will, Your Honor. I don't have it with
11 me but I'll get it to him.

12 THE COURT: Okay, sounds good. All right, anything
13 else we want to do before we take a look at the autopsy
14 photos?

15 MR. BRYAN: I don't have anything, Your Honor.

16 THE COURT: Okay. Mr. Axelrod?

17 MR. AXELROD: No, sir, Your Honor. Your Honor, and not
18 just so much the autopsy photos, it's all the photos because
19 if we're able to go through there's a ton of them from
20 everywhere. If we can look at all the photos he wants to
21 introduce maybe we can come up with some kind of order and
22 it'll -- it will not stop this trial.

23 THE COURT: Okay, any objection to going ahead and
24 doing a motion in limine on all photos?

25 MR. BRYAN: Yes, Your Honor. I would rather, rather

1 than showing him, laying out my case for him as my trial
2 strategy as to which pictures I'm going to introduce through
3 which witnesses, I understand he objects to autopsy and the
4 basis for those objections. If he has some objection to some
5 other picture for some reason if he could state it we can take
6 that up, but I don't want to show him every single picture I'm
7 going to put in through every single witness at this time.

8 THE COURT: All right, Mr. Axelrod, you've got the
9 photos, if you can look through them, tell me which ones you
10 object to and then we'll decide whether the probative value
11 outweighs the prejudicial effect or vice versa.

12 MR. AXELROD: I wasn't asking the State to show me the
13 photos they plan to introduce. I was just trying to stop -- I
14 was just trying to help this Court not having to stop it at
15 each photo, but I'd be ---

16 THE COURT: Well, we don't have to. I'm assuming all
17 photos have been provided to you.

18 MR. AXELROD: Yes, I've seen all photos.

19 THE COURT: All right, go through those photos. Let
20 me know which ones you object to, then we'll address the issue
21 as to whether or not they're admissible.

22 MR. BRYAN: And, and there's ---

23 MR. AXELROD: Well, I guess I'll object as to whichever
24 ones he brings in. At this point I would say I object to all
25 of the photos. I've been given photos at different times,

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1 different agencies. They're going to have to establish chain
2 of custody on them. I'll wait for that time, Your Honor, to
3 address that.

4 MR. BRYAN: Chain of custody on the photos?

5 THE COURT: Okay, all right, we'll address them when
6 they arise then.

7 MR. BRYAN: Your Honor, and I've got no problem going
8 through whatever he's got that he finds objectionable. I
9 understand the autopsy. I've got the ones and we'll, rather
10 than going through every single autopsy photo, I'll bring the
11 ones that I've got that I intend to introduce and we'll go
12 through those, just those, I don't know, 20 or so as opposed
13 to the 200, and we can do that. If there is some particular
14 objection I'll be glad to go through or tell him, you know,
15 I'm not using that or why I would be using it, but I just
16 don't, I don't ---

17 MR. AXELROD: It's just a lot of photos are
18 repetitious, Your Honor. That's all, and I was just trying to
19 help. I withdraw. I'll deal with it.

20 THE COURT: Okay, he withdrew it.

21 MR. BRYAN: I don't intend to introduce any
22 repetitious.

23 THE COURT: That's fine. Let's take a look at the
24 autopsy photos. We'll stand in recess; okay?

25 MR. AXELROD: Thank you.

1 *****OFF THE RECORD*****

2 (On the record.)

3 THE COURT: All right, gentlemen, we've got the
4 photographs that we did the motion in limine on. Have we got
5 those marked?

6 COURT REPORTER: They just brought them to me.

7 THE COURT: They just did?

8 COURT REPORTER: Yes.

9 THE COURT: Okay, we'll take those up in just a minute
10 once Grace has a chance to mark them.

11 The only other thing I have is on the motion for NCIC
12 reports, Mr. Axelrod, I don't see anything that requires them
13 to provide NCIC reports for you. They are required to produce
14 any exculpatory evidence, but nothing that says they have to
15 run an NCIC check on all their witnesses and give it to you.

16 MR. AXELROD: Your Honor, my concern in the 12 years of
17 doing trials here I've always been given one. Your Honor,
18 it's a Brady request, also. The State says, "Well, they're
19 not -- they don't have to give me. I can go to SLED," but to
20 confront my witnesses adequately I need to know whether they
21 are arrested in Montana or California, what an NC ---

22 THE COURT: Yeah, but what I'm saying is the State
23 doesn't have to produce that to you.

24 MR. AXELROD: I think it's a violation of the
25 confrontation clause that I'm not fully able to meaningfully

Motions

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1 cross examine a potential witness to the biases that they
2 might have or if they've been convicted of murder in Montana
3 I'm not able to say to the jury, "Well, isn't it true you did
4 25 years for murder in Montana?"

5 THE COURT: If the State withholds exculpatory
6 evidence then they have to deal with the Brady issue when it
7 arises, but I'm telling you right now unless you produce me
8 some authority I have not found any that says that the State
9 is required to do an NCIC check on all of its witnesses and
10 produce the results of those reports to the Defendant.

11 MR. AXELROD: So, what the Court is telling me is that
12 if my client has a prior conviction for a crime that I'm
13 unable to find out because he put the witness on the stand,
14 Mr. Smith takes the stand ---

15 THE COURT: No, no, now, we're not talking about the
16 Defendant. We're talking -- he does have to provide ---

17 MR. BRYAN: He's got the Defendant's NCIC, Your Honor.

18 MR. AXELROD: No, I'm speaking about a lay witness. If
19 he puts a witness on the stand and knows that he's been
20 charged with 35 crimes of violence or drugs or whatever the
21 case might be that would go against, I'd be able to impeach
22 him to the jury, if he has that and knows that and I'm unable
23 to obtain it, then it violates the United States versus
24 Arsdall the meaningful, you know, confrontation of a witness.

25 THE COURT: I'm telling you if they have exculpatory

1 evidence, then under Brady they have to produce it.

2 MR. AXELROD: And, and ---

3 THE COURT: What I'm telling you also is they are not
4 required to do an NCIC check on all of their witnesses and
5 produce that report to you.

6 MR. AXELROD: Okay, so, what the Court is saying is in
7 my opinion is it would be exculpatory that if someone, if a
8 witness was testifying and they had a prior record for, we'll
9 say murder as an example, that that would be exculpatory for
10 me to use to impeach him. I would think I'd be entitled to
11 that. Forget the NCIC right now, but if the State knows that
12 a person has been convicted of a crime, moral turpitude or
13 violence ---

14 THE COURT: I'm not going to say it's exculpatory
15 evidence because I don't know. That issue is not in front of
16 me.

17 MR. AXELROD: But it would go to the bias for
18 impeachment purposes and I think the Sixth Amendment
19 guarantees me that, that full right to confront that.

20 THE COURT: Well, if there -- if it's exculpatory, I
21 mean, they're going to have -- I'm just telling you they don't
22 have to do a records check on their witnesses and give you the
23 report.

24 MR. AXELROD: So, if I ask the witness, "Have you ever
25 been convicted of a crime," am I allowed to ask them that

1 because I don't have an NCIC?

2 THE COURT: Yeah.

3 MR. AXELROD: And if he says no and the State knows that
4 he was convicted of a crime then where do we stand at that
5 point?

6 THE COURT: Well, then they've got some, they've got
7 to bring to the attention that they knowingly -- if they know
8 a witness has lied under oath, just like if you know a witness
9 lies under oath, then you have an obligation as an officer of
10 the court to bring that to the Court's attention at the
11 appropriate time. Nobody, whether it be the State or the
12 Defense, can allow a party or a witness to knowingly give
13 false testimony.

14 MR. AXELROD: So, I'll go through that line of
15 questioning. That'll be fine, Your Honor.

16 THE COURT: All right.

17 MR. AXELROD: Thank you.

18 Your Honor, Your Honor, is it the Court's ruling that the
19 State does not have to provide me -- if I need to run my own
20 checks I would need the date of birth, Social Security numbers
21 of all their potential witnesses. They've asked me to provide
22 to them birth dates, Social Security numbers so they can run
23 their check. So, I would think that I would be entitled to
24 the birth dates and Social Security numbers of their
25 witnesses.

1 MR. BRYAN: We'll give them that, Your Honor.

2 THE COURT: Okay, he said he'll give it to you.

3 Hand me what she's marked and I can tell you.

4 (Court and court reporter confer.)

5 THE COURT: All right, as a result of our motion in
6 limine regarding the autopsy photographs, State's Exhibit
7 Number One, I'm granting the motion in limine to exclude that
8 preliminarily. State's Exhibits Two, Three, Four, Five, Six,
9 Seven, Eight, Nine, Ten, 11, 12, 13, 14, and 15 were not
10 objected to by the Defendant, subject to laying proper
11 foundation and things of that nature.

12 State's Exhibits 16, 17, 18 and 19 I've ruled are
13 admissible over the objection of the Defendant, keeping in
14 mind that a motion in limine is not binding during the trial
15 of the case. If something arises during the trial of the
16 case, evidence that I have ruled inadmissible in a motion in
17 limine I can change that decision, evidence that I've ruled
18 admissible I can change that decision. I'm just saying as far
19 as the motion in limine is concerned, State's Exhibit Number
20 One to me the prejudicial effect seems to outweigh any
21 probative value. State's Exhibits 16, 17, 18 and 19, the
22 probative value seems to outweigh the prejudicial effect; and
23 so, based upon those preliminary decisions I'll rule that way.

24 Anything else before we break for lunch?

25 MR. BRYAN: No, Your Honor.

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1 THE COURT: All right, we'll stand in recess. The
2 jury is coming in at two.

3 *****OFF THE RECORD*****

4 (On the record.)

5 (Whereupon, the following takes place in the presence of
6 the jury venire.)

7 THE COURT: Solicitor, you want to call the first
8 case?

9 MR. BRYAN: Thank you, Your Honor, if it please the
10 Court, the State calls Vladimir Pantovich, indicted for murder
11 in indictment 07-GS -- 06-GS-22-126. The Georgetown County
12 Grand Jury true-billed that indictment for murder on 4-6 -- 4-
13 5 of '06, Your Honor.

14 THE COURT: All right.

15 All right, ladies and gentlemen, we're getting ready to
16 start the case of the State of South Carolina versus Vladimir
17 Pantovich. Mr. Pantovich has been indicted for murder, which
18 states that on or about March the 7th, 2006, Mr. Pantovich
19 willfully, feloniously and intentionally with malice
20 aforethought did kill Sheila McPherson by beating Sheila
21 McPherson to death.

22 Now, what I'm going to go over now with you is a series
23 of questions known as voir dire questioning to determine if
24 you are qualified to serve as jurors on this particular case.
25 Now, the Defendant in this case, Mr. Vladimir Pantovich, if

1 you would please stand and face the jury.

2 (Complies with request.)

3 THE COURT: All right, thank you, sir. You may be
4 seated.

5 The victim, alleged victim in this case is a Ms. Sheila
6 McPherson. Now, is there any member of the jury panel related
7 by blood or marriage, have a social relationship, a business
8 relationship or other familial relationship with either the
9 Defendant, Vladimir Pantovich, or the alleged victim, Sheila
10 McPherson; if so, please stand.

11 (No response.)

12 THE COURT: All right, the list of possible witnesses
13 in this case, if you would please listen up: Buddy McKinney;
14 Chad Pennell; Thomas Gough, how you pronounce that, Gough,
15 Gough?

16 MR. BRYAN: I'm not sure. I think Gough or Gough.

17 THE COURT: Gough, G-O-U-G-H; Mark St. Claire; Van
18 Williams; Marco Pantovich; Janice Bryson; Katie Coy; Jason B.
19 Wheeler; Mike Lewis; Joyce Philips; Bill Pierce; George Smith;
20 Paul Glover; John Magaan; Clark Ard; Dr. Cynthia Schandl or
21 Schandl; Jessica Branton; Crystal Collins; Joseph Williamson;
22 Chris McCune; Ronnie Eschman, E-S-C-H-M-A-N; Tammy Eschman;
23 Andy Seifert; Debbie Crisman; and Maureen Moans. Is there
24 any member of the jury panel related by blood or marriage,
25 have a business relationship, social relationship or other

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1 familial type relationship with any of these potential
2 witnesses; if so, please stand.

3 Yes, sir, your name?

4 MR. WENGER: Brian Wenger.

5 THE COURT: And your jury number?

6 MR. WENGER: 144.

7 THE COURT: Brian Wenger?

8 MR. WENGER: Yes.

9 THE COURT: All right, Mr. Wenger, which witness or
10 witnesses are you acquainted with?

11 MR. WENGER: Social relationship with Joseph
12 Williamson, and I also work part time with Clark Ard at the
13 911 dispatch.

14 THE COURT: With Clark Ard you all work together?

15 MR. WENGER: At the 911 center, yes, sir.

16 THE COURT: Okay, all right, Mr. Wenger, I will excuse
17 you from this particular case. Thank you very much.

18 MR. BRYAN: Your Honor, and for scheduling purposes
19 before he's excused.

20 (Whereupon, a bench conference was held in the presence
21 but out of the hearing of the jury venire.)

22 THE COURT: Now, the attorneys in this case for the
23 State of South Carolina represented by Attorney Robert B.
24 Bryan. Mr. Bryan, if you would stand.

25 (Complies with request.)

1 THE COURT: The Defendant is represented by attorney
2 Stuart Axelrod and Chris Castro.

3 Now, is there any member of the jury panel related by
4 blood or marriage, have a business relationship, a social
5 relationship, any other familial relationship or has ever been
6 represented by any of these attorneys or any attorneys or
7 employees in their offices; if so, please stand?

8 (No response.)

9 THE COURT: Is there any member of the jury panel who
10 has read anything, heard anything, spoken with anyone about
11 any of the facts of this case or knows anything about this
12 case; if so, please stand.

13 All right, if you would please just form a line.

14 All right, ma'am, if you would come forward, please.

15 BAILIFF: Number 71.

16 THE COURT: 71.

17 (Whereupon, an on-the-record bench conference was held
18 with Juror Number 71, Debbie A. Germek, attorney for the State
19 and attorneys for the Defendant.)

20 THE COURT: Ms. Germek, all right. What have you
21 seen?

22 MS. GERMEK: It was in the paper this morning.

23 THE COURT: Okay, and you read the account in the
24 paper?

25 MR. GERMEK: I did.

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1 THE COURT: Okay, would that effect your ability to
2 give both the State of South Carolina and the Defendant a fair
3 and impartial trial in this case?

4 MS. GERMEK: I think so.

5 THE COURT: Okay, I appreciate you letting us know
6 that.

7 Thank you very much. I'll excuse you from this case.
8 Thank you.

9 MR. AXELROD: Your Honor, on my voir dire, the case law
10 I looked at was what the Court did. I'm not saying what the
11 Court should do, but the Court actually asked the people if
12 they had formed any opinions, went into several voir dire
13 questions.

14 THE COURT: Well, I'm just going to ask if it effects
15 their ability. If they admit that they can't give a fair
16 trial ---

17 MR. AXELROD: I would ask the Court if it would ask if
18 they've already formed an opinion before you ask if they could
19 be -- give a fair. I would just like to know whether they
20 even formed an opinion about the case.

21 THE COURT: Okay.

22 MR. BRYAN: I don't have a problem with that.

23 THE COURT: All right, sounds good.

24 (Whereupon, the following takes place in open court.)

25 BAILIFF: Number 11.

1 (Whereupon, an on-the-record bench conference was held
2 with Juror Number 11, Linda P. Lindsay, attorney for the State
3 and attorneys for the Defendant.)

4 THE COURT: Ms. Lindsay.

5 MS. LINDSAY: Yes.

6 THE COURT: All right, seen, heard, read?

7 MS. LINDSAY: Read.

8 THE COURT: All right, what did you read?

9 MS. LINDSAY: I read when it first happened and I read
10 this morning's newspaper.

11 THE COURT: All right, has that caused you to form an
12 opinion about this case?

13 MS. LINDSAY: Well, I will make one statement. I am
14 opposed to capital punishment, so, if that is a factor.

15 THE COURT: No, that's ---

16 MS. LINDSAY: Okay.

17 THE COURT: --- they're not, this isn't a capital
18 case.

19 MS. LINDSAY: Okay, okay.

20 THE COURT: The question is has what you know about
21 this case whether through newspaper, TV?

22 MS. LINDSAY: I don't think, I don't think it's
23 prejudiced.

24 THE COURT: Okay, has it caused you to form an opinion
25 about the Defendant's guilt or innocence?

1 MS. LINDSAY: No, no.

2 THE COURT: Would you be able to give both the State
3 of South Carolina and the Defendant a fair and impartial
4 trial?

5 MS. LINDSAY: I would do my best. I've been around
6 legislative bodies and law offices most of my professional
7 career and the one law firm was a major international law firm
8 and it was a major international banking scandal and we had,
9 there we had -- we were supporting one of the people that got
10 caught up in it.

11 THE COURT: All right, well, the question is about
12 this case.

13 MS. LINDSAY: But this case, no, I have formed no
14 opinions about this case.

15 THE COURT: Could you give both the State and the
16 Defendant a fair and impartial trial?

17 MS. LINDSAY: Yes, I would listen to both sides.

18 THE COURT: Could you base your decision exclusively

19 ---

20 MS. LINDSAY: On the facts.

21 THE COURT: --- on the testimony you hear in trial and
22 the evidence at trial and put all of these outside influences
23 aside?

24 MS. LINDSAY: I would, I would put the newspaper, I
25 would put the local section of the newspaper aside.

1 THE COURT: Okay, would you be able to base your
2 decision only on the in-court testimony and evidence?
3 MS. LINDSAY: Yes.
4 THE COURT: Okay, thank you very much.
5 MS. LINDSAY: It's a situation of being aware of what
6 happened but not have the real specifics though. Okay?
7 THE COURT: All right, thank you very much.
8 MR. BRYAN: I have no objection to number 11, Your
9 Honor.
10 THE COURT: Huh?
11 MR. BRYAN: I have no objection to number 11.
12 THE COURT: Yes, right.
13 BAILIFF: 78.
14 (Whereupon, an on-the-record bench conference was held
15 with Juror Number 78, Adrienne R. Heekin, attorney for the
16 State and attorneys for the Defendant.)
17 THE COURT: Ms. Heekin?
18 MS. HEEKIN: Heekin, yes.
19 THE COURT: Okay, Ms. Heekin, you heard something,
20 read something?
21 MS. HEEKIN: Read something, several articles in the
22 local newspapers. I live in Pawleys Island.
23 THE COURT: Okay.
24 MS. HEEKIN: I felt it was rather near to where we
25 live.

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1 THE COURT: Has your knowledge, prior knowledge of
2 this case caused you to form an opinion as to the Defendant's
3 guilt or innocence?

4 MS. HEEKIN: I don't believe so.

5 THE COURT: Okay.

6 MS. HEEKIN: The articles indicated ---

7 THE COURT: Could you ---

8 MS. HEEKIN: --- that -- oh, I don't know the answer to
9 the question.

10 THE COURT: Well, the question, what we've got to do
11 is we've got to insure that whoever is selected on the jury
12 can give both the State and the Defendant a fair and impartial
13 trial.

14 MS. HEEKIN: Uh-huh.

15 THE COURT: And that the jurors base their decision
16 exclusively on the testimony and evidence presented at trial
17 and cannot consider any outside influences; and so, that is my
18 question as to whether or not these outside influences has
19 caused you to form an opinion one way or the other and if not
20 ---

21 MS. HEEKIN: I believe I would have to -- I -- the way
22 I read the article I really do believe I would be slanted.

23 THE COURT: Okay, I appreciate your letting us know
24 that. I'll excuse you from this case. Thank you very much.

25 Okay, that's Juror Number 78 is excused.

1 BAILIFF: 143.

2 (Whereupon, an on-the-record bench conference was held
3 with Juror Number 143, Hannah B. Wendt, attorney for the State
4 and attorneys for the Defendant.)

5 THE COURT: All right, Ms. Wendt; is that correct?

6 MS. WENDT: Yes, that's correct.

7 THE COURT: All right, heard something, read
8 something?

9 MS. WENDT: I actually just heard from the juror who
10 was sitting next to me during the recess and a speculation. I
11 was not here during the time of the case. I actually was
12 living in the State of Michigan. So, I don't know anything
13 whatsoever.

14 THE COURT: Okay, so, this is just what somebody has
15 said.

16 MS. WENDT: Correct.

17 THE COURT: All right, has what was said caused you to
18 form a opinion about the Defendant's guilt or innocence in
19 this case?

20 MS. WENDT: No, no.

21 MS. AXELROD: Could we ask what was said to her? Could
22 we ask what was said to her from the juror that was seated
23 next to her?

24 THE COURT: Any objection?

25 MR. BRYAN: I would just if she could set aside what

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1 she's heard and be fair and impartial.

2 THE COURT: Yeah, yeah, can you put what was said
3 aside and give both the State and the Defendant a fair and
4 impartial trial?

5 MS. WENDT: Absolutely.

6 THE COURT: Would you be able to base any decision
7 exclusively on the testimony and the evidence in the courtroom
8 in the trial outside of these other interferences?

9 MS. WENDT: Correct.

10 THE COURT: Okay, thank you very much.

11 MS. WENDT: You're welcome.

12 BAILIFF: Number 97.

13 (Whereupon, an on-the-record bench conference was held
14 with Juror Number 97, Carol A. Lusby, attorney for the State
15 and attorneys for the Defendant.)

16 THE COURT: Ms. Lusby?

17 MS. LUSBY: Yes.

18 THE COURT: Is that how you pronounce your name?

19 MS. LUSBY: Uh-huh.

20 THE COURT: You've heard something, read something?

21 MS. LUSBY: I read about it in the newspaper when it
22 happened. I saw the news on TV, and I know the general story
23 line and I read it again in the paper this morning when told,
24 you know, that the jurors were being seated for this case.

25 THE COURT: Have those sources caused you to form an

1 opinion as to the Defendant's guilt or innocence?

2 MS. LUSBY: No, no.

3 THE COURT: Okay, would you be able to give both the
4 State and the Defendant a fair and impartial trial?

5 MS. LUSBY: I think so.

6 THE COURT: Okay, you need to be sure now.

7 MS. LUSBY: Yes.

8 THE COURT: Would you be able to base your decision if
9 you were selected as a juror exclusively on the testimony and
10 evidence presented at trial without any consideration to any
11 of these articles that you may have read or news accounts that
12 you may have seen?

13 MS. LUSBY: Yes.

14 THE COURT: You could do that?

15 MS. LUSBY: Yes.

16 THE COURT: All right, I appreciate you letting us
17 know that.

18 MS. LUSBY: Thank you.

19 THE COURT: Thank you very much.

20 MS. LUSBY: Thank you.

21 BAILIFF: 101.

22 (Whereupon, an on-the-record bench conference was held with
23 Juror Number 101, Carolyn C. McGill, attorney for the State
24 and attorneys for the Defendant.)

25 THE COURT: 101. Ms. McGill, heard something, read

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1 something?

2 MS. MCGILL: Huh?

3 THE COURT: Have you heard something, read something?

4 MS. MCGILL: Well, the lady beside me was explaining to
5 me when we came in what she thought it was about, and I, you
6 know, and it, I guess that is what it's about.

7 THE COURT: Okay.

8 MS. MCGILL: Actually I just don't think I would be
9 very good the way I feel about things like that.

10 THE COURT: Well, has the fact that she said something
11 to you caused you to form an opinion about the Defendant's
12 guilt or innocence?

13 MS. MCGILL: Uh-huh, it would.

14 THE COURT: Okay, I appreciate you letting us know
15 that. I'll excuse you from this, from this particular case.

16 MS. MCGILL: Okay.

17 THE COURT: Thank you very much.

18 All right, Juror Number 101 is excused from this case.

19 BAILIFF: Number 33.

20 (Whereupon, an on-the-record bench conference was held with
21 Juror Number 33, Stella M. Cameron, attorney for the State and
22 attorneys for the Defendant.)

23 THE COURT: Ms. Cameron?

24 MS. CAMERON: Yes.

25 THE COURT: All right, Ms. Cameron, have you seen

1 something, heard something, read something?

2 MS. CAMERON: Just what was in the local newspaper.

3 THE COURT: You've read newspaper accounts?

4 MS. CAMERON: Huh-huh.

5 THE COURT: All right, have those accounts caused you

6 to form an opinion about the Defendant's guilt or innocence?

7 MS. CAMERON: No.

8 THE COURT: Would you be able to give both the State

9 and the Defendant a fair and impartial trial?

10 MS. CAMERON: I think so, yes.

11 THE COURT: Okay, would you be able to base your

12 decision exclusively on the evidence presented at trial

13 without any consideration to these other newspaper accounts

14 you read?

15 MS. CAMERON: I think so, yes.

16 THE COURT: Okay, I need to be sure. That's the

17 problem.

18 MS. CAMERON: Yes, yes.

19 THE COURT: Okay, you could? You could give them both

20 a fair trial?

21 MS. CAMERON: Yes, sir.

22 THE COURT: And you could base your decision

23 exclusively on the evidence?

24 MS. CAMERON: Uh-huh.

25 THE COURT: All right, I thank you very much.

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1 BAILIFF: Number 66.

2 (Whereupon, an on-the-record bench conference was held with
3 Juror Number 66, James C. Ford, attorney for the State and
4 attorneys for the Defendant.)

5 THE COURT: All right, Mr. Ford.

6 MR. FORD: Yes, sir.

7 THE COURT: All right, have you heard something, read
8 something?

9 MR. FORD: I read the newspaper accounts when it
10 happened and it seems like there was something recently in the
11 paper and I saw the news this morning.

12 THE COURT: Okay, have those TV accounts and newspaper
13 accounts caused you to form an opinion about the Defendant's
14 guilt or innocence?

15 MR. FORD: I don't think so.

16 THE COURT: And we need to be sure of that. The
17 requirement is whether or not you can give both the State and
18 the Defense a fair trial.

19 MR. FORD: Yes, sir. Yes, sir, I can.

20 THE COURT: You can do that?

21 MR. FORD: Yes, sir.

22 THE COURT: Have you formed an opinion about his guilt
23 or innocence?

24 MR. FORD: No, sir.

25 THE COURT: All right, do you have any problem

1 presuming him innocent at this stage?

2 MR. FORD: No, sir.

3 THE COURT: Okay, would you be able to base your
4 decision exclusively on the testimony and evidence you hear at
5 trial?

6 MR. FORD: Yes, sir.

7 THE COURT: Okay, all right, thank you very much.

8 BAILIFF: Number 26.

9 (Whereupon, an on-the-record bench conference was held
10 with Juror Number 26, Ms. Frances P. Brigham Besemer,
11 attorney for the State and attorneys for the Defendant.)

12 THE COURT: Ms. Brigham, is that correct?

13 MS. BESEMER: Yes, sir. I changed it. It's Besemer.

14 THE COURT: Besemer?

15 MS. BESEMER: B-E-S-E-M-E-R.

16 THE COURT: And that's 26? What's your jury number,
17 26?

18 MS. BESEMER: 26.

19 THE COURT: B-E-S ---

20 MS. BESEMER: --- E-M-E-R.

21 THE COURT: All right, Ms. Besemer, have you read
22 something, seen something?

23 MS. BESEMER: Read.

24 THE COURT: You read? In?

25 MS. BESEMER: In the newspaper and saw the news.

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1 THE COURT: Okay, have those news accounts caused you
2 to form an opinion about the Defendant's guilt or innocence?

3 MS. BESEMER: I was in an abuse situation. I was
4 married to a man that was abusive.

5 THE COURT: Okay.

6 MS. BESEMER: And it reminds me of this.

7 THE COURT: All right.

8 MS. BESEMER: I couldn't be justified in trying to get
9 him off.

10 THE COURT: Okay, so, when you say get him off are you
11 of the opinion that he is guilty?

12 MS. BESEMER: Uh-huh.

13 THE COURT: Okay, all right, I'll excuse you from this
14 case. Thank you.

15 MS. BESEMER: Okay. Is there another we've got to stay
16 for?

17 THE COURT: Right now there may be.

18 MS. BESEMER: So, I need to stay?

19 THE COURT: Yeah, for right now.

20 MS. BESEMER: Okay.

21 BAILIFF: Number 10.

22 (Whereupon, an on-the-record bench conference was held with
23 Juror Number 10, Lucia B. Lachicotte, attorney for the State
24 and attorneys for the Defendant.)

25 MR. AXELROD: Number 10?

1 THE COURT: Ms. Lachicotte?
2 MS. LACHICOTTE: Yes.
3 THE COURT: All right, you read something, heard
4 something?
5 MS. LACHICOTTE: Yes, read.
6 THE COURT: What did you read?
7 MS. LACHICOTTE: The account of the ---
8 THE COURT: In the newspaper?
9 MS. LACHICOTTE: Uh-huh.
10 THE COURT: Okay, has that newspaper account caused
11 you to form an opinion about the Defendant's guilt or
12 innocence?
13 MS. LACHICOTTE: Yes, yes.
14 THE COURT: Okay, thank you very much. I'll excuse
15 you from this.
16 MS. LACHICOTTE: Just wait?
17 THE COURT: If you'd just have a seat.
18 MS. LACHICOTTE: Okay.
19 THE COURT: All right, Number 10 is excused.
20 BAILIFF: Number 4.
21 (Whereupon, an on-the-record bench conference was held with
22 Juror Number 4, Joy S. Crespino, attorney for the State and
23 attorneys for the Defendant.)
24 THE COURT: Ms. Crespino?
25 MS. CRESPIANO: That's correct.

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1 THE COURT: All right, have you heard something, read
2 something?

3 MS. CRESPINO: Uh-huh.

4 THE COURT: What have you ---

5 MS. CRESPINO: I've read, heard.

6 THE COURT: You read, okay.

7 MS. CRESPINO: All the details.

8 THE COURT: All right, what, newspaper, TV or anybody
9 else?

10 MS. CRESPINO: All of the above.

11 THE COURT: Okay, anything besides newspaper and TV?

12 MS. CRESPINO: No.

13 THE COURT: Have those accounts caused you to form an
14 opinion about the Defendant's guilt or innocence?

15 MS. CRESPINO: Yes.

16 THE COURT: Okay.

17 MS. CRESPINO: Also had domestic violence in my family
18 relationship.

19 THE COURT: All right, I'll excuse you from this
20 service.

21 MS. CRESPINO: Okay.

22 THE COURT: So, we'll excuse number four.

23 BAILIFF: Number 95.

24 (Whereupon, an on-the-record bench conference was held
25 with Juror Number 95, Charles W. Larson, attorney for the

1 State and attorneys for the Defendant.)

2 MR. LARSON: 95.

3 THE COURT: Mr. Larson.

4 MR. LARSON: Yes, sir.

5 THE COURT: Correct, all right, have you seen or heard

6 or read or what's ---

7 MR. LARSON: Yes, this morning's paper.

8 THE COURT: Read this morning's, had a newspaper?

9 MR. LARSON: Sometimes.

10 THE COURT: Okay.

11 MR. LARSON: On the local section.

12 THE COURT: All right.

13 MR. LARSON: My wife brought it to my attention.

14 THE COURT: Has that article caused you to form an

15 opinion about the Defendant's guilt or innocence in this case?

16 MR. LARSON: Not guilt or innocence, no.

17 THE COURT: Okay, would you be able to put what you've

18 read aside, give both the State of South Carolina and the

19 Defendant a fair and impartial trial in this case?

20 MR. LARSON: Yes.

21 THE COURT: Could you base your decision if you were

22 selected as a juror exclusively on the evidence presented at

23 trial and not draw any consideration from what you've read or

24 heard outside the court?

25 MR. LARSON: Well, the only decision I drew was this

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1 was really a very serious case. It really needed impartial
2 jurors.

3 THE COURT: Okay, that's the question, that's what
4 we've got to insure. That's what I'm doing now is to make
5 sure we get impartial jurors.

6 MR. LARSON: Okay.

7 THE COURT: Could you be an impartial juror?

8 MR. LARSON: All I know is I thought that whoever did
9 that was one mean son-of-a-bitch.

10 THE COURT: Okay, does that cause you, I mean, do you
11 have any problems presuming Mr. -- the Defendant in this case
12 presuming him innocent?

13 MR. LARSON: I might have a hard time.

14 THE COURT: Okay.

15 MR. LARSON: Very hard time.

16 THE COURT: All right, I will excuse you from the
17 case. Thank you very much.

18 MR. LARSON: Okay.

19 THE COURT: Number 95 is excused.

20 BAILIFF: Number 41.

21 (Whereupon, an on-the-record bench conference was held
22 with Juror Number 41, Elbert H. Cox, attorney for the State
23 and attorneys for the Defendant.)

24 THE COURT: Mr. Cox.

25 MR. COX: Yes, sir.

1 THE COURT: Correct, heard something, read something?

2 MR. COX: I saw it on the news on the, basically on
3 TV, read in the newspaper probably two weeks ago in the
4 Georgetown Times.

5 THE COURT: Has that newspaper account and that TV
6 account caused you to form an opinion about the Defendant's
7 guilt or innocence?

8 MR. COX: No.

9 THE COURT: Would you be able to give both the State
10 and the Defendant a fair and impartial trial and base your
11 decision exclusively on the evidence presented at trial
12 without considering any of these newspaper accounts or TV
13 accounts?

14 MR. COX: Yes.

15 THE COURT: Okay, do you have any problem presuming
16 the innocence -- the Defendant innocent at this time?

17 MR. COX: No.

18 THE COURT: Okay, I thank you for bringing that to our
19 attention. Thank you very much.

20 BAILIFF: 135.

21 (Whereupon, an on-the-record bench conference was held
22 with Juror Number 135, Henry D. Thornell, attorney for the
23 State and attorneys for the Defendant.)

24 THE COURT: 135, Mr. Thornell?

25 MR. THORNELL: Yes, sir.

1 THE COURT: All right, have you read something, heard
2 something?

3 MR. THORNELL: It's what I've read, seen on the
4 television and also inadvertently and this may not have any
5 bearing, it doesn't have any bearing on me, but the
6 Solicitor's Office faxed the docket sheet for what's on the
7 court for this week. It was sent to my office inadvertently.

8 THE COURT: And what office is that?

9 MR. THORNELL: Bobby's Appliance Center.

10 MR. BRYAN: Faxed what?

11 MR. THORNELL: The Court dockets for this week.

12 MR. BRYAN: The docket, who's appearing in court?

13 MR. THORNELL: Yeah. I mean, that has no bearing on me.
14 The thing I just wanted to bring it to your attention.

15 THE COURT: Has anything that you read or heard thus
16 far caused you to form an opinion about the Defendant's guilt
17 or innocence?

18 MR. THORNELL: No, sir; no, sir.

19 THE COURT: Okay, could you give both the State and
20 the Defendant a fair and impartial trial?

21 MR. THORNELL: Yes, sir.

22 THE COURT: Could you base your decision exclusively
23 on what you hear and review in court, in trial, without
24 considering any of these other outside?

25 MR. THORNELL: Yes, sir.

1 THE COURT: Do you have any problem presuming the
2 Defendant innocent at this time?
3 MR. THORNELL: No, sir.
4 THE COURT: Okay, all right, I thank you for bringing
5 that to our attention. Thank you, sir.
6 BAILIFF: 122.
7 (Whereupon, an on-the-record bench conference was held
8 with Juror Number 122, Wanda D. Rogers, attorney for the State
9 and attorneys for the Defendant.)
10 THE COURT: Ms. Rogers, what did you do, read
11 something?
12 MS. ROGERS: Uh-huh.
13 THE COURT: Newspaper?
14 MS. ROGERS: All the newspaper articles.
15 THE COURT: Okay, has that caused you to form an
16 opinion about the case?
17 MS. ROGERS: I reckon I could.
18 THE COURT: Well, let me put it this way, can -- you
19 have a problem presuming the Defendant innocent?
20 MS. ROGERS: Uh-huh.
21 THE COURT: Okay, that's all we need to know. Thank
22 you, ma'am.
23 MS. ROGERS: Okay, thank you.
24 THE COURT: Excuse Juror Number 122.
25 BAILIFF: 99, 99.

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1 (Whereupon, an on-the-record bench conference was held
2 with Juror Number 99, Dana D. Marsh, attorney for the State
3 and attorneys for the Defendant.)

4 MR. MARSH: Hey, Your Honor.

5 THE COURT: Hey, how are you doing?

6 MR. MARSH: Good.

7 THE COURT: This one is -- 122 was the last one.

8 This is 99, Mr. Marsh?

9 MR. MARSH: Yes.

10 THE COURT: All right, read something, heard
11 something?

12 MR. MARSH: Yes, a discussion with local business
13 people and then read the article in the paper.

14 THE COURT: Okay, have those discussions, those
15 newspaper accounts caused you to form an opinion?

16 MR. MARSH: As of right now, to be honest, I have, but
17 I am willing to serve as a juror and not trying to get out of
18 it.

19 THE COURT: And I understand that.

20 MR. MARSH: Okay.

21 THE COURT: The problem we have is that we have to
22 have a fair and impartial juror and give both the State and
23 the Defendant a fair and impartial trial and if you've already
24 got a predetermined opinion ---

25 MR. MARSH: Right, I mean, I'm willing to listen to

1 the evidence or whatever.

2 THE COURT: Well, do you have ---

3 MR. MARSH: I'm being honest.

4 THE COURT: Are you able to presume the Defendant

5 innocent?

6 MR. MARSH: No, sir.

7 THE COURT: Okay, so ---

8 MR. MARSH: If the evidence is there, I don't ---

9 THE COURT: Well, now, see that's the thing is the

10 Defendant doesn't have to prove his innocence. He's presumed

11 innocent at this time. If we walk out the door right now and

12 the State says that's the case then he's innocent, the person

13 goes free for the crime. Have you formed an opinion about

14 whether or not he's guilty or innocent?

15 MR. MARSH: I feel like I have as of right now.

16 THE COURT: Okay, I appreciate you letting us know

17 that. I'll excuse you from this case.

18 MR. MARSH: All right.

19 THE COURT: Thank you. Juror Number 99 is excused.

20 Thank you, sir.

21 MR. MARSH: Thank you.

22 BAILIFF: Number 2.

23 (Whereupon, an on-the-record bench conference was held

24 with Juror Number 2, Michael E. Collins, attorney for the

25 State and attorneys for the Defendant.)

1 THE COURT: Mr. Collins.

2 MR. COLLINS: Yes, sir.

3 THE COURT: All right, you read something, heard
4 something?

5 MR. COLLINS: Yes, this morning there was an article in
6 the Sun News just saying that we were going to have jury
7 selection this afternoon, where the alleged crime took place.
8 I saw something on TV.

9 THE COURT: Okay, has that TV account and newspaper
10 account caused you to form an opinion about the case?

11 MR. COLLINS: No, sir.

12 THE COURT: Have you formed an opinion about the
13 Defendant's guilt or innocence?

14 MR. COLLINS: No, I haven't.

15 THE COURT: Could you give both the State and the
16 Defendant a fair and impartial trial?

17 MR. COLLINS: Yes.

18 THE COURT: Could you base your decision exclusively
19 on the evidence at trial?

20 MR. COLLINS: Yes.

21 THE COURT: And not consider the newspaper account or
22 the TV account?

23 MR. COLLINS: I'd just use whatever evidence was at
24 trial.

25 THE COURT: Okay, do you have any problem presuming

1 the Defendant innocent at this stage?

2 MR. COLLINS: No.

3 THE COURT: Okay, thank you very much. I appreciate
4 it.

5 BAILIFF: 146.

6 (Whereupon, an on-the-record bench conference was held
7 with Juror Number 146, Creola Wilson, attorney for the State
8 and attorneys for the Defendant.)

9 THE COURT: Ms. Wilson.

10 MS. WILSON: Yes.

11 THE COURT: Okay, read something, heard something?

12 MS. WILSON: The Georgetown Times, co-workers at work,
13 husband.

14 THE COURT: Okay, have those conversations or any of
15 those newspaper accounts caused you to form an opinion about
16 this case?

17 MS. WILSON: Well, being a female myself, you know, I
18 do have the female side of, you know, I do feel that, you
19 know, she shouldn't be, you know, did what she did, what
20 happened to her rather.

21 THE COURT: Do you have a problem presuming the
22 Defendant innocent?

23 MS. WILSON: Yes, I do. I shouldn't say that, but yes,
24 I do.

25 THE COURT: No, I understand and that's why ---

1 MS. WILSON: Being a female myself, you know.

2 THE COURT: That's why we have to check this out. I
3 appreciate you letting us know. Thank you very much.

4 MS. WILSON: Okay, all right.

5 THE COURT: Excuse Juror Number 146.

6 (Whereupon, the following takes place in open court.)

7 THE COURT: Is there anybody else in the jury panel
8 who has heard anything, read anything, spoken with anyone or
9 know anything about this case? If so, please come forward.

10 (No response.)

11 THE COURT: All right.

12 MR. AXELROD: Your Honor, can we approach one second?

13 (Whereupon, a bench conference was held in the presence,
14 but out of the hearing of the jury venire.)

15 THE COURT: Is there any member of the jury panel who
16 has discussed this case with anyone else and you have not
17 brought it to the Court's attention; if so, please stand.

18 (No response.)

19 THE COURT: Is there any member of the jury panel
20 aware of any bias or prejudice towards either the State or the
21 Defendant in this case; if so, please stand.

22 (No response.)

23 THE COURT: Is there any member of the jury panel who
24 is a member of or a contributor to any group which has as its
25 primary concern the promotion of law enforcement or victim's

1 rights such as Mothers Against Drunk Driving called MADD,
2 Students Against Drunk Driving, called SADD, CAVE, which is
3 Citizens Against Violent Crime or any similar organizations;
4 if so, please stand.

5 (No response.)

6 THE COURT: Is there any member in the jury panel who
7 knows of any reason whatsoever why he or she should not serve
8 as a juror in this case; if so, please stand.

9 (No response.)

10 THE COURT: Is there any member of the jury panel who
11 for personal, political, religious or any other reason would
12 have difficulty giving a fair and impartial trial to both the
13 State and the Defendant in this case; if so, please stand.

14 (No response.)

15 THE COURT: Is there any member of the jury panel who
16 personally or has a family member or close personal friend who
17 has been a victim of a violent crime; if so, please stand.

18 (No response.)

19 THE COURT: Any member of the jury panel who
20 personally or has a family member that works with the police
21 department, detention facility, department of corrections or
22 some similar law enforcement agency; if so, please stand.

23 All right, start with the front here. Your name, again?

24 MS. WENDT: Hannah Wendt.

25 THE COURT: And your jury number?

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1 MS. WENDT: 143.
2 THE COURT: Ms. Wendt.
3 MS. WENDT: Yes, sir, my uncle is a deputy in the
4 State of Maryland.
5 THE COURT: Okay, would that association or
6 relationship prevent you from giving both the State and the
7 Defendant a fair and impartial trial?
8 MS. WENDT: No, sir.
9 THE COURT: Would you be able to base any decision if
10 you were selected as a juror exclusively on the evidence
11 presented at trial?
12 MS. WENDT: Yes, sir.
13 THE COURT: All right, thank you for bringing that to
14 our attention.
15 Yes, ma'am, your name and number?
16 MS. FUERNEISEN: Number 68, Carol Fuerneisen. My
17 husband's first cousin was -- is a retired state policeman in
18 New Jersey and my brother's oldest daughter is a township
19 policeman in Pennsylvania.
20 THE COURT: Okay, and how do you pronounce your name?
21 MS. FUERNEISEN: Fuerneisen.
22 THE COURT: Ms. Fuerneisen.
23 MS. FUERNEISEN: Correct.
24 THE COURT: Do those relationships or would those
25 relationships prohibit you from giving both the State and the

1 Defendant a fair and impartial trial?

2 MS. FUERNEISEN: No, they would not.

3 THE COURT: Could you base your decision as a juror
4 exclusively on the evidence presented in this case?

5 MS. FUERNEISEN: Yes, I would.

6 THE COURT: Thank you for bringing that to our
7 attention.

8 Now, to her right.

9 MS. LUSBY: Carol Lusby, 97.

10 THE COURT: And your number again?

11 MS. LUSBY: 97.

12 THE COURT: All right, Ms. Lusby what is the ---

13 MS. LUSBY: My husband is a consultant under the
14 Department of Justice as a deputy monitor for the Prince
15 George's County Police Department in Maryland.

16 THE COURT: All right, would that relationship
17 prohibit you from giving both the State and the Defendant a
18 fair and impartial trial?

19 MS. LUSBY: No.

20 THE COURT: Could you base the decision as a juror
21 exclusively on the evidence you hear at the trial?

22 MS. LUSBY: Yes, sir.

23 THE COURT: Thank you for bringing that to our
24 attention. I appreciate it.

25 All right, yes, ma'am, your name and number?

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1 MS. CHURCH: Alicia Harrelson Church, Number 75.
2 THE COURT: Harrelson?
3 MS. CHURCH: Yes, sir.
4 THE COURT: All right.
5 MS. CHURCH: Church.
6 THE COURT: Okay, your last name is now Church?
7 MS. CHURCH: Yes, sir.
8 THE COURT: All right, Ms. Church, what is the
9 relationship?
10 MS. CHURCH: My husband is a sergeant with the City
11 Police Department.
12 THE COURT: City Police Department involved in this?
13 MR. BRYAN: No, Your Honor.
14 THE COURT: They're not. Okay, all right, would that
15 relationship prohibit you from giving both the State and the
16 Defendant a fair and impartial trial?
17 MS. CHURCH: No, sir.
18 THE COURT: Excuse me?
19 MS. CHURCH: No, sir.
20 THE COURT: Could you give both the State and the
21 Defendant a fair trial in this case?
22 MS. CHURCH: Yes, sir.
23 THE COURT: Could you base your decision exclusively
24 on the testimony and evidence presented at trial?
25 MS. CHURCH: Yes, sir.

1 THE COURT: Okay, thank you very much, appreciate you
2 bringing that to our attention.

3 All right, yes, sir, your name and number?

4 MR. HOLLISTER: 82, James Hollister.

5 THE COURT: All right, Mr. Hollister, what is the
6 relationship?

7 MR. HOLLISTER: My girlfriend, we live together, she
8 works with Georgetown County as a dispatch.

9 THE COURT: She works for the County.

10 MR. HOLLISTER: Yes, she does.

11 THE COURT: Okay.

12 MR. HOLLISTER: I don't know if that ---

13 MR. BRYAN: Dispatch is potentially -- could be
14 involved, Your Honor.

15 THE COURT: Okay, all right, I appreciate you bringing
16 that to our attention, and what is the relationship? Who is
17 this?

18 MR. HOLLISTER: My girlfriend, we live together.

19 THE COURT: Okay, all right, I'm going to excuse you
20 from this case, okay. Thank you very much.

21 MR. HOLLISTER: Yes, sir.

22 THE COURT: Yes, ma'am, your name and number?

23 MS. HEMINGWAY: Pamela Hemingway, Number 80, my
24 brother-in-law is a city police officer.

25 THE COURT: All right, Ms. Hemingway. All right, your

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1 brother?

2 MS. HEMINGWAY: Brother-in-law.

3 THE COURT: And he is what?

4 MS. HEMINGWAY: A city police officer.

5 THE COURT: All right, would that relationship
6 prohibit you from giving both the State and the Defendant a
7 fair and impartial trial?

8 MS. HEMINGWAY: No, sir.

9 THE COURT: Could you base any decision as a juror
10 exclusively on the evidence presented in court?

11 MS. HEMINGWAY: Yes, sir.

12 THE COURT: Thank you for bringing that to our
13 attention.

14 Is there any member of the jury panel who personally or
15 has a family member that has had any dealings with the
16 Solicitor's Office; if so, please stand.

17 (No response.)

18 THE COURT: Any member of the jury panel who
19 personally or has a family member that has had encounters with
20 law enforcement that left you predisposed as to or to have an
21 opinion adverse to law enforcement; if so, please stand.

22 (No response.)

23 THE COURT: Any other voir dire questioning from the
24 State?

25 MR. BRYAN: No, Your Honor.

1 THE COURT: Any from the Defense?

2 MR. AXELROD: May I approach, Your Honor?

3 THE COURT: All right.

4 (Whereupon, a bench conference was held in the presence,

5 but out of the hearing of the jury venire.)

6 THE COURT: Okay, any member of the jury panel who

7 personally or has a family member or a close personal friend

8 who has ever been the victim of criminal domestic violence; if

9 so, please stand.

10 All right, yes, ma'am, your name and number?

11 MS. STEWART: Miranda Stewart, Number 133.

12 THE COURT: 133?

13 MS. STEWART: Yes, sir.

14 THE COURT: Ms. Stewart, would that situation or let

15 me put it this way, yeah, would that situation prohibit you

16 from giving both the State and the Defendant a fair and

17 impartial trial in this case?

18 MS. STEWART: No, sir.

19 THE COURT: Could you base your decision exclusively

20 on the evidence you hear at the trial of this case?

21 MS. STEWART: Yes, sir.

22 THE COURT: Okay, thank you for bringing that to our

23 attention.

24 Yes, sir, your name and number?

25 MR. BUTLER: Marshall Butler, Juror Number 31.

1 THE COURT: You're 31, Mr. Butler. Would that
2 situation that you or a family member or a friend encountered
3 would that prohibit you from giving both the State and the
4 Defendant a fair and impartial trial in this case?

5 MR. BUTLER: No, sir.

6 THE COURT: Could you base your decision in this case
7 exclusively on the evidence you hear at trial?

8 MR. BUTLER: Yes, sir.

9 THE COURT: Okay, thank you for bringing that to our
10 attention.

11 All right, any additional voir dire questioning from the
12 State?

13 MR. BRYAN: None from the State, Your Honor.

14 THE COURT: Any from the Defense?

15 MR. AXELROD: No, sir, Your Honor.

16 THE COURT: All right.

17 MR. AXELROD: Your Honor, may I have a minute?

18 THE COURT: Huh?

19 MR. AXELROD: May I have a minute to compile my list
20 right now?

21 THE COURT: Yeah.

22 MR. AXELROD: Thank you.

23 THE COURT: All right, ladies and gentlemen, we will
24 now begin the jury selection process. Names will be -- of
25 those that are remaining in the jury pool will be drawn at

1 random and you will come forward, and when you come forward I
2 ask that you come up here to the podium, the microphone, then
3 turn and face the table. The State by law is granted so many
4 strikes. The Defense by law is granted so many strikes, and
5 we keep going until we get a jury of 12 people. So, if we
6 would just sit tight for just a few minutes while I tend to
7 some things, let the attorneys review their list, review their
8 information and then we'll start the process.

9 Let me see the attorneys up here for a second.

10 (Whereupon, a bench conference was held in the presence,
11 but out of the hearing of the jury venire.)

12 THE COURT: Okay, let me see the attorneys back up
13 here for a brief second.

14 (Whereupon, a bench conference was held in the presence,
15 but out of the hearing of the jury venire.)

16 THE COURT: All right, ladies and gentlemen, the Clerk
17 will now call, if she calls your name, please come forward,
18 bring with you any purses, coats, whatever you might have with
19 you, come to the forward and turn and face the attorneys. All
20 right, Ms. Clerk.

21 THE CLERK: Juror Number 68, Carol Fuerneisen.

22 MS. FUERNEISEN: Fuerneisen.

23 THE CLERK: Fuerneisen.

24 What says the State?

25 MR. BRYAN: Please present the juror.

Jury Selection

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1 THE CLERK: What says the Defense?

2 MR. AXELROD: Please excuse the juror from the trial of
3 this case.

4 THE CLERK: You may return to your seat.
5 Juror Number 5, Gladys Davis.
6 What says the State?

7 MR. BRYAN: Please present the juror.

8 THE CLERK: What says the ---

9 MS. DAVIS: I'm sorry. It's hard to hear you.

10 MR. BRYAN: Present the juror. You stay right there.

11 THE CLERK: What says the Defense?

12 MR. AXELROD: Your Honor, may we approach a minute?

13 THE COURT: All right.

14 (Whereupon, a bench conference was held in the presence,
15 but out of the hearing of the jury venire.)

16 MR. AXELROD: Please excuse the juror from the trial of
17 this case.

18 THE COURT: All right.

19 THE CLERK: Juror Number 31, Marshall Butler.
20 What says the State?

21 MR. BRYAN: Please present the juror.

22 THE CLERK: What says the Defense?

23 MR. AXELROD: Please swear the juror.

24 THE CLERK: Please take a seat in the jury box.
25 Juror Number 135, Henry Thornell.

Jury Selection

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1 MR. AXELROD: I couldn't hear that number, ma'am.
2 THE CLERK: 135.
3 What says the State?
4 MR. BRYAN: Please present the juror.
5 THE CLERK: What says the Defense?
6 MR. AXELROD: Please excuse the juror.
7 THE CLERK: You may return to your seat.
8 Juror Number 139, Spencer Turner.
9 What says the State?
10 MR. BRYAN: Please present the juror.
11 THE CLERK: What says the Defense?
12 MR. AXELROD: Swear the juror.
13 THE CLERK: Please take a seat in the jury box.
14 Juror Number 115, Jessica Powell.
15 What says the State?
16 MR. BRYAN: Please present Ms. Powell.
17 THE CLERK: What says the Defense?
18 MR. AXELROD: Excuse the juror.
19 THE CLERK: What, what?
20 MR. AXELROD: Please excuse the juror from the trial of
21 this case.
22 THE CLERK: Juror Number 77, Jo A. Hayes.
23 What says the State?
24 MR. BRYAN: Please present Ms. Hayes.
25 THE CLERK: What says the Defense?

Jury Selection

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1 MR. AXELROD: Please swear Ms. Hayes.
2 THE CLERK: Please take a seat in the jury box.
3 Juror Number 149, Javanghn Wragg.
4 What says the State?
5 MR. BRYAN: Please excuse Mr. Wragg from the trial of
6 this case.
7 THE CLERK: You may return to your seat.
8 THE CLERK: Juror Number 44, Irene Creel.
9 What says the State?
10 MR. BRYAN: Would you repeat the juror number?
11 THE CLERK: 44.
12 MR. BRYAN: Please present the juror.
13 THE CLERK: What says the Defense?
14 MR. AXELROD: Please excuse the juror.
15 THE CLERK: You may return to your seat.
16 Juror Number 37, Shavonne Collington.
17 What says the State?
18 MR. BRYAN: Please excuse Ms. Collington from the
19 trial of this case.
20 THE CLERK: You may return to your seat.
21 Juror Number 85, Clarence Hudson.
22 What says the State?
23 MR. BRYAN: Please excuse Mr. Hudson from the trial of
24 this case.
25 THE CLERK: You may return to your seat.

Jury Selection

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1 Juror Number 143, Hannah Wendt.
2 What says the State?
3 MR. BRYAN: Please present Ms. Wendt.
4 THE CLERK: What says the Defense?
5 MR. AXELROD: Excuse the juror.
6 THE CLERK: You may return to your seat.
7 Juror Number 97, Carol Lusby.
8 What says the State?
9 MR. BRYAN: Please present Ms. Lusby.
10 THE CLERK: What says the Defense?
11 MR. AXELROD: Excuse the juror.
12 THE CLERK: You may return to your seat.
13 Juror Number 36, Diadrian Coley.
14 What says the State?
15 MR. BRYAN: Please present Mr. Coley.
16 THE CLERK: What says the Defense?
17 MR. AXELROD: Please swear Mr. Coley.
18 THE CLERK: Take a seat in the jury box.
19 Juror Number 33, Stella Cameron.
20 What says the State?
21 MR. BRYAN: Please present Ms. Cameron.
22 THE CLERK: What says the Defense?
23 MR. AXELROD: Excuse the juror.
24 THE CLERK: You may return to your seat.
25 Juror Number 124, James Shubrick.

Jury Selection

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1 What says the State?

2 MR. BRYAN: Please present Mr. Shubrick.

3 THE CLERK: What says the Defense?

4 MR. AXELROD: Swear Mr. Shubrick.

5 THE CLERK: Please take a seat in the jury box.

6 Juror Number 6, Ricky Eldreth.

7 What says the State?

8 MR. BRYAN: Please present the juror.

9 THE CLERK: What says the Defense?

10 MR. AXELROD: Swear the juror.

11 THE CLERK: Take a seat in the jury box.

12 Juror Number 16, Linda Alford.

13 What says the State?

14 MR. BRYAN: Please present Ms. Alford.

15 THE CLERK: What says the Defense?

16 MR. AXELROD: Please swear the juror.

17 THE CLERK: Take a seat in the jury box.

18 Juror Number 2, Michael Collins.

19 What says the State?

20 MR. BRYAN: Present Mr. Collins.

21 THE CLERK: What says the Defense?

22 MR. AXELROD: Please swear Mr. Collins.

23 THE CLERK: Take a seat in the jury box.

24 Juror Number 34, James Canteen.

25 What says the State?

Jury Selection

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1 MR. BRYAN: Please excuse Mr. Canteen from the trial
2 of this case.

3 THE CLERK: You may return to your seat.
4 Juror Number 12, Doris Sessions.
5 What says the State?

6 MR. BRYAN: Please present Ms. Sessions.

7 THE CLERK: What says the Defense?

8 MR. AXELROD: Swear the juror.

9 THE CLERK: Please take a seat in the jury box.
10 Juror Number 107, Raymond Miller.
11 What says the State?

12 MR. BRYAN: Please present Mr. Miller.

13 THE CLERK: What says the Defense?

14 MR. AXELROD: Please swear Mr. Miller.

15 THE CLERK: Take a seat in the jury box.
16 Juror Number 3, Perry Collins.
17 What says the State?

18 MR. BRYAN: Please excuse Mr. Collins from the trial
19 of this case.

20 THE CLERK: You may return to your seat.
21 Juror Number 72, Jeffrey Goude.
22 What says the State?

23 MR. BRYAN: Please present Mr. Goude.

24 THE CLERK: What says the Defense?

25 MR. AXELROD: Please excuse the juror.

Jury Selection

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1 THE CLERK: You may return to your seat.
2 Juror Number 123, Emily Scott.
3 What says the State?
4 MR. BRYAN: Please present the juror.
5 THE CLERK: What says the Defense?
6 MR. AXELROD: Please swear Ms. Robinson
7 THE CLERK: Take a seat in the jury box.
8 Juror Number 41, Elbert Cox.
9 What says the State?
10 MR. BRYAN: Please present Mr. Cox.
11 THE CLERK: What says the Defense?
12 MR. AXELROD: Please excuse the juror.
13 THE CLERK: You may return to your seat.
14 Juror Number 67, David Foy, Jr.
15 What says the State?
16 MR. BRYAN: Please present Mr. Foy.
17 THE CLERK: What says the Defense?
18 MR. AXELROD: Swear Mr. Foy.
19 THE CLERK: Take a seat in the jury box.
20 THE COURT: All right, we'll now go with the
21 alternates, one strike for the State, two strikes for the
22 Defendant for our alternate.
23 THE CLERK: Pick one alternate or two?
24 THE COURT: We'll do two.
25 THE CLERK: Two, thank you.

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1 Juror Number 110, Faye Murrow.
2 What says the State?
3 MR. BRYAN: Please present Ms. Murrow.
4 THE CLERK: What says the Defense?
5 MR. AXELROD: Please excuse the juror.
6 THE CLERK: You may return to your seat.
7 Juror Number 100, Janice McCray.
8 What says the State?
9 MR. BRYAN: Please present Ms. McCray.
10 THE CLERK: What says the Defense?
11 MR. AXELROD: Swear the juror.
12 THE CLERK: Please take a seat in the jury box.
13 Juror Number 112, Sandra Palmer.
14 What says the State?
15 MR. BRYAN: Please present Ms. Graham.
16 THE CLERK: What says the Defense?
17 THE COURT: Excuse me, what is the -- what's her name?
18 MS. GRAHAM: Graham.
19 THE COURT: Okay.
20 MR. AXELROD: Swear Ms. Graham.
21 THE CLERK: Take a seat in the jury box.
22 Any challenges to the selection or composition of the
23 jury by the State?
24 MR. BRYAN: Yes, Your Honor, yes, sir.
25 THE COURT: All right. You all come up here for a

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1 second.

2 (Whereupon, a bench conference was held in the presence
3 but out of the hearing of the jury and jury venire.)

4 THE COURT: All right, ladies and gentlemen, we have a
5 matter of law that we need to take care of outside the
6 presence of the jury and I'll instruct you on what this means
7 a little bit later. At this time if I can get the bailiff to
8 take these prospective jurors to the jury room. The rest of
9 the jury panel we're going to need to take probably about a
10 15-minute break or a 10 minute -- let's say a 10-minute break
11 and I'll direct the bailiffs when they'll let you back in the
12 jury room, but at this time if you'd please remain seated
13 while this potential jury goes to the jury room.

14 (Whereupon, jury exits courtroom.)

15 THE COURT: All right, the rest of you who are in the
16 jury panel we do have a matter of law that we need to take up
17 outside of your presence. We've been at it a pretty good
18 while. So, it's a good time for you to take a break anyway.
19 So, I'll excuse you from the courtroom. However, where do
20 they come back in through this, through over here? Please be
21 back over here at the door to come back into the courtroom in
22 about 10 minutes, but I'll excuse you for right now for about
23 the next 10 minutes so you can stretch your legs, get a glass
24 of water, use the restroom or whatever the case may be.

25 (Whereupon, jury venire exits courtroom.)

1 Is the door closed? Anybody in the possible jury panel
2 in the courtroom?

3 (No response.)

4 THE COURT: The door is closed? All right, Mr. Bryan,
5 let me hear your objection.

6 MR. BRYAN: Thank you, Your Honor, my objection is
7 under both Batson and J.E.B. versus Alabama ex rel based on
8 the fact that of the ten strikes that Mr. Axelrod made, seven
9 of them were white females. I don't believe that he struck
10 any African-Americans, and I believe that he struck seven out
11 of nine white females. My belief is that under the case law
12 that all I have to do is establish that a cognizable racial or
13 gender group was struck and that the -- and that I basically
14 request a hearing at this point, the burden shifts to Mr.
15 Axelrod to find out or to give a race neutral reason for why
16 he struck those individuals, which I may then rebut.

17 THE COURT: All right, so, let's, let's take them in
18 order. All right, Mr. Axelrod, the first one I had you
19 striking was Carol H. Fuerneisen, Fuerneisen, a white female.
20 I'm assuming you're talking about only the white females.

21 MR. BRYAN: Yes, sir, that would be jurors number --
22 well, I can name them or not, all the white females, seven of
23 them.

24 THE COURT: I've got it, yeah, 68, 5 ---

25 MR. BRYAN: 115.

1 THE COURT: --- 115, 44, 143, 97, 33.

2 MR. BRYAN: As well as the two alternates, 110 and
3 100.

4 THE COURT: 110, yeah, all right, let's start first
5 with Ms. Fuerneisen, Fuerneisen, Carol H. Fuerneisen, Juror
6 Number 68.

7 MR. AXELROD: Your Honor, may I have one more second to
8 look at the alternates? The Court's indulgence for one
9 minute. I'm ready, Your Honor.

10 THE COURT: All right, what was the basis for
11 striking Juror Number 68, Carol H. Fuerneisen?

12 MR. AXELROD: Your Honor, her family member was a
13 police officer, two family members were police officers.

14 THE COURT: All right, how do we want to do this?
15 Let him go through the whole list or do you want to address
16 them one at a ---

17 MR. BRYAN: That might be helpful, Your Honor. Then
18 we can take a second; and so, that was because of family
19 member in law enforcement.

20 THE COURT: All right, Juror Number Five, Gladys
21 Davis.

22 MR. AXELROD: Your Honor, I struck her because -- I
23 even came up to the Court and asked the Court to strike her
24 for cause. I believe this woman could not hear and I still
25 say she can't hear. So, I struck her for that reason.

1 THE COURT: All right, Juror Number 115, Jessica L.
2 Powell.

3 MR. AXELROD: Your Honor, I spoke with my client on
4 each of these people. I spoke with my client. I spoke with
5 Mr. Castro. I spoke with Walt on each of these people. This
6 was the one client [sic] that he looked at me and he said he
7 didn't like the way she looked at him. She gave like an evil
8 look to him when she looked over there. That was the one that
9 Mr. Pantovich actually had a strong sense about.

10 THE COURT: You're talking about during the selection
11 when she came forward?

12 MR. AXELROD: Yes, sir, Your Honor, absolutely.

13 THE COURT: Juror Number 44, Irène Creel.

14 MR. AXELROD: Your Honor, this might sound a little bit
15 strange but this juror, she actually painted her eyebrows on
16 her forehead, and I spoke with Mr. Pantovich about that. They
17 were different heights. Her makeup was just such that I just
18 thought that she was not the type of juror I wanted on this
19 case based actually on the makeup, that I just felt that -- I
20 felt that the amount of makeup that she had around her eyes
21 and her face, I felt that she might be, I don't want to say
22 shallow, but I want to say that I was afraid that she wouldn't
23 be able to delve into the issues of this case deeply because
24 just the face makeup the way she had painted it on.

25 THE COURT: Juror Number 143, Hannah B. Wendt.

1 MR. AXELROD: That one, Your Honor, that was one of the
2 questions that people stood up and said, you know, any member
3 of your family a member of a police department. She had a
4 relative that was a police officer, uncle was a deputy in
5 Maryland, Your Honor.

6 THE COURT: Juror Number 97, Carol Lusby.

7 MR. AXELROD: Husband is retired from the Federal
8 Bureau of Investigation, Your Honor. I feel that when your
9 husband is a retired FBI agent that the permeation of a 30-
10 year career, which I assume it was, would actually be imbedded
11 within her own reasoning.

12 THE COURT: Juror Number 33, Stella M. Cameron.

13 MR. AXELROD: Your Honor, I had no problem with her
14 originally. She was brought up front. She was one of the
15 people that said she read from the newspapers, and Your Honor,
16 what I did was the ones that came up to the bench, some of
17 them were excused, some were not excused and of the ones that
18 were not excused some of them I put Xs beside, some of them I
19 put question marks and some of them I left blank. This one,
20 Number 33, I put an X beside. I did not want her based on her
21 demeanor to the bench asking questions about reading the
22 paper.

23 THE COURT: Juror Number 110, Faye Murrow.

24 MR. AXELROD: She worked for at youth -- she worked in
25 some type of organization that was for at-risk youth, and I

1 felt that what was happening in this case I think drug abuse
2 was going to become an issue of this case and what drugs do to
3 people and I just thought that her line of work would have
4 maybe made her more sympathetic toward the State's side, Your
5 Honor.

6 THE COURT: All right, Mr. Bryan?

7 MR. BRYAN: Thank you, Your Honor, if I can just have
8 one second to look through because there were so many people
9 who came forward and that was one of the reasons used. If I
10 can just look through and see which ones came forward.

11 THE COURT: Okay.

12 MR. BRYAN: Thank you, Your Honor. I'm ready.

13 THE COURT: All right, Mr. Bryan.

14 MR. BRYAN: If it please the Court, I believe the
15 standard is to now show that the reason given was mere
16 pretext, and one way to do that is to show similarly situated
17 jurors on the panel that were seated, and I would point out
18 for the Court, obviously, the reason given some of them were
19 reasons, of course, that there would be no way for me to
20 rebut. Whether the Defendant says he didn't like the way
21 somebody looked at him, I could, I guess, assert that Juror
22 Number 4, 5, 6, 7, 8, 9 -- I'm sorry, Juror Number 36, 124 and
23 all the other jurors looked at him funny, but of course,
24 there's no way for me to show the pretextual nature of that.
25 I would say that that is not a race neutral or gender neutral

1 reason and that there's no way for us to make any showing.
2 So, anybody could always just say they didn't like the way
3 they looked at them and there's no way to rebut it.

4 However, I'll say that as well as Number 44 Mr. Axelrod
5 said it might sound a little strange but didn't like the
6 makeup. Obviously, the makeup that one wears would, I hope
7 I'm not being a misogynist by saying that I think generally
8 only women wear makeup and that the fact that somebody is
9 wearing makeup or you don't like the makeup that one wears is
10 not a gender neutral reason in my opinion, the fact that
11 somebody has on makeup. In addition, Number 33 he stated that
12 Number 33 came up front and there was another juror who was a
13 white male about the same age as the Defendant; and so, I
14 would assert that that was a pretextual reason based on the
15 fact that number two came up. He stated to the Court that he
16 had read an article, said he could be fair. He answered all
17 the same questions all the same way as the female juror that
18 was struck by Mr. Axelrod and he struck him. He's a white
19 male. It's almost impossible to show that there's a
20 pretextual reason, but there is one right there. It's Juror
21 Number Two. He came forward just like Juror Number 33 who was
22 a -- the only difference between the two of them is that he is
23 a white male and she was a white female. She was struck and
24 he was not struck. They were subjected to the same line of
25 questions from the Judge, answered the same way and he seated

1 the male and did not seat the female; and therefore, the State
2 has made a showing that that was a merely pretextual reason
3 and that we would ask that the Court grant the Batson motion

4 ---

5 MR. AXELROD: Thank you, Your Honor, may I?

6 MR. BRYAN: --- under State versus Alabama.

7 THE COURT: All right.

8 MR. AXELROD: Your Honor, I'll deal with that last --
9 I'll deal -- I'll deal with the two issues that -- I'll deal
10 with three of them. My client's on trial for murder. Now,
11 Juror 115, that was the only juror that my client through this
12 entire process said, "I don't like the way she looked at me."
13 That's the only juror. I have it down in my -- Walt did not
14 like her, the only one. Now, to go on to the next one, Juror
15 Number 44, she looked like a clown, Judge, and I'm not, I'm
16 not trying, I'm not trying to be, you know, smart about this.
17 It was just the way she painted on her face. To me it was
18 shallow and to me it meant that that's what she sees as
19 herself and I took it that that was not a type of juror that I
20 wanted on this jury. I wanted a juror that had depth, and the
21 way this lady looked with the silver on her eyebrows and the
22 painted eyelashes above her in the brown I just didn't think
23 it was the kind of juror I wanted. I mean, it was just -- and
24 I talked with both my colleagues -- I spoke to my colleague
25 and my client. I said, "Just the way she looks I don't want

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1 her," and to go to the third issue that the State thinks
2 that's it's pretextual, Number 33 goes up to the Court, goes
3 up to the bench and I put an X beside her, didn't like her. I
4 didn't know it was a man or a woman. I didn't write it down
5 that way. Number two didn't have anything beside it, and to
6 explain to the Court we had that engineer lady, 143, I liked
7 her. I didn't have an X by her name until she stood up and
8 said that she had a relative that was a police officer. If
9 she didn't have a relative that was a police officer I would
10 have taken her. I didn't have on my list whether they were
11 male or female, white or black at all. I didn't like Number
12 33 for the way the answers came to the Court, and number two,
13 we talked about it, there was no marks. Some of them I had
14 marks, somebody of them I didn't, but Number 143 I would have
15 taken her but for her uncle being a police officer in
16 Maryland.

17 THE COURT: All right, all right, Mr. Bryan, I note
18 your motion. I deny it though.

19 MR. BRYAN: Thank you, Your Honor.

20 THE COURT: I think he has established sufficient
21 grounds, all right.

22 Any other challenges to the selection or composition of
23 the jury by the State?

24 MR. BRYAN: No, Your Honor.

25 THE COURT: Any from the Defendant?

1 MR. AXELROD: No, sir, Your Honor.

2 THE COURT: All right, let's -- the jury that we've
3 got impaneled we'll leave them there. Let's bring back in the
4 remaining people. Are we cutting them loose for the week?
5 Are we cutting these jurors loose for the week?

6 MR. MODICA: May I approach, Your Honor?

7 (Whereupon, bench conference held.)

8 (Remaining panel dismissed and given call-back
9 instructions by Court.)

10 THE COURT: All right, while they're going out, so
11 I'll know how to instruct this other jury, we've got a Jackson
12 v. Denno hearing.

13 MR. BRYAN: Yes, sir, Your Honor, two, two separate
14 statements actually that I believe not to be as a
15 interrogation. So, they're really not Jackson v. Denno.
16 They're just statements by a Defendant to law enforcement.

17 THE COURT: All right, and about how many motions and
18 how long does the Defense have?

19 MR. AXELROD: Concerning ---

20 THE COURT: So, you don't need to tell me what they
21 are or anything. I'm just trying to get a time schedule so I
22 can let this jury know what time they need to be back
23 tomorrow. I don't want them to come in and be sitting half
24 the day while we're doing motions.

25 MR. AXELROD: Your Honor, they could be short and they

1 could be a little bit longer. I can't say. It all depends
2 how heated it gets. If the, you know, the State wants to
3 agree to my motion to suppress certain items it'll be quick.
4 I doubt they will.

5 THE COURT: Well, let's say it's fully contested, all
6 right.

7 MR. BRYAN: A fair assumption, Your Honor.

8 THE COURT: But number one, it might be fully
9 contested; number two, I'm going to strictly enforce the rule
10 that says once I make a decision that's it, no arguments,
11 number one, and number two, there'll be no arguments unless I
12 ask for arguments; okay?

13 MR. AXELROD: Okay, I'm understanding.

14 THE COURT: All right.

15 MR. AXELROD: I would think, Your Honor, I think the
16 totality maybe 90 minutes. That might do it all. The
17 Solicitor has probably got at least a half hour.

18 THE COURT: Okay.

19 MR. AXELROD: He always says he has less, but he talks
20 for quite a while usually, too.

21 THE COURT: All right, so, nine [sic] minutes, two
22 hours, say maybe get them to come in say at 11? We can get
23 them ---

24 MR. BRYAN: What time were we starting, nine?

25 THE COURT: Yeah, start at nine o'clock, get them in

1 at 11. We can do opening statements, maybe break for lunch
2 and then start straight into the witnesses tomorrow afternoon.

3 MR. BRYAN: Be fine, whatever you want to do, 10:30 or
4 11 because if they come in at 10:30, I mean, they might sit
5 for a little while, but we'd have them if we finish early.

6 THE COURT: Okay.

7 MR. AXELROD: That'd be ---

8 THE COURT: All right, that sounds good.

9 All right, bring the jury in.

10 (Whereupon, the following takes place in the presence of
11 the jury.)

12 THE COURT: All right, ladies and gentlemen, you are
13 now the jury for this first case that we have which is the
14 State of South Carolina versus Vladimir W. Pantovich. Now,
15 the first thing that we need to do, I'm going to go over some
16 preliminary instructions with you, but at this time the first
17 thing we need is for the Clerk to swear you in as jurors in
18 this case. If you'd please administer the oath, please.

19 (Whereupon, the jury is sworn by the Clerk.)

20 THE COURT: All right, ladies and gentlemen, you're
21 the jury in this case and we're getting ready to break for the
22 evening and when you come back tomorrow, I will start off by
23 giving you some preliminary instructions to explain to you
24 what your duties are in this case, what my duties are in this
25 case, procedurally how the trial will go forward and what you

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1 need to do. The first thing we have some matters that we need
2 to take up first; and so, it won't be necessary for you to
3 come back until 10:30 tomorrow morning. When you come back at
4 10:30 tomorrow morning just report to the jury room that you
5 were just taken to, check in with the bailiffs and we'll be
6 with you as soon after 10:30 as we can. Now, once you get
7 into the jury room and everyone is present if I could get you
8 to do me a favor. First of all, that is to select a
9 foreperson. A lot of judges choose the foreperson on their
10 own. I like to give the jury the opportunity to select a
11 foreperson among yourselves. It's not required you do so and
12 if you can't select a foreperson don't worry about it. I can
13 appoint someone to act as foreperson.

14 Now, a foreperson has no more authority, has no more
15 influence and has no more rights than any other member of the
16 jury panel or anybody in the jury. The foreperson is simply
17 the person who if the jury has a need the foreperson will let
18 the bailiff know. If the jury has a question the foreperson
19 will let the Court know. The foreperson will preside over
20 deliberations when it's time to deliberate and when the jury
21 reaches a verdict the foreperson is the person who gives the
22 verdict to the clerk to be published. Other than that the
23 foreperson has no more authority, no more influence, no more
24 import than any other juror, but I will give you the
25 opportunity to select a foreperson. When you select the

1 foreperson just write his or her name on a sheet of paper,
2 give the jury number, give it to the bailiff and the bailiff
3 will bring it to the Court. The only restriction is as
4 alternates, Ms. McCray or Ms. Graham, you cannot serve as the
5 foreperson. You will be the alternates.

6 Now, when you come back into the courtroom, whoever
7 is the foreperson of the jury I'll ask to occupy this first
8 seat here. Ms. McCray, Ms. Graham, as the alternates you will
9 always occupy the two seats you are in. The rest of the
10 jurors are at liberty to sit in any seat you want. You can
11 sit in the same seat throughout the trial of the case, you can
12 alternate in different seats throughout the trial of the case.
13 It really doesn't matter. It's whatever is at your pleasure
14 with the exception of the foreperson who will always sit in
15 the first one and the alternates who will always sit in those
16 first two in the back.

17 So, I'm going to excuse you now. Please be back in the
18 jury room at 10:30, select your foreperson if you can and let
19 us know.

20 Now, over the course of the evening do not discuss this
21 case with anyone even among yourselves. At this point in time
22 no evidence has been presented. It's too premature for any
23 deliberations. Do not talk to any family members about this
24 case. Do not talk to any friends about this case. Do not
25 talk to any of the attorneys, any witnesses or anything of

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1 that nature. It's not that they're being rude. It's just that
2 they have been instructed not to talk to you and they don't
3 want you to speak or the Court directs that you not speak with
4 them to avoid even the appearance of any impropriety or even
5 the appearance of anything being wrong. Do not conduct any
6 independent investigations. Do not go on the internet trying
7 to look up anything about this case. Do not watch any news
8 accounts this evening on this case. Do not read any newspaper
9 accounts about anything regarding this case. Do not conduct
10 any independent investigation. Do not be influenced by
11 anything outside this courtroom because as jurors it is your
12 sworn duty to base your decision and your verdict ultimately
13 on the evidence presented in the trial of this case
14 exclusively and you have to give both the State and the
15 Defendant a fair and impartial trial. The only way you give
16 the State and the Defendant a fair and impartial trial is by
17 basing your decision exclusively on the evidence they present
18 at trial and that you don't consider anything that they do not
19 present to you or that I rule admissible [sic], but I hope
20 everyone has a good evening, get good rest. Please be back,
21 be prompt and on time when you come into the -- be back so we
22 don't have to wait for anyone. Also, when you come back into
23 the courtroom, I'll ask that if you have any pagers, any cell
24 phones, any communication devices that you turn them off
25 completely. Heretofore, I just ask you to put them on silent

1 mode, but tomorrow when you come into the courtroom I'll ask
2 that you turn them off completely because part of your duties
3 as jurors is going to be to listen to these witnesses, review
4 this evidence and you don't need any interruption from any
5 outside source. So, at this point in time I'll excuse you and
6 I look forward to seeing you back tomorrow morning. Thank you
7 very much. If everyone else would please remain in place
8 while the jury is excused.

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right, anything before we break?

12 MR. BRYAN: No, Your Honor.

13 THE COURT: All right, anything?

14 All right, we will stand in recess until nine a.m.
15 tomorrow morning.

16 MR. BRYAN: Thank you, Your Honor.

17 THE COURT: All right, thank you very much.

18 *****OFF THE RECORD*****

19 (On the record, Tuesday February 5, 2008.)

20 (Whereupon, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right, gentlemen, what have we got
23 first? Anything, motions from the State?

24 MR. BRYAN: We can, we can do our Jackson v. Denno,
25 Your Honor, through ---

1 THE COURT: Okay.

2 MR. BRYAN: --- Buddy McKinney. We -- I think we'd
3 call one witness in a Jackson v. Denno.

4 THE COURT: All right.

5 MR. AXELROD: Your Honor, I would ask the Court, I'd
6 like to know what this hearing is about, which Jackson v.
7 Denno and what statement he's speaking of.

8 MR. BRYAN: Two, well, three statements, it's Buddy
9 McKinney who was the Alexander County Sheriff's Office Deputy
10 who got a BOLO to be on the lookout for the Defendant's
11 vehicle with his license plate and the description of the car
12 and the Defendant with a dead body in the trunk traveling
13 towards the son's house in North Carolina. They initiated a
14 traffic stop, detained him, did an exigent search of the
15 trunk, found a what looked like a dead human body inside the
16 trunk. He placed Mr. Pantovich in custody, put him in his
17 car, read him his Miranda rights, did not attempt to take any
18 statement from him. At two times about eight minutes apart
19 the Defendant was just sitting there and said, "Tell my son
20 he did the right thing," and about eight minutes later he
21 said, "I just lost it, man." Those are the two things that
22 he said not subject to interrogation by Officer McKinney and
23 then subsequently at the bond hearing the Defendant made a
24 series of statements which are captured by News Channel 6 out
25 of Charlotte.

1 THE COURT: At a what, at the bond hearing?

2 MR. BRYAN: At -- going into the bond hearing ---

3 THE COURT: Oh, okay.

4 MR. BRYAN: --- they -- when they take him into the
5 bond hearing the news camera is there.

6 THE COURT: Right.

7 MR. BRYAN: They hold a microphone out and the
8 Defendant says, "She was on pills. She was a violent person
9 and I couldn't take it anymore," some other statements that
10 are on a disk and we can play it for the Court. It's probably
11 20, 30 seconds. He is in custody but he's not even on the
12 tape. He's not questioned by law enforcement.

13 THE COURT: That's what I was getting ready to ask
14 you, was the statement made to law enforcement?

15 MR. BRYAN: It was not. It was made to newspaper or
16 to camera people. So, we can not have that hearing. He was
17 in custody. He was being transported by the deputies. He was
18 going into the bond hearing but he's walking by a camera
19 person and reporter who sticks a microphone out and says,
20 "Why did you do it? Why did you do it," and he answers.

21 THE COURT: Let me ask you that, Mr. Axelrod. Do we
22 need a Jackson v. Denno hearing?

23 MR. AXELROD: I have several issues about this, Your
24 Honor. Are we going to discuss -- let's discuss the news
25 issue first. First of all, this is a statement that the State

1 had in their custody or knew about having and we were not
2 informed of this until last week, what day? You got it
3 written down? I'd ask Mr. Castro to tell us the day that the
4 State told us that this existed. Pick that up please.

5 THE COURT: All right, but you got it last week?

6 MR. AXELROD: I want to tell the Court the exact date.
7 We made note of this.

8 THE COURT: All right, well, let's move along now.
9 Come on. That's what I was telling you. We need to be ready
10 for these motion hearings.

11 When was the statement made?

12 MR. BRYAN: The statement was made ---

13 MR. AXELROD: March the 8th, 2006.

14 MR. BRYAN: The same day he was arrested, Your Honor.

15 THE COURT: Okay, the same day.

16 MR. BRYAN: The issue with the tape, Your Honor, is
17 it was a beta tape. We don't have -- there's nobody in
18 Georgetown who can play a beta tape. I don't know. It was in
19 evidence. It's been in evidence. Mr. Axelrod never requested
20 to come by and look at the evidence. He never requested to
21 come by and look at the evidence even up until a week before
22 the trial, at which point I called Mr. Castro and said,
23 "We've known for two months that this case is coming up
24 February the 4th. Would you like me to make arrangements for
25 you to come look at the evidence at the Sheriff's Office."

1 It was in evidence at the Sheriff's Office. It's a little
2 yellow beta tape. I don't have a beta player. They don't
3 have a beta player. We certainly didn't have a way to ---

4 THE COURT: But did you know what was on the tape?

5 MR. BRYAN: We knew that there was a statement by the
6 Defendant. So, in preparation for the trial I went to North
7 Carolina myself on the 25th, whatever the Friday the week
8 before the 28th was. I went up there. We had sent people to
9 Conway to try to get the tape put in a form we could view, and
10 we ultimately -- I had to drive to North Carolina myself, go
11 to the CBS station that had done the reporting and have them
12 put it on a disk where we could look at it. So, what we did
13 was at that time the day I got it I drove it back and gave it
14 back to Mr. Axelrod. It's about a 15-minute statement and I
15 don't believe that there's any prejudice to him. It's what --
16 it's exactly what his defense is. It's exactly what the
17 Defendant has been saying to everybody all the way along.
18 It's just him making a statement to law enforcement. It's
19 also in the public domain. In other words, it was aired on
20 television.

21 THE COURT: All right.

22 MR. BRYAN: And the Defendant clearly knew he had
23 made the statement.

24 THE COURT: I understand. I understand. All right,
25 Mr. Axelrod, have you got an outstanding motion regarding

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1 that?

2 MR. AXELROD: A motion to suppress the statement, Your
3 Honor. It was not given in a timely fashion. We were not
4 notified till the 28th or the 29th of this month of January
5 that it existed. I didn't know that he had been on
6 television. I was unaware of it, and I want to bring to the
7 Court's attention how this statement was made, Your Honor. At
8 6:17 in the morning, at 6:17 in the morning Walt Pantovich was
9 read his Miranda Rights, and he wrote, "I want a lawyer," and
10 at that time all conversation with him should have broke off
11 after 6:17 a.m. on March the 8th, 2006. Now, what's
12 interesting on this case with this newspaper stuff, and I
13 think the Court needs to watch this video. They allowed,
14 Your Honor, the television people into the jail. You can see
15 them in the jail. You can see the bars. You can see Walt
16 with bars around him, and they have a camera in his face.
17 Now, the State might want to argue to the Court and say,
18 "Well, it wasn't, it wasn't elicited through, you know,
19 officer interrogation," but the police allowed the cameras
20 into the jail and I say that that, at that point by allowing
21 that they became an arm of the State. They became an
22 extension of the State and by becoming an extension of the
23 State the law would hold that Miranda would attach to them as
24 well, and I would ask the Court to -- I think the Court needs
25 to watch this brief video to see it's in the jail around bars.

1 THE COURT: All right, Mr. Bryan, let me hear from
2 you on that.

3 MR. BRYAN: I don't think there's any -- it's -- I
4 guess it borders on absurd that the media is an arm of the
5 State. Clearly in my experience ---

6 THE COURT: I understand that, but I mean, if the
7 police allowed them into the jail, saying, ``Here, go out and
8 interview them.''

9 MR. BRYAN: Well, of course -- well, the fact that,
10 Your Honor, if -- I guess the media was here yesterday, for
11 instance, by analogy, and if, if they had spoken to Mr.
12 Pantovich in and out would that, would that by analogy make
13 them an arm of the State? It's the same ---

14 THE COURT: No, as I understand Mr. Axelrod, the
15 Defendant is sitting in his jail six o'clock in the morning,
16 the police open the doors and lets the news media in to
17 interview him.

18 MR. BRYAN: No, no, no, no, no, no, he's being, he's
19 being taken before the judge for a bond hearing.

20 MR. AXELROD: In the jail. He's in the jail walking
21 down a hallway.

22 THE COURT: Oh, okay, all right.

23 MR. BRYAN: It's on the way to the bond hearing.
24 It's a public -- I'm sorry. So, it's a public venue. There,
25 there -- the media is being allowed in at the bond hearing

1 just like they were allowed in ---

2 THE COURT: So, he's on -- okay, he's on his way to
3 the bond hearing. I understand.

4 MR. BRYAN: Here ---

5 MR. AXELROD: Your Honor, it was after a bond hearing.
6 It was after the bond hearing.

7 THE COURT: I understand.

8 MR. AXELROD: Okay, now, at that point to allow a news
9 camera to go in and ask questions, for the State to allow that
10 to go in, makes them an extension of the Court.

11 THE COURT: All right, all right, Mr. Axelrod, your
12 motion to suppress the statement I deny that.

13 MR. AXELROD: Your Honor, I would ask ---

14 THE COURT: Now, I still -- let me hear from you -- I
15 deny it on the grounds that you're claiming that the media is
16 a part of the police department and all of that or law
17 enforcement.

18 MR. AXELROD: Your Honor, I would ask -- I understand
19 the ruling of the Court. I would ask the Court to look at
20 this tape because at the very end of the tape what it shows is
21 Walt's walking down the hallway, there's a camera this close
22 to him in his face. At some point right at the very end they
23 open up a door and the camera is standing there and they put
24 Walt through the door and they close the door with all the
25 bars and I think that's prejudicial. I would ask because that

1 occurs after the statement. If the Court is going to allow
2 the statement in I would say that we be able to redact, we be
3 able to redact at that point and stop that statement. I would
4 ask the Court to watch this video.

5 THE COURT: Well, let me ask you, Mr. Bryan, are you
6 talking about having a person of the news media testify as to
7 the statement made to the reporter or are you talking about
8 showing the video?

9 MR. BRYAN: I'm talking about showing the video, but I
10 would be glad to -- I haven't heard anything about redacting
11 any portion. I'll be glad to not show him if he's in the bar
12 or in the -- inside the cell. Obviously we could not play
13 that portion for the jury.

14 MR. AXELROD: Your Honor, I would ask that we suppress
15 the entire tape. If the news person wants to testify to what
16 Walt said there, I could see that. I think the tape is
17 prejudicial for the fact that it's in the jail, he's in an
18 orange jumpsuit and it's just -- it's prejudicial. If what
19 the Court's concerned about or if what the State's concerned
20 about is the statement then the statement ---

21 THE COURT: Well, I tell you and I understand that.
22 What I'll need to do is look at the video. We can do that in
23 chambers because I am concerned as to whether or not the
24 prejudicial effect outweighs any probative value where you've
25 got a person walking through the jail in an orange jumpsuit

1 coming out of a bond hearing with bars all around.

2 MR. BRYAN: I understand, Your Honor.

3 THE COURT: You know, I might let the statement in,
4 but I might not let the video in. I'll have to see the video
5 first.

6 MR. BRYAN: Yes, sir, Your Honor. I understand.

7 THE COURT: All right, all right, Mr. Axelrod, let me
8 hear from you as far as your position on whether or not there
9 is a requirement for a Jackson v. Denno hearing as to that
10 statement since it was made to the news media.

11 MR. AXELROD: I would still argue that it's a -- that
12 the news media by being allowed in, as far as they were
13 allowed into the bowels of the jail that they become an arm of
14 the State; and therefore, I think a Jackson v. Denno still
15 would be appropriate if it was given voluntarily without
16 duress. He's chained up. He's shackled, I believe, and makes
17 a statement.

18 THE COURT: All right.

19 MR. BRYAN: I think that's been ruled on, but when we
20 handle the Jackson v. Denno, which is another custodial
21 statement made by a Defendant which is not the subject of
22 investigation we'll have Officer McKinney testify that he was
23 mirandized as alluded to by defense counsel immediately upon
24 being arrested. So, he'd already received his Miranda
25 warnings. He lawyered up. He said, "I'd like a lawyer," and

1 nobody in law enforcement that I'm aware of ever asked him any
2 questions to elicit, no one interrogated him after that. They
3 asked him what his name was.

4 THE COURT: Well, we'll get into all of that at a
5 Jackson v. Denno hearing.

6 MR. BRYAN: So, that'll be shown that he's already
7 been mirandized at the point of which and then they didn't re-
8 mirandize him because they weren't going to ever question him
9 again.

10 THE COURT: Okay, all right, any other motions?

11 MR. AXELROD: Do you have any other motions on this?

12 MR. BRYAN: No, I would ---

13 THE COURT: You've just got a Jackson v. Denno
14 hearing that you've got to do. .

15 MR. BRYAN: That's all, that's, yes, sir.

16 THE COURT: All right, do we want to go ahead and do
17 those now or have you got any other motions regarding
18 statements from the Defense?

19 MR. AXELROD: I have one other issue that we brought up
20 before the jury was sworn. I'd like to revisit that if I
21 could at this point, Your Honor.

22 THE COURT: All right.

23 MR. AXELROD: This is a murder trial and it concerns
24 me. Yesterday, and we discussed this, I believe, in chambers
25 and it might have been out here. I'm not sure. We talked

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1 about being provided the NCIC reports of potential witnesses
2 that would testify against Walt. Specifically I was concerned
3 about possibly jailhouse snitches and other people of that
4 character that to be able to show some type of bias, whether
5 their charges have been lessened or whether their charges were
6 dismissed. Normally I receive an NCIC from the State. Now,
7 the Solicitor in this case he provided me -- it's my
8 understanding that the Solicitor told the Court yesterday that
9 he doesn't provide NCICs. He doesn't have to provide NCICs
10 and he's not customarily doing that. I would argue that under
11 Brady I'm entitled to it, if it's exculpatory or inculpatory.

12 THE COURT: All right, if it's not exculpatory or
13 inculpatory then you admit under Brady you're not entitled to
14 it; correct?

15 MR. AXELROD: Right, but I'm entitled to see it to
16 determine whether it is or it isn't because I went on the SLED
17 website last night. I'm unable to get any SLED reports. I'm
18 unable to get a national-wide search. Only law enforcement
19 people with that authority can, but the concern I have is the
20 Solicitor did give me one NCIC on one potential witness and it
21 has, you know, Robert Bryan's name on it. He requested it,
22 Robert Bryan. He has to request it. Now, I did get one NCIC.
23 You know, all the trials I've ever done I get the NCIC. After
24 they testify they have to hand it to me to see if I can
25 impeach with it. If the Solicitor is saying in this case I'm

1 not entitled to any more of those NCICs I would say to the
2 Court that it's an equal protection and due process violation
3 of my client that he -- because if the Solicitor is going to
4 say that the position of his office is not to give anybody the
5 NCICs, well, I want to put that on the record because, first
6 of all, I already got one for this case, and he's attacking
7 Walt individually. If he gives it to everybody else in every
8 drug case, when a snitch gets on the stand and holds it
9 against him that he can't have it that's an equal protection
10 and a due process violation of our state and our federal
11 constitutions. I want to put that on the record. This is a
12 murder trial. This is as serious as it gets, Your Honor, and
13 I do have an NCIC on one of the potential snitches, and for
14 the State to tell you and to tell this Court that, "We don't
15 have to give it," I want to know why he gave it.

16 THE COURT: All right, motion is noted. It's again
17 denied. I don't see anywhere that requires the State to
18 produce NCIC reports to the Defense on all the Plaintiff's
19 witnesses.

20 MR. BRYAN: And Your Honor, I appreciate that, and I
21 don't want to waste the Court's time, but just to make sure
22 the record is clear on the issue, first of all, I didn't say I
23 don't do it and that I've never done it. I never said that.
24 I said I do not have to do it. He can go to the SLED website.
25 He can pay \$25 and he can run an NCIC report, but secondly, I

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1 would like to get this marked as a Court's Exhibit and hand it
2 up to the -- Your Honor.

3 (Court's Exhibit Number Two [Discovery] appropriately
4 marked.)

5 MR. BRYAN: This is where I gave him -- I have two
6 potential snitches and I gave him copies of the NCIC on both
7 of those. That's marked Court's Number Two and that's signed
8 by Mr. Castro here, and it says that he got NCICs on Cory
9 Rutledge and William Bryan McCants in addition to a plea offer
10 on William Bryan McCants on 1-24-08. I gave it to him myself
11 at his office. He signed for it. So, he's got the NCIC on
12 both the snitches. Now, if Mr. Axelrod has some particular
13 witness who he's concerned about who he doesn't have an NCIC
14 be glad to hear from him about who that particular person is
15 and we'll go run it off for him right now, not that I have to,
16 but we'll be glad to do that so that we can put that issue
17 behind us.

18 THE COURT: Well, I think what he's saying is every
19 person you identified he wants an NCIC report on that witness.

20 MR. BRYAN: Well, they're all law enforcement, Your
21 Honor. Is he wanting me to run ---

22 MR. AXELROD: Your Honor, if they're law enforcement
23 I'm not requesting it, but what I am saying to the Court is I
24 can go to SLED and I can maybe get a South Carolina history,
25 but I can't get a North Carolina, a Georgia, a Virginia, a

1 Florida, a New York, a New Jersey. Somebody could be
2 convicted of murder, spend 20 years for murder in the State of
3 New York and I would not be able to know that.

4 MR. BRYAN: For instance, name one on the witness
5 list that you want, name one.

6 MR. AXELROD: Your Honor, I'm raising the issue if
7 there's ---

8 THE COURT: All right, let's move on. I've ruled on
9 that motion. All right, next motion.

10 Now, excuse me, let me back up. My ruling is I cannot
11 find anything that requires the State to produce an NCIC
12 report to the Defendant on the State's witnesses. Keeping in
13 mind, Mr. Bryan, that under Brady decision if an NCIC report
14 is in your possession and it shows any exculpatory evidence
15 against the Defendant then I think under Brady you have to
16 produce that. Do you understand that?

17 MR. BRYAN: Yes, Your Honor.

18 THE COURT: All right.

19 MR. BRYAN: And of course, we -- I think it's clear
20 that an NCIC is not exculpatory. It doesn't mean the
21 Defendant did not commit the act. I don't think it's
22 exculpatory, but I do understand if it were exculpatory that
23 ---

24 THE COURT: Well, I think ---

25 MR. BRYAN: --- I would have to produce it. I do

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1 understand that.

2 THE COURT: Yeah, I think if you have anything in
3 your possession that tends to cast doubt on the guilt or
4 innocence of the Defendant that it has to be produced.

5 MR. BRYAN: Well, I can say for the record then just
6 to be clear for the record I do not have any NCICs on any
7 witnesses that indicate any prior convictions that have not
8 been handed over to the Defendant.

9 MR. AXELROD: That's exactly my point, Your Honor. My
10 point is if the Solicitor knows that one exists and we're
11 speaking about witnesses, not the Defendant.

12 THE COURT: All right, Mr. Axelrod, you're beating a
13 dead horse. I deny your motion.

14 All right, let's move on, the next motion.

15 MR. AXELROD: I have no other motions, Your Honor. A
16 motion to sequester all the witnesses, I would ask that they
17 be sequestered. I think the Court granted that.

18 THE COURT: We ruled on that yesterday. That's
19 granted.

20 MR. AXELROD: We did the autopsy photos. Your Honor,
21 I would make a motion to exclude any mention of a 911 call
22 that occurred October the 20th, 2005. It occurred a year
23 before this event, and I'm bringing it up as, just as a matter
24 of caution. I don't think it's going to be part of this case.
25 It was in the discovery material. We received it and I would

1 ask that it be not -- be not allowed to be entered into.

2 THE COURT: What's the date of it?

3 MR. AXELROD: October the 20th of the year 2005, Your
4 Honor.

5 THE COURT: 911 call from whom?

6 MR. AXELROD: I believe it's from the victim to the
7 police concerning Walt.

8 THE COURT: All right, let me hear you, Mr. Bryan.

9 MR. BRYAN: Contingent upon Defendant not putting
10 prior difficulties between the parties in evidence or any
11 battered spouse syndrome or the fact that poor Walt was
12 terrified of the victim because she had terrorized him on
13 previous occasions, if he does put that in evidence obviously
14 I can parade in as many witnesses as I can find to testify
15 about how the aggressor was Walt Pantovich and not the victim
16 in the case. So, in that particular instance I don't think
17 we're going to allow the Defendant to say that she attacked
18 him over and over and no one to come in on behalf of the
19 victim to say that he terrorized her.

20 MR. AXELROD: Your Honor, it's a remoteness of time.
21 It's the prejudicial effect. This occurred, you know, a year
22 before. There's a statement, there's a 911 call. We're here
23 on a murder trial on a specific matter that occurred and ---

24 THE COURT: All right.

25 MR. BRYAN: And as long as we just talk about the

1 specific matter that occurred and not any prior difficulties
2 between the parties then we would not admit that clearly, Your
3 Honor.

4 THE COURT: All right, I'm going to take that one
5 under advertisement.

6 MR. AXELROD: Thank you, Your Honor.

7 THE COURT: All right, any other motions?

8 MR. AXELROD: That's all, Your Honor.

9 THE COURT: All right, you want to go ahead with your
10 Jackson v. Denno hearing now?

11 MR. BRYAN: Yes, sir, Your Honor.

12 THE COURT: All right.

13 MR. BRYAN: The State calls Officer Buddy McKinney.

14 WHEREUPON, BUDDY MCKINNEY WAS CALLED TO THE STAND, DULY

15 SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

16 THE CLERK: State your name for the record, please.

17 MR. MCKINNEY: Deputy Buddy McKinney.

18 EXAMINATION

19 BY MR. BRYAN:

20 Q Who do you work for?

21 A The Alexander County Sheriff's Office.

22 Q And how did you get involved in this case?

23 A I received a message to meet a man at my -- at our
24 sheriff's office.

25 MR. AXELROD: Your Honor, at that point, I don't mean

1 to interrupt but are we able to sequester the witnesses in
2 this case at this point, even at this point in the Jackson v.
3 Denno hearing because I think we have officers that are going
4 to testify in this case that could gain knowledge and I would
5 just ask that as an abundance of caution.

6 MR. BRYAN: I don't have a problem sending them out,
7 Your Honor. They were here for the ---

8 THE COURT: All right, all right, anybody who's going
9 to be testifying during the course of these Jackson v. Denno
10 hearings or who will be testifying at the trial of the case
11 we'll need you to leave the courtroom.

12 MR. BRYAN: I wasn't sure of the order, what was
13 happening. Your Honor, Joyce Phillips is not a fact witness
14 in any way. She is the evidence custodian, raise your hand,
15 Joyce, for the Sheriff's Office. We've got boxes of evidence,
16 1, 2, 3, 4 boxes and 3 bags. They're going to come in through
17 all different witnesses at all different times. If you want
18 to sequester her, put her down the hall, we can send for her
19 every single time I need to take a piece of clothing out of a
20 box through a witness or we can have her in the courtroom so
21 that she'll be available to hand it up. She's in charge of
22 the evidence. She will not be a fact witness.

23 THE COURT: Mr. Axelrod, your position on that?

24 MR. AXELROD: Your Honor, as long as the Court would
25 caution the evidence custodian that she, she would be, in a

1 way, sequestered herself that anything that she hears or she
2 sees during this trial she could not say to anybody else and I
3 would think with a caution to her we would have no objection.
4 It would help the trial go quicker with her here and I've
5 actually spoke with her about that, that I was not opposed to
6 that. I would just like her to be aware that if she was to
7 hear somebody say blue that she could not go home even to her
8 husband or her boyfriend and say, "Hey, they said blue," that
9 she would also be, as a juror, she would have to keep it
10 within herself of what she's heard.

11 THE COURT: All right, and I'm sorry, her name again?

12 MR. BRYAN: I'm sorry. I called her Joyce Phillips,
13 but she was married and she's Joyce Whelan.

14 THE COURT: Joyce Whaley?

15 MR. BRYAN: Whelan.

16 THE COURT: All right, Ms. Whaley [sic], you
17 understand that even though you're a witness in this case and
18 we're sequestering the witnesses you will not be allowed, I
19 mean, you will not be required to leave the courtroom, just
20 out of a convenience, but by the same token, you cannot
21 discuss any witness's testimony with anyone. You understand
22 that?

23 MS. WHELAN: Yes, sir, Your Honor.

24 THE COURT: All right, thank you very much.

25 All right, Mr. Bryan, you can continue.

1 BY MR. BRYAN:

2 Q How did you get involved in this case?

3 A I was told to report back to my Sheriff's Office to meet
4 with the subject.

5 Q Well, okay, so, first did you get a BOLO?

6 A No, sir, we did not at first.

7 Q Okay, what happened? You've got -- you were told to
8 report back and meet with the subject?

9 A Yes, sir.

10 Q Okay.

11 A When I arrived back at the Sheriff's Office I met with
12 Marco Pantovich and he explained to me that he believed his
13 father had been involved in a crime in South Carolina and was
14 on his way to North Carolina.

15 Q What information did you receive from him about what
16 crime?

17 A He told me that his father had killed his girlfriend and
18 placed her in the trunk of his car and was driving to his
19 house.

20 Q Did you get any kind of a description of a vehicle?

21 A Yes, sir, I did.

22 Q What did he tell you?

23 A He told me it was a gray or blue Mercury.

24 Q All right, did he say what kind of Mercury or what it
25 looked like?

1 A He said it looked like a patrol car.

2 Q Like a patrol car?

3 A Yes, sir.

4 Q Okay, and were you also informed by anybody of the
5 license plate?

6 A Yes, sir, I was. After I talked to Marco I contacted --
7 at the time I thought it was Horry County communications but I
8 believe it was possibly Georgetown communications now and they
9 was able to give me a BOLO on the vehicle.

10 Q Okay, so, you got a license plate as well?

11 A Yes, sir, I did.

12 Q And did you come in contact with that vehicle?

13 A I did, sir.

14 Q When and where?

15 A I come in contact with that vehicle that morning at about
16 five after six traveling on Highway 16 South in our county.

17 Q Why were you there?

18 A That was by the most direct route to Marco's house from
19 South Carolina.

20 Q Okay, and did you receive some information that Marco
21 believed that his dad might be on the way to his house?

22 A Yes, sir.

23 Q Okay, so, you went and basically staked out the road ---

24 A Yes, sir, we did.

25 Q --- between Horry County or Georgetown County and Marco's

1 house?

2 A Yes, sir.

3 Q All right, what happened?

4 A As we saw the vehicle we initiated a felony vehicle stop
5 on the vehicle.

6 Q And what happened next?

7 A We got Mr. Pantovich out of the vehicle. I patted him
8 down, placed him in the back of my patrol car.

9 Q And when you placed him in the back of the patrol car did
10 you handcuff him or not?

11 A I did.

12 Q And did you give him his Miranda warnings?

13 A Yes, sir, I did.

14 Q And obviously, he was in custody at that time; is that
15 right?

16 A Yes, sir, he was.

17 Q And when you gave him his Miranda warnings did you do it
18 off the top of your head or did you use a form?

19 A No, sir, I used a form.

20 Q Do you have the form with you?

21 A I do, sir.

22 Q And did you -- let me -- can we get a copy, give me that
23 copy.

24 MR. AXELROD: May I see that, Your Honor?

25 (Court's Exhibit Number Three [Miranda Warning Form])

1 appropriately marked.)

2 MR. BRYAN: That's been marked Court's for
3 identification purposes three.

4 BY MR. BRYAN:

5 Q What is that?

6 A This is my Miranda rights waiver and warning form.

7 Q And what did you advise Mr. Pantovich?

8 A I advised Mr. Pantovich, "I do not have to answer any
9 questions or say anything. Anything I say or do can be used
10 as evidence against me in a criminal trial. I have a right to
11 talk to a lawyer before or after questioning or have a lawyer
12 present with me during questioning. If I cannot afford a
13 lawyer and want one, arrangements will be made to obtain a
14 lawyer for me. If I am now willing to discuss the offense
15 under investigation with or without a lawyer present I have a
16 right to stop answering questions at any time or speak to a
17 lawyer before answering further even if I sign the waiver
18 below. I understand I am under arrest at this time and I am
19 not free to leave at any time I desire."

20 Q Did he appear to be under the influence of alcohol or
21 drugs at that time?

22 A No, sir.

23 Q Did he appear to understand the warnings you gave him?

24 A Yes, sir, he did.

25 Q Did you threaten him to get him to make any statements?

1 A No, sir, I did not.

2 Q Did you coerce him in any way?

3 A No, sir, I did not.

4 Q Did you make any promises or hope of reward?

5 A No, sir.

6 Q Did you -- did he, at that time that you gave him his
7 warning, did he make any statements at that time?

8 A When I make the -- when I read the Miranda Rights out to
9 him I ask him if he understands each right and he said yes to
10 every right, "I understood," I read to him.

11 Q Okay, did he choose to make -- and you noted that on the
12 form?

13 A Yes, sir.

14 Q And did he sign it?

15 A No, sir, he did not.

16 Q Okay, why not?

17 A He was handcuffed, sir.

18 Q Okay, and so, you wrote down that he understood and then
19 did he choose to give you a statement?

20 A No, sir, he did not.

21 Q What did he say?

22 A He wanted an attorney.

23 Q Okay, and so, when he asked for an attorney what does
24 that mean to you?

25 A That means I stop asking any questions.

1 Q And did you ever ask him any other questions or
2 interrogate him?

3 A No, sir, I did not.

4 Q All right, what happened -- did he ever make any
5 statements to you?

6 A Yes, sir, he did.

7 Q And tell the Court about that.

8 A Shortly after I mirandized him probably three minutes,
9 three or four minutes after that, he stated, "Tell my son he
10 did the right thing."

11 Q Okay, when -- did you make any notes about when he said
12 that?

13 A Yes, sir, I did.

14 Q When was that?

15 A That was about 0620 in the morning.

16 Q Okay, and again, did you ask him anything to get him to
17 say, "Tell my son he did the right thing?"

18 A No, sir, I did not.

19 Q All right, did he make any other statements?

20 A Yes, sir, he did. About four minutes after that at 0624
21 he stated, "I just lost it, man."

22 Q And did you give it -- did you say anything to him to
23 elicit that statement?

24 A No, sir, I did not.

25 Q Okay, why was he in your patrol car? What were you all

1 doing?

2 A At that time we were standing by for other officers to
3 respond to us.

4 Q All right, so, are you -- what's your role? You're the
5 -- a deputy or you're an officer, not an investigator; is that
6 right?

7 A No, sir, I'm a patrol deputy.

8 Q So, when you find a dead body in a trunk what do you do?

9 A We call a detective.

10 Q All right, and what do you, what do you do with the
11 vehicle and the dead body?

12 A We secure the vehicle.

13 Q And what do you do with the person who was driving the
14 car with the dead body in the trunk?

15 A We also secure the, secure that subject.

16 Q All right, do you move them or transport anybody?

17 A Sir?

18 Q Do you move the Defendant or anybody else?

19 A No, sir.

20 Q You just hold on to them till the investigator gets
21 there.

22 A Yes, sir.

23 Q Did Mr. Pantovich ever make any other statements in your
24 presence later on?

25 A I was present when he was transported to the bond

1 hearing, sir.

2 Q Explain the -- explain the process for the transporting
3 to the bond hearing, at least the part that you're aware of.

4 A The way our office is set up our jail, courthouse,
5 sheriff's office is all in one building and they are walked
6 from the jail to the magistrate's office for the bond hearing
7 to have a bond set.

8 Q All right, maybe inform the Court of how far they go
9 from where to where:

10 A They go from the jail where the processing room to the,
11 to the magistrate's office.

12 Q And is the magistrate's office in the same building or a
13 different building?

14 A It's in the same building, sir.

15 Q Okay, and is media, members of the media are they
16 allowed, is that a public forum during the bond hearing?

17 A Yes, sir, it is.

18 Q Are they routinely allowed in?

19 A Yes, sir.

20 Q And who makes that decision whether the media is allowed
21 in? Do you make that decision or the Sheriff's Office or the
22 Judge make that decision?

23 A I'm sorry, sir. I don't -- do not know.

24 Q All right, so, during the -- where in that process did
25 the Defendant make a statement that you, that you heard?

1 A As he was walking down the hallway towards the
2 magistrate's office.

3 Q Was it on the way or on the way back?

4 A On the way.

5 Q Okay, so, it was before the bond hearing, on the way to
6 the bond hearing.

7 A Yes, sir.

8 Q Clearly he's in custody?

9 A Yes, sir.

10 Q And he's either in the jail or on the -- in a hallway on
11 the way to the jail.

12 A He's in the hallway on the way to the jail.

13 Q And did you or any other member of law enforcement
14 interrogate him at that time?

15 A No, sir.

16 Q Who asked the questions?

17 A The reporters did.

18 Q Okay, and was that caught on tape to your knowledge?

19 A Yes, sir, it was.

20 Q Did you have a chance to view the video?

21 A I did, sir.

22 Q Did it fairly and accurately reflect what had been said?

23 A Yes, sir.

24 Q You ask any questions to get him to say what he said?

25 A No, sir, I didn't ask him any questions.

1 Q What did he say?

2 A I don't remember verbatim, sir, but he did say that
3 something to do with the fact that she was on pills, Methadone
4 and Morphine, maybe, and that -- that's ---

5 Q Did he say he couldn't take it anymore?

6 A Something like that, to that effect, sir.

7 Q Did you, did you or anybody to your knowledge ask the
8 media to ask him any questions?

9 A No, sir, not that I know of.

10 Q Certainly, did you?

11 A No, sir.

12 Q I don't have any other questions.

13 EXAMINATION

14 BY MR. AXELROD:

15 Q Who called the media?

16 A I do not know, sir.

17 Q Is it standard to call the media?

18 A Most of the media in our area have scanners and come out
19 for major things.

20 Q You said you had some notes I think.

21 A Yes, sir.

22 Q Do you have them with you?

23 A I do, sir.

24 Q Can I see them, please?

25 A Sure.

1 Q Let me ask you a question.

2 A Yes, sir.

3 Q Sir, you read this to Walt?

4 A Yes, sir, I did.

5 Q And you read his -- each right and you've answered that

6 he understood what you said.

7 A Yes, sir.

8 Q Then did you read him both of the boxes that are at the

9 bottom of this sheet?

10 A Yes, sir.

11 Q What did you read to him? Tell the Court what you

12 read. You asked him several questions. What were they?

13 A Yes, sir, ask him which questions, sir?

14 Q After he told you that he understood all the Miranda,

15 what were the following questions you asked him?

16 A ``Understanding my rights as stated above I am now

17 willing to discuss the offenses under investigation without a

18 lawyer being present. I do not want to give up my rights. I

19 want a lawyer. I do not want to be questioned or say

20 anything.''

21 Q Now, did you ask him if he wanted a lawyer?

22 A Yes, sir.

23 Q And then you marked that he wanted a lawyer. Did you

24 specifically ask him, also, ``Mr. Pantovich, do you not want

25 to be questioned or say anything?'' Did you ask him that

1 question?

2 A I believe I did, sir.

3 Q There's no mention of, there's no notation here; is
4 there?

5 A No, sir.

6 Q No notation of his answer because in all the other
7 questions that you asked him you have notations of what he
8 said. Here it appears that you didn't even ask this question.

9 That's all.

10 THE COURT: Redirect?

11 MR. BRYAN: No, Your Honor.

12 THE COURT: All right, you may step down. Call your
13 next witness.

14 MR. BRYAN: That's all the witnesses.

15 That's all the witnesses, Your Honor.

16 THE COURT: All right, Mr. Axelrod.

17 MR. CASTRO: The Defense calls Mr. Pantovich.

18 WHEREUPON, VLADIMIR WALT PANTOVICH WAS CALLED TO THE
19 STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

20 THE CLERK: Thank you. Please be seated and state
21 your name for the record, please.

22 THE COURT: I'm sorry. Go ahead and state your name
23 for the record.

24 MR. PANTOVICH: Walt Pantovich, Vladimir Walt Pantovich.

25 THE COURT: All right, before we go forward, let me

1 see the attorneys up here.

2 (Whereupon, a bench conference was held.)

3 THE COURT: All right, thank you. All right, Mr.
4 Pantovich, I understand that you are going to be testifying in
5 this hearing. Now, the purpose of this hearing is simply to
6 determine the voluntariness of statements allegedly made by
7 you.

8 A Yes, sir.

9 THE COURT: Now, the fact that I rule on the
10 voluntariness of those statements does not mean that it cannot
11 then again be challenged in front of the jury because we have
12 two different standards that I go by to determine the
13 admissibility of the statements and then one that the jury,
14 the standard that this jury uses. However, just like at the
15 trial and I'll question you now you're not required to testify
16 at this point in time but you're permitted to do so. Now, the
17 reason that we have these hearings outside the presence of the
18 jury is so that the jury will not be influenced by anything
19 that is said during this hearing because the sole purpose of
20 this hearing is to determine legally whether or not the
21 statements allegedly made by you are admissible in court;
22 okay?

23 A Yes, sir.

24 THE COURT: So, you understand that you do not have to
25 testify even in this hearing. You understand that?

1 A Yes, sir.

2 THE COURT: And that this is a voluntary choice by you
3 to testify, keeping in mind that the purpose of this hearing
4 and I will limit the purpose of this hearing solely to
5 determine the voluntariness of statements allegedly made by
6 you; do you understand that?

7 A Yes, sir.

8 THE COURT: All right, Mr. Axelrod, is there any other
9 instructions you want me to give to the Defendant?

10 MR. AXELROD: No, that was fine, Your Honor.

11 THE COURT: Okay, all right, Mr. ---

12 MR. CASTRO: Castro.

13 THE COURT: --- Castro. I'm sorry. Go ahead.

14 MR. CASTRO: Thank you, Your Honor.

15 EXAMINATION

16 BY MR. CASTRO:

17 Q Walt, I'm going to hand you the Court's Exhibit, I'm
18 sorry, the exhibit, I didn't see the exhibit number for that,
19 Court's Exhibit Three. I'm going to give you just a second to
20 look at that. I'm going to point out that date and time, give
21 you a second to refresh your recollection.

22 Now, on the 8th of March, 2006, at some point in time
23 were you handcuffed and put in the back of this deputy's car?

24 A Yes, sir.

25 Q And do you recall approximately what time that was?

1 A I really don't know. I know it's early morning. I was
2 in really bad state of mind and it was real early in the
3 morning.

4 Q Had you had any sleep?

5 A No, sir.

6 Q Were you stressed?

7 A Very much.

8 Q Were you scared?

9 A Yeah.

10 MR. BRYAN: Objection to leading, Your Honor, I'd ask
11 that he ask what his state of mind was, not were you stressed,
12 were you scared.

13 THE COURT: Let's don't lead. Go ahead.

14 MR. CASTRO: Your Honor, that requires either a yes or
15 a no answer.

16 THE COURT: All right.

17 MR. CASTRO: Yes, sir.

18 BY MR. CASTRO:

19 Q Did you recall this deputy asking you a series of
20 questions?

21 A I think he gained some weight since, but I don't -- I
22 don't remember him.

23 Q Do you recall this deputy handing you a sheet of paper
24 and letting you look at something?

25 A Well, at the arrest I don't remember that.

1 Q At the arrest.

2 A I don't remember that.

3 Q Were you restrained by handcuffs at this time?

4 A Yes, I was.

5 Q Did you tell him that you wanted a lawyer?

6 A In one period of time I think I told him I wanted a
7 lawyer when I was in the car after a while when they put me in
8 the car.

9 Q Did you actually check the box on this form? Is that
10 your handwriting?

11 A No, it's not my handwriting.

12 Q At this point in time where were your hands when you're
13 in the back of that police car?

14 A I don't remember they're in the back or the front. I
15 don't remember. I really don't.

16 Q What was around your hands?

17 A What was around my hands? Handcuffs.

18 Q Do you remember checking that box, "I do not want a
19 lawyer?"

20 A I don't remember.

21 Q Did you sign that ---

22 A Not, not, not, not in the car, not in the car.

23 Q Did you sign that form anywhere?

24 A Not in the car.

25 Q Were you coerced to making any statements when you're in

1 this police car?

2 A Was I forced? Was I forced?

3 Q Coerced.

4 A No, sir.

5 Q Were you under duress?

6 A What does duress means?

7 MR. CASTRO: Your Honor, may I define?

8 THE COURT: Yeah, go ahead.

9 BY MR. CASTRO:

10 Q Harsh conditions?

11 A Yes.

12 Q Did you make that statement freely and voluntarily?

13 A Then I was distressed, that I was distressed.

14 Q No.

15 A What statement?

16 Q Did you make a statement to this deputy?

17 A What statement?

18 Q When you were in the police car did you ever make a

19 statement?

20 A I said, I said some things.

21 Q Were you coerced into making that statement?

22 A Was I -- no, sir.

23 Q Later on that day do you recall being at a police

24 station?

25 A Yes.

1 Q Do you recall seeing members of the media there?

2 A Yes.

3 Q At some point that morning were you moved from one area
4 of that law enforcement building to another area?

5 A Yes.

6 Q At that time had you had any sleep?

7 A No.

8 Q Had you had anything to eat?

9 A No.

10 Q Had you had anything to drink?

11 A I don't recall. Maybe I had some water. I don't recall
12 it.

13 Q Were you suffering from stress at that point in time?

14 A Yes, I was.

15 Q Did you see anybody else, any other members of the public
16 besides law enforcement and this TV crew?

17 A There a bunch of people there and I recall I was almost
18 to the breaking point because when I -- when we left the room,
19 when I went to, I don't know who the sergeant's office, I just
20 broke down, tears just start falling out, falling out my eyes.
21 I just completely broke down.

22 Q Were you under duress when you made that statement?

23 A What statement?

24 Q Did the media, did anybody in the media ask you a
25 question?

1 A Well, I don't remember exactly what they asked, but I
2 know I told them that the pills, the Methadone killed, killed
3 her.

4 Q Were you coerced into making that statement?

5 A No, sir.

6 MR. CASTRO: The Court's indulgence one moment, Your
7 Honor.

8 THE COURT: All right.

9 BY MR. CASTRO:

10 Q We're going to step back just one moment. When you are
11 in this deputy's car, did police officers engage you in
12 conversation?

13 A He asked me if I wanted cigarette. He gave me cigarette.
14 I stepped outside. He -- I had cigarette. I told him who my
15 son was, that he was, my son was working there fire
16 department, volunteer fire department, and I did tell him that
17 I lost it, and I did tell him that I lost it because she lock
18 me up too many times for no reason.

19 Q When you were asked that question about cigarettes, did
20 you feel like you were obligated to respond?

21 A To a cigarette?

22 Q To the question. You said this deputy engaged you in
23 conversation, you were engaged in conversation. Did you feel
24 at this point that you were obligated to respond?

25 A I guess. I don't know. He asked for cigarette, I needed

1 a cigarette. I was smoking at the time and ---

2 Q Now, moving forward back to the police station, did
3 anybody engage you in conversation when you were at the police
4 station?

5 A Not really, not really.

6 MR. CASTRO: One more moment, Your Honor, if I may.

7 THE COURT: All right.

8 MR. CASTRO: Nothing further, Your Honor.

9 THE COURT: All right, Mr. Bryan.

10 MR. BRYAN: Just one thing, Your Honor.

11 EXAMINATION

12 BY MR. BRYAN:

13 Q The person who offered -- well, maybe not just one thing.
14 The person who offered you a cigarette wasn't that officer.
15 Do you remember who it was?

16 A I really don't remember, sir.

17 Q Okay.

18 A I really don't remember.

19 Q And other than offering you a cigarette any other
20 conversation the officers had with you at the time you were in
21 the car there?

22 A They, they were -- I don't -- they were saying I don't
23 have to say whatever I did -- sir, I was in so much stress at
24 that point, I don't remember everything what happened. If you
25 have two guns on top of your head laying on the ground, I was

1 scared. I was lost.

2 Q Yeah.

3 A And I don't remember every little detail what happened
4 there, sir.

5 Q But the details you do remember are that you were offered
6 a cigarette and they ---

7 A Yes.

8 Q --- were saying you don't have to say whatever.
9 That's what you testified to; right? You have to answer out
10 loud.

11 A Sir?

12 Q You have to answer out loud. Do you remember any other
13 statements or conversation that they engaged you in other
14 than, "Do you want a cigarette? You don't have to say
15 anything?"

16 A They didn't say do I want a cigarette, you don't have to
17 say any -- they never, no, nobody said that.

18 Q Okay, so ---

19 A I assumed that I didn't have to say anything. They
20 didn't ask me about the case. They didn't ask me about stuff
21 like that.

22 Q They did not ask you about the case.

23 A No, sir.

24 Q They did not ask you about stuff like that.

25 Any other conversation that you recall other than, "You

1 don't have to talk about the case?" They told you that;
2 right, and they told you ---

3 THE COURT: Excuse me, you've got to give, give a
4 verbal response.

5 A Yes.

6 Q And someone, not McKinney, but somebody offered you a
7 cigarette; right?

8 A I don't know who. Well, maybe it was him, maybe it was
9 somebody else. I don't remember.

10 Q Besides those two things, any other conversation that
11 you can recall that they had with you, that any law
12 enforcement officers, police had with you?

13 A They also loosen up my handcuffs because they asked me --
14 I asked to loosen up my handcuffs. They loosen up my
15 handcuffs. I remember that much. I remember that from
16 reading a motion discovery two years ago.

17 Q They loosened your handcuffs?

18 A Sir?

19 Q They loosened your handcuffs?

20 A Yes, sir.

21 Q Any other conversation that any police officers had that
22 you recall?

23 A We was talking about my son, who my son was. That's
24 about all I remember.

25 Q When you say, "We were talking about who my son was,"

1 you said, "He did, tell my son he did the right thing," did
2 you say that?

3 A Yeah, I said that. Yes, sir.

4 Q Were you under the influence of any alcohol or drugs at
5 the time that you ---

6 A No, I had, I had, I had some drinks in the afternoon the
7 day before probably about four o'clock, something like
8 that.

9 Q How many drinks?

10 A I don't remember, two, three drinks maybe.

11 Q Two or three drinks?

12 A Yes, sir.

13 Q Of what kind, alcohol?

14 A I stopped by the bar, beer and Jack Daniels.

15 Q Okay, what bar was it?

16 A In Garden City, Lighthouse.

17 Q And that was the afternoon before, that being the day
18 that Sheila died.

19 A Yes, sir.

20 Q And that was around three or four in the afternoon?

21 A Probably after four because I worked, I worked that day
22 and ---

23 Q What were you doing at work that day?

24 MR. AXELROD: Your Honor, we're here for a Jackson v.
25 Denno and now we're going into a trial.

1 THE COURT: Sustained, I sustain.

2 Q You testified that you said you lost it because, "She
3 locked me up too many times for no reason." What were the
4 times that she locked you up for no reason?

5 MR. AXELROD: Your Honor, we're here for a Jackson v
6 Denno. We're not here for a trial.

7 THE COURT: Sustain the objection, sustained.
8 We're dealing with strictly with voluntariness of the
9 statement.

10 MR. BRYAN: I don't have any other questions.

11 THE COURT: Redirect?

12 MR. AXELROD: No, sir, Your Honor.

13 EXAMINATION

14 BY THE COURT:

15 Q Mr. Pantovich ---

16 A Yes, sir.

17 Q --- the police placed the handcuffs on you.

18 A Yes, sir.

19 Q Then they told you you did not have to say anything;
20 correct?

21 A Sir, I don't remember all of that. I really don't. I
22 was in so much stress I don't remember that, sir. I really
23 don't remember what. I know they told me, man, when I was --
24 when they pull me over I don't remember my windows on the car
25 don't work. So, I had my both hands and I just had my hand

1 down. They were behind it. They just said louder for me to
2 step out of car. Then I opened the door and then I heard what
3 they were saying. They put ---

4 Q And what were they saying?

5 A To put my hands out and then to lay down and stuff. They
6 came over with guns then and then I ---

7 Q Did they -- did you ever hear them tell you that you had
8 the right to talk to a lawyer?

9 A Sir, I don't remember that. I really don't remember
10 that. I don't remember they told me that when I, when I came
11 -- went to police station or before that. I really don't
12 remember, sir.

13 Q Okay, what I'm trying to find out is at what point in
14 time did somebody come up and offer you a cigarette and said,
15 "Do you want a cigarette?"

16 A I was sitting in the car.

17 Q In the police car or in your car?

18 A In the police car, in police car.

19 Q You were sitting in the police car.

20 A Yes, sir.

21 Q The person that offered you the cigarette were they in
22 the police car with you or were they outside the police
23 car?

24 A Well, there was some people outside police car, there was
25 policeman in the car at the driver's seat. I don't know which

1 one offered me cigarette, sir.

2 Q Okay, all right.

3 THE COURT: Any questions in response to my
4 questioning?

5 MR. AXELROD: No, sir, Your Honor.

6 MR. BRYAN: No, Your Honor.

7 THE COURT: All right, all right, you may step
8 down.

9 A Thank you, sir.

10 THE COURT: All right, Mr. Castro, Mr. Axelrod, any
11 other witnesses?

12 MR. AXELROD: No, sir, Your Honor, that'd be
13 all.

14 THE COURT: All right, anything in reply?

15 MR. BRYAN: No, sir, Your Honor.

16 THE COURT: All right, all right, I find that the
17 State has satisfied the Jackson v. Denno requirements, only
18 you can still argue the voluntariness to the jury, but there's
19 a different standard as I understand. It's a preponderance of
20 the evidence is what I consider. So, I rule that "Tell my
21 son he did the right thing," and, "I just lost it, man,"
22 those are admissible.

23 The language on the videotape, the statement is
24 admissible but I want to review the video to see whether or
25 not you're going to be able to show the video or whether or

1 not it's going to be limited to somebody just testifying as to
2 what was said. All right?

3 MR. AXELROD: Yes, sir.

4 THE COURT: All right, anything else before we recess?
5 Where have you got -- is there -- is that video like on the
6 computer where you can bring it back in my office and let me
7 take a look at it or do I need to see it out here?

8 MR. BRYAN: Yes, sir, I think you can probably just
9 play it on yours. If not, I can bring it back to your office.
10 I'd rather not unplug mine because when I tried to get on it I
11 couldn't sign on and they had to call MIS up here and they
12 signed on for me, so. What -- you want to just see if you can
13 play it and then we'll -- it's about 20 seconds. You can come
14 look at it up here if you need to.

15 THE COURT: All right, I'll need to view the video and
16 I've still got to rule on the 911 call. Anything else that I
17 haven't ruled on?

18 MR. BRYAN: No, I don't think so.

19 THE COURT: All right. Thank you very much. We'll
20 stand in recess probably about 10 to 15 minutes, all
21 right.

22 *****OFF THE RECORD*****

23 (On the record.)

24 (Whereupon, the following takes place outside the
25 presence of the jury.)

1 MR. BRYAN: Your Honor, may we approach?

2 THE COURT: Okay.

3 (Whereupon, a bench conference was held.)

4 THE COURT: All right, anything else?

5 MR. BRYAN: No, no, Your Honor.

6 THE COURT: All right, I've viewed the video. Number
7 one on the 911 call, kind of a motion in limine, I do grant
8 the motion to suppress -- well, first, what does it say? It
9 was from October 2005.

10 MR. AXELROD: I haven't even listened to it, Your Honor.
11 I just think that it's outside the realm of the case. I just
12 brought it up.

13 THE COURT: Well, what I'm saying is it's like the
14 photographs. At this point in time I don't see where it has
15 anything to do with this case. So, I grant your
16 motion.

17 MR. AXELROD: Thank you.

18 THE COURT: However, if during the presentation of
19 your case, this is like a motion in limine, if during the
20 presentation of your case you open the door that makes it
21 admissible that does not preclude them from offering it at
22 that time.

23 MR. AXELROD: I would understand that, Your
24 Honor.

25 THE COURT: Yeah.

1 MR. AXELROD: Yes, sir.

2 THE COURT: All right, so, that motion is granted. As
3 to the video, the statements made on it are admissible, but
4 I'm not going to allow you to show the video to the jury. You
5 can certainly ---

6 MR. BRYAN: I understand the Court's ruling and I
7 appreciate that. With respect to that, just for
8 clarification, I'd ask for the same ruling or similar ruling
9 that you made with the 911 tape, which is if Defense counsel
10 opens the door, if Mr. Axelrod starts or Mr. Castro starts
11 questioning about the fact that Mr. -- Officer McKinney is the
12 only one who heard the statement or implying that he didn't
13 really make the statement or that there was a crowd of people
14 there but you're the only one here to make this statement,
15 that that would open the door for the admissibility of the
16 tape so that they're on notice that they're opening the door.
17 I mean, if they're going to challenge the accuracy or the
18 authenticity or the conditions under which the statement are
19 made, that clearly they're going to open the door. I mean,
20 clearly he made the statement and the officer can testify to
21 the statement as you've ruled and if he testifies accurately
22 to what's on the tape and then they launch into cross
23 examination impugning the veracity of the officer or in some
24 way calling into question the accuracy of his testimony, then
25 at that point clearly I would be able to put that tape in to

1 show that it was an accurate statement and the conditions
2 under which it was made. Is that fair?

3 THE COURT: I mean, that may very well open the door.
4 What I'm saying is just viewing the video of itself, the video
5 that shows him coming in in an orange jumpsuit behind bars,
6 handcuffed, police, that there is a prejudicial effect that
7 outweighs any probative value.

8 MR. BRYAN: Right.

9 THE COURT: But the statements are admissible but not
10 the video. Now, if they during the course of this trial
11 create a situation where the probative value then outweighs
12 the prejudicial effect that might reverse the ruling at a
13 later time.

14 MR. BRYAN: Thank you, Your Honor.

15 MR. AXELROD: Your Honor, in response to the Solicitor,
16 I didn't understand a thing you said in actuality, but from
17 what I heard the Court say was that the statement would be
18 admissible, the video would not be.

19 THE COURT: Right.

20 MR. AXELROD: And then the State said, he said that if I
21 was going to question the authenticity of the statement that
22 that would open the door.

23 THE COURT: What he's saying is if you are saying --
24 if you try to argue to the jury that the statement he made in
25 this video ---

1 MR. AXELROD: Was never made.

2 THE COURT: --- was never made, was involuntary, is
3 portrayed inaccurately, was done in the privacy of just your
4 client and the police officer ---

5 MR. BRYAN: Or where are all the other people?

6 THE COURT: --- then he can show the video to show,
7 you know, to contradict your allegations, and I think he's
8 right on that.

9 MR. AXELROD: I understand that, and I have no problem
10 with that, Your Honor, because we stand by the Court's ruling
11 that the statement would be admissible and the statement, as
12 far as I understand, see, this is what concerns me, Your
13 Honor, the statement is coming in through his witness. It's
14 not coming in through my witness. He's going to put it in
15 through the police officer. So, where would the authenticity
16 problem be? That was what I did not understand in his
17 argument.

18 THE COURT: Okay.

19 MR. BRYAN: There was a question asked.

20 THE COURT: All right, we've got it straight.

21 All right, is the jury here?

22 BAILIFF: Yes, sir.

23 THE COURT: All right, anything before we go ahead and
24 get started in the trial of this case? All right, let's take
25 about a 10-minute recess. Then we'll bring the jury in.

1 We'll start with opening arguments. Well, we'll do the
2 preliminary charges, re-swear the jury, do opening arguments;
3 okay?

4 MR. BRYAN: Thank you, Your Honor.

5 THE COURT: All right.

6 MR. AXELROD: Thank you, sir.

7 THE COURT: Thank you. Stand in recess for about 10
8 minutes.

9 *****OFF THE RECORD*****

10 (On the record.)

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: All right, anything from the State before
14 we bring the jury in?

15 MR. BRYAN: No, Your Honor, other than just
16 scheduling. You're anticipating that we do opening arguments,
17 call our first witness, probably, is that before lunch?

18 THE COURT: Let's see 20 till 11. I don't know how
19 long you all are going to spend on opening statements. You
20 know, I'd kind of like to probably break for lunch around
21 noon.

22 MR. BRYAN: Okay.

23 THE COURT: Do we want to get -- can we get a witness
24 in or do we want to go through opening statements and then
25 break or ---

1 MR. BRYAN: I think potential exists that he could be
2 a lengthy witness. He might be 20 minutes, 30 minutes on
3 direct, but I have no idea what. It's going to be potentially
4 a lengthy witness on cross. I don't know. So, I just --
5 whatever you want to do. I'll have him prepared. He's
6 outside.

7 THE COURT: Okay, let's -- we'll just have to kind of
8 play it ---

9 MR. BRYAN: See how long it takes.

10 THE COURT: --- yeah, we'll kind of play it by ear and
11 see what transpires.

12 All right, anything from the Defense before we bring in
13 the jury?

14 MR. AXELROD: No, sir, Your Honor.

15 THE COURT: All right, bring in the jury, please.

16 BAILIFF: Yes, sir.

17 (Whereupon, the following takes place in the presence of
18 the jury.)

19 THE COURT: All right, ladies and gentlemen, welcome
20 back. I don't know if anybody mentioned or reminded you. Have
21 you had a chance to select a foreperson as of yet? Okay, and
22 did you write it down or who is? All right, and your name?

23 MS. ALFORD: Linda Alford.

24 THE COURT: All right, Ms. Alford. All right, that's
25 Juror Number 16, Linda S. Alford, is the foreperson of this

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1 jury. As I instructed you yesterday, if you would always
2 occupy that seat. Our alternates should always occupy the two
3 seats where you are now and then the rest of you are at
4 liberty to sit wherever you choose throughout the course of
5 this trial. As I said, you can choose the same seat. You can
6 choose different seats. It's entirely up to you.

7 Now, at this time, we are getting ready to begin the case
8 of the State of South Carolina versus Vladimir Pantovich, and
9 before we can begin the trial I want to let you know what you
10 can expect and what is expected of you in this trial. This
11 trial will be probably a little bit different from what you're
12 accustomed to, especially from watching TV shows, movies,
13 things of that nature. Those trials are usually full of
14 drama, a lot of action, a lot of anticipation, a lot of
15 mystery, things of that nature and this case may be that way.
16 Usually they're not though, but they may be and I hope that
17 you do find this case educational and I hope that you do find
18 it a worthwhile service that you are performing.

19 Now, the attorneys appearing before you are advocates for
20 the parties they represent, but first and foremost they're
21 officers of the court. They're sworn to uphold the integrity
22 and fairness of our judicial system and you can expect them to
23 be professional, competent and ethical in their representation
24 of their clients' interests. Likewise, they expect the same
25 from you, that you likewise be professional, reasonable and

1 ethical as you serve on this jury. As I told you yesterday,
2 the first thing I want to ask you as jurors is that you turn
3 off any cell phones, any pagers or any communication devices
4 that might interrupt you during the course of this trial
5 because during the course of this trial we will need your
6 undivided attention to the witnesses as they testify, to
7 review the evidence as it's admitted into evidence or the
8 exhibits as they are admitted into evidence. Next is we will
9 periodically be taking breaks. We'll be breaking for lunch.
10 We'll be breaking for the evening. We'll be breaking for
11 various matters and I recognize that emergencies do arise.
12 If you have an emergency come up, if you have transportation
13 problems, if you have some other emergency, please, do not
14 hesitate to give us a call. Oftentimes we can assist you with
15 that emergency, certainly if it is a transportation problem,
16 you have a flat tire or whatever, you'll get the quickest,
17 best help you've ever had in your life because we'll send
18 somebody from the Sheriff's Department right out to pick you
19 up. It won't be any problem. So, please don't just not show
20 up. Call and let us know what your emergency or what your
21 situation is.

22 Last, but certainly not least I want to ask that you pay
23 close attention during the course of this trial. This is the
24 State and the Defendant's day in court. These are matters
25 that are very important to them.

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1 Now, before I go forward with the general charges at this
2 time I will ask the clerk if he will swear the jury in.

3 (Whereupon, jury sworn by Clerk.)

4 THE COURT: All right, ladies and gentlemen of the
5 jury, at this time I'll give you some preliminary charges and
6 these charges are really to let you know why you are here. As
7 the jury in this case you are the sole judge of the facts of
8 this case. Your job is to determine what the facts of this
9 case are. You're to determine the facts only from the
10 testimony you hear and any other evidence that is presented
11 during this trial. You should not be influenced by any
12 opinions or statements you may have heard outside of the
13 courtroom. If at any time I make a comment which leads you to
14 believe that I have an opinion as to what the facts of this
15 case are, then you're to disregard my comment because you and
16 you alone must determine what the facts of this case are based
17 upon the testimony and evidence presented at trial.

18 Now, the same law that makes you the judge of the facts
19 makes me the judge of the law, and the law as I give it to you
20 is the only law you may consider. You must accept and follow
21 the law as I give it to you even though you may disagree with
22 it. Just as I cannot tell you what the facts of this case
23 are, you cannot disagree with me as to what the law is or what
24 the law should be. Your job is to take the law as I give it
25 to you and apply it to the facts as you find them to be.

1 Now, until I advise you to begin your deliberations you
2 must not discuss this case with anyone, even your fellow
3 jurors, friends, family members or anyone else involved in the
4 case. During the trial do not read, listen to or watch any
5 news reports about the case. Do not conduct any independent
6 investigations. Do not go on the internet or read any
7 newspaper accounts and do not watch any television reports,
8 listen to any radio reports or consider anything you hear or
9 may have heard about the case outside the courtroom. It is
10 important that you keep an open mind and not decide any issue
11 in this case until all of the evidence has been presented.
12 When you are instructed to start your deliberations you must
13 discuss this case only in the jury room with your fellow
14 jurors.

15 Now, in just a minute, we'll start this case and the way
16 we start it is with the attorneys making opening statements.
17 Now, opening statements are not evidence. Opening statements
18 are simply an explanation by the attorneys of the issues in
19 this case or at least what the attorney thinks the issues in
20 this case will be. After the opening statements the evidence
21 in the case will be presented to you by the testimony of sworn
22 witnesses from the witness stand and/or by any other exhibits
23 that I rule is admissible into evidence. As the judge of the
24 law I determine what evidence is admissible at trial. As the
25 judge of the facts, you determine what evidence and testimony

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1 is believable. Once the testimony is admitted, whether or not
2 you believe it is solely for you to determine. Now, in
3 deciding whether to believe a witness you have the right to
4 consider whether the witness has an interest in the result of
5 the trial, whether the witness is prejudiced towards either
6 the Plaintiff or the Defendant, the State or the Defendant,
7 the opportunity for the witness to have seen the matters and
8 things about which the witness may testify and the way the
9 witness acts on the witness stand. You have the right to
10 consider anything that is in the record that will help you
11 evaluate the testimony of the witnesses. That means that it
12 is your duty to pay close attention to the witnesses, to
13 observe the witness, to listen to the witnesses.

14 Now, is there anything, preliminary charges or challenges
15 by the State before we begin opening statements?

16 MR. BRYAN: No, Your Honor.

17 THE COURT: Anything from the Defendant?

18 MR. AXELROD: Nothing, Your Honor.

19 THE COURT: All right, all right, ladies and
20 gentlemen, at this time we will start with the opening
21 statements. As I told you, these are not evidence. These are
22 simply statements by the attorneys as to what they feel the
23 issues are in this case and to help you to determine what the
24 issues are in this case. All right, Mr. Bryan.

25 MR. BRYAN: Thank you, Your Honor, if it please the

1 Court?

2 BY MR. BRYAN: On March 7, 2006, Vladimir Pantovich
3 murdered Sheila McPherson by beating her to death with a
4 baseball, a metal bat. He's about six foot, two, about 220
5 pounds and he beat on her five foot, three inch, 120 pound
6 frame till there was no breath left in her body and that's
7 murder. Murder in South Carolina is the unlawful killing of
8 another with malice. Malice is the killing of another without
9 just cause or legal provocation. There's no -- malice can be
10 formed at any point, in a split-second malice can be formed.
11 It's a black heart. It's the intention to take the life of
12 another and there's no amount of time that's required in
13 forming malice. In this case, the autopsy expert, the
14 forensic pathologist by the State will tell you that she
15 didn't die from just one, one beating or from one shot, that
16 there were numerous extremely forceful blows. She had broken
17 ribs, shots, multiple shots to her head, and there's no way to
18 say which blow caused her death, and in any time during that
19 brutal beating, this Defendant formed his malicious intent,
20 malice.

21 Now, the evidence in this case is going to come out
22 through first the son of the Defendant, who he called and told
23 he had killed Sheila McPherson, who is the victim in this
24 case. His son lives in North Carolina and he said that she
25 quote, unquote, attacked him and that she attacked him, that

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1 he killed her. Marco Pantovich, his son, is going to sit
2 right there and tell you that after that he contacted law
3 enforcement because he was afraid his dad was about to bring a
4 dead body to his house. He's got five kids. He didn't have
5 anyplace to put a dead body. So, he called law enforcement on
6 his own father.

7 What his father did is wrapped her up in rope and a
8 comforter, put a plastic bag over her head to keep her from
9 bleeding into his trunk, stuffed her in the trunk of his car,
10 gathered up some of the material from the crime scene,
11 including the bat that he used to kill her, and headed to
12 North Carolina. The officers from North Carolina will come
13 and testify that they arrested him on the road leading from
14 South Carolina to his son's house. When they stopped him
15 they found him to be driving the car and they got a
16 description from his son and they found her dead body in the
17 trunk next to the baseball bat. Now, at the end of the case,
18 the officers are going to testify, there'll be some Georgetown
19 Sheriff's Office people who will testify that they responded
20 to the crime scene, which was [REDACTED] in Murrells
21 Inlet section of Georgetown County. They found a little blood
22 on the door. They went in because they didn't know if she was
23 dead there or in the trunk at the time. So, they go inside
24 and find what they test to be some presumptive blood; and so,
25 at that point they get out and ask for a search warrant and

1 there will be evidence presented that obviously that was the
2 crime scene where the murder took place, and then finally
3 there will be the autopsy expert.

4 Now, what we want you to do in this case is to use your
5 common sense, just use your common sense and bring back a
6 verdict that speaks the truth because there's going to be no
7 other reasonable explanation, no other reasonable verdict
8 besides murder in this case and there will be evidence
9 presented in the form of pictures. They say a picture tells
10 -- says a thousand words. So, you're going to hear a lot of
11 testimony, but what I want to ask you to focus on is the
12 pictures in this case because they're going to show you the
13 condition, there are going to be pictures of Sheila McPherson
14 and there's going to be pictures of Vladimir Pantovich, and
15 when you get back in your juror room I want you to lay them
16 out side by side.

17 MR. AXELROD: Your Honor, we're going into an argument
18 here and we're going outside the opening statement of laying
19 out the case. He's telling the jury what they should do in
20 the jury room with the pictures. I believe it's improper and
21 impermissible in an opening.

22 THE COURT: Overruled, go forward.

23 MR. BRYAN: In this case if you line up the pictures,
24 you look at what, what you can see is the evidence, there's
25 going to be no reasonable doubt in your mind that that

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1 Defendant murdered Sheila McPherson by beating her to death
2 with a metal bat, and we ask you to bring back a verdict that
3 speaks the truth and a verdict of murder.

4 THE COURT: All right, Mr. Axelrod.

5 MR. AXELROD: Thank you, Your Honor. May it please the
6 Court.

7 Good morning, this case, in jury, the jury selection, the
8 Judge questioned everybody whether they read anything in the
9 newspaper, whether they had any preconceived opinions, had any
10 ideas, had any thought of what it should be, and I know the
11 Court actually inquired to most of the jurors that Walt sits
12 here today innocent until proven guilty, and I submit to you
13 right now that if anybody has formed an opinion of this case
14 based on what they just heard they are not taking their vow
15 seriously.

16 This is not going to be easy. We come into a courtroom.
17 We have preconceived beliefs, prejudices, opinions because
18 we're human. We're human. If we see the clouds are out
19 there, we can say, "Oh, it'll probably rain," but we're here
20 on a murder trial. You have to take your opinions. People
21 have sat in this box for 200 years. This service is the
22 closest thing to fighting in Iraq for us as Americans because
23 Walt comes in here cloaked in innocence, says, "I am not
24 guilty of murder." We don't even know what he's going to
25 say, and we better not have formed an opinion yet. You are in

1 a vacuum. You have to leave your preconceived beliefs,
2 thoughts, prejudices outside the court, and as the Judge told
3 you, this is not television, but let me tell you what this is,
4 this is real. This is real. Walt is not guilty, and you
5 cannot form an opinion till you've heard all the evidence,
6 heard all the testimony and seen all the evidence, and when
7 you've seen it and heard it all and only then will the Judge
8 tell you you can go back there and you can deliberate about
9 it. You can't even form an opinion when someone takes the
10 witness stand. You are the fact finders. You are here to
11 take in the facts, and that man up there, that Judge he will
12 give you the law that you apply those facts to and you swore
13 to take an oath that you will apply those facts to that law
14 even if you don't appreciate, agree with that law. You might
15 find out about some laws in this case that you don't agree
16 with, but you're still going to have to apply those facts to
17 the law even if it isn't what you would think it should be
18 because you took an oath, you took an oath, and it don't get
19 any bigger than this. This, this week and it, and it takes
20 out of you. You don't really want to be here, but for you 12
21 people that will be the jury ultimately you stop chaos and
22 anarchy in this world for us because Walt comes in here not
23 guilty. No matter what you think, no matter what you think
24 you've heard or read and I don't know how to tell you to set
25 that aside because only inside do you know if you can, but you

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1 got to park it outside. You got to walk in here and you've
2 got to say, "I am going to listen to the facts of this case,
3 and after I hear all of the facts of the case then I'm going
4 to deliberate," because sometimes first impression things are
5 not the way they really appear to be, but we as humans can
6 jump to those conclusions. An example would be sometimes
7 we'll ask somebody a question. We're not even listening to
8 their answer. We just want to ask another question because we
9 have our own dialogue going on, but today there's no dialogue
10 here. You need to listen to this case and what you're going
11 to hear in this case is that Walt didn't want to be with
12 Sheila anymore. He moved her out of his house, and she comes
13 over that night and you're going to hear testimony. You're
14 going to hear testimony that she was drunk. You're going to
15 hear testimony that she had all different kinds of drugs in
16 her. From the State you'll hear that. You're going to find
17 out she had Methadone in her. You're going to find out she
18 had marijuana in her. You're going to find out that she was
19 legally drunk at the time. You're going to find out she had
20 some anti-psychotic drugs in her. You're going to find out
21 that she had cocaine in her. She came to Walt's house. Walt
22 didn't want her there. You're going to hear testimony that
23 Walt told her he was going to call the police. You're going
24 to hear testimony that she yanked the telephone out of the
25 wall. You're going to hear testimony that she came at Walt

1 with an L-shaped thing from the fireplace, the thing that you
2 kind of pull logs out, got like an L-shape on it where you can
3 hook a log. You're going to hear testimony she came at Walt
4 swinging that at him and you're going to hear Walt, Walt the
5 man has been battered before. You're going to hear that he
6 took up a baseball bat and he hit her and, yes, he killed her.
7 Yes, he did. He hit her until she could not attack him
8 anymore and you're going to hear from this Court if the Court
9 allows a self-defense charge to come to you. Whether we like
10 it or not the Court will tell you that if you're justified in
11 firing the first shot, you're justified in shooting 14 more
12 times.

13 Malice, it's a legal term. Malice is a legal term
14 implying wickedness and excluding a just cause or excuse.
15 You're going to find out through testimony that Walt had a
16 reason to defend himself. You're going to find out from
17 testimony that Walt is not a wicked person. His actions were
18 not implying wickedness at the moment. Malice is the doing of
19 a wrongful act intentionally and without just cause or excuse.
20 Walt is not guilty. The term malice indicates a formed
21 purpose and design, a formed purpose, a plan, whenever formed,
22 but a plan to do a wrongful act under circumstances that
23 exclude any legal right to do it, and you're going to hear
24 testimony that Walt was within his purview to do what he did.
25 You might not like it. You might not agree with it, but you

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1 might have to apply those facts to that law. Walt's not
2 guilty.

3 THE COURT: All right, you can call your first witness.

4 MR. BRYAN: Thank you, Your Honor. If it please the
5 Court, the State calls Mark Pantovich.

6 THE COURT: All right, if someone will get Mark
7 Pantovich.

8 MR. BRYAN: I believe it's actually Marco, Your Honor.
9 I said Mark. It's Marco.

10 THE COURT: Okay, all right. Mr. Pantovich, I need
11 you to come around here, take the witness stand, please.

12 WHEREUPON, MARCO PANTOVICH WAS CALLED TO THE STAND, DULY
13 SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

14 THE CLERK: Thank you. Please be seated and state
15 your name for the record, spelling your last name, please.

16 MR. PANTOVICH: Marco Pantovich, P-A-N-T-O-V-I-C-H.

17 DIRECT EXAMINATION

18 BY MR. BRYAN:

19 Q Marco, where do you live?

20 A North Carolina.

21 Q Just generally where in North Carolina?

22 A The foothills of North Carolina.

23 Q All right, and what's the closest city or do you live in
24 a town or city?

25 A In the town of Taylorsville.

1 Q Say that again.
2 A In the town of Taylorsville.
3 Q And what, what county is Taylorsville in?
4 A Alexander.
5 Q Okay, and what do you do there?
6 A I work for myself.
7 Q And what kind of work do you do?
8 A I clean restaurant exhaust systems.
9 Q Okay, and back in 2005, 2006 were you also a volunteer
10 fireman ---
11 A Yes.
12 Q --- or work for the volunteer firemen?
13 A It was volunteer, yes.
14 Q And who do you live with there? Who do you live with?
15 A Myself and my wife and five children.
16 Q They all yours?
17 A Yes.
18 Q Okay, how old are they?
19 A 10, going down, 11, 9, 7, 6 and my new one's 11 weeks.
20 Q Eleven weeks?
21 A Uh-huh.
22 Q And who is Vladimir Pantovich to you?
23 A My father.
24 Q Okay, and just briefly describe for the jury kind of
25 what your relationship has been like with your father or where

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1 -- what your relationship is like now or was in 2005 and 2006?

2 MR. AXELROD: Your Honor, I don't understand the
3 relevance for that question. Whatever relationship might have
4 ensued what bearing does that have on this case?

5 MR. BRYAN: We can approach if you'd like us to.

6 THE COURT: All right.

7 (Whereupon, a bench conference was held in the presence
8 but out of the hearing of the jury.)

9 THE COURT: All right, I overrule your objection. I'm
10 going to allow the question.

11 MR. AXELROD: Thank you, Your Honor.

12 THE COURT: Thank you.

13 BY MR. BRYAN:

14 Q Did you have a -- well, just briefly, very briefly just
15 kind of describe the relationship with your father back in
16 2006 around the time of the incident that we're here for.

17 A It wasn't too bad. It was kind of like a on, on and off
18 thing.

19 Q Okay, and at that point you all were talking and
20 communicating?

21 A Yes.

22 Q Okay, and tell the jury what happened on the night or
23 the -- tell the jury about the conversation when your dad
24 called you and said that he was on his way to North Carolina,
25 the conversation that leads you to be here to testify in front

1 of this jury today.

2 A I had a call at 10:10 p.m. His voice kind of sounded
3 shaky. He said he killed Sheila and I'm so nervous. This is
4 ridiculous.

5 Q Let me stop you there. You -- you're here today under a
6 subpoena from the State; right?

7 A Yes.

8 Q And did you, did you voluntarily call law enforcement in
9 this issue or did somebody make you do that or was that your
10 decision to do?

11 A I wasn't made. I -- well, I was, yes, voluntarily.

12 Q Okay, but obviously, that man over there is your father?

13 A Yes.

14 Q And are you a little uncomfortable being here today?

15 A Yeah.

16 Q Okay, and are you a little nervous?

17 A Extremely.

18 Q Okay, so, take a deep breath and maybe have a drink of
19 water if you want to and tell the jury what your dad, your
20 father said to you when he called you on the phone that night.

21 A When he called me he said he killed Sheila and, oh, God,
22 I asked him what happened, and they got in an argument and
23 supposedly she was gone for four days or something like that
24 and was there and they got in some argument; and so, they got
25 -- he went to call the police and she yanked the phone cord

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1 out, and she grabbed a fire poker and started swinging and the
2 next thing you know he got the bat and struck her with it.

3 Q Okay, so, I'm going to slow you down, and you weren't
4 there obviously. You were in North Carolina?

5 A Yes.

6 Q So, what you're testifying to is what ---

7 A What I ---

8 Q --- Vladimir Pantovich told you on the phone ---

9 A Yeah.

10 Q --- when he called you.

11 A Uh-huh.

12 Q And what you, what you said is that he said that she was
13 gone for four days; is that right?

14 A Uh-huh.

15 Q And that when she came home ---

16 THE COURT: Excuse me, you need to give a yes or a no
17 response. The court reporter can't pick up the difference
18 between uh-huh and huh-uh, so if you could answer yes or no;
19 okay?

20 A Uh-huh.

21 Q Okay, so, you testified that he told you she was gone
22 for four days?

23 A Yes.

24 Q And that when she came home they got into an argument?

25 A Yes.

1 Q And he told you that she picked up, that she, she yanked

2 ---

3 MR. AXELROD: Your Honor, the Solicitor is now leading
4 the witness on each question.

5 MR. BRYAN: He's already testified to all ---

6 MR. AXELROD: Okay, so ---

7 MR. BRYAN: But it's ---

8 MR. AXELROD: --- it's been asked and answered then at
9 that point.

10 THE COURT: Okay, I sustain you on that. It's been
11 asked and answered.

12 MR. BRYAN: And Your Honor, I appreciate the ruling
13 and I'll try to move on, but obviously the witness is a little
14 bit nervous and uncomfortable and not speaking extremely clear
15 and it's very important information for the jury. So, I'm not
16 intending to ask it over and over again, but I want to make
17 sure that the testimony is clear for the jury.

18 THE COURT: Okay, well, I heard it.

19 MR. BRYAN: I understand.

20 THE COURT: And I understood it. So, let's move on.

21 BY MR. BRYAN:

22 Q Do you have caller ID?

23 A Yes.

24 Q And when the phone call was placed to you that we've
25 been speaking about was it on -- did it come up on your caller

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- 1 identification?
- 2 A Yes.
- 3 Q And what does -- what does your caller identification
- 4 set forth, what does it show?
- 5 A Vladimir Pantovich and the time.
- 6 Q What was the time?
- 7 A 10:10 p.m.
- 8 Q And does it -- I'm sorry. Say again.
- 9 A 10:10 p.m.
- 10 Q And did he tell you what time the incident had taken
- 11 place in relationship to 10:10?
- 12 A He said it was like a couple of hours before.
- 13 Q Okay, and did the caller identification not have the
- 14 phone number that he was calling from?
- 15 A Yes.
- 16 Q Did you later relay that phone number to law
- 17 enforcement?
- 18 A Yes, to EOC, the dispatch.
- 19 Q And in fact, did you give it to more than one person on
- 20 dispatch? Had you talked to more than one agency?
- 21 A Yes, I believe it was three agencies.
- 22 Q And also, was there a Jessica Branton that you spoke to?
- 23 She's with Horry County 911? Did you see her yesterday?
- 24 A Yes.
- 25 Q And that was the first time you ever met her?

1 A Yes.

2 Q And did you listen to a phone conversation with her?

3 A Yes.

4 Q And was that -- in that phone conversation was that the
5 number that you gave her?

6 A Yes.

7 Q Okay, there were some other things that he said in the
8 phone conversation. What else did he say?

9 A He was confused. He didn't know what to do, basically,
10 you know, we were just quiet a lot of the times. We were
11 talking. I told him to think about, you know, what he done,
12 don't do nothing stupid. You know, I wasn't sure if he was
13 going to hurt himself or do something that, you know, hide the
14 body or I don't know. I don't know what he was going to do.

15 Q Hurt himself or what?

16 A Like kill himself or something. I was just worried
17 about him. So, you know, I told him to think about it and,
18 you know, don't do nothing stupid.

19 Q You weren't concerned that he was going to leave the
20 scene?

21 A Yeah, and also that actually. I was worried about him
22 coming to the house and ---

23 Q Why were you worried about him coming to the house?

24 A Well, I wasn't sure if he was in the right state of mind
25 after a incident like that.

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1 Q Were your kids and your wife at home?

2 A Yes.

3 Q Did you, in your conversations with law enforcement, did
4 you notify -- did you tell Jessica Branton with 911, did you
5 give a description of the types of vehicles that he had?

6 A Yes.

7 Q What, what did you tell her?

8 A I told her that he had a motorcycle, a pickup and like a
9 police type car, whether it was gray or blue or I really
10 didn't get the color right.

11 Q But you basically said that it was either blue or a
12 light gray?

13 A Yes.

14 Q Light blue or gray?

15 A Yeah.

16 Q And did -- you described it as a police vehicle and do
17 you know what kind of car that is now?

18 A I think it's a Mercury Grand Marquis or something like
19 that.

20 Q A Grand Marquis?

21 A I believe, yeah.

22 Q Now, do you remember the phone number that you told to
23 Jessica Branton?

24 A I don't.

25 Q Did you tell her that that number was 651-4592?

- 1 A Yes.
- 2 Q Did you later speak to members of the Alexander County
3 Sheriff's Office and Officer Buddy McKinney?
- 4 A Yes.
- 5 Q Okay, and did you also -- about when was that?
- 6 A That was the next morning I believe around eight o'clock
7 or so I spoke with him.
- 8 Q Okay, and what did you tell him?
- 9 A Basically the same situation that happened like what had
10 happened when dad called where I went, which was to a friend's
11 house because ---
- 12 Q Are you talking -- go ahead. Are you talking about a
13 written statement you gave ---
- 14 A Uh-huh.
- 15 Q --- or a statement to an officer? Okay, did you give --
16 did you talk to two different officers with Alexander County?
17 Did you go down there right after you made the complaint and
18 speak to an officer?
- 19 A I went straight to the -- where the magistrate's office
20 is and waited there and then I went straight to the
21 detective's office, which was across and then talked to, I
22 believe it was him and wrote a statement.
- 23 Q Did you talk to an officer before you wrote the
24 statement? In other words, did you talk to a deputy in
25 uniform that evening?

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1 A There was a deputy that came over to the house, assured
2 us that was, you know, everything was okay and advised us to
3 go to a friend's house till we can figure out what's going on.

4 Q Can you describe kind of what he looked -- do you
5 remember if that was Deputy McKinney?

6 A Honestly, I really don't remember that deputy that came
7 over there.

8 Q Was in a uniform or not in a uniform?

9 A Uniformed, uniformed.

10 Q Okay, and that was shortly after the report, shortly
11 after you called law enforcement that night?

12 A Yeah, yes, yes, yes.

13 Q And did you give him -- sorry. Did you give him a
14 description of the vehicle?

15 A Yes.

16 Q And did you ---

17 A And the directions of how he would travel here.

18 Q You told him how he could get there.

19 A If he would come, yeah.

20 Q And then later you went down the next day and gave a
21 statement to an investigator like in plainclothes?

22 A Yes.

23 Q And that may be -- is that Mark St. Claire? You gave a
24 written statement to somebody?

25 A I believe it was Mark St. Claire, yes.

1 Q And you gave a written statement to him the next day?
2 A It was a written, written statement, yes.
3 Q Now, the process, who did you call first when you got
4 the information?
5 A I called ---
6 Q Did you talk -- so, to be clear, I don't know if that
7 was a good question. When your father called you ---
8 A Uh-huh.
9 Q --- after that phone conversation and you hung up, who
10 did you call?
11 A I called my mom.
12 Q Okay, and then you spoke to her. Did you talk to
13 anybody else before you talked with law enforcement?
14 A I talked to my wife.
15 Q Say again.
16 A My wife.
17 Q Okay, and then did you call, ultimately call law
18 enforcement?
19 A After that, yes.
20 Q And who did you call first, what law enforcement agency?
21 A That would be Surfside.
22 Q All right, and why did you call Surfside?
23 A I thought it was -- he lived in Surfside.
24 Q All right, and did you find out later it wasn't
25 Surfside?

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- 1 A Yes.
- 2 Q And what happened when you called Surfside?
- 3 A I was told to talk to my agency in teletype. I don't
- 4 know what they meant by that, but teletype something to the
- 5 other agency. I believe it was Horry County's dispatch I
- 6 think or ---
- 7 Q That was pretty confusing to you ---
- 8 A Yeah.
- 9 Q --- the instructions you got from Surfside?
- 10 A Yes.
- 11 Q All right, did you later call or get in touch with ---
- 12 A Yes.
- 13 Q --- a Jessica Branton?
- 14 A Yes.
- 15 Q The one from Horry County 911?
- 16 A Yes.
- 17 Q Okay.
- 18 A That's the one I talked to the most.
- 19 Q Was she more helpful?
- 20 A Yes.
- 21 Q Okay, and you related all the information? Did you
- 22 relay the information your father had told you including what
- 23 he said and where he called from?
- 24 A Yes.
- 25 Q Okay.

1

2 MR. BRYAN: I don't have any other questions.

3 THE COURT: All right, Mr. Axelrod.

4 MR. AXELROD: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. AXELROD:

7 Q Good morning, Marco.

8 A Good morning.

9 Q Do you remember the events that occurred better today or
10 would you have remembered them better the day you gave the
11 statement?

12 A I would remember them better the day I gave the
13 statement.

14 Q Isn't it true in your statement that you tell the police
15 that he called at 10:10?

16 A Yes.

17 Q But nowhere in your statement that you gave that next
18 day after talking to the police and writing out the statement
19 you never say in your statement that your dad said it happened
20 several hours before; did you?

21 A I don't remember the statement about that.

22 Q All right, I'm going to let you look at -- do you have a
23 copy of your statement with you?

24 A Yes.

25 Q Okay, let me see that. Is that the same one I have?

1 Yeah. Why don't you just read that for a second and I'll go
2 back and ask that question to you again.

3 A Okay.

4 Q My question isn't it true that nowhere in your statement
5 does your dad -- does it say your dad told you it happened
6 several hours before that; does it?

7 A Yes, that's true.

8 Q Thank you. Now, isn't it true in your statement you
9 told the police that your dad said he came home and Sheila was
10 there; correct?

11 A Yes.

12 Q And isn't it true that your dad told you that he hadn't
13 seen her in four days?

14 A Yes.

15 Q Isn't it true that he told you that an argument flared
16 up?

17 A Yes.

18 Q And isn't it true that he told you that she was on
19 something, pills or -- and drinking?

20 A Yes.

21 Q Isn't it true he told you he tried to call 911?

22 A Yes.

23 Q Isn't it true he told you she pulled the phone cord out
24 of the wall?

25 MR. BRYAN: Objection, asked and answered. This is

1 all the questions I was trying to ask earlier when Defense
2 counsel objected, Your Honor.

3 THE COURT: Okay, cross examination, overruled. Go
4 ahead.

5 MR. AXELROD: Thank you, Your Honor.

6 BY MR. AXELROD:

7 Q Isn't it true, I'll repeat the question, isn't it true
8 that your dad told you that she pulled the phone cord out of
9 the wall?

10 A Yes.

11 Q Isn't it true he told you she grabbed the fireplace
12 poker and she was hitting him with it?

13 A Yes.

14 Q And then did he tell you that he lost it and didn't know
15 what happened, he grabbed a bat and killed her?

16 A Yes.

17 Q Didn't he tell you he didn't know what to do at that
18 point?

19 A Yes.

20 Q Did he tell you that he didn't know whether he should
21 call the police, turn himself in or even kill himself?

22 A Yes.

23 Q And the concern you had for him was you were afraid he
24 was going to kill himself?

25 A Yes.

- 1 Q And didn't he tell you that he loved her?
- 2 A Yes.
- 3 Q On page two?
- 4 A Yes.
- 5 Q And at that point according to your report you talked to
- 6 him for 30 minutes?
- 7 A Yes.
- 8 Q Would it be fair to say that you're the closest relative
- 9 to him at that point?
- 10 A Yes.
- 11 Q And we've had testimony and he basically put Sheila in
- 12 the trunk of the car and drove a beeline towards your house;
- 13 correct?
- 14 A Yes.
- 15 Q You've known your dad a long time?
- 16 A Yes.
- 17 Q Knowing your dad as you've known him, did these events
- 18 surprise you?
- 19 A Yes, it did.
- 20 MR. BRYAN: Objection. Never mind, I'll withdraw that
- 21 objection, Your Honor.
- 22 THE COURT: All right.
- 23 Q It surprised you?
- 24 A Yes.
- 25 Q Almost didn't believe you were hearing what you were

1 hearing?

2 A Yes.

3 Q And the caller ID said your dad's name on it?

4 A Yes, it did.

5 Q He called from his house?

6 A Yes, it did.

7 Q That's all.

8 THE COURT: Redirect.

9 REDIRECT EXAMINATION

10 BY MR. BRYAN:

11 Q Why did this surprise you?

12 A I've never heard of something like that before.

13 Q Never heard of something like that?

14 A That's my dad, I mean, see it on TV.

15 Q I understand. So, you didn't, as far you know, he's

16 never murdered anybody before?

17 A Exactly. I know he hasn't.

18 MR. AXELROD: Your Honor, I would object to that. I

19 think that's inflammatory to ask that question.

20 MR. BRYAN: Your Honor, he's ---

21 THE COURT: Overruled. Go ahead.

22 BY MR. BRYAN:

23 Q And are you telling this jury that as far as you know

24 he's not capable of violence? Is that what your testimony is?

25 A No, I'm not saying he's -- no one's not capable of

1 violent, I mean, everyone's capable of violence.

2 Q Well, your dad in particular. Are you telling them that
3 you'd be surprised if he committed a violent act on another
4 person?

5 A Murder, yes.

6 Q But not that he's not capable of some violence towards
7 somebody?

8 A No, not -- he -- everyone, yeah, he's capable.

9 Q Well, not only capable but you know that he's
10 demonstrated that in the past; is that true?

11 A Yeah.

12 Q Okay, and as far as the statement ---

13 A Yes.

14 Q --- that was made about two hours ago, you had a chance
15 to listen to your recorded conversation to Horry County 911
16 ---

17 A Yes.

18 Q --- yesterday?

19 A Yes.

20 Q And in it did you tell Jessica Branton and when was that
21 phone call made, the -- was that phone call to 911 when you
22 spoke to Jessica Branton of Horry County 911, was that before
23 or after that written statement that you were reading from
24 Defense counsel?

25 A That'd be before this statement, this statement, right.

1 Q Okay, it's like right after you heard from your dad you
2 called 911; right?

3 A I called my mother, then I called 911.

4 Q Right.

5 A Yes.

6 Q And in that statement that is on tape did you say, did
7 Jessica ask you, ``Okay, and he said that he killed her
8 tonight," and you say, ``Okay, he called me at 10:10 and he
9 said two hours before." Is that on that tape?

10 A Yes.

11 Q I don't have any other questions.

12 THE COURT: All right.

13 MR. AXELROD: You speak of ---

14 THE COURT: All right, wait a minute. Wait a minute.
15 I don't think we have any re-cross.

16 MR. AXELROD: Yes, sir, Your Honor. May we approach?

17 THE COURT: All right, ladies and gentlemen, we're
18 going to excuse you to the jury room for just a minute. I've
19 got a matter of law that we need to take up, and let me
20 explain to you why we excuse you from the courtroom at this
21 time because as I told you at the outset, you and you alone
22 are the sole deciders of the facts of the case. Now, from
23 time to time legal issues come up and I've got to rule on what
24 the law is. In discussing what the law is, sometimes the
25 attorneys, sometimes I myself might make a statement regarding

1 the facts, and we don't want anything that we say to prejudice
2 you in your determining what the facts of this case are. So,
3 that's why we excuse you from the jury room [sic]. It's not
4 that we're trying to hide anything from you. It's that we
5 want to make sure that you base your decision exclusively on
6 the testimony and evidence you see at trial. So, while I deal
7 with this legal issue I'm going to go ahead and excuse you to
8 the jury room at this time and we'll bring you back out
9 shortly.

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right, a witness may be re-examined
13 as to the same matters to which he testified only in the
14 discretion of the Court but without exception he may be re-
15 examined as to any new matter brought out during cross
16 examination. After the examination of the witness has been
17 concluded all parties to the action that witness may be
18 recalled only within the discretion of the Court. So, as I
19 read Rule 611, you have direct examination, cross examination,
20 redirect only as to new matters brought out in cross. You got
21 anything? I've never -- and I've always had this question
22 come up, I mean, even back when I was a lawyer. I do not know
23 anywhere and I wish somebody would show it to me where the
24 practice of re-cross examination came up.

25 MR. AXELROD: Your Honor, I would just tell the Court

1 under Rule 611(D), re-examination or recall, " A witness may
2 be re-examined as to the same matters to which he testified
3 only in the discretion of the Court, but without exception he
4 may be re-examined as to any new matter brought out during
5 cross examination." I agree with that, and then it says, the
6 following sentence says, "After the examination of the
7 witness has been concluded by all the parties to the action."
8 It doesn't say has been concluded by the State on the ---

9 THE COURT: No, no, I understand that, but it says
10 the reexamination is as to new matters brought out on cross
11 examination.

12 MR. AXELROD: Right, but then after that it does say
13 that after the examination of witnesses has been concluded by
14 all the parties. If they, if they wanted -- if the
15 legislature wanted to say that it was only -- that the State
16 could only do it, it would have not included the words "by
17 all the parties to the action."

18 THE COURT: All right, it doesn't say that. What it
19 says is when you call your witnesses you've got direct
20 examination, they get cross, you get redirect and that's it.

21 MR. AXELROD: Your Honor, I'll live by, I'll live by
22 the ruling. I'll make an objection to it that I've been
23 precluded from a re-cross, that that would be fine.

24 THE COURT: Yeah, all right, all right, it's noted.
25 I've just -- and I've had it come up before and I just do not

1 know where, I mean, where the scope of or the re-cross came
2 from because then the questioning could go on in perpetuity,
3 and I understand you've got direct examination, cross
4 examination, redirect examination. I'm limiting it if there's
5 an objection that they're exceeding the scope of new matters
6 brought up during cross examination, I'm going to sustain it.
7 So ---

8 MR. AXELROD: And I'll live by the ruling, Your Honor,
9 just that -- the State brought up issues on the re-cross, on
10 the redirect, on the redirect, and I understood that, but then
11 they opened the door further that I think I should be able to
12 go into the re-cross on it. That was all.

13 THE COURT: Okay, I don't think so.

14 All right, let's bring the jury back in.

15 (Whereupon, the following takes place in the presence of
16 the jury.)

17 THE COURT: Ladies and gentlemen, welcome back. Mr.
18 Pantovich, I'm going to ask you to step down.

19 MR. BRYAN: Your Honor, we'd ask that the witness be
20 excused from the State's subpoena at this point.

21 MR. AXELROD: Your Honor, he's still under my subpoena.

22 THE COURT: All right, he's still under subpoena.
23 He'll need to stay with us.

24 MR. BRYAN: Thank you, Your Honor.

25 THE COURT: All right, ladies and gentlemen of the

1 jury, at this time I've been informed that the next witness
2 may take a little bit of time. So, I think it's a good time
3 for us to go ahead and break for lunch; okay? So, I'm going
4 to excuse you to lunch. Please be back in the jury room at
5 1:30. That'll give you about a hour and a half to eat or a
6 little bit more than an hour and a half to eat. So, please be
7 back in the jury room at 1:30 and we'll resume the trial at
8 that time. I caution you still do not discuss this case with
9 anyone, even among yourselves. It is still premature for
10 deliberations. So, don't talk about it, don't conduct any
11 independent investigations, don't read any newspaper accounts,
12 listen to any TV reports or anything of that nature, but
13 please enjoy your lunch and we'll see you back at 1:30. Thank
14 you very much. Everyone please remain seated while the jury
15 is excused.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right, anything from the State before
19 we break for lunch?

20 MR. BRYAN: No, Your Honor.

21 THE COURT: Anything from the Defense?

22 MR. AXELROD: No, sir, Your Honor.

23 THE COURT: All right, we will stand in recess until
24 1:30.

25 *****OFF THE RECORD*****

1 (On the record.)

2 (Whereupon, the following takes place outside the
3 presence of the jury.)

4 THE COURT: Anything from the State before we bring in
5 the jury?

6 MR. BRYAN: No, Your Honor.

7 THE COURT: All right, anything from the Defense
8 before we bring in the jury?

9 MR. AXELROD: Yes, sir, Your Honor.

10 THE COURT: All right.

11 MR. AXELROD: Your Honor, I'm shutting my phone off
12 right now. After Mr. Marco Pantovich testified, I told him to
13 stay here and he talked to Mr. Castro, and Mr. Castro tells me
14 that Mr. Pantovich told him that he'd be back after lunch.
15 We've scoured the courthouse. Mr. Little is walking down to
16 the Solicitor's Office and we've yet to find him. What I had
17 planned to do, Your Honor, I wanted to proffer that testimony
18 of what I would have asked him on re-cross. Now, he's under
19 my subpoena. He was not released. He was told to be here.
20 If he shows back up at some point I would like to be able to
21 just get his testimony proffered, you know, after one of their
22 witnesses because I have to proffer it to preserve my record.
23 I would have done it right now if the man was standing here.
24 I don't know where he is. He was under my subpoena not to go
25 anywhere, and that's where we're at right now. If he does

1 appear I would just ask the Court at some point when we take a
2 break or in between the State's witnesses that I be allowed to
3 proffer. My proffer would be probably three or four
4 questions, no more than that. It was on a re-cross. I was
5 going to ask him three or four specific questions and let him
6 answer those and then I'll have that for an appeal issue some
7 day if some Court wants to hear it if they need to.

8 THE COURT: Well, I mean, the question is is whether
9 or not you have an inherent right to re-cross examination.

10 MR. AXELROD: Absolutely, but -- and that would, that
11 might be left for someone smarter than myself to figure that
12 out, but if I don't proffer the testimony that I would have
13 elicited in re-cross it's not preserved because the appellate
14 court would not even be able to look at it because the point
15 would be not so much -- let's just say it's a gray area, Your
16 Honor, that based on Rule 611 I would argue to the Court, I'm
17 not arguing right now, but I would argue to the Court that,
18 that I am allowed to re-cross. I think an appellate court
19 would look at, "Well, what were the questions on re-cross
20 that would have been asked and were they pertinent to the case
21 based on the redirect." So, I think I do have to proffer it
22 if I can find him, and at some point I'm going to ask the
23 Court to help me get him here because if he's not here,
24 because he's under my subpoena, I just want to let the Court
25 be aware of that.

1 THE COURT: All right, well, I don't know if I'm
2 going to let you proffer it or not because I think the
3 question is whether or not you have a right to re-cross
4 examination. I'm saying that in this situation you did not.
5 So, we'll deal with that issue when it arises, but right now
6 we're still in the State's case and we'll let them go ahead
7 with their case.

8 MR. AXELROD: And if the Court was to say that I was
9 not allowed to place a proffer I would except that also and
10 just take exception to it.

11 THE COURT: All right, anything before we bring the
12 jury back in?

13 MR. BRYAN: Yes, I just called Marco. He's in his
14 hotel room. He's on the way over here.

15 THE COURT: Okay.

16 MR. BRYAN: Just to let you know.

17 THE COURT: All right, anything before we bring the
18 jury in?

19 MR. BRYAN: No, Your Honor.

20 THE COURT: All right, bring the jury back in, please.

21 (Whereupon, the following takes place in the presence of
22 the jury.)

23 THE COURT: Ladies and gentlemen, welcome back.
24 We're now ready to resume the evidentiary portion of this
25 trial. Mr. Bryan, you can call your next witness.

1 MR. BRYAN: Thank you, Your Honor. The State calls
2 Jessica Branton.

3 WHEREUPON, Jessica Branton was called to the stand, duly
4 sworn by the Clerk and testified as follows:

5 THE CLERK: Please be seated and state your name for
6 the record, spelling your last.

7 MS. BRANTON: Jessica Branton, B-R-A-N-T-O-N.

8 DIRECT EXAMINATION

9 BY MR. BRYAN:

10 Q Who do you work for?

11 A Horry County E911.

12 Q And I'm going to ask you to speak up just a little bit.
13 We'll help you with that microphone.

14 Horry County 911?

15 A Yes, sir.

16 Q And how long you been with 911?

17 A Eight and a half years.

18 Q And what kind of role do you have at 911?

19 A I'm a telecommunicator dispatch.

20 Q Do you take incoming 911 calls?

21 A Yes, sir.

22 Q Okay, were you working with the Horry County 911 on
23 March the 8th of 2000 or March -- the night of March the 7th
24 into March the 8th of 2006?

25 A Yes, sir.

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1 Q And did you have a call from Marco Pantovich?

2 A Yes, sir.

3 Q Tell the jury about the nature of that call.

4 A Marco was instructed to call Horry County dispatch per
5 Surfside Police for an attempt to locate on his father for the
6 welfare check. He was -- he said that he had talked to his
7 father ---

8 MR. AXELROD: Your Honor, we're eliciting hearsay at
9 this point. She can -- she can't really testify to what Marco
10 says to her.

11 THE COURT: Okay, sustained as to any hearsay. If
12 it's being offered for the truth of the matter or the truth of
13 the statement. You can't get into what was told to you.

14 Q So, as a result of the -- did you call him back?

15 A Yes, sir.

16 Q Why was that?

17 A He had a prepaid cell phone that was using minutes and I
18 called him back to be able to speak to him so it would be a
19 free call for him.

20 Q Okay, and did you -- how long were you on the phone
21 with Marco?

22 A It was quite some time, maybe an hour, a little over an
23 hour.

24 Q And why is that?

25 A We had some difficulty locating some addresses as to

1 where Mr. Pantovich may have lived. All we had was some
2 directions, didn't have no exact numerics.

3 Q Okay, did he provide you a phone number?

4 A Yes, sir.

5 Q What was the phone number that you got from Mr.
6 Pantovich?

7 A I do not recall.

8 Q Did he provide you the number of 651-4592?

9 A Yes, sir, it was a 651 number, yes, sir.

10 Q Okay, and what did you do with that information?

11 A We have an enhanced system to where we can run numbers
12 and when I ran it through my system it came back not founded.
13 So, I called Horry Telephone and they provided me with an
14 address.

15 Q Okay, were you able to determine where the address that
16 matched that phone number was?

17 A Yes, sir.

18 Q What was the address that matched that phone number?

19 A [REDACTED] Georgetown.

20 Q Now, that in Georgetown, Georgetown County or Horry
21 County?

22 A Georgetown County.

23 Q Okay, and the conversation that you had with Marco was
24 that all on audiotape or did you all make a recording of that?

25 A Yes, sir; yes, sir.

Jessica Branton - Direct by Mr. Bryan

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1 Q All right, and you had a chance to listen to it?

2 A I did.

3 Q And did you listen to it with Marco yesterday?

4 A Yes, sir.

5 Q Okay, and did that tape fairly and accurately reflect
6 the conversation you had with him?

7 A Yes, sir.

8 Q And in addition to the phone number that he provided you
9 did you get any other information that you passed along to --
10 did you pass along the phone number 651-4592, did you give
11 that to Georgetown County 911?

12 A Yes, sir.

13 Q Okay, and along -- in addition to that was there other,
14 any other useful information that you passed along to
15 Georgetown County?

16 A Yes, sir, I stayed on the phone with Marco to speak to
17 Georgetown and give them everything that he had given me.

18 Q Did that include a description of the vehicle his father
19 might be driving?

20 A Yes, sir.

21 Q Okay, and did you at any point, did you advise or did
22 anyone in your presence advise Georgetown County 911 of the
23 fact that where the Defendant might be headed?

24 A I don't recall.

25 Q After you called or after you spoke to Marco and were

- 1 able to determine that 651-4592 was [REDACTED] did you
2 do anything else with that phone number?
- 3 A Yes, sir.
- 4 Q What did you do?
- 5 A I called the phone number.
- 6 Q Okay, and why did you do that?
- 7 A Just to see if I could get anyone to pick up.
- 8 Q Had Marco expressed concern about his father's well-
9 being?
- 10 A Yes, sir.
- 11 Q Okay, and so you called the number that he gave you from
12 his caller ID; is that right?
- 13 A Yes, sir.
- 14 Q And I'm going to hand you, going to hand you what's been
15 marked for identification purposes as State's 47. What is
16 that?
- 17 A It's my recorded conversation with a subject that
18 identified himself as Walt.
- 19 Q And did you have a chance to review this earlier?
- 20 A Yes, sir.
- 21 Q You mean you listened to it?
- 22 A Yes, sir.
- 23 Q And does it fairly and accurately reflect the
24 conversation you had with the individual who identified itself
25 as Walt?

Jessica Branton - Direct by Mr. Bryan

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1 A Yes, sir.

2 MR. BRYAN: At this point, Your Honor, I'd ask that
3 Number State's for identification purposes 47 be admitted into
4 evidence.

5 MR. AXELROD: No objection, Your Honor.

6 MR. BRYAN: And I'm requesting ---

7 THE COURT: State's Exhibit Number 47 is admitted
8 into evidence without objection.

9 (Whereupon, State's Exhibit Number 47 [911 Tape] admitted
10 into evidence and appropriately marked.)

11 MR. BRYAN: At this point I would request permission
12 to publish the -- State's 47 to the jury, Your Honor.

13 THE COURT: All right, any objection?

14 MR. AXELROD: Without objection, Your Honor.

15 THE COURT: All right, without objection.

16 (Whereupon, State's Exhibit Number 47 [911 tape] played
17 in open court.)

18 MR. BRYAN: I don't have any other questions. Please
19 answer any questions Mr. Axelrod has.

20 MR. AXELROD: I don't have any questions, Your Honor.

21 THE COURT: All right, you may step down. All right,
22 Mr. Bryan, you can call your next witness.

23 MR. BRYAN: Thank you, Your Honor. The State calls
24 Officer Buddy McKinney.

25 Your Honor, we'd ask that Ms. Branton be excused. I

1 think she's on duty in Horry County.

2 THE COURT: Any objection to excusing Ms. Branton?

3 MR. AXELROD: Absolutely no objection, Your Honor.

4 THE COURT: All right, she's excused.

5 WHEREUPON, BUDDY MCKINNEY was called to the stand, duly
6 sworn by the Clerk and testified as follows:

7 THE CLERK: Please be seated. State your name for the
8 record, spelling your last name, please.

9 MR. MCKINNEY: Deputy Buddy McKinney, M-C-K-I-N-N-E-Y.

10 DIRECT EXAMINATION

11 BY MR. BRYAN:

12 Q Where are you from?

13 A Alexander County, North Carolina.

14 Q Where's that roughly?

15 A That is roughly 70 miles northwest of Charlotte.

16 Q How do you get there from here?

17 A I-77 to I-26, I-26 to 17, 17 North.

18 Q All right, that's from there to here?

19 A I'm sorry, sir.

20 Q That's all right, so, how do you get there from here?

21 You haven't traveled that route yet, but ---

22 A Yes, sir, Highway 17 South to Interstate 26, Interstate
23 26 to Columbia, I-77 to Interstate 40, Interstate 40 to
24 Highway 16, Highway 16 to Taylorsville.

25 Q Okay, and what do you do in North Carolina?

Buddy McKinney - Direct by Mr. Bryan

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- 1 A I'm a deputy sheriff.
- 2 Q And you're with the Alexander County Sheriff's Office?
- 3 A Yes, sir.
- 4 Q And were you working the night of the 7th of March,
- 5 2006, were you working that shift?
- 6 A On the 7th, sir?
- 7 Q The 7th into the 8th.
- 8 A Yes, sir.
- 9 Q Late night of the 7th into the morning of the 8th?
- 10 A Yes, sir.
- 11 Q What shift were you on?
- 12 A I'm on night shift, sir.
- 13 Q Okay, and how did you get involved in this case?
- 14 A I was told to report to the Sheriff's Office to meet
- 15 with the subject.
- 16 Q And who was the subject?
- 17 A Marco Pantovich.
- 18 Q And did you do that, did you meet with him?
- 19 A Yes, sir, I did.
- 20 Q Did you get some information from him?
- 21 A Yes, sir, I did.
- 22 Q What information did you receive?
- 23 A Marco informed me that his father had called him and
- 24 told him that he had killed his girlfriend and had her in --
- 25 had her in the trunk of his car and was in route to his house.

1 Q Okay, and did he give you any description of the vehicle
2 that Mr. Pantovich might be driving?

3 A Yes, sir, he did.

4 Q What was the description given to you?

5 A It was a light blue or gray Mercury car, four door.

6 Q Did he give any other kind of description about what
7 kind of Mercury or ---

8 A He said it looked like a police car.

9 Q Okay, and what did you do as a result of that
10 conversation?

11 A I immediately contacted the communication center down
12 here and confirmed there had been a possible homicide. They
13 informed me there was a BOLO put out.

14 Q And what kind of information did you receive on the
15 BOLO?

16 A On the BOLO I received the information about a possible
17 homicide and the vehicle information and the suspect
18 information.

19 Q When you say vehicle information what vehicle
20 information?

21 A If I refer to my notes, a light blue or gray 1992
22 Mercury four door bearing South Carolina tag 2941BG.

23 Q I'm going to hand you what's been marked, I'm going to
24 hand you what's been marked for identification purposes as
25 State's 20. What is that?

Buddy McKinney - Direct by Mr. Bryan

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- 1 A That is the suspect vehicle, sir.
- 2 Q Let me hold that back and let's -- I'm going to back up
3 a little bit and get you to describe as a result of your --
4 so, you got the BOLO?
- 5 A Yes, sir.
- 6 Q And you got the information describing the car and the
7 license plate of 2941BG?
- 8 A Yes, sir.
- 9 Q What did you do after that?
- 10 A I immediately contacted my partner and we set up a
11 surveillance of the -- of Marco's residence.
- 12 Q And why did you choose Marco's residence?
- 13 A Marco informed me that Mr. Pantovich had no other family
14 in the area and that would be the most likely place for him to
15 go.
- 16 Q And so, when you say you set up sort of a perimeter
17 there, explain that to the jury.
- 18 A Myself and my partner set up on Highway 16 South at the
19 county line. The other deputy working he set up above the road
20 leading into Marco's house in a secluded area and we waited.
- 21 Q And about what time did you all get there?
- 22 A We originally got there probably about 4:30, 15 till
23 five in the morning.
- 24 Q In the morning and then what happened?
- 25 A We waited until approximately five o'clock.

1 Q What did you do at five o'clock?

2 A At five o'clock myself and Marco Pantovich, his wife and
3 Deputy Stout, the other deputy working that night, went to
4 Marco's house to get clothing for Marco and his family and to
5 check to see if his father had called and left a message on
6 his answering machine.

7 Q All right, so, his family, you all went and got some
8 stuff so they could leave their home?

9 A Yes, sir.

10 Q Okay, and then what happened?

11 A I returned back to where my partner was staying at the
12 county line. As I pulled in beside my partner, my partner
13 said, spotted the vehicle. When he spotted the vehicle we
14 immediately fell in behind it and followed it for a short
15 distance and initiated a felony vehicle stop.

16 Q Okay, and when you say the vehicle what vehicle are you
17 referring to?

18 A It was a light blue Mercury Marquis.

19 Q And did it have a license plate?

20 A Yes, sir, it did.

21 Q What was that?

22 A That was South Carolina 2941BG.

23 Q I'm going to hand you State's 20 again and tell the jury
24 what that is.

25 A This is the vehicle that myself and my partner stopped.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) 06-GS-22-126
 COUNTY OF GEORGETOWN)

The State,)
)
 Plaintiff,)
)
 vs.) TRANSCRIPT OF RECORD
)
 Vladimir Pantovich,)
)
 Defendant.) February 4-8, 2008
)
) Volume 2: Pages 201-400
)

B E F O R E :

Honorable Benjamin H. Culbertson
 Georgetown County Courthouse
 Georgetown, South Carolina

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

William Bryan, Esquire
 Attorney for Plaintiff

Stuart Axelrod, Esquire
 Chris Castro, Esquire
 Attorneys for Defendant

Grace L. Hurley, CVR-CM
 Circuit Court Reporter

1 Q And is it -- is that where you stopped it?

2 A Yes, sir, it is.

3 Q And does that fairly and accurately reflect the vehicle

4 where it stood when you stopped?

5 A Yes, sir, it does.

6 MR. BRYAN: At this point I would ask that State's 20

7 be admitted into evidence.

8 THE COURT: Any ---

9 MR. AXELROD: Without objection, Your Honor.

10 THE COURT: All right, State's Exhibit Number 20

11 admitted into evidence without objection.

12 MR. BRYAN: Request to publish it to the jury.

13 THE COURT: Yeah.

14 (State's Exhibit Number 20 [Photograph] admitted into

15 evidence and appropriately marked.)

16 BY MR. BRYAN:

17 Q So, when you stopped the vehicle what did you do?

18 A We got Mr. Pantovich out of the vehicle. I placed Mr.

19 Pantovich in custody, patted him down, placed him into the

20 rear of my patrol car.

21 Q What kind of stop did you execute?

22 A It's a felony vehicle stop.

23 Q What does that mean?

24 A A felony vehicle stop is a high risk vehicle stop where

25 the suspect is brought out at gunpoint. He is given commands.

Buddy McKinney - Direct by Mr. Bryan

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1 He is brought out of the vehicle and placed on the ground and
2 when he's placed on the ground we put him on his stomach and
3 handcuff him on the ground.

4 Q And why did you do that?

5 A Due to the possible -- the suspect possibly having a
6 weapon.

7 Q And so, did he comply with your verbal commands? In
8 other words when you told him to get out of the car, did he
9 get out of the car?

10 A Yes, he did.

11 Q And when you told him to get on the ground did he get on
12 the ground?

13 A Yes, sir, he did.

14 Q And did you or somebody place him under arrest?

15 A Yes, sir.

16 Q And did you handcuff him?

17 A Yes, sir, I did.

18 Q Who did that?

19 A I did.

20 Q Okay, once you handcuffed him what did you do with him?

21 A Once I handcuffed him I put him in the back of my
22 patrol car.

23 Q And what did you do after that?

24 A I conferred, I conferred with my partner. My partner
25 advised me that he had talked to the detectives in South

1 Carolina and wanted us to Mirandize him and question him. I
2 then read Mr. Pantovich his Miranda warnings.

3 Q Do you do that off the top of your head or you got a
4 sheet you use to do that?

5 A No, sir, I have a sheet I use to do it.

6 Q Let me hand you what's been marked for identification
7 purposes as State's 49. What is that?

8 A This is my Miranda warnings and waiver certificate.

9 Q And is that what you used to advise him of his rights?

10 A Yes, sir, it is.

11 Q And tell the jury exactly what you told Mr. Pantovich
12 that, I guess, early morning.

13 A "I do not have to answer any questions or say anything.
14 Anything I say or do can be used as evidence against me in a
15 criminal trial. I have a right to talk to a lawyer before or
16 after questioning or have a lawyer present with me during
17 questioning. If I cannot afford a lawyer and want one,
18 arrangements will be made to obtain a lawyer for me. If I am
19 now willing to discuss the offenses under investigation with
20 or without a lawyer present, I have a right to stop answering
21 questions at any time or speak to a lawyer before answering
22 further even if I sign the waiver below. I understand I am
23 under arrest at this time and I am not free to leave at any
24 time I desire."

25 A Is that what you read, is that typed on there or written

Buddy McKinney - Direct by Mr. Bryan

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1 on there?

2 A It's typed, sir.

3 Q Is there any handwriting on it?

4 A Yes, sir, there are.

5 Q What's the handwriting?

6 A The handwriting beside every ---

7 Q You fill out the top? Let's start at the top.

8 A Yes, sir. I'm sorry.

9 Q What did you put at the top?

10 A The top is the location of the stop, where I, where I

11 mirandized him at.

12 Q And you gave a date and time?

13 A The date and time.

14 Q As well as his Social Security number and name?

15 A Yes, sir.

16 Q Okay, and then you were about to say that next to the

17 typed portion there's some handwritten notes by you? What is

18 that?

19 A The handwritten notes, when I mirandize someone I have a

20 set way to do it. I explain, I explain to them, "I'm going

21 to read you your rights to you. If you understand them I just

22 need you to tell me yes. If you don't understand them tell me

23 no. I will explain them to you," and after I read them, they

24 either say yes or no. If they say yes, I write yes. I write

25 exactly what they say. If they say no, I will explain it to

1 them and I'll note, I'll note that, that I explain it to them
2 and they understand or not.

3 Q To each of -- there's five elements there, I guess you
4 wrote starting with number one which says, "I do not have to
5 answer any questions or say anything." Did you write
6 something next to that?

7 A Yes, sir.

8 Q And what did you write?

9 A Yes.

10 Q And next to number two it says, "Anything I say or do
11 can be used as evidence against me in a criminal case, in a
12 criminal trial," what did you write next to that?

13 A Yes.

14 Q Now, if he'd said, "Yes, sir, I understand," what would
15 you have written?

16 A Yes, sir, I understand.

17 Q So, you write exactly, your practice is to write
18 exactly what he says?

19 A Yes, sir.

20 Q Okay, now, did he write that or you wrote it?

21 A I wrote this.

22 Q And was he handcuffed or not handcuffed?

23 A He was handcuffed.

24 Q So, he would not be able to write that at that point?

25 A No, sir, he was not.

Buddy McKinney - Direct by Mr. Bryan

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- 1 Q There's a place on there for him to sign. Did he sign?
- 2 A No, sir, he did not.
- 3 Q Why not?
- 4 A He was handcuffed, sir.
- 5 Q Okay, also at the bottom it has two spaces where it says
- 6 under non-waiver, what does that say under non-waiver?
- 7 A Non-waiver, "I do not give up my rights. I want an --
- 8 I want a lawyer."
- 9 Q And did he check that box?
- 10 A I checked that box, sir.
- 11 Q Okay, so, after, after you mirandized him did you ask
- 12 him any questions?
- 13 A No, sir, after he waived his -- after he said he wanted
- 14 a lawyer I asked him no questions.
- 15 Q Okay, and what ---
- 16 MR. BRYAN: At this point, Your Honor, I would ask
- 17 that State's 49 be admitted into evidence.
- 18 THE COURT: Any objection?
- 19 MR. AXELROD: Without objection, Your Honor.
- 20 THE COURT: All right, State's Exhibit Number 49 is
- 21 admitted into evidence without objection.
- 22 (Whereupon, State's Exhibit Number 49 [Miranda Form]
- 23 admitted into evidence and appropriately marked.)
- 24 BY MR. BRYAN:
- 25 Q After you advised him of his rights on that form and

1 made your notations to it what did you do next?

2 A I was sitting in my patrol car in the driver's seat and

3 I started taking my notes.

4 Q So, is that a normal practice for you to take notes when

5 you make a stop?

6 A Yes, sir.

7 Q Particularly in a more serious case?

8 A Yes, sir.

9 Q So, you were sitting there documenting your notes and

10 your role, you're a patrol deputy; is that right?

11 A Yes, sir, that's right.

12 Q Do you do investigation or not?

13 A No, sir, normally our investigators do all

14 investigations.

15 Q So, when you -- okay, so, what did you do next? You're

16 sitting there taking your notes and what happened? At this

17 point has anybody gone into the trunk?

18 A No, sir.

19 Q Okay, what happened next?

20 A At approximately 0620, the ---

21 Q Let me stop you right there. What time was your -- what

22 time, did you document what time the Miranda was?

23 A Yes, sir, it was 0617.

24 Q Okay, so, it's 6:20. What happened?

25 A At 6:20 Mr. Pantovich said, "Tell my son he did the

Buddy McKinney - Direct by Mr. Bryan

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1 right thing."

2 Q And was that in response to any questioning by you?

3 A No, sir, I asked no question.

4 Q And I'm sorry, I'm going to backtrack. Just to make
5 sure the record is clear, when you gave him this, you gave him
6 this Miranda form, State's 49, and you asked him each of these
7 individual questions, he responded he understood, did he
8 appear to you to understand?

9 A Yes, sir, he did.

10 Q Did you make any threats to him?

11 A No, sir, I did not.

12 Q Did you promise him anything if he were to give you a
13 statement?

14 A No, sir.

15 Q Did you in any way intimidate him or coerce him to get
16 you [sic] to say anything to him?

17 A No, sir.

18 Q Okay, so, at 6:20 he said what?

19 A At 6:20 he said, "Tell my son he did the right thing."

20 Q And that's while you're doing what?

21 A While I'm taking my notes, sir.

22 Q And were you asking him any questions?

23 A No, sir, I was not.

24 Q What's the next thing that happened?

25 A At 0624 he stated, "I just lost it, man."

1 Q And was that in response to any questioning by you?

2 A No, sir.

3 Q And what were you doing at the time that he uttered

4 that?

5 A I was taking notes.

6 Q Did you document that?

7 A Yes, sir, I did.

8 Q The fact that he said that?

9 A Yes, sir.

10 Q And what time did he say the second thing?

11 A 0624.

12 Q So, about four minutes later?

13 A Yes, sir.

14 Q After you got through taking your notes what happened?

15 Did you call anybody and alert anybody else that you had

16 stopped the vehicle?

17 A Yes, sir, that's our standard procedures when we stop a

18 vehicle is to contact our communications.

19 Q And did anybody alert the investigators to respond?

20 A Yes, sir, they did.

21 Q Okay, and then after you get done taking your notes what

22 happens next?

23 A After I wrote my notes down, Sergeant Jason Moore had

24 arrived. Myself and Sergeant Jason Moore went to the car,

25 conferred with our sheriff and determined that exigent

Buddy McKinney - Direct by Mr. Bryan

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1 circumstances existed and opened the trunk of the car.

2 Q Where were you when, where were you when the trunk was
3 opened?

4 A I was standing beside Sergeant Moore.

5 Q Okay, did you look inside?

6 A Yes, sir, I did.

7 Q I'm going to hand you what's been marked for
8 identification purposes as State's 48. What is that?

9 A That's what I found inside the trunk of the car, sir.

10 Q And can you describe it for the jury?

11 A Yes, sir, it appears to be a left arm of a person with
12 the black garbage bag above the head and shoulders wrapped in
13 a blanket and a baseball bat at the foot, towards the feet
14 section.

15 Q Lots of other stuff in there, too?

16 A Yes, sir, a lot of other stuff in the car.

17 Q Does that clearly and accurately reflect what you saw
18 when you opened the trunk?

19 A It does.

20 Q And can you tell if that's on the road or where that's
21 at?

22 A Yes, sir, this is that -- at the traffic stop. This is
23 where we stopped the vehicle at.

24 MR. BRYAN: At this point I'd ask that State's 48 be
25 admitted into evidence.

1 MR. AXELROD: Without objection, Your Honor.

2 THE COURT: All right, State's Exhibit Number 48

3 admitted into evidence without objection.

4 (Whereupon, State's Exhibit Number 48 [Photograph]

5 admitted into evidence and appropriately marked.)

6 MR. BRYAN: And request to publish.

7 THE COURT: All right.

8 BY MR. BRYAN:

9 Q What did you do next?

10 A I stood by with Sergeant Moore while EMS arrived on

11 scene.

12 Q Okay, was there any question in your mind whether the

13 person inside was alive or dead?

14 A No, sir, no question in my mind.

15 Q And what were -- was your judgment they were alive or

16 dead?

17 A She was, my judgment she was dead.

18 Q Okay, and did you -- you have some experience with EMT

19 as well; right?

20 A Yes, sir, I do.

21 Q Okay, so, you all followed EMTs, stood by, somebody

22 called ---

23 A Yes, sir.

24 Q --- an ambulance, and you stood by and waited for the

25 ambulance and the investigators to get there.

Buddy McKinney - Direct by Mr. Bryan

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1 A Yes, sir.

2 Q Okay, were you ever present, were you ever present when
3 the Defendant made any other statements later on?

4 A Yes, sir, I was.

5 Q Where -- were you -- did you question the Defendant in
6 that instance?

7 A No, sir, I did not.

8 Q Who if anybody was doing the questioning?

9 A TV reporter, sir.

10 Q TV reporters.

11 A Yes, sir.

12 Q And what was -- what did the Defendant say? Well, first
13 of all not where, but when was it?

14 MR. AXELROD: Your Honor, may we approach a minute?

15 THE COURT: All right.

16 (Bench conference was held in the presence but out of the
17 hearing of the jury.)

18 Q So, I think you've already answered this, but were you
19 present when TV reporters asked Vladimir Pantovich some
20 questions?

21 A Yes, sir, I was.

22 Q And not where but when did that take place?

23 A That took place after he was taken to our sheriff's
24 office right before he was taken ---

25 Q About what time? In other words, the same day, next

1 day?

2 A It was the same day an hour or two after he was stopped.

3 I don't remember the exact time, sir.

4 Q All right, and what if any statements did Mr. Pantovich
5 make at that time and let me make sure the foundation is clear
6 first. Was anybody in law enforcement asking him any
7 questions?

8 A No, sir.

9 Q Okay, and the questions that were being asked were being
10 asked by a news crew; is that right?

11 A Yes, sir, that's right.

12 Q And he responded to their questions?

13 A Yes, sir, he did.

14 Q What did he say? Did you ask him, did you ask the media
15 to ask these questions?

16 A No, sir, I did not.

17 Q Did anyone in law enforcement prompt them to ask these
18 questions?

19 A As far as I know, no, sir.

20 Q Was this venue, the place, don't say where it was, but
21 was it an open forum? Was it open to the media?

22 A Yes, sir, it was.

23 Q And what if anything did he say?

24 A He said, "I can't take it no more." Said that she was
25 on drugs, Morphine and I can't remember the other drug he

Buddy McKinney - Cross by Mr. Axelrod

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1 said, but said they ruin lives, that's what caused it.

2 Q Did he say anything else?

3 A He said he couldn't take the drugs anymore and he said
4 -- at one point a reporter asked if he was sorry, he said,
5 ``Surely I'm sorry.'' Another reporter asked him, I believe he
6 stated, ``She had you locked up,'' and he said, ``Many times.''

7 Q I don't have any other questions. Please answer any
8 questions Mr. Axelrod has.

9 A Yes, sir.

10 CROSS EXAMINATION

11 BY MR. AXELROD:

12 Q The reporter asked, somebody asked him if he loved her;
13 correct?

14 A Yes, sir, they did.

15 Q And he responded he loved her?

16 A Yes, sir.

17 Q And in fact when he was sitting in your patrol car did
18 you give him a cigarette?

19 A No, sir, I did not.

20 Q Somebody gave him a cigarette?

21 A I don't know, sir. I did not see it.

22 Q Might have?

23 A Possibly.

24 Q Okay, was Walt cooperative with you?

25 A Yes, sir.

- 1 Q Based on the felony stop and the way you brought him out
2 of the car with the gun and put him on the ground were you
3 expecting him to be that cooperative?
- 4 A He didn't act no more than some of the other ones I've
5 stopped in the same way.
- 6 Q When you turned off -- are your lights blue or red or
7 green in North Carolina?
- 8 A Blue.
- 9 Q They're blue?
- 10 A Yes, sir.
- 11 Q When you turned on your lights, you got behind him and
12 you turned on your lights, what did Walt do?
- 13 A He stopped.
- 14 Q He stopped the car?
- 15 A Yes, sir.
- 16 Q He didn't drive off a hundred miles an hour?
- 17 A No, sir.
- 18 Q He didn't try to evade you?
- 19 A No, sir.
- 20 Q He cooperated?
- 21 A Yes, sir.
- 22 Q You heard the statements that he couldn't take it
23 anymore, she was on drugs?
- 24 A Yes, sir.
- 25 Q Thank you.

Van Williams - Direct by Mr. Bryan

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1 MR. BRYAN: No further questions and I'd ask that
2 Officer McKinney be excused.

3 THE COURT: All right, sir, you may step down. Any
4 objection?

5 MR. AXELROD: No objection for him to go back to North
6 Carolina.

7 THE COURT: All right, you're excused. Thank you
8 very much.

9 A Thank you, Your Honor.

10 THE COURT: Thank you. Call your next witness.

11 MR. BRYAN: The State calls Van Williams.

12 THE COURT: All right, Van Williams.

13 WHEREUPON, Van Williams was called to the stand, duly
14 sworn by the Clerk and testified as follows:

15 THE CLERK: Thank you. Please be seated and state
16 your name for the record, spelling your last name, please.

17 MR. WILLIAMS: My name is Van Williams, W-I-L-L-I-A-M-S.

18 DIRECT EXAMINATION

19 BY MR. BRYAN:

20 Q And who do you work for? Who are you employed by?

21 A I am employed by the North Carolina State Bureau of
22 Investigation.

23 Q And so, what is the North Carolina State Bureau of
24 Investigation?

25 A It's a state agency. We assist the law enforcement

1 agencies, local law enforcement agencies, any investigations.
2 We're, for those of you in South Carolina, we're basically the
3 North Carolina version of SLED.

4 Q South Carolina Law Enforcement Division?

5 A Yes, sir.

6 Q So, you're a statewide agency and you typically -- well,
7 you'll assist anybody, any agency, but typically smaller
8 agencies in larger cases and that kind of stuff?

9 A Right, yes, sir.

10 Q And how long have you been with North Carolina SBI?

11 A I've been employed by the State Bureau of Investigation
12 for approximately four years.

13 Q And what are you -- what is your -- just briefly what
14 are your general duties?

15 A I'm a crime scene specialist, also a criminal agent. I
16 go around process crime scenes, plus investigate other cases
17 that we're requested to investigate.

18 Q And how many crime scenes have you investigated and
19 processed?

20 A I have investigated well over 150 homicides.

21 Q Have you ever -- those are homicides?

22 A Yes, sir.

23 Q Not just crime scenes?

24 A Not just crime scenes. That's just the homicide
25 investigations.

Van Williams - Direct by Mr. Bryan

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1 Q And have you ever been qualified as an expert in court
2 in the State of North Carolina?

3 A In certain things. We don't get qualified for crime
4 scene or anything like that. I've been qualified in drug
5 cases as an expert.

6 Q Do you have special training in crime scene
7 investigation and processing?

8 A Yes, I do.

9 Q What kind of training do you have?

10 A I've completed the North Carolina State Bureau of
11 Investigation basic academy, which is a four-month program.
12 I've completed the advanced homicide investigation block,
13 which is a 40-hour plus block of instruction, basic crime
14 scene through the North Carolina State Bureau of
15 Investigation, which is 80 hours, advanced crime scene, which
16 is another 40-hour block. I've completed blood spatter,
17 advanced blood spatter investigation or training. I've had
18 numerous crime scene courses through the State Bureau of
19 Investigation, also the Institute of Police Technology
20 Management out of Florida.

21 Q And did you respond to a crime scene in this case?

22 A Yes, I did.

23 Q Where did you respond -- well, who contacted you?

24 A I was contacted by the special agent in charge of the
25 Hickory District Office of the State Bureau of Investigation,

1 David Call.

2 Q And do you know about what time you were contacted?

3 A Yes, I do. I was contacted approximately 9:02 a.m. on
4 March the 8th, 2006.

5 Q And where did you respond to?

6 A I responded to Alexander County to Wayside Church Road.

7 Q What did you find when you got there?

8 A There was a vehicle. It was a Mercury Grand Marquis
9 along the shoulder of the roadway. Also, the Alexander
10 Sheriff's Department had roped off the area with a yellow
11 crime scene tape and the roadway was blocked by deputies from
12 the Sheriff's Department. They had the whole roadway blocked,
13 just allowing law enforcement traffic into the area.

14 Q And let me show you what's already in evidence as
15 State's 20. Is that the vehicle you found there that was
16 stopped?

17 A Yes, it was.

18 Q What did you do when you got there?

19 A When I got there I made the observation of the vehicle,
20 seen the vehicle sitting off the shoulder of the roadway. The
21 trunk was partially up on the vehicle and just observed the
22 area.

23 Q Okay, what did you do after your initial assessment?

24 Who else was on the scene when you got there? So, there was a
25 local agency already involved; right?

Van Williams - Direct by Mr. Bryan

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1 A Yes, sir, the Alexander County Sheriff's Department was
2 there.

3 Q And who would be -- was there an investigator there when
4 you got there?

5 A There were several investigators there.

6 Q Most of them?

7 A There were several.

8 Q Was Investigator Chad Pennell there?

9 A He showed up at a later time. I don't think he was
10 there as soon as I got there, but showed up at a later time.

11 Q But he was -- okay, so, what did you do after you made
12 your initial assessment there?

13 A Looked at the vehicle. I decided at that point to have
14 the vehicle impounded to process the vehicle at a different
15 location from the roadside.

16 Q Okay, and so, how -- tell the jury about that process.

17 A Okay, what I did I measured where the vehicle was at,
18 measured the location from -- there's a street right up the
19 roadway, an intersection. I measured where the vehicle was at
20 and then I contacted, I had the Sheriff's Department at my
21 request contact a wrecker to come out to that location. They
22 actually brought a rollback out to load the vehicle onto a
23 rollback to take it back to a more secured area to process it.

24 Q All right, and in the meantime did you ever see what was
25 in the trunk of the vehicle?

1 A Yes, I did.

2 Q And what was in the trunk of the vehicle?

3 A I opened up the trunk, looked inside. At that point I
4 didn't do a complete search of the vehicle, but I did see a
5 body, female body in the trunk. There was a plastic bag
6 partially over the body and several items in the trunk with
7 the body.

8 Q All right, and then you contacted -- that was before you
9 contacted the tow truck?

10 A That was before I contacted the tow truck, yes, sir.

11 Q Okay, any question in your mind that she was deceased
12 at that point?

13 A No, sir.

14 Q Okay, and so, then you decided to have the vehicle
15 moved, you contacted a tow truck and what happened next?

16 A Waited on the scene for the tow truck to arrive. It
17 arrived at approximately 10:02 a.m.

18 Q And now, obviously, you took careful precautions with
19 the scene there, but really this isn't the scene where the
20 incident took place, this is where the stop of the suspect
21 along with the deceased person took place; right?

22 A Yes, sir, this was a Alexander Sheriff's Department
23 deputies had stopped the vehicle out of a traffic stop and
24 this was not the crime scene location. This was just location
25 where the vehicle got stopped at.

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1 Q Correct, okay, and so, after you arranged for the tow,
2 tell the jury about that process and where you took the
3 vehicle.

4 A Before the vehicle left the scene there's a pack of
5 Marlboro cigarettes on the ground near the driver's door. I
6 collected those, also the keys to the vehicle were sitting on
7 the hood of the vehicle. They had been placed there before I
8 arrived and I collected the keys off the hood.

9 Q Okay, what else did you do?

10 A I shut the trunk back, secured it back and the vehicle
11 was loaded up on a rollback.

12 Q Did anybody move the body in the trunk at that time?

13 A No, sir, the only thing I did was secured the trunk lid
14 shut on the vehicle. That was the only movement to the
15 vehicle.

16 Q Okay, what happened next?

17 A The vehicle was loaded onto a rollback at approximately
18 10:40 a.m. and transported to the Alexander County Sheriff's
19 Department. Once the vehicle was on the rollback I followed
20 the vehicle from the location that it was at to the Alexander
21 County Sheriff's Department. I was right behind it.

22 Q Anything significant happen on the ride back to the
23 evidence processing?

24 A No, no, sir, I was right behind the vehicle the whole
25 time, nothing at all.

1 Q So, when you got there what happened?

2 A When we got there the vehicle was loaded inside a
3 garage area, the Alexander County Sheriff's Department. It
4 was a secured area that had a garage door on it. The vehicle
5 was pulled inside, taken off the rollback and then the
6 rollback left and I secured the garage door shut and I stayed
7 with the vehicle.

8 Q What did you do next?

9 A Next there was a search warrant obtained for the vehicle
10 and when the search warrant was served I started searching the
11 vehicle.

12 Q Who actually obtained the search warrant?

13 A It was deputies from the Alexander County Sheriff's
14 Department.

15 Q And was it signed by a judge? You don't know?

16 A Honestly I don't remember. I remember getting a ---

17 Q They executed the search warrant?

18 A The search warrant was executed, yes, sir.

19 Q And then what did you do?

20 A I opened the trunk on the vehicle and began my search of
21 the vehicle.

22 Q I'm going to hand you what's been marked for
23 identification purposes as State's 21. What is that?

24 A That's a picture of the female and the items inside the
25 vehicle once the trunk was opened on the vehicle.

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1 Q And is that taken on the road or back at the processing?

2 You can kind of tell from the corner.

3 A That one was taken back at the processing area.

4 Q And does that fairly and accurately reflect what you saw
5 when you all opened the trunk?

6 A Yes, it does.

7 Q I'm going to hand you what's been marked State's 22 and
8 ask you can you see anything -- what is that?

9 A That's another picture of the inside of the trunk. You
10 can see the body inside the trunk. You can also see some
11 items inside the trunk of the vehicle.

12 Q Anything significant in there of note to the jury
13 besides the body?

14 A Yes, sir, there's a black plastic bag and there is a
15 handle of a baseball bat or softball bat. It's a bat of some
16 type sticking out of the bag.

17 Q Metal bat?

18 A Yes, sir.

19 Q Right next to the body?

20 A Yes, it is.

21 Q Did you, at some point did you take the or did somebody
22 in your presence take the body out of the trunk?

23 A Yes, we did.

24 Q And tell the jury about that process.

25 A Myself and another agent with the State Bureau of

1 Investigation along with the medical examiner removed the body
2 out of the trunk of the vehicle placing it into a body bag.

3 Q What color was the body bag?

4 A It was blue.

5 Q Okay, did you take some other evidence out as well?

6 A Yes, I did. I conducted a inventory search of the
7 vehicle and removed several items out of the vehicle.

8 Q What did you take out of the vehicle?

9 A In fact, all of the items in the vehicle was removed.

10 Q All right, I'm going to hand you what's been marked as
11 State's Exhibit 23. What is that?

12 A That's a photograph of items that were removed from
13 inside the plastic bag, the aluminum bat, there's a newspaper,
14 a placemat, a ashtray, a loop type earring and a candy
15 wrapper.

16 Q Okay, and anything significant about the condition of
17 the placemat or the ashtray and the candy wrapper?

18 A Yes, sir, all the items, the placemat, the ashtray,
19 candy wrapper and earring all had -- newspaper also had blood
20 on the items.

21 Q Okay, what about the earring, anything about the earring
22 that you noticed?

23 A The earring was bent.

24 Q Bent?

25 A Yes, sir.

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1 Q And does 23 fairly and accurately reflect the items that
2 you took out of that trunk?

3 A Yes, they do.

4 Q I'm going to hand you what's been marked as State's 24.
5 Is that a different view of some of the items that you just
6 testified to?

7 A Yes, it is. It's a different view of the aluminum bat,
8 also the newspaper.

9 Q And does that fairly and accurately reflect what you saw
10 when you collected those items out of that trunk?

11 A Yes, it does.

12 Q I'm going to hand you finally what's been marked as
13 State's Exhibit 25 and ask you what that is.

14 A That's the barrel portion of the aluminum bat and you
15 can see the blood stain on the top portion of the, top portion
16 of the bat.

17 Q And does it fairly and accurately reflect what you saw
18 of that bat?

19 A Yes, it does.

20 MR. BRYAN: At this point, Your Honor, I'd ask that
21 State's 21, 22, 23, 24 and 25 be admitted into evidence.

22 THE COURT: Any objection?

23 THE COURT: May we approach, Your Honor?

24 THE COURT: All right.

25 (Whereupon, a bench conference was held in the presence

1 but out of the hearing of the jury.)

2 THE COURT: Plaintiff's ---

3 MR. AXELROD: Your Honor, without objection, no
4 objection.

5 THE COURT: Plaintiff's Exhibits Number 21, 22, 23, 24
6 and 25 are admitted into evidence.

7 (Whereupon, State's Exhibits Numbers 21, 22, 23, 24, and
8 25 admitted into evidence and appropriately marked.)

9 MR. BRYAN: Ask permission to publish these. I'm
10 just going to hand them and pass them down.

11 BY MR. BRYAN:

12 Q I'm going to hand you what's been marked for
13 identification purposes as State's 50.

14 THE COURT: Before we go on, make sure the jurors are
15 paying attention. They're still reviewing the photos.

16 MR. BRYAN: Okay, sure, thank you, Your Honor.

17 THE COURT: All right, Mr. Bryan.

18 BY MR. BRYAN:

19 Q I'm going to ask you in a minute to open it or identify
20 if you can first State's 50, and if you need to to identify it
21 you can open it up.

22 A I'll have to.

23 Q If you do open it, try not to cut -- if you open it,
24 open it from this side so that this -- that's the SLED seal.

25 A Okay, yeah, I'll have to open this to identify it

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1 because that's not the way that I packaged it.

2 Q Okay, yeah, that came from SLED.

3 A Yes, sir.

4 Q What is that?

5 A It's the metal ashtray from the black plastic bag from
6 the trunk of the Mercury.

7 Q And you removed that from another box. It wasn't your
8 box; is that right?

9 A That's not my box, no, sir.

10 Q And is that your bag?

11 A Yes, it is.

12 Q How do you know?

13 A That's my bag. It's got my handwriting on it. It's got
14 our -- the SBI case number, item number and my name, time and
15 date it was collected. The back of it, the bag had a seal on
16 it with my initials, the SBI case number and the date the bag
17 was sealed.

18 Q All that black printing on there, especially your name
19 and the numbers, is that writing you put on it?

20 A Yes, it is.

21 Q To identify it for this case?

22 A Yes, it is.

23 Q Okay, if you would open it up and take out what's in it.

24 That's another -- what's that?

25 A This is something that I'm sure the South Carolina Law

1 Enforcement Division lab put on there when they mailed it
2 back. When I collected it it was placed directly into the
3 bag, sealed up in no other container.

4 Q And can you feel around what that is?

5 A It feels like a metal ashtray.

6 Q Okay, and you collected the metal ashtray and put it in
7 that bag?

8 A Yes, I did.

9 Q But you didn't put it in this.

10 A I didn't put it in this.

11 Q Somebody else did that.

12 A This was put after it was taken from my custody.

13 Q Okay, where did you seize this metal ashtray from?

14 A It was in a black plastic bag in the trunk of the
15 vehicle beside the body.

16 Q I'm going to put the ashtray back in the bag with your
17 signature on it, put that back in the box. Well, actually I'm
18 going to hand it to the evidence custodian to put back in
19 there.

20 I'm going to hand you what's been marked for
21 identification purposes as State's 51 and what is that?

22 A State's 51 is a Power Flite aluminum softball bat from a
23 black plastic bag in the trunk of the Mercury, was collected
24 by myself.

25 Q And you're looking at a plastic bag. Right now you

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1 can't see the bag; can you?

2 A No, sir, the bag is what the bat was actually removed
3 from.

4 Q Got you and that writing on there that says Power Flite
5 aluminum softball bat with reddish colored stain from black
6 plastic trash bag from trunk of Mercury, is that your
7 handwriting?

8 A Yes, it is, along with their -- the SBI's case number,
9 the date, time the item was collected and my name on the front
10 of the bag, also the back of the bag contained tape seal, my
11 initials, the SBI case number and the date the item was
12 collected.

13 Q And I'm going to ask you to -- I'm going to have you
14 remove it from the bag. Don't cut the SLED one. Maybe you
15 can do it from down here.

16 A I'm sure I can.

17 Q What's inside of that bag?

18 A Again, it's in paper that I did not put around it.

19 Q Okay, let's go ahead and open it up, take it out.
20 What is that?

21 A It's the Power Flite softball bat, that aluminum bat
22 that I recovered from the trunk of the vehicle, trunk of the
23 Mercury.

24 Q And it's in -- that's also in the picture you saw, you
25 showed next to the body; is that right?

1 A Yes, it is.

2 MR. BRYAN: At this point, Your Honor, I would ask
3 that, at this point I would ask that State's 51 be admitted
4 into evidence.

5 THE COURT: Any objection?

6 MR. AXELROD: Which number was that, Your Honor?

7 THE COURT: Number 51.

8 MR. AXELROD: And would that be the bat?

9 THE COURT: That's correct.

10 MR. AXELROD: Without objection, Your Honor.

11 THE COURT: All right, State's Exhibit Number 51
12 admitted into evidence without objection.

13 (Whereupon, State's Exhibit Number 51 [Bat] admitted into
14 evidence and appropriately marked.)

15 BY MR. BRYAN:

16 Q Now, you testified earlier that you took the -- I think
17 you can probably take the gloves off now. You testified
18 earlier about putting the body in a blue bag; is that right?

19 A Yes, sir.

20 Q Did you -- describe the bag to the jury.

21 A It was a blue bag that is used to put deceased bodies
22 in. It's got two zippers on it. The bag -- the body is
23 placed inside the bag and the bag is zipped up once the body
24 is placed inside it.

25 Q And why do you -- is it just any old bag or where do you

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1 get them?

2 A This bag come from the transport crew that was going to
3 transport the body from the scene. They bring their bags with
4 them. We use their bags.

5 Q Did somebody make contact -- did somebody make contact
6 with authorities in South Carolina about an autopsy?

7 A Yes, they did.

8 Q Do you know who did that?

9 A No, sir.

10 Q Okay, when you put the body in the bag did you seal it?

11 A Yes, sir.

12 Q How did you do that?

13 A We carry plastic seals. It's kind of like is on your
14 power company puts on meter boxes to make sure meter boxes are
15 not tampered with. It's a plastic seal. It's got a metal top
16 to it. We put the seals around, well, through the zippers of
17 the body bag and seal it up and that way we know the bag's not
18 tampered with from the time it leaves us to wherever the
19 destination of the body is.

20 Q Would you sign it?

21 A Yes, I do. I sign it. I put our case number, victim's
22 name if we know it and I sign, date it, and put my initials on
23 it.

24 Q And in this case did you do that?

25 A Yes, I did.

1 Q And so, your signature would be on that and it would
2 look just like the signature that you -- on the bags that you
3 collected?

4 A Yes, sir, I'll put my initials on it. They're kind of
5 small. So, I don't usually sign my name. I just put my
6 initials and it would have been initialed on that date.
7 The seal was actually put on the body bag at 11:14 a.m.

8 Q Okay, and then what happened with the body at that
9 point?

10 A The body was turned over to Charles Duckworth and Thomas
11 Goude with the transport company.

12 Q And what do they do?

13 A They transport bodies from the location wherever the
14 body is at for the autopsy.

15 Q Thank you, sir.

16 MR. BRYAN: The Court's indulgence, Your Honor.

17 THE COURT: All right.

18 MR. AXELROD: Your Honor, now may be a good time to take
19 a break.

20 MR. BRYAN: I think we can take a break if we need
21 to.

22 THE COURT: All right.

23 MR. BRYAN: That's fine, Your Honor.

24 THE COURT: All right, we'll take a very quick break,
25 about 10 to 15 minutes.

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1 MR. BRYAN: Thank you, Your Honor.

2 THE COURT: All right, everybody remain seated. The
3 jury is excused to the jury room. Please do not begin
4 deliberations.

5 (Whereupon, the following takes place outside the
6 presence of the jury.)

7 THE COURT: All right, Mr. Williams, we're still in
8 your testimony. So, you cannot discuss your testimony with
9 anyone, even the State's attorney at this point in time; okay?

10 A Okay.

11 THE COURT: Before we continue, that was Juror
12 Number?

13 (Bailiff and Court confer.)

14 THE COURT: All right, let me -- we'll take about a
15 10-minute recess. Let me see the attorneys in chambers.

16 *****OFF THE RECORD*****

17 (On the record.)

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right, if one of the bailiffs could
21 please bring Ms. Scott, Juror Number 123 in.

22 BAILIFF: Yes, sir.

23 (Whereupon, Juror Number 123, Emily J. Scott, enters
24 courtroom.)

25 THE COURT: Ms. Scott, if you could just come right

1 there. I understand ---

2 MS. SCOTT: I'm sorry, Your Honor. I'm sorry, Your
3 Honor. I apologize to the Court, but I'm in my second year of
4 diabetes and sometimes under the pressure, diabetes,
5 cholesterol problem and when I got to go I got to go.

6 THE COURT: And I understand that, and I can certainly
7 sympathize.

8 MS. SCOTT: But I do apologize.

9 THE COURT: And don't -- no need to apologize. I
10 understand it. That's certainly understandable and I think
11 what we have decided is that's why we've got alternate jurors.
12 I know because of yesterday you were feeling ill, today you
13 were feeling a little bit ill, so, I think what we're going to
14 do is excuse you from this jury. We certainly appreciate your
15 service. I admire your effort to try to sit and make it
16 through this trial, but I understand that there are some times
17 when people have physical conditions or illnesses or whatever
18 the case may be and sometimes they're temporary. Sometimes
19 they're permanent, but regardless it just makes it -- them
20 unable to render efficient jury service. Now, I appreciate
21 your effort. I appreciate your service, but I think we are
22 going to excuse you from any further service on this jury;
23 okay?

24 MS. SCOTT: All right, Your Honor.

25 THE COURT: Thank you very much.

1 MS. SCOTT: Thank you very much.

2 THE COURT: You're certainly welcome to stay with us
3 or if you would like to be excused you can go ahead and be
4 excused now, whichever you prefer.

5 MS. SCOTT: All right, sir, thank you.

6 THE COURT: All right, thank you.

7 (Juror Number 123, Emily J. Scott, exits courtroom.)

8 THE COURT: Madam Clerk, we have two alternates. We
9 need to put Juror Number 100 and Juror Number 112 and draw
10 that at random. Have we done that? Okay. We need to --
11 yeah, put them in there and turn it and just pull one out at
12 random.

13 THE CLERK: Juror Number 112, Your Honor, Sandra
14 Palmer Graham.

15 THE COURT: All right, so, Juror Sandra D. Palmer
16 Graham will replace Ms. Emily J. Scott on the jury, okay?

17 MR. BRYAN: I don't have any objection to that, Your
18 Honor.

19 THE COURT: All right, any challenges or objections
20 from the Defendant?

21 MR. AXELROD: No, sir, Your Honor.

22 THE COURT: All right, bring the jury back in full
23 and I'll direct Ms. Graham when she gets back in what we did.

24 (Whereupon, the following takes place in the presence of
25 the jury.)

1 THE COURT: Ladies and gentlemen, because through no
2 fault of her own, through no fault of anyone, Ms. Scott was
3 unable to render efficient jury service. So, we have had to
4 seat one of the alternates. Mrs. Graham, you will now replace
5 Ms. Scott on the jury, okay. So, you will no longer occupy
6 that chair and you will occupy one of the other regular juror
7 chairs. Ms. McCray, you will continue to occupy either one of
8 those seats, whichever one you prefer, okay?

9 MS. MCCRAY: Okay.

10 THE COURT: All right, I believe we were still in the
11 direct examination of Mr. Williams. Mr. Bryan.

12 BY MR. BRYAN:

13 Q Found it. Sir, I'm going to show you what's been marked
14 as State's 52. What is that?

15 A That's a photograph of the seal that I placed on the
16 body bag on this occasion.

17 Q Okay, and once you sealed it, let me get this in
18 evidence first. Does this fairly and accurately reflect the
19 way that you sealed that bag?

20 A Yes, it does.

21 Q And that's your, that's your markings on the seal?

22 A Yes, sir, I wrote SBI case number, the date and the time
23 the bag was sealed on that portion of the seal.

24 MR. BRYAN: I'd ask that State's 52 be admitted into
25 evidence.

1 THE COURT: Any objection?

2 MR. AXELROD: Without objection, Your Honor.

3 THE COURT: All right, State's Exhibit Number 52
4 admitted into evidence without objection.

5 (State's Exhibit 52 [Photograph] admitted into evidence.)

6 MR. BRYAN: I don't have any other questions. Please
7 answer any questions Mr. Axelrod has.

8 CROSS EXAMINATION

9 BY MR. AXELROD:

10 Q Did you ever go to Walt's house where this event occurred?

11 A I don't have a clue where he lives at.

12 Q So, the only stuff you were able to learn or glean
13 knowledge from was at the scene where the car was stopped?

14 A The things that were in the vehicle, yes, sir, that's my
15 only involvement in the case.

16 Q Thank you.

17 MR. AXELROD: Nothing further.

18 THE COURT: All right.

19 MR. BRYAN: Nothing further from the State and I'd
20 ask that Agent Williams be excused, Your Honor.

21 THE COURT: Any objection?

22 MR. AXELROD: Without objection, Your Honor.

23 THE COURT: All right, Mr. Williams, you may step
24 down and you are excused. Thank you very much.

25 MR. BRYAN: The State calls Chad Pennell.

1 THE COURT: All right, Mr. Pennell, if you'd come
2 around, please.

3 WHEREUPON, Michael Chad Pennell was called to the stand,
4 duly sworn by the Clerk and testified as follows:

5 THE CLERK: Thank you. Please be seated and state
6 your name for the record, spelling your last, please.

7 (Cell phone rings in courtroom.)

8 THE COURT: All right, if we would please have
9 everyone turn all cell phones, all communication devices off
10 completely. Okay. All right, please give us your full name
11 again and spell your last name.

12 MR. PENNELL: Michael Chad Pennell, P-E-N-N-E-L-L.

13 DIRECT EXAMINATION

14 BY MR. BRYAN:

15 Q Who are you employed by?

16 A I'm employed with the Alexander County Sheriff's Office
17 in North Carolina.

18 Q And what do you do? What's your role there?

19 A My -- I'm classified as detective sergeant over part of
20 the investigative unit. My main job is narcotics.

21 Q Now, do you do investigation?

22 A Yes, sir, I do.

23 Q And so, you're not a road, patrol deputy, you're an
24 investigator.

25 A That's correct, yes, sir.

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1 Q And but I guess normally you focus on narcotics?

2 A That's correct.

3 Q In this particular case did you get called out to a
4 crime scene where Vladimir Pantovich was?

5 A Yes, sir, I did.

6 Q Tell the jury how you got involved.

7 A I was on call, being the detective on call for that
8 particular week. I was called by the Sheriff's Office to
9 respond to the Wayside Church Road, which is within Alexander
10 County in North Carolina.

11 Q Did you respond?

12 A Yes, sir, I did.

13 Q Where did you respond to?

14 A It was Wayside Church Road and -- but actually it's all
15 Wayside Church Road within Alexander County toward the 16
16 South area, lower end of our county.

17 Q Okay, near 16 -- I'm sorry, near 16 South?

18 A Yes, sir.

19 Q Right off of 16 South? Who was there when you got
20 there?

21 A Chief Deputy Chris Bowman, Deputy John Hayes, Deputy
22 Buddy McKinney, Sergeant Jason Moore. I think that's, I think
23 that's all.

24 Q And what did you do when you got there?

25 A When I first initially responded, found out the

1 circumstances, I just been told a little bit over the phone.
2 Then I started taking photographs or area photographs around
3 the vehicle and the vehicle stop.

4 Q When you got there -- so, tell the jury who you found
5 and was there a suspect vehicle, and if so, describe it.

6 A There was a suspect vehicle there. It was a Mercury,
7 light blue in color with South Carolina tags that had been
8 stopped. There was a gentleman in the back of one of the
9 patrol cars, which is Mr. Vladimir, I call him Walt because I
10 can't say his name correctly. He was in the back of one of
11 the patrol cars.

12 Q And was he in Deputy McKinney's patrol car?

13 A Yes, sir.

14 Q Okay, and what did you, what did you do once you got
15 there, started processing the scene?

16 A Yes, sir, I did.

17 Q And was Van Williams of the SBI also involved in that
18 process?

19 A He was called and responded there to the scene.

20 Q Okay, and so, you all were -- two agencies kind of
21 essentially doing the same thing there, kind of assisting each
22 other processing the crime scene?

23 A Yes, sir.

24 Q Okay, so, what happened at the crime scene? I say the
25 crime scene where the vehicle was stopped with Mr. Pantovich?

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- 1 A The initial thing was I collected the particulars off
2 the vehicle, tag, vin number, so on and so forth, also
3 photographed, again I photographed around the vehicle and
4 pictures of the vehicle and then after that I would have left.
- 5 Q Okay, you say you left?
- 6 A Yes, to apply for a search warrant.
- 7 Q Okay, so, you went and got a search warrant?
- 8 A Yes, sir.
- 9 Q And do you have a judge sign it?
- 10 A Yes, sir.
- 11 Q And then did you all -- what was the search warrant for?
- 12 A The search warrant was for the vehicle and items
13 contained inside the vehicle.
- 14 Q And did you execute the search warrant or somebody with
15 your agency?
- 16 A I did.
- 17 Q Okay, and where did that take place?
- 18 A That -- we have a processing area there at the Alexander
19 County Sheriff's Office. The vehicle was towed there to that
20 processing area where the search warrant was served on that
21 vehicle and then the vehicle was processed.
- 22 Q And who was -- who did the primary processing of the
23 vehicle?
- 24 A That responsibility was the SBI.
- 25 Q So, who was the chief agent for the SBI?

- 1 A That would be Mr. Williams.
- 2 Q Van Williams?
- 3 A Yes, sir.
- 4 Q And so, you were there the entire time while the vehicle
- 5 was processed?
- 6 A Yes, sir.
- 7 Q Okay, at a later -- the Court's indulgence, Your Honor.
- 8 After the vehicle was processed did you later process Vladimir
- 9 Walt Pantovich?
- 10 A Yes, sir.
- 11 Q And tell the jury your role in that.
- 12 A What I did was I seized the clothing from Mr. Pantovich
- 13 and then took photographs of Mr. Pantovich each layer as I
- 14 took those, as I took the clothes from him.
- 15 Q And where did that take place?
- 16 A That took place at the Sheriff's Office.
- 17 Q And obviously he was in custody at that point?
- 18 A Yes, sir, he was.
- 19 Q And you took his items of clothing. I'm going to hand
- 20 you or maybe if you -- I don't know, whatever is better for
- 21 you. I can hand it to you. You can step down if you need to.
- 22 That's State's 53. What is that?
- 23 A This is a cardboard box that ---
- 24 Q Is that your box?
- 25 A No, sir.

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1 Q Can I get you to open it up? Do you have a knife or
2 need one?

3 A I need a knife. May I stand up?

4 Q So, that box has got SLED written on the outside a
5 couple of places, not your box. Inside what is that?

6 A Inside is a paper bag which is -- has my particular case
7 number for this particular case, meaning when I say our case
8 number, the Alexander County Sheriff's Office case number, the
9 time, the date, has what it is and my initials on it.

10 Q And what is it?

11 A It's the property that I seized from Mr. Pantovich, his
12 personal belongings.

13 Q So, when you were testifying just before and brought the
14 box over, you said you seized some clothes from him and on the
15 outside of the box has it got your signature or your initials
16 on it actually?

17 A Yes, MCP.

18 Q Okay, and so, reach in there and see if you find a
19 bandana that you seized off of Mr. Pantovich, and can you
20 describe that for the record?

21 A Yes, sir, it is a rebel flag sort of a bandana.

22 Q And what -- anything -- is it exactly the way you got it
23 or is there a little piece missing in there?

24 A There is a piece missing and some writing on the side
25 and front of it.

- 1 Q Somebody else wrote on that ---
- 2 A Yes, sir.
- 3 Q --- and that writing wasn't there when you seized it?
- 4 A That's correct.
- 5 Q And then there's a little cutting right, kind of at the
- 6 back maybe?
- 7 A Yes, sir.
- 8 Q And you didn't do that?
- 9 A No, sir.
- 10 Q Okay, so, what did you do with that once you took it off
- 11 his person?
- 12 A Placed it inside this bag.
- 13 Q Okay, are there any long johns ---
- 14 A Yes, sir.
- 15 Q --- or white long pants in there?
- 16 A You want me to leave these out?
- 17 Q Put them back in.
- 18 A Okay.
- 19 Q Did you seize those from him as well?
- 20 A Yes, sir, I did.
- 21 Q And is there -- are they in the same condition that you
- 22 seized them or is there any difference on them?
- 23 A No, there is some initials and there's a -- been a
- 24 cutting taken from the long johns.
- 25 Q And what did you do with that once you seized it?

1 A Once I seized it from Mr. Pantovich I put it inside this
2 bag.

3 Q And are there various other items in the bag?

4 A Yes, sir.

5 Q Oh, and I think there's a sock as well. Is there a sock
6 in there?

7 A Yes, sir.

8 Q And that sock that you're holding right there is it --
9 is that the way you seized it or is there a change made to
10 that?

11 A It's been cut, also.

12 Q And you didn't cut it?

13 A No, sir, I didn't.

14 Q And you haven't seen it, well, other than yesterday have
15 you seen it when it got -- when it's been cut?

16 A No, sir.

17 Q And somebody wrote on it?

18 A That's correct.

19 Q Okay, put that back in there and is there -- you don't
20 need to go through all of the items in there, but are all the
21 clothes or most of the clothes that you seized additionally in
22 there?

23 A Yes, sir, they are.

24 Q Okay, so, that's not all the items but that's three
25 items are in there along with some of his other clothes?

- 1 A That's correct, yes, sir.
- 2 Q And then what did you do with that bag, those clothes
3 once you put them in the bag. Did you seal it?
- 4 A Yes, I sealed it up. The tape still has my initials on
5 it right there.
- 6 Q And so, you took those, just to be clear, all those
7 items you seized from where?
- 8 A I seized them from the person of Mr. Pantovich.
- 9 Q And you put them in that bag?
- 10 A Yes, sir.
- 11 Q And sealed that bag?
- 12 A Yes, sir.
- 13 Q And then what did you do with that bag?
- 14 A I turned that bag over to -- if you let me grab my notes
15 I can tell you the exact person, Mr. Larry M. Lewis with
16 Georgetown County Sheriff's Office.
- 17 Q Did you photograph the Defendant in the condition he
18 came in?
- 19 A Yes, sir, I did.
- 20 Q And I'm going to hand you what has been marked for
21 identification purposes as State's 26. What is that?
- 22 A This is a front shot of Mr. Pantovich.
- 23 Q And does that fairly and accurately reflect the way he
24 appeared when you -- did you take those pictures?
- 25 A Yes, I did.

Michael Chad Pennell - Direct by Mr. Bryan

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1 Q When you took that picture?

2 A Yes, sir.

3 Q Describe what State's 27 is.

4 A State's 27 is a picture of Mr. Pantovich's hands being
5 the back side of his hands.

6 Q What is state's 28?

7 A State's 28 is a picture of the front side or the palm
8 side of Mr. Pantovich's right hand.

9 Q What is State's 29?

10 A State's 29 is a picture of Mr. Pantovich's palm side on
11 his left hand.

12 Q What is State's 30?

13 A State's 30 is a close picture of the fingernail area of
14 Mr. Pantovich's left hand.

15 Q And what is State's 31?

16 A State's 31 is a picture of Mr. Pantovich's left hand
17 with, in particular showing his middle finger, an area that I
18 noticed a scratch or something of that nature.

19 Q What is State's 32?

20 A State's 32 is a close up of the back side of Mr.
21 Pantovich's right hand.

22 Q State's 33?

23 A State's 33 is the forearm area of Mr. Pantovich noting a
24 scratch in the middle of his forearm on his left, left hand or
25 left arm, excuse me.

- 1 Q State's 34?
- 2 A State's 34 is a picture of the back area of Mr.
3 Pantovich's right arm noticing a scratch.
- 4 Q What is State's 35?
- 5 A State's 35 is a picture of Mr. Pantovich in his
6 underwear, the lower part of his body, the back side.
- 7 Q Why did you take a picture of him in his underwear?
- 8 A Just to document any type of injuries or anything that
9 was obvious. That's why we took the picture.
- 10 Q Or lack thereof?
- 11 A Or lack thereof.
- 12 Q What's State's 36?
- 13 A State's 36 is a frontal picture of Mr. Pantovich in his
14 underwear.
- 15 Q And State's 37, what is that?
- 16 A It's a close-up of Mr. Pantovich's back and him in his
17 underwear.
- 18 Q And finally State's 38?
- 19 A State's 38 is a front shot of Mr. Pantovich in his
20 underwear.
- 21 Q Are there any injuries that you can see on State's 38
22 that'd be in the front of Mr. Pantovich?
- 23 A No, sir.
- 24 Q At this time I would ask -- I'm going to ask if there's
25 any -- you see any injuries on State's 37, that's his back.

Michael Chad Pennell - Direct by Mr. Bryan

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1 You seen any injuries there?

2 A No, sir.

3 Q State's 36, you see any injuries there?

4 A No, sir.

5 Q State's 35, any injuries?

6 A No, sir.

7 Q State's 37. Okay, so, State's 31 ---

8 A Yes, sir.

9 Q --- that's the one you said had an injury on it?

10 A I noticed on his left hand, middle finger would be
11 classifying it in this, this area here, I noticed a little
12 place or right beside his fingernail. So, I took a close-up
13 photograph of that.

14 Q In his cuticle?

15 A Yes, sir.

16 Q And then on State's 34, there is a scratch on his arm?

17 A Yes, sir, it's on the outside.

18 Q And State's 33 is a scratch on the other arm?

19 A Yes, on the inside.

20 Q Any other injuries besides those three injuries that you
21 were able to detect on his entire body?

22 A No, sir.

23 Q At this point I would ask to admit into evidence -- let
24 me ask this, State's 31, 26, 35, 36, 37, 38, 33, 34, 32, 30,
25 29, 28 and 27, those are all the photos that you've just

1 identified. Do those all fairly and accurately reflect his
2 condition when you took pictures of him that day?

3 A Yes, sir.

4 Q Okay.

5 MR. BRYAN: And at this point I'd ask that they all
6 be moved into evidence, Your Honor.

7 THE COURT: Any objection?

8 MR. AXELROD: No objection, Your Honor.

9 THE COURT: All right, Plaintiff's Exhibits, excuse
10 me, State's Exhibits 26, 27, 28, 29, 30, 31, 32, 33, 34, 35,
11 36, 37 and 38 admitted into evidence without objection.

12 (Whereupon, State's Exhibits Numbers 26 through 38
13 [Photographs] admitted into evidence and appropriately
14 marked.)

15 MR. BRYAN: At this point, Your Honor, I'd request an
16 opportunity to publish them briefly. I'd just hand them to
17 let them hand them down.

18 THE COURT: Okay, but I want to make sure -- don't go
19 into any questions. I want them paying attention ---

20 MR. BRYAN: Yes, sir. Thank you, Your Honor.

21 THE COURT: --- to the witnesses. All right.

22 You can go ahead and ask questions.

23 MR. BRYAN: You say go ahead?

24 THE COURT: You can go ahead, yeah.

25 BY MR. BRYAN:

1 Q I'm going to hand you what's been marked for
2 identification purposes as State's 50, and I think I'm going
3 to have to have you open, that's -- what is that?
4 A State's 50 is a ashtray.
5 Q It's a box, that's not ---
6 A The box, I'm sorry.
7 Q --- that's not your box; is it?
8 A No, that's not my box.
9 Q That's the SLED, maybe somebody else's box. It's got
10 SLED written on it?
11 A Yes, sir.
12 Q And did you put anything in that box?
13 A No, sir.
14 Q Okay, so, let me get you to open that up and see what's
15 inside.
16 A I need that knife back. Are you going to need me to
17 pull it out?
18 Q I think so. I'm not going to get you to pull the
19 ashtray out.
20 A Just the bag, just the bag?
21 Q Your identifying marks for us.
22 A Okay.
23 Q Can you identify what's inside?
24 A Yes, sir, it's a paper bag, be my item number eight.
25 It's containing a metal ashtray that was seized from the

1 vehicle, Mr. Pantovich's vehicle and turned over to me by Mr.
2 Van Williams.

3 Q And you were there when Van Williams took it out of the
4 suspect vehicle?

5 A Yes, sir.

6 Q And then he gave it to you.

7 A He turned it over to me.

8 Q Then what did you do with it?

9 A I collected it and retained it in custody and then
10 turned it over to Mr. Larry M. Lewis with Georgetown.

11 Q Did you alter it or change it in any form?

12 A No, sir.

13 Q Okay, and you put it in that bag?

14 A Yes, Mr. Williams put it in this bag. I seized it from
15 Mr. Williams.

16 Q And you gave it, you gave this bag to Mike Lewis?

17 A That's correct, yes, sir.

18 Q Okay.

19 MR. BRYAN: I don't have any other questions. Please
20 answer any questions that Mr. Axelrod has.

21 CROSS EXAMINATION

22 BY MR. AXELROD:

23 Q Did you ever go to Walt's house in South Carolina?

24 A No, sir.

25 Q Your knowledge of this case is based on your information

Michael Chad Pennell - Cross by Mr. Axelrod

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1 you received at your police station and at the scene where the
2 car was?

3 A Yes, sir.

4 Q Nothing more than that?

5 A Nothing more than that.

6 Q And basically you've done inventory?

7 A Besides the photographs of Mr. Pantovich, yes, sir, I
8 seized the evidence from the SBI, held the evidence and then
9 turned it over to Georgetown when they, when they came.

10 Q So, you were a conduit for the evidence?

11 A Yes, sir.

12 Q Thank you.

13 THE COURT: Redirect?

14 MR. BRYAN: Nothing further, Your Honor. I'd ask
15 that Investigator Pennell be excused.

16 THE COURT: Any objection?

17 MR. AXELROD: Without objection, Your Honor.

18 THE COURT: All right, you may step down and you're
19 excused.

20 A Thank you, sir.

21 THE COURT: Thank you.

22 MR. BRYAN: They're -- I think they are getting the
23 next witness, Your Honor.

24 THE COURT: Okay.

25 WHEREUPON, John Magann was called to the stand, duly

1 sworn by the Clerk and testified as follows:

2 THE CLERK: Thank you. Please be seated, state your
3 name for the record, spelling your last name, please.

4 MR. MAGANN: John Magann, last name spelled M-A-G-A-N-N.

5 THE COURT: All right, Mr. Bryan.

6 DIRECT EXAMINATION

7 BY MR. BRYAN:

8 Q Deputy Magann, you work for the Georgetown Sheriff's
9 Office?

10 A Yes, sir.

11 Q And what are your -- what kind of officer are you?

12 A I'm a patrol officer. I'm assigned to the patrol
13 division, answer all 911 calls.

14 Q So, real briefly what does that mean?

15 A Any calls for service, if you call 911 or non-emergent I
16 respond to all incidents.

17 Q And you're a patrol deputy, you're out on the road and
18 if you get a call you respond to an incident location?

19 A Yes, sir.

20 Q On, I guess the early morning of March the 8th, 2006,
21 did you receive a call to respond to an incident location
22 involving an incident with Vladimir Pantovich?

23 A I did.

24 Q And tell the jury what incident location you were
25 dispatched to?

John Magann - Direct by Mr. Bryan

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1 A I was sent to [REDACTED] which is in the
2 Murrells Inlet section of Georgetown County for a possible
3 murder suicide. While in route, central, which is our
4 dispatch, stated that a subject by the name of Vladimir
5 Pantovich had apparently killed his live-in girlfriend or beat
6 his live-in girlfriend with a baseball bat and had fled the
7 scene or possibly fled the scene, that the subject was either
8 going to kill himself or dump the body and run.

9 Q And did you respond to [REDACTED]

10 A I did, sir.

11 Q Is that in Georgetown County?

12 A Yes, sir, it is.

13 Q What did you find when you got there?

14 A We found a -- my partner and I found a barn with a one-
15 room living quarters. The outside door was locked and the
16 windows all the blinds were drawn. We were able to see
17 through the window. The TV was on and that there was a rug
18 rolled up in the floor. After being there for a few minutes,
19 my sergeant, Clark Ard arrived to assist Deputy Chalk and
20 myself. While my sergeant and I were walking around I told
21 him, well, we had seen -- because there's also an open field
22 beside the house with large ditches, we had searched that area
23 also. We came back to the front door. We found a speck of
24 blood, what appeared to be a speck of blood above the door
25 knob. At that time Sergeant Ard notified the central to page

1 out the on-call investigator. We also notified Lieutenant
2 Pierce, who's over investigations, to respond to the scene.

3 Q I'm going to hand you State's 39. What is that?

4 A This is the entryway to the residence. They had an old
5 boat sitting here. That door entered into the garage. Once
6 you entered into the garage that's where we found the blood
7 was on this door. Once you entered in, immediately to your
8 right was another door which entered into the living quarters.

9 Q And I'm going to hand you what's been marked as State's
10 40. What is that?

11 A This is the door that we found the blood on.

12 MR. AXELROD: Your Honor, I would ask that the deputy
13 not publish till it's in evidence. At this point it's just
14 ID. He's publishing it as he's speaking.

15 THE COURT: All right, just have him identify it.
16 Don't publish it until it's admitted into evidence.

17 A Sorry. I'm sorry. Okay.

18 Q So, State's 40 is what?

19 A Front door to the garage.

20 Q And that had some red spots on it?

21 A Yes, sir.

22 Q And what did you do after you all kind of looked around?
23 Did you call anybody else or did anybody else respond?

24 A Just Lieutenant Pierce, Investigator Glover. Once they
25 arrived we went from there.

John Magann - Direct by Mr. Bryan

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1 Q So, is -- did you make entry into the residence prior to
2 Lieutenant Pierce being there?

3 A No, we did not.

4 Q Okay, was everybody waiting until -- is he -- would he
5 be the highest-ranking person there ---

6 A Yes, sir.

7 Q --- when he got there?

8 A Yes, sir, he was the one we -- when -- once he arrived
9 we told him what we had found and what we could see through
10 the blinds. At that time he told us let's, let's go ahead and
11 do a protective sweep of the residence to make sure nobody is
12 inside injured.

13 Q So, you got a call from 911, you responded to 3829
14 Labruce Lane?

15 A Yes, sir.

16 Q And you waited there until Lieutenant Pierce got there.

17 A Right.

18 Q I don't have any other questions. Please answer any
19 questions that Mr. Axelrod has.

20 MR. AXELROD: No questions.

21 THE COURT: All right, you may step down.

22 MR. BRYAN: The State calls Bill Pierce. May Deputy
23 Magann be released, Your Honor?

24 THE COURT: Any objection?

25 MR. AXELROD: No objection, Your Honor.

1 THE COURT: All right, sir, you're free to leave.

2 Thank you.

3 WHEREUPON, Bill Pierce was called to the stand, duly
4 sworn by the Clerk and testified as follows:

5 THE CLERK: Thank you. Please be seated and state
6 your name for the record, spelling your last name, please.

7 MR. PIERCE: Bill Pierce, P-I-E-R-C-E.

8 THE COURT: All right, Mr. Bryan.

9 DIRECT EXAMINATION

10 BY MR. BRYAN:

11 Q Who are you employed by?

12 A I work for the Georgetown County Sheriff's Office.

13 Q And what's your rank?

14 A I'm a lieutenant.

15 Q So, you're a lieutenant over any particular division?

16 A I supervise criminal investigations.

17 Q And are you also over the crime scene? Do you do crime
18 scene investigation as well?

19 A Yes, sir.

20 Q Okay, have you received any special training with
21 respect to crime scene processing and analysis?

22 A Yes, I have.

23 Q Tell the jury just briefly what kind of training you've
24 received or where you've received it and what type of
25 training.

Bill Pierce - Direct by Mr. Bryan

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1 A Well, in addition to graduating from the Ohio Peace
2 Officer Training Academy and the South Carolina Criminal
3 Justice Academy I've received approximately 450 hours of
4 advanced crime scene training from various agencies throughout
5 the country dealing specifically with crime scene processing
6 and investigation.

7 Q And how long have you been with the Sheriff's Office?

8 A Almost 17 years.

9 Q And how long have you been sort of -- how long have you
10 had crime scene analysis or processing as part of your
11 responsibilities?

12 A For approximately 10 years.

13 Q Okay, and so, I don't know if you can make a guess, but
14 do you have any idea how many crime scenes you've processed in
15 that time?

16 A Almost, approximately a thousand, around a thousand
17 crime scenes.

18 MR. BRYAN: At this time, Your Honor, I would ask
19 that Lieutenant Pierce be qualified as an expert in the field
20 of crime scene processing analysis.

21 THE COURT: Any questions or objections, Mr. Axelrod?

22 MR. AXELROD: What -- may I go into it?

23 EXAMINATION (RE: QUALIFICATIONS)

24 BY MR. AXELROD:

25 Q To be qualified as an expert what degrees do you have in

1 advanced training?

2 A What degrees?

3 Q Yes, have you received any degrees that say that you're

4 an expert?

5 A Well, every, every class that I attend I receive a

6 certificate of completion, if that's what you're referring to.

7 Q And those certificates say you're an expert in the ---

8 A No, sir, the courts in this state say I'm an expert.

9 Q I'm asking you if there's a piece of paper say you an

10 expert.

11 A No, sir, they don't.

12 Q We're here, we're here to determine right now ---

13 A They don't say that I'm an expert.

14 Q Now, so, it's your -- it's your testimony today that you

15 are an expert in crime scene processing.

16 MR. BRYAN: Objection to the form of the question.

17 Mr. Axelrod knows that he doesn't testify that he's an expert.

18 He would be qualified if you find him qualified, Your Honor.

19 THE COURT: Okay, I'm going to allow the question. Go

20 ahead.

21 A No, sir, I'm not sitting here saying I'm an expert.

22 Q Okay, thank you.

23 MR. BRYAN: Your Honor, we would ask that he be

24 qualified as an expert.

25 THE COURT: Any objection?

Bill Pierce - Direct by Mr. Bryan

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1 MR. AXELROD: I would say that he's a police officer.
2 I don't think he's an expert in the line of what we would say
3 is an expert testimony to crime scene evaluation.

4 MR. BRYAN: Based on his ten years of experience as
5 the crime processing.

6 THE COURT: I got it. I got it. All right, I find
7 Lieutenant Pierce qualified as an expert in the field of crime
8 scene investigation.

9 Now, ladies and gentlemen of the jury, what this means is
10 normally a person can only testify as to what they actually
11 know, what they saw, what they heard, what they observed, what
12 they smelled, what they tasted, things that they actually
13 observed and cannot render opinions. However, certain people
14 because of their education, because of their job training,
15 because of their experience, they have a certain degree of
16 knowledge in a certain area that allows them to be classified
17 as an expert and they are permitted to give their opinion in
18 certain areas if the Court qualifies them that way. Now, I
19 have found Lieutenant Pierce qualified as an expert in the
20 field of crime scene investigations, which means he will be
21 allowed, if the proper foundation is laid, to give his
22 opinion as it pertains to crime scene investigation in this
23 case. Now, that does not mean that you must accept his
24 opinion. It doesn't mean that his testimony is any more
25 important or is any more believable just because he is an

1 expert. All his qualifications as an expert in this case do
2 is it allows him to give an opinion based upon a set of facts
3 that he did not necessarily have to personally observe,
4 witness, taste, hear, smell or whatever the case may be.

5 All right, Mr. Bryan, you can continue.

6 MR. BRYAN: Thank you, Your Honor.

7 DIRECT EXAMINATION (CONTINUED)

8 BY MR. BRYAN:

9 Q Please tell the jury -- did you respond to 3829 Labruce
10 Lane on the early morning of March 8th, 2006?

11 A Yes, I did.

12 Q And tell the jury what you did when you got there.

13 A I met with the shift supervisor and the deputies that
14 were on scene and they told me the circumstances surrounding
15 the events that led them to that location that night.

16 Q And as a result of that what did you do?

17 A I gave the order to enter the house to conduct a
18 protective sweep for victims.

19 Q Did you all -- so, you all -- you gave the order and
20 then did you all enter the house?

21 A Yes, we did.

22 Q And so, when you say -- who else was there with you?

23 A Myself, Sergeant Clark Ard, Deputies John Magann and
24 Warren, Deputy Warren Chalk.

25 Q Okay, and at that time was Investigator Smith there?

Bill Pierce - Direct by Mr. Bryan

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1 A No, sir.

2 Q Okay, so, you all entered the residence and what did you
3 do once -- what was the purpose of entering the residence?

4 A To search for victims, for persons that might have been
5 injured within the house.

6 Q And that's based on the report that you had received
7 from 911?

8 A Correct.

9 Q And so, what did you find when you got in there?

10 A Nothing. The house was empty. There was a small dog
11 inside the house that we secured in a bathroom and that was
12 about it. Once we determined that there were no persons in
13 plain view in the house or people injured, there was a large
14 area rug that was rolled up on the floor of the living room
15 that was unrolled and it contained what appeared to be a large
16 stain, presumably blood. I used a field test kit and verified
17 that it was, in fact, blood by the field test. It was a
18 positive field test for blood. At that time I had the
19 officers back out of the house and I had Investigator Paul
20 Glover prepare a search warrant for the house.

21 THE COURT: Mr. Bryan.

22 Q Did Investigator Glover return with a search warrant?

23 A Yes, he did.

24 Q Did the Sheriff's Office execute the search warrant?

25 A Yes, we did.

1 Q Did you all go inside?

2 A We did.

3 Q And let me show you what's been marked for
4 identification purposes as State's 44. What is that?

5 A This is a photograph of the area rug once it was
6 unrolled.

7 Q And does that fairly and accurately reflect what you saw
8 when you went inside?

9 A Yes, it does.

10 Q And then there's another -- is that a close-up of the
11 same rug?

12 A This is a close-up of the same rug showing the stain
13 that I mentioned a few seconds ago.

14 Q What color is the stain?

15 A Red.

16 Q That's State's 45?

17 A That's State's 45.

18 Q Does that -- does -- do State's 44 and State's 45 fairly
19 and accurately reflect what you saw when you went in?

20 A Yes, they do.

21 MR. BRYAN: I'd ask that State's 44 and 45 be
22 admitted into evidence.

23 MR. AXELROD: Without objection, Your Honor.

24 THE COURT: All right, State's Exhibits Number 44 and
25 45 admitted into evidence without objection.

Bill Pierce - Direct by Mr. Bryan

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1 (Whereupon, State's Exhibit Number 44 and 45
2 [Photographs] admitted into evidence and appropriately
3 marked.)

4 MR. BRYAN: Request to publish. I'll just hold them
5 up, Your Honor.

6 THE COURT: All right, that'll be fine.

7 BY MR. BRYAN:

8 Q So, you executed the search warrant and you went inside
9 and what was the purpose -- once you got the search warrant,
10 you found out nobody was in there, nobody was injured; is that
11 right?

12 A Correct.

13 Q Then you got a search warrant, and then once you
14 executed the search warrant what was the purpose of going back
15 inside?

16 A To collect any evidence that we might have found inside
17 the house.

18 Q And so, did you find -- starting with the outside
19 entryway into the residence did you find any evidence?

20 A Yes, we did.

21 Q Where?

22 A There was a stain on the carport door. There was a
23 carport that attached to the house. The door leading into the
24 garage area from the carport on the exterior side or the
25 outside of the door there was a stain, a probable blood stain

1 that was ultimately collected, swabbed.

2 Q That was not collected by you though, the swab.

3 A No, that wasn't collected by me.

4 Q Did you find any evidence inside? You collected -- did
5 you, did you personally collect any evidence inside?

6 A I collected -- you just want me to read the list of what
7 I collected from the crime scene?

8 Q I'll tell you what I'll do. I show you something if you
9 -- I'm going to hand you what's been marked for
10 identification purposes as State's 54. What is that?

11 A These are two swabs of suspected blood from the end
12 table in the living room.

13 Q So, the jury understands sort of the packaging, is this
14 outside, this outside plastic baggie, is that your bag?

15 A No, it's not.

16 Q Did you ever put those -- are there -- what's inside of
17 that plastic bag?

18 A Inside the plastic bag are my evidence packages, the
19 yellow envelope.

20 Q So, you collected two swabs and you put those into a
21 yellow envelope inside of that plastic bag?

22 A That's correct.

23 Q And are there some other ---

24 A There are.

25 Q --- envelopes?

Bill Pierce - Direct by Mr. Bryan

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1 A There's three other envelope -- there's four total.

2 Q Okay, but what we're primarily interested in right now
3 is just the one that you can actually see. What is that
4 yellow envelope? What's inside that?

5 A Inside this front yellow envelope are two swabs of
6 suspected or probable blood from an end table in the living
7 room.

8 Q And you collected that yourself?

9 A I did.

10 Q How did you collect it?

11 A I used a package of two sterile swabs, would have
12 moistened the swabs with sterile water and then, and then
13 wiped those across the stain, let them, let, let the swabs dry
14 and then package them in a box and then place the box inside
15 this yellow envelope.

16 Q And then how's -- what's this, this plastic baggie on
17 the outside? What does it say?

18 A This is an evidence bag that the South Carolina Law
19 Enforcement Division uses.

20 Q So, after it goes up to SLED they repackage it, seal it
21 and bring it -- and send it back?

22 A Correct.

23 Q Okay, and so, on the -- on just yours can you tell what
24 did you do with this two swabs that you collected? You placed
25 them into the yellow bag.

- 1 A Once I place the two swabs in the box, place the box
2 inside this first yellow envelope, then I secured or sealed
3 this yellow envelope with evidence or tamper tape. I took
4 this envelope and placed it in evidence at the Sheriff's
5 Office on March the 8th, 2006, at 11 o'clock a.m.
- 6 Q So, that would be within the custody of Joyce Whalen?
- 7 A Correct.
- 8 Q Did you, did you collect a fire poker?
- 9 A Yes, I did.
- 10 Q And why did you do that?
- 11 A Because I had received information that perhaps a fire
12 poker was used in this incident.
- 13 Q I'm going to hand you what's been marked for State's
14 identification as 46. Do you see the -- what is that?
- 15 A State's 46 is a photograph that I took of the fire poker
16 that I collected from the crime scene.
- 17 Q And is that where you collected it?
- 18 A That's correct.
- 19 Q Okay, and what did you do with it once you got it?
- 20 A Placed it in a box, secured the box and took it, placed
21 it in evidence at the Sheriff's Office, the same as I did with
22 the swabs that I just spoke about.
- 23 MR. BRYAN: At this point, Your Honor, I'd like to
24 ask that State's 46 be admitted into evidence.
- 25 MR. AXELROD: Without objection.

Bill Pierce - Direct by Mr. Bryan

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1 THE COURT: All right, State's Exhibit Number 46
2 admitted into evidence without objection.

3 (Whereupon, State's Exhibit Number 46 [Photograph]
4 admitted into evidence and appropriately marked.)

5 MR. BRYAN: And request to publish it just by holding
6 it up briefly.

7 THE COURT: That'll be fine.

8 BY MR. BRYAN:

9 Q I'm going to hand you what's been marked for
10 identification purposes as State's 55.

11 A May I step down?

12 Q Yeah.

13 THE COURT: Yes.

14 Q And that's a box. Is that your box or somebody else's
15 box?

16 A This is our, our -- one of our evidence boxes.

17 Q And I'm going to ask you to open that up and see what's
18 inside. Does it have any -- while you're doing that, does it
19 have any markings on the outside to indicate what's inside?

20 A Yes, it does.

21 Q What are the markings?

22 A There's an evidence tag on the front of the box. The
23 evidence description is a broken fireplace poker.

24 Q And, okay, go ahead and open it up and see what's
25 inside.

1 A I'm going to need a pair of scissors or -- remove it?
2 Q Please. Is that the fire poker you seized?
3 A Yes, it is.
4 Q And is it in the same condition? Are there any changes
5 to it actually? Are there any markings on it that aren't
6 yours?
7 A There are some markings on it that are not from me.
8 Q Okay, but other than the markings is it in the same
9 condition that you seized it in?
10 A Yes.
11 Q So, even in the picture shows that it was in two pieces;
12 is that right?
13 A Correct.
14 Q Okay, let me get you to put that back in the ---
15 MR. BRYAN: At this point, Your Honor, I would ask to
16 move the contents of the box marked State's 55 into evidence,
17 that being the fire poker.
18 THE COURT: Any objection?
19 MR. AXELROD: Is that the only -- Your Honor, is that
20 the only thing in that box, the poker?
21 MR. BRYAN: I believe so. That's the only thing in
22 there.
23 MR. AXELROD: Without objection. That's the only --
24 the piece in there.
25 THE COURT: All right, State's Exhibit Number 55

Bill Pierce - Cross by Mr. Axelrod

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1 admitted into evidence without objection.

2 (Whereupon, State's Exhibit Number 55 [Fireplace Poker]
3 admitted into evidence and appropriately marked.)

4 MR. BRYAN: I don't have any other questions. Please
5 answer any questions Mr. Axelrod has.

6 CROSS EXAMINATION

7 BY MR. AXELROD:

8 Q Good afternoon, Mr. Pierce.

9 A Good afternoon.

10 Q Did you bring a copy of the report you made?

11 A Yes, sir.

12 Q Which report did you bring today?

13 A It's a copy of my supplement dated March 13th.

14 Q Approximately four pages?

15 A Yes, sir.

16 Q Okay, and pretty much it, it's just a narrative and
17 pretty much what you just testified to.

18 A Correct.

19 Q Is that correct? Okay, did you, did you happen to make
20 an inventory list of what was in the, in Walt's house?

21 A No, sir, I did not.

22 Q You took the fireplace poker with you into evidence but
23 did you take the rest of the fireplace tools into evidence?

24 A No, sir, I did not.

25 Q In your crime scene experience and this Court has

1 quantified you as an expert for today, have you been to other
2 crime scenes where people try to cover up the crime?

3 A Yes, I have.

4 Q Have you been in crime scenes where say blood was a
5 part of the crime scene that people might take Clorox or try
6 to wash things up?

7 A Yes, I have.

8 Q Did you see bottles of Clorox all over the floor in this
9 case?

10 A No, I did not.

11 Q Thank you.

12 MR. AXELROD: Nothing further.

13 THE COURT: Redirect?

14 MR. BRYAN: Nothing further, Your Honor.

15 THE COURT: All right, you may step down.

16 A Thank you.

17 THE COURT: I think it's a good time to take about a
18 10 to 15-minute break and let the jury stretch their legs, use
19 the restroom, get something to drink. So, we'll stand in
20 recess for about 15 minutes; okay?

21 MR. BRYAN: May Investigator Pierce be excused, Your
22 Honor?

23 THE COURT: Any objection?

24 MR. AXELROD: No objection.

25 THE COURT: All right, he's excused. Everyone else

Bill Pierce - Cross by Mr. Axelrod

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1 please remain in place while the jury is excused. Please do
2 not begin any deliberations or talk about the case.

3 (Whereupon, the following takes place outside the
4 presence of the jury.)

5 THE COURT: All right, we'll stand in recess for about
6 15 minutes.

7 *****OFF THE RECORD*****

8 (On the record.)

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 MR. AXELROD: Your Honor, may I approach?

12 THE COURT: All right.

13 (Whereupon, a bench conference was held.)

14 THE COURT: Tell Mr. Axelrod we need to get started
15 back, please.

16 All right, anything from the State before we bring the
17 jury back in?

18 MR. BRYAN: No, Your Honor.

19 THE COURT: All right, anything from the Defense
20 before we bring the jury back in?

21 MR. AXELROD: No, sir, Your Honor.

22 THE COURT: All right, you can bring the jury back in,
23 please.

24 (Whereupon, the following takes place in the presence of
25 the jury.)

1 THE COURT: All right, ladies and gentlemen, welcome
2 back. We'll continue now with the evidentiary portion of the
3 trial. Mr. Bryan, you can call your next witness. Mr. Bryan.

4 MR. BRYAN: Thank you, Your Honor. The State calls
5 Investigator George Smith.

6 WHEREUPON, George Smith was called to the stand, duly
7 sworn by the clerk and testified as follows:

8 THE CLERK: Thank you. Please be seated. State your
9 name for the record, spelling your last, please.

10 MR. SMITH: George Smith, S-M-I-T-H.

11 MR. BRYAN: The Court's indulgence, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. BRYAN:

14 Q Investigator Smith, who do you, who do you work for?

15 A Georgetown County Sheriff's Office.

16 Q And how long have you been with the Sheriff's Office?

17 A Approximately 17 years.

18 Q And in what capacity do you work there now?

19 A I'm a senior investigator.

20 Q And how long have you been an investigator?

21 A Approximately 15 years.

22 Q And what are your general duties as an investigator?

23 A To investigate various crimes reported in Georgetown
24 County.

25 Q How did you get involved in this case?

George Smith - Direct by Mr. Bryan

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1 A I was contacted by Lieutenant Pierce and asked to co-
2 process this crime scene with him.

3 Q Okay, do you and Investigator Pierce kind of work
4 together on crime scenes on major cases?

5 A Yes, sir.

6 Q That's the general practice, you two are the crime scene
7 guys for the Sheriff's Office; right?

8 A Yes, sir.

9 Q And so, and how long have you all been kind of working
10 together in that capacity?

11 A Approximately 10 years.

12 Q Okay.

13 A I've processed over a thousand crime scenes, including
14 hundreds of death investigations. I have over 800 hours in
15 advance crime scene investigations. I'm an accredited
16 instructor through the South Carolina Criminal Justice Academy
17 and I've co-taught a 70-hour crime scene class, also a
18 homicide class through the South Carolina Chiefs of Police
19 through the Criminal Justice Academy.

20 Q That's classes, the last thing you said was 70 hours
21 that you've taught to other police chiefs ---

22 A Correct.

23 Q --- or to police chiefs throughout the state?

24 A Well, the 70 hours was to other law enforcement.

25 Q Okay, and so, you've also been qualified as an expert in

1 the field of crime scene investigation in the State of South
2 Carolina in General Sessions Court?

3 A Yes, sir.

4 MR. BRYAN: At this point I would ask to have
5 Investigator Smith qualified as an expert in the field of
6 crime scene investigation.

7 THE COURT: Any questions?

8 MR. AXELROD: No, sir, Your Honor, no objection.

9 THE COURT: All right, I'll qualify Mr. Smith as an
10 expert in the field of crime scene investigation.

11 BY MR. BRYAN:

12 Q So, when you responded to this incident location what
13 was the address?

14 A [REDACTED] Murrells Inlet.

15 Q And that's in Georgetown County?

16 A It is.

17 Q And had people at the Sheriff's Office already entered
18 when you got there or did you all make entry together?

19 A They had made entry under exigent circumstances before I
20 got there to make sure that there wasn't anybody in need of
21 any EMS or medical attention, but as far as entering after the
22 search warrant we did that together, myself and Lieutenant
23 Pierce.

24 Q So, you got there, waited on them to get the search
25 warrant after you all found out there was nobody dead or dying

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1 inside and then you all entered together to process the crime
2 scene.

3 A Yes, sir, we entered.

4 Q And so, you and Lieutenant Pierce processed the scene
5 together. What did you do once inside?

6 A I began collecting measurements for what we call crime
7 scene sketch of the residence and items within it that seemed
8 to have an evidentiary value, while Lieutenant Pierce did
9 other portions of the processing. I also collected what
10 appeared to be blood on the exterior of the door to the
11 residence.

12 Q Let's just go ahead and hand you the blood first. I'm
13 going to hand you what's been marked for identification
14 purposes as State's 54. What is that?

15 A It's a clear plastic envelope with looks like four paper
16 envelopes inside of it, evidence envelopes.

17 Q Is the clear plastic envelope your agency's or the
18 sealed bag around the other envelopes, is that your agency's
19 or another one?

20 A No, it is not. It says South Carolina Law Enforcement
21 Division.

22 Q And that's so -- you sent that up, some evidence to SLED
23 and they package it and seal it in that container and send it
24 back.

25 A Yes, it is.

- 1 Q And can you go ahead and is it sealed tight right now?
- 2 A I would have to cut it open.
- 3 Q Okay, go ahead and do that.
- 4 A I've got a knife.
- 5 Q And see if you see in there any swabs that you collected
- 6 from the door?
- 7 A Yes.
- 8 Q And take that out of the bag.
- 9 A There's two envelopes.
- 10 Q And one is from the plant stem on the porch table. The
- 11 other being what?
- 12 A From the exterior side of the entrance door.
- 13 Q So, let's put this one back in there, and kind of , put
- 14 it back in there if I get it marked separate. I'm going to
- 15 hand you what's been marked for identification purposes as 58.
- 16 What is that?
- 17 A It's a craft envelope, evidence envelope that the
- 18 Sheriff's Office uses. It says evidence description, two of
- 19 possible blood from the exterior side of entrance door.
- 20 Q And ---
- 21 A It's initialed by me and it's got tamperproof tape on
- 22 the back where I had originally sealed it, signed it and dated
- 23 it.
- 24 Q Did you collect, you collected that?
- 25 A Yes, I did.

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1 Q And I'll let you put that down for a second so I can
2 hand you State's 39. What is that?

3 A That's a photograph looking at the porch area of the
4 residence on Labruce Lane and the entrance door that I swabbed
5 for blood.

6 Q Kind of dark right in the middle?

7 A Yes, it is.

8 Q And the State's 40, what is that?

9 A That's the entrance door that I swabbed for blood.

10 Q And what is State's 41?

11 A That is the blood that was swabbed.

12 Q So, State's 41, basically they're -- 40 is a little
13 closer view of 39 and 41 is a little closer view of the door
14 on 40?

15 A Yes, sir.

16 Q And 41 shows the blood that you actually swabbed?

17 A Yes, sir.

18 Q Does those three photos fairly and accurately reflect
19 that crime scene when you were there that night?

20 A They do.

21 MR. BRYAN: I'd ask that State's 39, 40 and 41 be
22 admitted into evidence.

23 THE COURT: Any objection?

24 MR. AXELROD: May I see them, Your Honor? Without
25 objection, Your Honor.

1 THE COURT: All right.

2 MR. BRYAN: And request to publish.

3 THE COURT: State's Exhibit Number 40 -- excuse me,
4 State's Exhibits Number 39, 40 and 41 admitted into evidence
5 without objection.

6 MR. BRYAN: And request to publish them just briefly
7 by holding them up, Your Honor.

8 THE COURT: That's fine. Go ahead.

9 (State's Exhibit Numbers 39, 40 and 41 [Photographs]
10 admitted into evidence and appropriately marked.)

11 BY MR. BRYAN:

12 Q All right, so, you swabbed that door, you put that in
13 evidence, your swabs into this Number 58, which I'm going to
14 go ahead and put back into -- what did you do with 58 after
15 you collected it?

16 A After I collected it I placed it in this -- there's a
17 cardboard sleeve we placed the sterile swabs into and then we
18 seal it on the back with tamperproof tape and we initial it
19 and put the date on it so we can identify it later.

20 Q And then where'd you take it or what did you do with it?

21 A I then dropped it at evidence March 8th, 2006,
22 approximately 10:30 a.m.

23 Q That same day, that same morning?

24 A Yes, sir.

25 Q I'm going to place that back into -- 58 back into 54

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1 where it came from.

2 All right, so, after you collected that evidence you
3 testified you took some measurements; right?

4 A Yes, sir.

5 Q I'm going to show you what's been marked as State's 57.
6 Let me show you what's been marked for identification as
7 State's 57 and if you need to you can come down off the --
8 well, what is that?

9 A That's a blown-up, a copy of the crime scene sketch that
10 I completed.

11 Q And what is State's 58 or start with 56?

12 A That is a blown-up copy of the sketch that I did of the
13 exterior door where I swabbed the blood.

14 Q So, what's significant about that is it shows on there
15 where the blood is that you collected on the door?

16 A Yes, sir.

17 Q Which are the pictures that were just admitted into
18 evidence?

19 A Yes, sir.

20 MR. BRYAN: At this point, Your Honor, I would like to
21 ask that 56 be admitted into evidence.

22 THE COURT: Any objection?

23 MR. AXELROD: Is that the crime scene sketch, Your Honor?

24 THE COURT: The door.

25 MR. AXELROD: Of the door? As long as the jury realizes

1 that it's not to scale, that -- because it says on it I
2 believe that it's not to scale, if the Court could explain
3 that to the jury.

4 MR. BRYAN: I can ask that question.

5 BY MR. BRYAN:

6 Q Is it to scale?

7 A No, sir, it is not. I have placed on the side of it not
8 to scale.

9 Q And so, it's documented on the exhibit itself that it's
10 not to scale.

11 A Yes, sir.

12 Q It just depicts, it's a blown-up version depicting where
13 you got the blood; is that correct?

14 A Yes, sir.

15 MR. BRYAN: And so, with that I would ask that it be
16 admitted into evidence, Your Honor.

17 THE COURT: Any objection?

18 MR. AXELROD: Not at that point, Your Honor, no, sir.

19 THE COURT: All right, State's Exhibit Number 56
20 admitted into evidence without objection.

21 (State's Exhibit Number 56 [Photograph] admitted into
22 evidence and appropriately marked.)

23 MR. BRYAN: I ask he come down off the witness stand
24 so the jury can see, show the jury where on your diagram you
25 collected that evidence.

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1 A There's two Xs on the door where there was what appeared
2 to be blood that was collected. One was approximately three
3 feet, eight inches down just above the doorknob. The other
4 one was approximately an inch down from the top of the door.

5 Q Before we get into the other diagram, I'm going to ask
6 you to describe the condition of the interior of the
7 residence.

8 A The residence itself was what appeared to be a garage
9 that had been converted into an open floor plan like
10 apartment. It was in disarray as far as housekeeping but we
11 didn't observe anything in the residence that was broken,
12 turned over, that would give us the opinion that there had
13 been a struggle. There was an area in the living room where
14 the rolled up rug was that had what was blood on it and that
15 area of the house was actually in the best order, had the
16 least amount of personal items in it.

17 Q In other words, when you say it was in the best order
18 would you say it was fair to say the house was generally a
19 mess?

20 A Yes.

21 Q And but the part where the rug was rolled up where there
22 was blood collected there or there was the red stain on that
23 in the living room any broken tables?

24 A No, sir.

25 Q Any broken lamps?

- 1 A No, sir.
- 2 Q Any broken anything other than -- well, anything else
- 3 that you could say that was broken, smashed, out of place?
- 4 A No, sir.
- 5 Q I'm going to show you what's been marked for
- 6 identification purposes as State's 43. I'm going to show you
- 7 State's 42. What is that?
- 8 A That's a photograph of the -- looking toward the bedroom
- 9 and dining room area of the Labruce Lane residence.
- 10 Q Did you take that or Investigator Pierce?
- 11 A Lieutenant Pierce.
- 12 Q And does that fairly and accurately reflect the
- 13 condition of the house?
- 14 A Yes, it does.
- 15 Q Did you all turn anything over or knock anything over,
- 16 mess anything up while you were there?
- 17 A No, sir, we photograph everything before we touch
- 18 anything. So, the first step in crime scene processing is you
- 19 photograph everything before you touch it.
- 20 Q So, that's State's 43. What is that?
- 21 A That's a photograph similar to the first, State's 42,
- 22 but a little bit further back. It captures a portion of the
- 23 area rug that was found rolled up in the living room area.
- 24 Q And does that fairly and accurately reflect the
- 25 condition of the house when you got there?

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1 A Yes, it does.

2 MR. BRYAN: I'd ask State's 42 and 43 be admitted and
3 request to publish.

4 MR. AXELROD: Without objection, Your Honor.

5 THE COURT: All right, State's Exhibits 42 and 43
6 admitted into evidence without objection.

7 (Whereupon, State's Exhibit Numbers 42 and 43
8 [Photographs] admitted into evidence and appropriately
9 marked.)

10 BY MR. BRYAN:

11 Q Did you -- were you present at the autopsy?

12 A Yes, sir, I was.

13 Q And did you -- were you present for the breaking of the
14 seal? When the body arrived there was it -- was there a seal
15 on the body bag?

16 A There was a seal that was on the body bag. There was
17 two zippers brought together and they were sealed by a
18 tamperproof seal and it was initialed and signed by whomever
19 put it there and it was intact.

20 Q So, I'm going to hand you what's already in evidence I
21 believe as State's 52 and is that the seal that you were just
22 describing?

23 A Yes, sir, it is.

24 Q And was the -- you said it was intact and were you there
25 when it was broken?

1 A Yes, I was.

2 Q And was it broken at the autopsy by one of the medical
3 personnel at MUSC?

4 A Yes, sir, it was.

5 Q Did you identify the victim?

6 A Not immediately. I attempted to by her driver's license
7 photograph that I had carried with me but because of the
8 injuries to her face I couldn't discern if that was her,
9 neither could the other personnel there. So, I did --
10 collected postmortem fingerprints from her, subsequently sent
11 to the FBI who compared them with her military fingerprints
12 and that's how we were finally able to positively identify
13 her.

14 Q What was -- who was the victim, was her name?

15 A I don't want to get the full name wrong, Sheila
16 McPherson.

17 Q And what is, what is her height, what was her height and
18 weight?

19 A She was approximately 5-3, 125 pounds.

20 Q Five foot 3, 125?

21 A Yes.

22 Q When you were at the -- I'm going to hand you what's
23 marked for identification purposes as State's 59. What is
24 that?

25 A It says answering machine Pantovich.

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1 Q And so, did you -- when you were at the -- back at the
2 crime scene did you collect any evidence from the answering
3 machine?

4 A Yes, sir, I did.

5 Q And how did you do that?

6 A There was one message on the answering machine. I used
7 my digital recorder, mashed play. As it played it I recorded
8 onto my digital recorder and transferred it to that disk
9 knowing that once you unplug those machines, it was a digital
10 answering machine, that more than likely you're going to lose
11 or risk losing whatever message is on there. So, that's why I
12 did that.

13 MR. BRYAN: Your Honor, I'd like to publish this.
14 This would be the last thing I would do through Investigator
15 Smith today, but I think we might need to take a real short
16 break before we do it in order for me to be able to publish it
17 properly.

18 THE COURT: All right, ladies and gentlemen of the
19 jury, we'll excuse you back to the jury room briefly. We'll
20 bring you back out in just a minute. Everybody remain seated
21 while the jury is excused.

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right, they're out. Mr. Axelrod, any
25 objection to the publishing of the disk?

1 MR. AXELROD: No, sir, Your Honor, in talking with the
2 Solicitor, it has the 911 on it that was already published and
3 I said to the Solicitor, I said as long as we just publish the
4 recording that'd be fine. So, the Solicitor I think what he
5 wants to do is cue it up and have it.

6 THE COURT: Okay, all right, then we'll wait for him
7 to get back.

8 MR. BRYAN: Your Honor, I'm sorry for the delay. Just
9 to explain, Investigator Smith put, which is no problem, but
10 there's a 911 which is already in, as well as several
11 conversations from Surfside 911 in addition to the answering
12 machine that we're referring to, all on the same disk, and I
13 just wanted to make sure that we're just going to play the one
14 particular thing that we're looking to play. That's why we
15 needed to take the break just to make sure we don't publish
16 something we're not supposed to.

17 THE COURT: How long do you think?

18 MR. BRYAN: Hopefully a minute or two.

19 THE COURT: All right, we'll just sit tight.

20 MR. BRYAN: Yeah, I think it'll be just one second.
21 We're ready.

22 THE COURT: All right, anything before we bring the
23 jury back in?

24 Anything from the State?

25 MR. BRYAN: I'm sorry, Your Honor. One second. Now

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1 it won't rewind. So, let's get it -- we're ready.

2 THE COURT: All right, anything from the State before
3 we bring the jury back in?

4 MR. BRYAN: No, sir, Your Honor.

5 THE COURT: Anything from the Defense? All right,
6 bring the jury back in.

7 (Whereupon, the following takes place in the presence of
8 the jury.)

9 THE COURT: All right, Mr. Bryan, you can publish.

10 MR. BRYAN: Thank you, Your Honor. I'm going to do
11 one other piece of housekeeping and then I'm going to publish
12 that.

13 THE COURT: All right.

14 BY MR. BRYAN:

15 Q I've got State's 60. What is that?

16 A It's a clear plastic bag that's sealed and it's printed
17 South Carolina Law Enforcement Division on the front.

18 Q And I'm going to ask you to open up State's 60 and what
19 I'm -- there are several items inside and one of them is a
20 vial of blood from the victim that you collected from autopsy.
21 Let's take that out. I think it might be the red one.

22 A Well, it's the bag the vial would have been in.

23 Q Okay, so, did you have a chain on that?

24 A Yes, I did.

25 Q And what's that red -- let me get that marked before we

1 do anything else with it.

2 That's State's 61, and that's the red baggy that came out
3 of State's 60?

4 A Yes, it is.

5 Q And what's -- when did you collect it and what is it?

6 A I collected it March 9th, 2006, approximately 3:30 p.m.
7 and placed it into our evidence, excuse me, I placed it in our
8 evidence at 3:30 p.m. I collected it at approximately 11:35
9 a.m.

10 Q Who did you receive it from?

11 A From the autopsy at MUSC.

12 Q And I'm going to place that back into Item 60, along
13 with the other three manila envelopes.

14 MR. BRYAN: At this point, Your Honor, I would ask to
15 publish the recording that Investigator ---

16 BY MR. BRYAN:

17 Q This, this recording you've got to be clear, where did
18 you collect it from?

19 A From telephone answering machine that was in the living
20 room area of Labruce Lane.

21 Q Labruce Lance incident where -- in Georgetown County
22 where the incident occurred ---

23 A Correct.

24 Q --- the crime scene?

25 THE COURT: Any objection?

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1 MR. AXELROD: Without objection, Your Honor.
2 THE COURT: All right.
3 MR. BRYAN: And I believe I asked it to be admitted
4 into evidence, Your Honor.
5 THE COURT: Not yet.
6 MR. BRYAN: I'm sorry, Your Honor. I'd ask at this
7 time before I publish it to admit ---
8 THE COURT: Any objection?
9 MR. BRYAN: --- 58, I'd ask to admit 58, Your Honor,
10 59, I'm sorry.
11 THE COURT: 59.
12 Any objection?
13 MR. AXELROD: One second, Your Honor.
14 Without objection, Your Honor.
15 THE COURT: All right, State's Exhibit Number 59
16 admitted into evidence without objection.
17 (Whereupon, State's Exhibit Number 59 [Answering Machine
18 Tape] admitted into evidence and appropriately marked.)
19 MR. BRYAN: And to publish it at this time, Your
20 Honor.
21 THE COURT: All right.
22 (Whereupon, State's Exhibit Number 59 published in open
23 court.)
24 BY MR. BRYAN:
25 Q What kind of answering machine was it? Was it an

1 answering machine separate or together with the phone?

2 A It was a telephone combination answering machine.

3 Q Thank you. I don't have any other questions. Please
4 answer any questions Mr. Axelrod has.

5 MR. AXELROD: Your Honor, it's late. It's five o'clock.
6 No, no questions.

7 THE COURT: You don't have any questions?

8 MR. AXELROD: No.

9 THE COURT: All right, you may step down.
10 All right, a good time to break for the day?

11 MR. BRYAN: I think so, Your Honor.

12 THE COURT: All right, ladies and gentlemen, we will
13 now recess for today. I caution you again please do not
14 conduct any independent investigations, do not watch any news
15 accounts, do not read any newspaper accounts, do not listen to
16 any radio accounts of this trial. It is imperative that you
17 base your decision exclusively on the testimony and evidence
18 presented here in trial without any influences from outside
19 the trial itself. So, I caution you not to investigate, not
20 to listen to any accounts, not to read any accounts, not to
21 discuss the case even among yourselves. It's still premature
22 for deliberations. So, I hope everyone has a good evening.
23 I'll excuse you for the evening. Please be back in the jury
24 room tomorrow morning at nine o'clock. All right, thank you
25 very much. Everybody remain seated while the jury is excused.

1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: Anything from the State before we
4 break?

5 MR. BRYAN: No, except with respect to scheduling. I
6 spoke to Mr. Axelrod before the trial of the case, maybe the
7 end of last week. He said something about when to bring his
8 witnesses and I told him Wednesday probably would be safe and
9 it looks like that was prophetic. I think we will finish
10 easily tomorrow; and so, if he has any witnesses to call I
11 would, I would, just by way of information, you might want to
12 have witnesses available for tomorrow.

13 THE COURT: All right.

14 MR. AXELROD: Your Honor, when the State says that they
15 plan to finish tomorrow, do they plan to finish by lunch? I
16 would ask ---

17 MR. BRYAN: I would expect that we would likely be
18 done by lunch.

19 THE COURT: I'm not going to hold you to it. Just be
20 ready to start your defense tomorrow; okay? That's the best
21 we can do it.

22 Anything from the Defense before we break for the
23 evening?

24 MR. AXELROD: No, sir, Your Honor.

25 THE COURT: All right, we'll stand in recess. Let's

1 try to be back, try to start as promptly at nine o'clock as we
2 can. All right. In recess until nine tomorrow
3 morning.

4 MR. BRYAN: Thank you, Your Honor.

5 THE COURT: Thank you.

6 *****OFF THE RECORD*****

7 (On the record, Wednesday, February 6, 2008.)

8 (Whereupon, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right, anything from the State before
11 we bring the jury in?

12 MR. BRYAN: No, sir, Your Honor.

13 THE COURT: Anything from the Defense?

14 MR. AXELROD: No, sir, Your Honor. Mr. Castro, I
15 think, went to get Mr. Pantovich.

16 THE COURT: All right.

17 (Scheduling discussed with Court.)

18 THE COURT: Do you think, Mr. Axelrod, that your
19 witnesses need to be here for the motion in limine regarding
20 their testimony?

21 MR. AXELROD: I hope not, Your Honor, because one of my
22 witnesses, three of my witnesses are working and I convinced
23 them that I would bring them in Thursday morning. I have
24 another witness that is coming from out of town and also we
25 just told everybody Thursday morning because we felt that that

1 would be the time that we would approach them for being
2 witnesses.

3 THE COURT: And I don't want to presume what you're
4 going to argue in your motion. I guess your motion is going
5 to be though that -- is it the content of their testimony or
6 the fact that they're lay witnesses that are going to be
7 testifying about ---

8 MR. BRYAN: Be essentially two issues. There'll be
9 numerous objections to the content of what -- well, we don't
10 know what their testimony is expected to be.

11 THE COURT: Right.

12 MR. BRYAN: Based on what they told my investigator
13 about 80 to 90 percent of it we believe is inadmissible. The
14 other ten percent is a second motion which is I don't believe
15 that lay testimony on battered spouse would be admissible
16 without a foundation by an expert to establish that there was
17 a battered spouse syndrome occurring in the Defendant. So,
18 that's ---

19 THE COURT: Okay, we can certainly ---

20 MR. BRYAN: --- two, two separate things.

21 THE COURT: Well, we can certainly take up the second
22 argument without your witnesses being here and to be honest
23 with you I don't -- I think we could probably deal with the
24 whole thing because I'm not going to make him reveal the
25 testimony before.

1 MR. BRYAN: That'll be fine. I'll tell you what I
2 find objectionable in what I heard that they're going to say
3 and we can establish maybe what's admissible in that
4 testimony.

5 THE COURT: All right, all right, well, we can deal
6 with that when it arises at the motion hearing.

7 Anything else before we bring in the jury?

8 MR. BRYAN: No, sir, Your Honor.

9 THE COURT: All right, please bring the jury in.

10 (Whereupon, the following takes place in the presence of
11 the jury.)

12 THE COURT: Ladies and gentlemen, welcome back. I
13 hope everyone had a restful evening. We'll now resume the
14 trial of this case, The State of South Carolina versus
15 Vladimir Pantovich. All right, Mr. Bryan, you can call your
16 next witness.

17 MR. BRYAN: The State calls Mike Lewis.

18 WHEREUPON, Mike Lewis was called to the stand, duly sworn
19 by the Clerk and testified as follows:

20 THE CLERK: Thank you, sir. Please be seated and
21 state your name for the record, spelling your last, please.

22 MR. LEWIS: Mike Lewis, last name L-E-W-I-S.

23 MR. BRYAN: Your Honor, before we start with Mr.
24 Lewis, there's one order of housekeeping. State's 57, I
25 believe the foundation was laid through Investigator Smith

Mike Lewis - Direct by Mr. Bryan

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1 yesterday. It was established that it was a drawing that was
2 not to scale, but, however, I did not say the magic words that
3 I asked that it be admitted into evidence, and at this time
4 we'd ask to move State's 57 into evidence.

5 THE COURT: Any objection?

6 MR. AXELROD: Well, Your Honor, my objection, my
7 objection would not be to -- that the officer didn't talk
8 about it on the stand yesterday, but it's a demonstrative
9 exhibit. He used it to explain things to the jury. It's not
10 to scale. I would think that it'd be improper to send back to
11 the jury. If it was to scale I'd have -- would have
12 absolutely no objection to that, but it was used to explain
13 his case to the jury. I would think that not being to scale
14 would not be proper to send back to the jury.

15 THE COURT: Right.

16 MR. BRYAN: I'll withdraw it, Your Honor.

17 THE COURT: All right.

18 MR. BRYAN: It has a key if he requires, but rather
19 than call Investigator Smith I withdraw it.

20 BY MR. BRYAN:

21 Q You're Lieutenant Lewis; is that right?

22 A That's correct.

23 Q And what role do you have? You work at the Georgetown
24 Sheriff's Office; is that correct?

25 A That's correct.

- 1 Q And what role do you perform there?
- 2 A I'm lieutenant of patrol, patrol division.
- 3 Q And how'd you get involved in this case?
- 4 A I got involved in this case, myself and another officer
- 5 went to Taylorsville, North Carolina, to pick up Mr.
- 6 Pantovich.
- 7 Q Who was the other officer?
- 8 A The other officer's name was Jeff Benton.
- 9 Q Is he with the Sheriff's Office?
- 10 A No, sir, he's no longer with us. He's in another
- 11 county.
- 12 Q And what -- did you pick up some items from some
- 13 officers, from some sheriff's officers from Alexander County,
- 14 North Carolina?
- 15 A That's correct.
- 16 Q I'm going to show you a box that's been marked for
- 17 identification purposes as State's 50 and I'm going to ask you
- 18 to remove the contents of that box. Can you identify that
- 19 item?
- 20 A Yes, sir.
- 21 Q What is it? Obviously it's a bag and it's got some
- 22 writing on it. What does it say it is?
- 23 A This writing on it is a metal ashtray with reddish
- 24 stains on a black plastic trash bag from the trunk of a
- 25 Mercury.

Mike Lewis - Direct by Mr. Bryan

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- 1 Q And who did you receive that from?
- 2 A I received that from Mr. or Detective Pennell.
- 3 Q And what did you -- did you open the bag?
- 4 A No, sir, I did not open the bag.
- 5 Q Did you tamper with it or change it in any way?
- 6 A No, sir, not whatsoever, no, sir.
- 7 Q What did you do with it?
- 8 A I took the items that was given to me and put them in
- 9 the trunk of my patrol vehicle.
- 10 Q And then did you keep them there or what did you do with
- 11 them after that?
- 12 A It was -- they stayed in the trunk of my vehicle until I
- 13 got back to Georgetown County and immediately turned it over
- 14 to our Evidence Custodian Phillips.
- 15 Q That's Joyce Phillips, now Joyce Whalen?
- 16 A Joyce Phillips, yes, sir.
- 17 Q I'm going to show you a box that's been marked for
- 18 identification as State's 53, and if you need to you may need
- 19 to step down for that. I'm going to ask you to open the box
- 20 and remove the contents of that box. Tell the jury what
- 21 you've got there.
- 22 A Item number 14 property seized from Vladimir Pantovich.
- 23 I removed cash, checkbook, wallet from this bag and to send
- 24 these items in this bag to SLED, which was our.
- 25 Q And did -- when you got that ---

1 A This, the bag was just like this. This bag sealed first.

2 Q Was it sealed at the time?

3 A Yes, it was.

4 Q So, it's now obviously unsealed. In fact, we broke the
5 seal in front of the jurors, but you never opened it up and
6 you don't know what the contents of the bag are.

7 A No, sir, that's the bag as is, when I got it.

8 Q And what -- you can just have a seat back and what did
9 you do with that bag once you got it?

10 A When I received the bag it also went in the trunk of my
11 patrol vehicle.

12 Q And where did you take it from there?

13 A I brought it back with me to Georgetown County and also
14 any and all evidence that was given to me and signed over I
15 give it to our evidence custodian.

16 Q So, you turned that bag -- did you tamper with any of
17 the contents of the bag or change them in any way?

18 A No, sir.

19 Q You turned it over to Joyce Phillips?

20 A That's correct.

21 Q I don't have any other questions. Please answer any
22 questions Mr. Axelrod has.

23 CROSS EXAMINATION

24 BY MR. AXELROD:

25 Q Did you have a list of what you turned over to your

Mike Lewis - Direct by Mr. Bryan

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1 evidence custodian?

2 A Do I have a list?

3 Q Yes.

4 A Yes, sir.

5 Q All right, do you have it with you?

6 A Yes, sir.

7 Q May I see it, please?

8 A All right, thank you, sir.

9 Q And all the evidence was in your control until you
10 turned it over?

11 A Yes, sir.

12 MR. AXELROD: No further questions, Your
13 Honor.

14 THE COURT: All right, anything on redirect?

15 MR. BRYAN: No, Your Honor.

16 THE COURT: All right, you may step down.

17 A Thank you, Judge.

18 THE COURT: Thank you.

19 MR. BRYAN: The State calls Joyce Whalen.

20 WHEREUPON, Joyce Whalen was called to the stand, duly
21 sworn by the Clerk and testified as follows:

22 THE CLERK: Thank you. Please be seated, state your
23 name for the record, spelling your last.

24 MS. WHALEN: Joyce Whalen, W-H-A-L-E-N.

25 DIRECT EXAMINATION

1 BY MR. BRYAN:

2 Q I'm going to start with Item 53, just to clear this up
3 before we go any further. This is State's 53 and if you'll
4 just remove it.

5 A Okay.

6 Q And tell the jury what that is.

7 A This is the bag of Mr. Pantovich's clothes that Mike
8 Lewis brought to me from North Carolina.

9 Q And so, Lieutenant Lewis read some items here, cash,
10 checkbook, wallet, etcetera. Explain to the jury what that
11 writing -- did you write that or did somebody else?

12 A Yes, that is my writing. Whenever I got this bag it had
13 all of his personal items that were taken off of him,
14 including his wallet, his checkbook, some money, the things
15 like that. The -- in order to send it to SLED that stuff is
16 not required, just his personal clothing. So, on 7-19-07 I
17 documented on here that I did take those items out of this bag
18 and it was packaged in another bag and secured in my evidence
19 room.

20 Q So, and what you removed was cash, checkbook and wallet?

21 A That's correct.

22 Q And then what's still in there is pretty much all his
23 clothes, including socks, bandana and long johns?

24 A Every bit of his clothes, that is right.

25 Q And then you've got that sealed or unsealed?

Joyce Whalen - Direct by Mr. Bryan

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- 1 A I got it sealed. Once I take -- took the items out I
2 re-sealed it and then I took it to SLED sealed.
- 3 Q When did you take that to SLED?
- 4 A Can I look at my paperwork?
- 5 Q Sure. You can have a seat back and then just rest a
6 little.
- 7 A His items I took to SLED on July the 20th of '07.
- 8 Q You turned those items over to SLED and then you -- did
9 you receive them back?
- 10 A Yes, sir, I did receive them back.
- 11 Q And when did you get them back? Do you pick them up
12 personally from SLED?
- 13 A I do. Everything I take personally and I pick up
14 personally. His items were picked up from SLED on September
15 7th of '07.
- 16 Q So, did you take two swabs of the upper part of the
17 exterior of the door to SLED that were collected by George
18 Smith?
- 19 A I did take those.
- 20 Q And what date did you deliver -- well, first tell the
21 jury when you received that item from George Smith or who you
22 received it from.
- 23 A I received it from George Smith.
- 24 Q And what did you do with it?
- 25 A Once I received it I logged it into my computer and I

- 1 issued it my number so that I can reference it. At that point
2 Investigator George Smith filled out the paperwork to take it
3 to SLED or have it sent to SLED. I got those items and I took
4 it to SLED personally with that paperwork.
- 5 Q And also your item N, that's two swabs from a small
6 table by the fireplace. Did you deliver those items to SLED?
- 7 A Yes, sir, I did.
- 8 Q Who did you receive those from?
- 9 A I received those items from Lieutenant Bill Pierce.
- 10 Q And what -- did you log them in?
- 11 A I did log those in.
- 12 Q And did you -- what day did you take those to SLED?
- 13 A I took those to SLED on 3-23 of '07.
- 14 Q And did you receive the item back from SLED?
- 15 A I did receive them back.
- 16 Q On what date?
- 17 A I received those items back on August the 10th of '07.
- 18 Q Did you also take your item EE from -- did you receive
19 that into evidence?
- 20 A I did receive that.
- 21 Q What is that?
- 22 A That's the fireplace poker.
- 23 Q Who did you get that from?
- 24 A I received that from Lieutenant Bill Pierce.
- 25 Q And what did you do with that item of evidence?

Joyce Whalen - Direct by Mr. Bryan

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1 A Once I got that piece of evidence I logged it into my
2 computer, I issued it a number. The paperwork was filled out
3 to have it sent to SLED. Once I got that I processed it and I
4 personally took it to SLED.

5 Q And what day did you take that to SLED?

6 A I took the fireplace poker on March the 23rd of '07.

7 Q Did you receive it back?

8 A I did receive it back on August the 10th of '07.

9 Q Item GG is a standard of blood collected at the autopsy.
10 That was given to you, that's your GG, I think I said that.
11 Who did you collect -- did you receive that into evidence?

12 A Yes, I did from -- I'm sorry.

13 Q Go ahead.

14 A --- from Investigator George Smith.

15 Q And what did you do with that?

16 A I took that to SLED.

17 Q And on what date did you deliver it to SLED?

18 A I took it to SLED on March the 23rd of '07.

19 Q Did you deliver Item 13 the bat to SLED?

20 A I did take the bat to SLED.

21 Q And on what date did you deliver that?

22 A I delivered the bat to SLED on July 20th of '07.

23 Q And Item LL, your LL, that's what?

24 A That's the ashtray.

25 Q And did you receive it into evidence?

- 1 A I did receive it into evidence.
- 2 Q From?
- 3 A That came from Lieutenant Mike Lewis.
- 4 Q And that's one of the items he collected from somebody
- 5 in North Carolina. What did you do with it?
- 6 A Once I got it I processed it in my computer. I got the
- 7 paperwork to take it to SLED. I took it to SLED on July the
- 8 20th of '07.
- 9 Q Just to make sure we've got it, I think we already did
- 10 Item 53 as far as when you received it. Did we, did we
- 11 establish when -- not ---
- 12 A I'm sorry, which?
- 13 Q --- your Item 53, but that's the bag.
- 14 A The bat?
- 15 Q The bag with the clothing.
- 16 A Yes, I got the bag of clothing. Once I got that I took
- 17 it to SLED on July 20th of '07.
- 18 Q All those items, other than logging them into your
- 19 system, documenting what you had done with it, and other than
- 20 the bag that you opened there, did you tamper with those items
- 21 in any way?
- 22 A I did not tamper with them.
- 23 Q And did they change in form or condition while in your
- 24 custody?
- 25 A Other than his clothing where I took the money and his

Joyce Whalen - Cross by Mr. Axelrod

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1 checkbook and his wallet out and repackaged it, there was no
2 alteration done to the items.

3 Q And when you delivered it to SLED were they in the same
4 condition as the way you received it?

5 A They were in the same condition.

6 Q I don't have any other questions. Please answer any
7 questions Mr. Axelrod has.

8 CROSS EXAMINATION

9 BY MR. AXELROD:

10 Q How long you been evidence custodian?

11 A I've been an evidence custodian since November the 1st
12 of 2005.

13 MR. AXELROD: No further questions.

14 THE COURT: Anything on redirect?

15 MR. BRYAN: Nothing further, Your Honor.

16 THE COURT: All right, you may step down. Thank you.

17 MR. BRYAN: The State calls Katie Coy.

18 WHEREUPON, Katie Coy was called to the stand, duly sworn
19 by the clerk and testified as follows:

20 THE CLERK: Thank you. Please be seated and state
21 your name for the record, spelling your last name, please.

22 MS. COY: Katie Coy, C-O-Y.

23 DIRECT EXAMINATION

24 BY MR. BRYAN:

25 Q Good morning.

- 1 A Good morning.
- 2 Q And you already stated your name; didn't you?
- 3 A Yes.
- 4 Q What's your occupation?
- 5 A I'm a forensic DNA analyst.
- 6 Q And how long have you been -- what agency do you work
7 for?
- 8 A I work for the South Carolina Law Enforcement Division,
9 commonly known as SLED.
- 10 Q And how long have you worked for SLED?
- 11 A I've worked there approximately two years.
- 12 Q And what are your duties at SLED?
- 13 A I receive biological evidence from agencies across the
14 state. I examine these items for body fluids such as blood,
15 semen and saliva. I then develop DNA profiles from evidence
16 items and known standards and I can compare them to see if
17 they match. I generate reports on my findings and testify in
18 court when necessary.
- 19 Q Okay, so, you -- first you check to see if there's any
20 blood, other bodily fluids and then you do DNA analysis?
- 21 A Yes.
- 22 Q Okay, and what's your educational background?
- 23 A I have a bachelor of science degree in forensic science
24 with a concentration in forensic biology from Virginia
25 Commonwealth University in Richmond, Virginia. I also have a

Katie Coy - Direct by Mr. Bryan

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1 Master of Science degree in forensic science, with a
2 concentration in forensic biology from the same university.

3 Q How much -- so, after high school how much, how many
4 years of higher education was that?

5 A Almost five years.

6 Q Okay, and so, what -- do you have any specialized
7 training in forensic analysis and DNA analysis?

8 A Yes, I have over three years of coursework and
9 laboratory training in DNA analysis. I have completed courses
10 in biochemistry, genetics, population genetics, statistics,
11 human genetics and serology and DNA analysis. I have
12 completed a joint DNA internship with VCU and Virginia
13 Department of Forensic Science. I have completed an in-house
14 training program at SLED under the supervision of court
15 qualified analysts. During that time I was trained in
16 evidence handling, serology, DNA analysis and report writing.
17 I have also attended outside training by Applied Bio-Systems,
18 which is a company that manufactures the instruments we use in
19 the lab and have also attended a statistics course for DNA
20 examiners in Atlanta, Georgia.

21 Q And do you all have some internal standards of where
22 you're qualified as a -- sort of internal checks and standards
23 for your ability to be able to conduct these tests at SLED?
24 In other words, do you have some -- do they test your ability
25 to?

1 A Yes, we perform proficiency testing.

2 Q Proficiency testing.

3 A Yes.

4 Q Good call. Have you been proficiency tested?

5 A Yes, I have.

6 Q Okay, and how did you fair?

7 A We all -- I write a report and the results have been

8 checked.

9 Q Okay.

10 MR. BRYAN: So, at this point, Your Honor, I would

11 ask to offer Ms. Coy as an expert in serology and forensic DNA

12 analysis.

13 THE COURT: All right, any questions?

14 MR. AXELROD: No, sir, Your Honor, no objection to her

15 being offered as an expert.

16 THE COURT: All right, I find Ms. Coy to be an expert

17 in the field of serology and DNA analysis,

18 MR. BRYAN: Thank you, Your Honor.

19 THE COURT: All right.

20 BY MR. BRYAN:

21 Q What is serology?

22 A Serology is the identification of body fluids such as

23 blood, semen and saliva.

24 Q And what is DNA?

25 A DNA stands for deoxyribonucleic acid. It's a chemical

Katie Coy - Direct by Mr. Bryan

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1 that is found in almost every cell of the body, with the
2 exception of red blood cells. It is what codes for all of
3 your traits, such as hair color and eye color, and it contains
4 the genetic information that is passed from generation to
5 generation. We get half of our DNA from our mom and half from
6 our dad. Over 99 percent of our DNA is the same between
7 individuals. However, there's a very small part of DNA that
8 differs between individuals and this is where we develop the
9 DNA profile from. To make a DNA comparison I compare
10 evidence, evidence profiles to the profiles of a known
11 standard and determine if they match. No two people should
12 have the same DNA profile except for identical twins.

13 Q And so, you -- okay. Did you -- I think you explained
14 pretty much what a DNA profile is as well as what DNA is;
15 right?

16 A Again, a profile is simply a string of numbers that
17 provides a unique genetic identifier to a sample. It's sort
18 of like a Social Security number where there are sets of
19 numbers and each person has a different grouping of numbers.

20 Q And so, based on the different groupings of numbers you
21 can take a standard and a sample and compare and see if they
22 match the same grouping of numbers.

23 A Yes.

24 Q Is that kind of how it works?

25 A Yes.

1 Q Okay, so, did you get a standard in this case on a Sheila
2 McPherson?

3 A Yes, I did.

4 Q It's your item 11?

5 A May I refer to my report?

6 THE COURT: Yes.

7 A Yes, I did.

8 Q And did you also get a standard from a Walt or Vladimir
9 Pantovich?

10 A Yes, sir.

11 Q Okay, and did you receive some items -- so, those were
12 the standards that you used to compare to the certain items of
13 evidence; is that right?

14 A Yes.

15 Q So, did you also receive a -- did SLED receive a bat and
16 did you take a swab off the bat or receive a swab off the bat?

17 A A bat was submitted, yes.

18 Q And I think that's your item 13-1; is that correct?

19 A That's correct.

20 Q And did you perform testing on that item 13-1 the swabs
21 from the bat?

22 A Yes, I did.

23 Q What were your results?

24 A On Item 13.1, blood was indicated and the DNA profile
25 developed from Item 13.1 matches the partial DNA profile of

Katie Coy - Direct by Mr. Bryan

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1 Sheila McPherson. The probability of randomly selecting an
2 unrelated individual having a DNA profile matching this item
3 is approximately 1 in 59 trillion.

4 Q What about item 14-1, that's swabs from the ashtray.
5 Did you receive or do any testing on that?

6 A Yes, Item 14.1, blood was indicated and the DNA profile
7 developed from item 14.1 also matches Sheila McPherson.

8 Q And to what, to what degree, can you say what
9 probability of ---

10 A It is the same statistic, 1 in 59 trillion.

11 Q Okay, also, did you receive a -- an Item 18-1, a cutting
12 from a sock?

13 A Yes.

14 Q And did you perform any analysis on that?

15 A Yes, on 18.1 blood was indicated, and the DNA profile
16 developed from Item 18.1 matches the partial DNA profile of
17 Sheila McPherson with same statistic.

18 Q That's one in 59 trillion?

19 A Yes.

20 Q And also Item 20.1, a bandana cutting, did you receive
21 that?

22 A Yes, sir.

23 Q And did you perform any tests on that?

24 A Yes, I developed a DNA profile from 20.1.

25 Q And what was the, what was the result of the test?

- 1 A The DNA profile developed from Item 20.1 also matches
2 Sheila McPherson.
- 3 Q Is that the same probability?
- 4 A Yes.
- 5 Q That's one in 59 trillion?
- 6 A Yes.
- 7 Q And 27.1 is a swab from a letter; is that correct?
- 8 A Yes.
- 9 Q And did you perform some analysis on that?
- 10 A Yes, blood was indicated and the DNA profile developed
11 from item 27.1 matches the partial DNA profile of Sheila
12 McPherson with a probability of one in 59 trillion.
- 13 Q And finally, two, two more items. Item 4 is a swab
14 collected from the side door off the porch. Did you receive
15 that into evidence there, perform analysis on it?
- 16 A Yes, yes.
- 17 Q And what was your result there?
- 18 A The swabs from the exterior side of the door off the
19 porch, Item 4, said blood was indicated and the DNA profile
20 developed from Item 4 matches the DNA profile of Sheila
21 McPherson, probability of randomly selecting unrelated
22 individual having a DNA profile matching these items is
23 approximately one in 59 trillion.
- 24 Q And you also got a swab or you took a swab off a fire
25 poker, which the fire poker being Item 8 and the swab being

Katie Coy - Direct by Mr. Bryan

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- 1 Item 8-1; is that right?
- 2 A Yes.
- 3 Q And did you perform a test to see -- a serology test to
- 4 see if there was blood on it?
- 5 A Yes, sir.
- 6 Q Did you do a presumptive test on that?
- 7 A Yes.
- 8 Q And what was your result there?
- 9 A No blood indicated.
- 10 Q And did you then process it to see if there was any DNA,
- 11 any other DNA evidence?
- 12 A Yes, sir.
- 13 Q And kind of tell the jury what that means. What kind of
- 14 DNA might you be looking for?
- 15 A It was a fireplace poker so there could potentially be
- 16 touch evidence, which is just skin cells that are left from
- 17 your hand on an object.
- 18 MR. AXELROD: Your Honor, I don't mean to interrupt but
- 19 I cannot hear the answer right now.
- 20 THE COURT: All right, please speak in the microphone
- 21 and speak up, please.
- 22 A Okay.
- 23 Q What kind of other evidence besides blood were you
- 24 looking for?
- 25 A On the fireplace poker I would expect to find touch DNA,

1 which is skin cells left when your hand comes in contact with
2 an object or a surface.

3 Q I'm sorry, and did you get any -- did you get a result
4 there?

5 A Yes.

6 Q What was it?

7 A The partial DNA profile developed from Item 8.1 is from
8 an unidentified individual, Vladimir Pantovich and Sheila
9 McPherson can be excluded as contributors.

10 Q You said can be excluded.

11 A Yes.

12 Q Meaning not them.

13 A Correct.

14 Q And finally there was one more item, the swab collected
15 from the scene, Item 6, swab, blood, swabs collected from the
16 table by the fireplace at the residence of Labruce Lane and
17 what would -- did you perform a test on that?

18 A Yes.

19 Q And what was that?

20 A On Item 6, the swabs from the small table by the
21 fireplace blood was indicated and the DNA profile developed
22 from Item 6 matches the DNA profile of Sheila McPherson. The
23 probability of randomly selecting an unrelated individual
24 having a DNA profile matching this item is approximately one
25 in 59 trillion.

Katie Coy - Cross by Mr. Axelrod

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1 Q So, one in 59 trillion I guess is a large number, at
2 least relatively speaking. Can you put it into context for
3 the jury, give them any -- something to base sort of their
4 opinion on? How many, how many people are in the world?

5 A There are approximately 6.6 billion people in the world.

6 Q And so, there's a lot, a lot less people in the world
7 than 59 trillion?

8 A Correct.

9 Q I don't have any other -- did you do a report?

10 A Yes, sir.

11 Q I don't have anything else at this time, Your Honor.

12 THE COURT: All right, Mr. Axelrod.

13 MR. AXELROD: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. AXELROD:

16 Q Good morning, ma'am.

17 A Good morning.

18 Q Let's start with the fireplace poker. How many
19 fireplace pokers did you examine?

20 A I did not actually examine that item. I received the
21 swabs from the evidence processing department which processes
22 all of our larger items.

23 Q And so, you never took the swabs?

24 A I received the swabs from a technician in a different
25 department.

- 1 Q Okay, but the swab was taken by the police department
2 somewhere?
- 3 A No, the fireplace poker was brought to SLED.
- 4 Q Got you.
- 5 A And it went to our evidence processing department and
6 the technician in that department swabbed for potential DNA
7 evidence and sent the swab to me.
- 8 Q Okay, so, you didn't swab it?
- 9 A I did not swab it, no.
- 10 Q Okay, and you don't know who swabbed it?
- 11 A Jan Bryson swabbed it.
- 12 Q Who?
- 13 A Jan Bryson.
- 14 Q Now, so, you just know that a fireplace poker was
15 swabbed?
- 16 A Yes.
- 17 Q One?
- 18 A Correct.
- 19 Q Do you know if they had sent any other swabs from any
20 other fireplace pokers?
- 21 A I only know what I was given in this case.
- 22 Q Okay, okay, now, you said that you would think that
23 there would be some time a trace DNA?
- 24 A Yes.
- 25 Q So, if somebody was to touch something would there be

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- 1 trace DNA on it?
- 2 A Possibly.
- 3 Q Not a hundred percent?
- 4 A No.
- 5 Q Would there be trace DNA on my pen?
- 6 A There could be.
- 7 Q But might not be?
- 8 A Right.
- 9 Q Okay, now, on the -- you tested the bat, the ashtray,
- 10 the sock, the bandana?
- 11 A Correct.
- 12 Q And they tested positive for blood; correct?
- 13 A Yes.
- 14 Q Do you know how the blood got on those items?
- 15 A No, I don't.
- 16 Q If items were packaged together, let's just say they
- 17 were packaged together in the trunk of a car, could blood, if
- 18 it's, if it's fresh could it move on to different objects?
- 19 A I would say if it is wet blood it could transfer to
- 20 other items.
- 21 Q Nothing further.
- 22 THE COURT: All right, redirect?
- 23 MR. BRYAN: None, Your Honor.
- 24 THE COURT: All right, you may step down.
- 25 MR. BRYAN: Your Honor, may Ms. Coy be excused?

1 THE COURT: Any objection, Mr. Axelrod?

2 MR. AXELROD: May we approach, Your Honor?

3 THE COURT: Yes.

4 (Whereupon, a bench conference was held in the presence
5 but out of the hearing of the jury.)

6 THE COURT: All right, Ms. Coy, you're excused and
7 free to go. Thank you very much.

8 All right, you can call your next witness.

9 WHEREUPON, Cynthia Schandl was called to the stand, duly
10 sworn by the Clerk and testified as follows:

11 THE CLERK: Thank you. Please be seated. State your
12 name for the record, spelling your last name, please.

13 MS. SCHANDL: Cynthia Anna Schandl, S-C-H-A-N-D-L.

14 DIRECT EXAMINATION

15 BY MR. BRYAN:

16 Q What's your occupation?

17 A I am a forensic pathologist and assistant professor at
18 the Medical University of South Carolina.

19 Q And are you licensed to practice medicine in the State
20 of South Carolina?

21 A Yes, sir.

22 Q Okay, and what is your educational background?

23 A In order to become a forensic pathologist one must first
24 have a bachelors degree, which I have from the California
25 State University in San Bernardino. After that one must

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1 complete medical school, which I did at the Medical University
2 of South Carolina. After completing medical school and
3 getting a medical degree, then you must continue to train in
4 the field of pathology in a formal residency program, which is
5 a four-year program, which I completed the anatomic and
6 clinical pathology residency at the Medical University of
7 South Carolina. After completing that training, one must then
8 continue in another formal year fellowship training in the
9 field, specifically of forensic pathology which I did complete
10 at the Medical University of South Carolina, and then after
11 the training, one may opt to become board-certified in those
12 fields. There's the national board certification through the
13 American Board of Pathology and I am board certified in
14 anatomic pathology, clinical pathology and forensic pathology.

15 Q Are you a member of any professional organizations?

16 A Yes, I'm a member of the National Association of Medical
17 Examiners, as well as the College of American Pathologists,
18 the American Society of Clinical Pathology, as well as others.

19 Q And do you have a specialty?

20 A Yes, my specialty is forensic pathology.

21 Q Okay, and what exactly is forensic pathology?

22 A Forensic pathology is a branch of pathology. So,
23 pathology is the study of disease. Forensic pathology in
24 particular is the study of disease as it relates to causes of
25 death. So, basically, a forensic pathologist is tasked with

1 determining a cause, as well as in some cases a manner of
2 death when people die either for unknown causes or for
3 traumatic reasons, then they bring the individual to us and we
4 are to determine the cause and manner of death.

5 Q Did you have any special training in pathology?

6 A Again, my special training includes both the four-year
7 residency program as well as the one-year fellowship in
8 forensic pathology in particular.

9 Q And at MUSC what is your -- what do your duties
10 currently consist of?

11 A At the Medical University I am primarily employed as a
12 forensic pathologist. I have other duties as a teaching
13 professor and I do do some other duties in the hospital but as
14 a forensic pathologist my primary duty is to perform autopsies
15 in order to determine the cause and manner of death.

16 Q About how many autopsies have you performed?

17 A I've performed over a thousand autopsies.

18 MR. BRYAN: At this time, Your Honor ---

19 BY MR. BRYAN:

20 Q Have you ever testified in court before?

21 A Yes, sir.

22 Q About how many times?

23 A About 25 times.

24 Q And have you been qualified as an expert in the field of
25 forensic pathology on those occasions?

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1 A Yes, sir, I have.

2 MR. BRYAN: At this time I would offer Dr. Schandl as
3 an expert in the field of forensic pathology.

4 THE COURT: All right, any questions?

5 EXAMINATION (RE: QUALIFICATIONS)

6 BY MR. AXELROD:

7 Q Good morning.

8 A Good morning.

9 Q And how many times have you testified in court?

10 A About 25 times.

11 Q And of those 25 times have they been testimony for the
12 State?

13 A Some of them have. Some of them are for the Defense.

14 It depends on who asks for me to testify, who subpoenas me.

15 Q I understand, but they all came through your association
16 with MUSC?

17 A Yes, generally speaking so. I do get some consult work
18 based on those introductions that are outside of my
19 affiliation with MUSC.

20 Q And have you had any specialized training at all in the
21 field of forensic toxicology?

22 A Forensic toxicology, just as it -- as I am trained
23 during my fellowship year we do have some training in forensic
24 pathology [sic] but not extensive.

25 MR. AXELROD: No further questions, Your Honor.

1 THE COURT: All right. All right, I'll find ---
2 MR. BRYAN: I have one just on ---
3 THE COURT: Okay.
4 BY MR. BRYAN:
5 Q You ever been qualified as an expert in the field of
6 forensic or in the field of toxicology?
7 A Toxicology, no, sir.
8 Q Thank you.
9 MR. BRYAN: We would offer her as an expert in the
10 field of forensic pathology.
11 THE COURT: All right.
12 MR. AXELROD: Without objection, Your Honor.
13 THE COURT: All right, I find her qualified as an
14 expert in the field of forensic pathology.
15 BY MR. BRYAN:
16 Q Were you employed at MUSC in March of 2006?
17 A Yes, sir, I was.
18 Q And did you have occasion to perform an autopsy on
19 Sheila McPherson?
20 A Yes, sir, I did.
21 Q I've got some -- how long did the -- where did the
22 autopsy on Ms. McPherson take place?
23 A The autopsy took place in the autopsy suite at the
24 Medical University of South Carolina.
25 Q And about how long did that take?

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1 A It began around nine in the morning and I don't remember
2 specifically how long it took, but probably about three hours
3 just for the initial external and internal examination
4 portions.

5 Q Based on that particular -- was that the first time you
6 had seen that victim?

7 A Yes, it was.

8 Q And based on that particular autopsy within the bounds
9 of medical certainty to a reasonable degree have you formed an
10 expert opinion on the cause of death?

11 A Yes, I have.

12 Q And what is that opinion?

13 A Extensive blunt force trauma of the head and thorax.

14 Q Extensive blunt force trauma to the head and thorax.
15 What does that mean exactly?

16 A That means that the victim, Ms. McPherson, was beaten to
17 death.

18 Q And with what kind of object?

19 A A blunt object. So, as opposed to a sharp object such
20 as a knife, we're talking a blunt object.

21 Q All right, can you say exactly what the object was?

22 A No, not with any certainty.

23 Q I'm going to pick up State's 51. Could this have done
24 it?

25 A Yes, sir, that is a blunt object.

1 Q I'm going to ask you to go through your findings with
2 the jury and I've got what's been marked as State's 62 and 63
3 which are blowups of two of your drawings, and if you wish to
4 refer to these I'll put them right here. They're not in
5 evidence. So, don't show them to the jury, but if at any
6 point you want to refer to these they'll be right here.

7 A All right, and I have these same diagrams in my notes.
8 So, I'll probably refer to that just for ease of paperwork.
9 All right, she was struck several times to the thorax, which
10 is basically the chest and back area. Two of these blows were
11 to the mid-back and extended all the way across the back.
12 These blows resulted in underlying hemorrhage, so, bleeding
13 into the tissues beneath the skin. They also resulted in
14 basically liquification of the soft tissues underneath those
15 blows. So, the muscle under there and the fat under there was
16 softened and liquified. They also resulted in fractures to
17 the ribs and there were, in addition to the two blows that
18 extended all the way across the back, there were also two
19 blows to the side here on the left side of the thorax, the
20 chest cavity and between those four blows there were multiple
21 rib fractures, so, the four blows I'm speaking of, the two
22 that went all the way across the back and two to the side, so
23 multiple rib fractures, damage to the spleen. The spleen is
24 an organ that sits on the left side protected quite well by
25 the rib cage, deep to the rib cage obviously. So, the spleen

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1 was actually lacerated or torn.

2 Q When you -- okay, so ---

3 A Yes.

4 Q --- first of all there were some broken ribs; is that
5 right?

6 A Yes, sir.

7 Q Can you say how many ribs were broken?

8 A I'll look. Okay, on the, on the lateral side or the
9 outside of the ribs on the left side rib 6, 7, 8 and 9, so,
10 those four ribs, and then the back, rib 7, 10, 11 and 12. So,
11 altogether there were eight separate rib fractures. So, in
12 addition to the rib fractures and the tear, the tear to the
13 spleen.

14 Q So, would the spleen be likely caused by the same blow
15 as the shot to the ribs or a different blow or could you say?

16 A Well, one of, one of the blows to either the back or the
17 side was sufficient to also damage the underlying spleen. I
18 can't tell you exactly which blow it was.

19 Q Where's the, where's the spleen in relation to the
20 ribs?

21 A The spleen again lies in the left upper quarter of the
22 abdomen. So, if you're looking at somebody's abdomen it'd be
23 up into the left over here on the left-hand side.

24 Q Is it underneath your ribs?

25 A It's -- it is beneath the ribs and inside the abdominal

1 cavity sort of protected by the ribs, right here on that side.

2 Q So, so, part of our makeup is the part or the purpose of
3 the ribs is to protect organs like the spleen?

4 A Yes, that's correct. The rib cage does provide some
5 protection to the underlying organs.

6 Q And the spleen was lacerated. So, what kind of force
7 would be necessary to lacerate somebody's spleen underneath
8 their broken ribs? Would that be a small amount of force or a
9 great amount of force?

10 A Well, the amount of force basically is enough to
11 compress the rib cage adequately to impact on the spleen. The
12 spleen itself is not a firm organ. It can be lacerated if it
13 is struck. The trick is getting that deep into the tissue to
14 strike the spleen. So, we're talking about an adequate amount
15 of force to actually impact the spleen, which is again quite
16 well protected.

17 Q I'm going to back you up and then I'll let you go, but I
18 want to start maybe by showing you -- let me show you what has
19 been marked for identification purposes as State's Three. What
20 is that?

21 A State's Exhibit Three is a photograph in the autopsy
22 suite of myself, my trainee, fellow M. D. and the decedent as
23 we are unwrapping her, unwrapping Ms. McPherson on the autopsy
24 table.

25 Q Okay, and so, is that, is that the condition that she

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1 was in prior -- upon her arrival or shortly after her arrival
2 when you started unwrapping the rope around her?

3 A Yes, so, at this point we have her taken out of the body
4 bag and placed onto the autopsy table and we're beginning to
5 remove the rope that's around the, around the body.

6 MR. BRYAN: At this point I would ask to admit
7 State's Three.

8 MR. AXELROD: Without objection, Your Honor.

9 THE COURT: All right, State's Exhibit Number Three
10 admitted into evidence without objection.

11 (Whereupon, State's Exhibit Number Three [Photograph]
12 admitted into evidence and appropriately marked.)

13 MR. BRYAN: Request the opportunity to publish it to
14 the jury, Your Honor.

15 THE COURT: All right.

16 BY MR. BRYAN:

17 Q That's State's Four for identification purposes, what is
18 that?

19 A State's Exhibit Four is a photograph again in the
20 autopsy suite. At this point we have unwrapped the plaid
21 comforter from Ms. McPherson's body and this is a photograph
22 of her body beneath the comforter. So, what we see on her
23 body, you can make out that the shirt that she is wearing does
24 have some blood staining and her hair is somewhat matted with
25 dried blood.

1 MR. BRYAN: At this point, Your Honor, I'd ask that
2 State's Four be admitted into evidence.
3 MR. AXELROD: Without objection, Your Honor.
4 THE COURT: State's Exhibit Number Four admitted into
5 evidence without objection.
6 (Whereupon, State's Exhibit Number Four [Photograph]
7 admitted into evidence and appropriately marked.)
8 MR. BRYAN: Request the opportunity to publish it.
9 THE COURT: All right, how many photos? I mean, do
10 you want to, rather than take the time after each photograph
11 ---
12 MR. BRYAN: I'd like to publish it so that the jury
13 has a chance to look at it right now if that's okay.
14 THE COURT: Say that again now.
15 MR. BRYAN: I'd like to publish them so the jury has
16 an opportunity to see them now.
17 THE COURT: I understand that, but rather than doing
18 one, passing it around, doing one, passing it around, why
19 don't we go through the whole stack and then publish them all
20 at one time?
21 MR. BRYAN: Okay, I think we need to -- can we
22 publish this one while we approach because we're going to have
23 to approach right now.
24 THE COURT: Yeah, that'll be fine.
25 MR. BRYAN: Thank you, Your Honor.

1 (Whereupon, a bench conference was held in the presence
2 but out of the hearing of the jury.)

3 THE COURT: Let me see the attorneys back up here for
4 a second.

5 (Whereupon, a bench conference was held in the presence
6 but out of the hearing of the jury.)

7 BY MR. BRYAN:

8 Q I'm going to hand you State's 17. You can turn it
9 whichever way you need -- you'd like to and then you testified
10 anything -- about anything that's reflected in that
11 photograph.

12 A Yes, State's Exhibit 17 is a photograph of Ms.
13 McPherson's back and it does illustrate those strikes that I
14 described, the two that go all the way across the back, and
15 you can also see two of the, the two on the left side of the
16 chest as well, as well as some additional bruising.

17 Q So, clearly you can see bruising on the back that would
18 probably be marks relative to the broken, some of the broken
19 ribs?

20 A That's correct, the marks that are associated with the
21 bruising.

22 THE COURT: Excuse me. You can't, you can't publish
23 those to the jury right now.

24 A Oh, yes, sir.

25 THE COURT: You're just identifying them.

- 1 A Yes, sir, it is, it is probable that these marks in this
2 photograph are associated with the rib fractures.
- 3 Q And there were -- you said you could kind of see some
4 marks on the side as well.
- 5 A Yes, you can.
- 6 Q And those are -- I'm going to hand you State's 18. Do
7 you see those same marks better in that photograph?
- 8 A Yes, State's Exhibit 18 does illustrate the marks to
9 the, to the left side better. That's correct.
- 10 Q And when you say marks, what kind of marks are there?
- 11 A These are, these are blunt force trauma. You can see
12 bruising and the point of impact, which is a central area that
13 is lighter than the bruising on the outside.
- 14 Q And I'm going to hand you State's Nine. Some of those
15 -- describe that.
- 16 A State's Exhibit Nine is a picture, again, of Ms.
17 McPherson's back. In this photograph you can also see her
18 upper right arm and you can see four additional areas of blunt
19 force trauma.
- 20 Q All right, and I think I'll let you get back to your
21 testimony at this point. We'll leave these right here as far
22 as going through your report and identifying any other
23 injuries.
- 24 A Okay, so, we were describing the strikes to the back and
25 to the left side which did result in rib fractures, laceration

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1 of the spleen, also resulted in hemorrhage, contusion bruising
2 of the left lung, some bleeding into the left chest cavity and
3 some bleeding into the abdominal cavity. So, taken together,
4 not knowing exactly which blow resulted in which specific
5 injury, the blows to the back and the side resulted in those
6 injuries altogether. There were four blows to the back of Ms.
7 McPherson's upper right arm. Again, there was significant
8 underlying hemorrhage into the soft tissues beneath the skin
9 associated with those blows. In addition there was a
10 laceration to the side of her head, the right side of Ms.
11 McPherson's head. A laceration is basically a split in the
12 skin caused by blunt force, and in this case the split in the
13 skin extended down to the skull. So, looking at the wound
14 from the outside you could actually see skull underneath.
15 That blow did lead to bleeding into the soft tissues of the
16 scalp, as well as the underlying muscle, the temporalis
17 muscle, which is in that region, and the membrane overlying
18 the skull. There were no skull fractures associated with
19 that injury and there was no hemorrhage into the inside of the
20 head from that injury.

21 Other injuries to the head and face, there were multiple
22 lacerations both to the right ear as well as the left ear,
23 again lacerations, splits in the skin caused by blunt trauma,
24 as well as bruising behind the right ear. In addition, there
25 was hemorrhage, bleeding into the sclera, which is the surface

1 of the eye on the right side, on the right eye, on the medial
2 side, so, in this area, and there was also a little bruise
3 with abrasion to the left eyelid. Let's see, make sure I'm
4 ---
5 Q To be clear ---
6 A Yes, sir.
7 Q --- about the ears, that's both ears.
8 A That's correct. There were lacerations, blunt trauma to
9 the right ear as well as the left ear.
10 Q To overstate the obvious, obviously that would require a
11 blow to this side and a blow to this side, both applied to the
12 head.
13 A That's correct, whether from a blow or whether being
14 struck against something, blunt trauma to both sides of the
15 head, yes.
16 Q And also the top of the head; is that right?
17 A The laceration, is that what you're referring to?
18 Q There's another -- there's a laceration to the top of
19 the head and that would be caused by a separate blow; is that
20 correct?
21 A Right, there's a laceration that's not associated with
22 the lacerations to the ears, that's to the scalp. That's the
23 one there where you can see the underlying skull.
24 Q I'll let you refer back to your notes.
25 A All right, just give me a moment, please.

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1 A Okay, small bleeding, small points of bleeding were also
2 to the left eye and the other injury that I have here is
3 tongue hemorrhage, suggesting that she may have bitten her
4 tongue during the course of events.

5 Q Any other injuries?

6 A There were additional bruises to the back that aren't
7 described as those four blows that I described specifically
8 that I can't place with any particular -- it is still blunt
9 trauma being bruises, but I can't place it with any particular
10 event. So, there are additional bruises to the back and
11 buttocks. To the hands, the nail is split at the right thumb,
12 the fingernail and there's a little bit of hemorrhage at that
13 point. There was a laceration at the second finger on the
14 right hand and a laceration also of the third finger, the
15 fingertip of the third finger. So, those three fingers were
16 also damaged at some point, again laceration meaning splitting
17 of the skin from blunt force. A separate bruise was to the
18 right ankle, the inside of the right ankle and there -- from
19 her being wrapped with rope there was what we call ligature
20 furrows around her ankles, a furrow basically just an
21 impression on the skin. These ligature furrows had a yellow
22 base and that indicates to me that she was not alive at the
23 time that that rope was wrapped around her ankles because
24 otherwise it would be red based suggestive of some bleeding at
25 that site. So, those ligature furrows on the ankles indicate

1 that she was wrapped with that rope after she was already
2 dead.

3 Q I'm going to show you State's Five. What is that?

4 A State's Exhibit Five shows Ms. McPherson early in the
5 course of our examination. She still has her clothing on and
6 you can still see the comforter in this photograph and it
7 shows the rope wrapped around both ankles.

8 Q And I'm going to show you State's Six?

9 A State's Exhibit Six is another photograph of Ms.
10 McPherson still with her clothing on and it shows after we
11 have taken the rope off and removed the comforter from the
12 body.

13 Q So, does that just kind of show the injury, the nature
14 of the -- when I say injury, I guess it wasn't an injury if
15 she was already dead, but there's an impression caused by the
16 rope depicted in that picture?

17 A Yes, in this, in this Exhibit Six you can see on one of
18 the ankles you can, you can clearly see the ligature furrow
19 that I was referring to, that impression of where the rope
20 was.

21 Q State's Two, what is that?

22 A State's Exhibit Two is a photograph of the rope aside
23 from the body after we've taken it off.

24 Q And you can identify it from your -- you've got an
25 autopsy number there?

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1 A We have an autopsy number here and we marked the areas
2 where the knots were and so forth.

3 Q What is State's Eight?

4 A State's Exhibit Eight shows another angle of Ms.
5 McPherson's upper right arm. If you recall I described four
6 strikes to that arm and this shows another angle of that
7 injury, those injuries. Excuse me.

8 Q I'm going to show you State's 14. What is that?

9 A State's Exhibit 14 shows Ms. McPherson's scalp after we
10 have shaved the hair that overlay the laceration to the scalp
11 and it shows the laceration.

12 Q State's 15, is that the same injury as 14?

13 A State's Exhibit 15 is the same injury as 14 and again
14 shows the laceration and it illustrates the depth of the
15 laceration down to the underlying skull.

16 Q So, it's also got somebody's fingers in it that ---

17 A Yes, in this illustration the fingers are spreading the
18 wound so that you can see the -- how deep the wound is, that
19 it extends down to the skull.

20 Q What is State's 13?

21 A State's Exhibit 13 is a photograph of Ms. McPherson's
22 left ear and it does show one of the lacerations and it's
23 behind that ear.

24 Q And I missed that one. That's State's 16. What is
25 that? That's going back to ---

1 A State's Exhibit 16 is a photograph of the right side of
2 Ms. McPherson's head, again after the hair has been shaved
3 over the laceration. You can also see her right ear and some
4 bruising to the ear from this photograph as well as that
5 laceration.

6 Q What is that?

7 A State's Exhibit 10 is a photograph of the right side of
8 Ms. McPherson's head before we've shaved any hair and it
9 illustrates the right ear. You can make out some bruising and
10 some bleeding from that site in this exhibit.

11 Q State's 12?

12 A State's Exhibit 12 is a photograph of the right ear that
13 better illustrates lacerations, abrasions, hemorrhage.
14 Abrasions are scraps and hemorrhage to that right ear.

15 Q And finally State's 11.

16 A State's Exhibit 11 shows the underside of the right ear
17 and demonstrates lacerations both on the back of the ear and
18 the fold between the ear and the skull, the head there.

19 Q The back side of the ear?

20 A The back side of the right ear. That's correct.

21 MR. BRYAN: At this time, Your Honor, we'd ask that ---

22 BY MR. BRYAN:

23 Q Well, let me ask you if State's 17, 18, 9, 5, 6, 2, 8,
24 14, 15, 13, 16, 10, 12 and 11, do those all fairly and
25 accurately reflect what you saw at the autopsy while

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1 performing your examination?

2 A Yes, those are what I saw on the external examination.

3 Q And do they aid you or assist you in describing or
4 showing the jury what you saw and how you made your findings?

5 A They do.

6 MR. BRYAN: At this point I'd ask that all those
7 exhibits be admitted into evidence, Your Honor.

8 MR. AXELROD: Your Honor, there's 14 exhibits the State
9 is attempting to enter into evidence at this point, 14 of
10 them, Your Honor. Your Honor, we have no objection to 12 of
11 the 14. I believe the two of them, Numbers -- I would object
12 ---

13 THE COURT: All right, all right, that's fine. All
14 right, ladies and gentlemen of the jury, we have a matter of
15 law that we'll need to take up. So, I will excuse you to the
16 jury room. It's a good time for you to take a short break
17 anyway, give you time to use the restroom, get something to
18 drink. Let me take up this matter of law and we'll have you
19 back out here shortly. You're excused. If everyone will
20 please remain seated while the jury is excused.

21 (The following takes place outside the presence of the jury.)

22 THE COURT: All right, Mr. Axelrod, which ones do you
23 object to?

24 MR. AXELROD: Your Honor, the two I object to are
25 Number 16 and Number 10.

1 THE COURT: Number 16.

2 MR. AXELROD: And if I may, if I may approach and look
3 at them just to make sure, Your Honor.

4 THE COURT: Yeah, Number 16 and Number 10 you said?

5 MR. AXELROD: Yes, sir, Your Honor.

6 THE COURT: All right.

7 MR. BRYAN: They're right here.

8 MR. AXELROD: Your Honor, I'm going to hand this up to
9 the Court to look at.

10 THE COURT: Yeah, yeah.

11 MR. AXELROD: And Your Honor, I'm not sure what the
12 Solicitor is talking to the witness about right now, but ---

13 THE COURT: All right, we can't -- hold for a second,
14 can't be discussing testimony while she's on the stand.

15 All right, Mr. Axelrod.

16 MR. AXELROD: Thank you, Your Honor. Your Honor, I
17 understand and I've done a lot of murder trials where gruesome
18 pictures of autopsy photos are admitted to a jury to allow the
19 pathologist to explain her findings, her reasonings and her
20 understandings of the case and I'm well aware of that and
21 clearly there's a ton of pictures that I'm not making an
22 objection to.

23 Pictures number 16 and 10, I'll start with number 16
24 because that was the first one the State tried to introduce of
25 this batch. The testimony from the doctor was that looking at

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1 picture number 16 it was a picture that after you shaved the
2 head you could see the laceration. That was her testimony.
3 The testimony was going towards the laceration. There's other
4 pictures that have -- there's other pictures admitted that
5 have the laceration. It didn't -- it was, it wasn't an
6 explanation. It was more of saying, "Well, this is what this
7 picture is. We shaved the head. There's the laceration." I
8 don't think it can go to -- it's not beneficial for the jury
9 to -- they know where the laceration was, that they have
10 pictures of the laceration. It didn't explain anything
11 further about the laceration. It just went, "After we shaved
12 the head here's the laceration." That was her specific
13 testimony, picture number 16.

14 On picture number 10 the doctor testified, "Before we
15 shaved the head this is the laceration to the ear." Well,
16 clearly, they have pictures of the laceration of the ear. I
17 say it's prejudicial for the -- inflammation to the jury for
18 the passion that she testified, "Before we shaved the head
19 here's the laceration to the ear." There's no benefit to the
20 jury for this, absolutely none, and I think because of that 16
21 and 10 should be excluded. There's ample pictures that show
22 the lacerations to the left ear, lacerations to the right ear,
23 lacerations to the head, many pictures of that. I think that
24 the color photos of these pictures and the nature of how
25 they're shot I think it is inflammatory and I think, I think

1 it's -- I think the prejudice outweighs the probative effect
2 of these pictures. Your Honor, if this were the only pictures
3 that they had it might be a different story.

4 THE COURT: All right, Mr. Bryan. So, I understand
5 -- excuse me, I understand, Mr. Axelrod, you do not object to
6 the other photos, just 10 and 16?

7 MR. AXELROD: Yes, sir, Your Honor. The only two I'm
8 going to object to is going to be 10 and 16.

9 THE COURT: All right.

10 MR. BRYAN: Your Honor, I'll withdraw 16 as there's
11 -- I think there's a fair enough representation in 14 and 15.
12 So, I withdraw that one and take it out. On 10 my argument is
13 although it wasn't testified to particularly by her, it is
14 admissible and relevant inasmuch as the other earring matching
15 it, there was testimony earlier, I think it was Van Williams,
16 one of the SBI, Georgia [sic] SBI agents testified that there
17 was an earring recovered and got a picture of it, it's in
18 evidence. The other earring had fallen out. It was bent. I
19 think it's -- and this shows the same type of earring that
20 didn't get knocked out of her ear and was still in her ear
21 before they removed it at autopsy and then cleaned her up so
22 you could see the injuries in 12, which is not duplicative of
23 11 which is the back side of 12. So, there's the front of the
24 lobe in 12, the back of the lobe in 11 and 10 leads up to it,
25 which is how they got her, how they received her with her

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1 earring still in her ear, bent back upwards.

2 THE COURT: All right, I will -- certainly -- you've
3 withdrawn Plaintiff's Exhibit Number 16 and I'll sustain the
4 objection as to Plaintiff's Exhibit 10. We'll admit, without
5 exception or without objection, excuse me, Plaintiff's
6 Exhibits Number 17, 18, 9, 5, 6, 2, 8, 14, 15, 13. State's
7 Exhibit Number 16 is withdrawn. I sustain the objection and
8 will not admit Plaintiff's Exhibit or State's Exhibit Number
9 10 and State's Exhibits Number 12 and 11 are admitted without
10 objection.

11 MR. AXELROD: Correct, Your Honor.

12 MR. BRYAN: I couldn't go that fast. Can -- so to
13 make sure, I just took 16 and 10 out. So ---

14 THE COURT: 16 and 10 are the only two out. You
15 withdraw 16. I sustain his objection to Number 10.

16 MR. BRYAN: Yeah, but just to make sure I don't put
17 any in that aren't supposed to be in, that leaves us with 12,
18 13, 14, 15, 11, 17, 18, 9, 5, 6 and 2 and 8?

19 THE COURT: Correct.

20 MR. BRYAN: Is that all?

21 THE COURT: That's correct.

22 (Whereupon, State's Exhibit Numbers 2, 5, 6, 8, 9, 11,
23 12, 13, 14, 15, 17 and 18 [Photographs] admitted into evidence
24 and appropriately marked.)

25 MR. BRYAN: May I have two minutes, one minute?

1 THE COURT: While the jury is out now it's a good
2 time for us to take about a five-minute break rather than not
3 do it. Dr. Schandl, is that correct?

4 A Yes.

5 THE COURT: All right, you're still on the stand.
6 You're still under oath. You cannot discuss your testimony or
7 speak with anyone while we take this break; all right? Thank
8 you very much. We'll stand in recess for about 10 minutes.

9 *****OFF THE RECORD*****

10 (On the record.)

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: All right, anything from the State before
14 we bring the jury back in?

15 MR. BRYAN: No, Your Honor, other than just
16 procedurally you just want me to go ahead and re-request the
17 admission of these and then publish them? Is that okay?

18 THE COURT: Okay, I can go ahead right now and rule on
19 -- I was thinking I already had. State's Exhibits Number 17,
20 18, 9, 5, 6, 2, 8, 14, 15, 13, 12 and 11 are admitted into
21 evidence without objection. The State voluntarily withdraws
22 State's Exhibit Number 16 and I sustain the Defendant's
23 objection to the introduction of State's Exhibit 10.

24 MR. BRYAN: And I think what I'm going to do, I guess,
25 since I couldn't get them in initially or couldn't have her

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1 testify in front of the jury about them I'm going to have her
2 come down off the witness stand and demonstrate her testimony
3 in front of the jury when I publish them.

4 THE COURT: All right, anything before we bring them
5 back in?

6 MR. BRYAN: No, Your Honor.

7 THE COURT: All right, anything from the Defendant
8 before we bring the jury back in?

9 (No response.)

10 THE COURT: All right, please bring the jury in.

11 (Whereupon, the following takes place in the presence of
12 the jury.)

13 THE COURT: All right, ladies and gentlemen, welcome
14 back. We'll resume the testimony, the direct examination of
15 Dr. Schandl. All right, Mr. Bryan.

16 BY MR. BRYAN:

17 Q Do you have an approximate height and weight of Ms.
18 McPherson?

19 A Yes, sir, I do. Individuals are weighed as they come to
20 us. So, this weight will include the body bag and in her case
21 her clothing, the rope and the comforter and that weight is
22 147 pounds. Her height is also somewhat difficult simply
23 because they're some degree of stiffness to the body. We
24 estimated it at 65 inches or 5 foot 5 inches.

25 MR. BRYAN: Your Honor, I believe this is State's Two.

1 It's now in evidence and I'm going to ask to publish it to the
2 jury

3 THE COURT: That'll be fine.

4 BY MR. BRYAN:

5 Q And I'm just going to actually just hold it, this one
6 up. I'm going to ask you now to step off the -- well, before
7 you do -- yeah, come off, step off the witness stand and I'm
8 going to have you look at a couple of things. This is State's
9 for identification purposes 62 and can you show, stand up and
10 turn it around -- well, first before you publish it, is this a
11 blowup of a diagram that you used in making your findings or
12 to demonstrate your findings?

13 A Yes, this is a diagram, a body diagram on which we draw
14 those external findings that we see and in order to illustrate
15 that.

16 Q So, there's some printed letters like height, inches,
17 Dr. Schandl, contents, etcetera. There's also some
18 handwriting on it. Who made the markings that are
19 handwritten?

20 A The handwriting is both my trainee's handwriting and my
21 own.

22 Q Okay.

23 MR. BRYAN: And at this time I would ask to admit
24 State's 62 into evidence.

25 THE COURT: Any objection?

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1 MR. AXELROD: May I see it, Your Honor?

2 No, sir, Your Honor.

3 THE COURT: All right, State's Exhibit Number 62

4 admitted into evidence without objection.

5 (Whereupon, State's Exhibit Number 62 [Diagram] admitted
6 into evidence and appropriately marked.)

7 BY MR. BRYAN:

8 Q This is State's 63, and what is that?

9 A This is the same body diagram. However, this particular
10 page I'm documenting basically identifying features, height,
11 weight, scars, that sort of thing.

12 MR. BRYAN: And I'm going to ask at this time to
13 publish State's 62 and allow the witness to go through the
14 information ---

15 THE COURT: All right.

16 MR. BRYAN: --- noted on here for the jury.

17 A All right, this is State's Exhibit 62. This is, again,
18 a body diagram showing the front and back, cartoon of Ms.
19 McPherson, and the markings that both myself and my trainee
20 made on this body diagram that represents those findings.
21 Most of these are injuries that we saw externally on Ms.
22 McPherson's body. I mentioned earlier two blows that extended
23 across her back. These are illustrated here. That's roughly
24 their shape and size and you can see measurements that I made
25 in order to document their size. So, those are the two blows

1 that I described across the back. You can see here the two
2 blows that I described to the left side, just sort of a bit of
3 them, and then these are the additional contusions that I made
4 mention of that are not specific to those blows. Also shown
5 here is the back of the upper right arm. I made mention of
6 four blows there and they are drawn in here on the back of the
7 arm, measurements made and so forth. Also mentioned on this
8 diagram is no external genital trauma. So, to the female
9 parts I did not see any trauma. There are several abrasions,
10 some of which are healing. So, it happened at some time in
11 the past. Here's mention of a tattoo here, a scar here.
12 Here's that bruise that I mentioned that was to her ankle, and
13 these markings down here are just describing the injuries to
14 the back. I have note here that there was massive hemorrhage
15 into the subcutaneous tissues and muscles of the back. Of
16 course I didn't see that until I actually did cut into the
17 back and then reflect the skin, but I made that notation here.
18 These are associated with these -- this hemorrhage into the
19 back muscles and soft tissues associated with these injuries
20 to the back.

21 Q What's the significance of the hemorrhage into the back
22 muscles?

23 A Well, the significance, it was a significant amount of
24 hemorrhage. So, in this case I estimated the hemorrhage into
25 the back to be about 500 milliliters, which is about half of a

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1 liter. So, that's a significant amount of blood. So, that's
2 the significance from that point of view is that there -- it
3 indicates a good deal of blood loss, also describes that the
4 tissues beneath the skin were damaged during the blows and
5 that can be also important because when you damage tissues
6 some of those particles, the fat cells and other things that
7 are damaged can gain entrance into the bloodstream and travel
8 to the lungs. So that's another factor that you have to
9 consider as far as causing, the cause of death, although we
10 call it blunt force trauma, all of these things compound, the
11 blood loss, the fat traveling to the lungs, the stress
12 involved in the beating, all of those things compound. So,
13 each one of those factors are noted here.

14 Q So, that's basically, if someone had to describe, the
15 bleeding into the body, in other words wouldn't be on -- at
16 the crime scene or anywhere else. It's contained within --
17 underneath her skin and bled into her body.

18 A Right, in this case these injuries, all of these
19 injuries except those that we call lacerations, which actually
20 split the skin, did not split the skin. So, the bleeding
21 wasn't outside. The bleeding was inside. So, in these cases
22 where the skin remained intact you wouldn't see blood where
23 she was. You'd see blood, you know, in her body. I see it.

24 Q And was that, was that a significant or insignificant
25 amount of bleeding into her body there?

1 A Oh, this was a significant amount of bleeding.

2 Q I'm going to hand you what's been marked for
3 identification purposes, you just stay right there, I'm sorry,
4 as State's 64. What is that? Don't publish it yet. It's not
5 in evidence.

6 A State's Exhibit 54 [sic] is a drawing, a cartoon drawing
7 of Ms. McPherson's right ear demonstrating the lacerations and
8 abrasions ---

9 MR. AXELROD: Your Honor, at this time it's not for the
10 jury yet. I would just ask that the witness pull it back from
11 the view of the jury.

12 THE COURT: All right.

13 A The lacerations and abrasions of the right ear.

14 Q It's a diagram you made?

15 A Yes, this is a diagram.

16 MR. BRYAN: I'd ask that it be admitted into evidence
17 and request permission to publish it.

18 THE COURT: Any objection?

19 MR. AXELROD: May I see it, Your Honor?

20 THE COURT: Yes.

21 Q Did you make this drawing on State's 64?

22 A This drawing is made by my trainee.

23 Q And does it help you in your testimony before the jury?

24 A Yes, it does describe each of the injuries seen.

25 Q Let's go ahead and see if we can identify them first, a

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1 brief description of 65.

2 THE COURT: Excuse me. Could you speak up? I can't

3 ---

4 MR. BRYAN: I'm sorry.

5 THE COURT: --- I can't hear anything, please.

6 MR. BRYAN: Your Honor, what I was saying is I think

7 I'll just go through them and have them all -- request that

8 they all be admitted at once rather than going through one

9 time and move. So, I'm going to ask her now about State's --

10 is that the one you did already, 65?

11 A No, we did ---

12 Q 64.

13 A Correct.

14 Q So, that's State's 65 you're holding and describe that.

15 A State's Exhibit 65 is much like 64 only it illustrates

16 the left ear, the lacerations and abrasions of the left ear

17 instead of the right ear.

18 Q And it's another drawing made by your trainee?

19 A Yes, that's correct.

20 Q And does it assist you in your testimony to the jury to

21 describe the injuries that you observed in the autopsy?

22 A It does.

23 Q And also, what is 66?

24 A 66 is another illustration of the left ear that shows a

25 laceration and abrasion of the left ear.

1 Q Is that drawing -- well, what is -- how is that
2 produced?

3 A This is a medical illustration of the left ear that is
4 photocopied from a textbook and then the area of the injuries
5 is drawn on this diagram.

6 Q Are they -- are there handwritten notes on it as well?

7 A Yes, the handwritten notes indicate the injuries.

8 Q Did you write those or did your trainee?

9 A My trainee.

10 Q And do they -- are they accurate according to the
11 injuries that you observed that day?

12 A Yes, they are.

13 Q And do they assist you in your testimony to the jury?

14 A Yes, they do show the injuries.

15 MR. BRYAN: At this point I would ask that 64, 65 and
16 66 be admitted and request the opportunity to publish and
17 allow her to testify from them in front of the jury.

18 MR. AXELROD: Your Honor, 64 and 65 are pictures that
19 are drawn by somebody other than the doctor. She can use them
20 in her discussion to the jury.

21 REPORTER: He needs to speak up, Judge.

22 THE COURT: We can't hear you. Speak up.

23 MR. AXELROD: I'm sorry, Your Honor. Item Number 64
24 and 65 and 66 -- 64 and 65 was not drawn by this doctor. The
25 doctor testified that it would assist her in explaining the

1 injuries and I have no problem with her using it through an ID
2 purpose to explain it. I think it would be improper to submit
3 that to the jury based on she's not the author of the actual
4 photograph, she didn't make the drawing, she testified to
5 that.

6 THE COURT: All right.

7 MR. AXELROD: Number ---

8 THE COURT: Go ahead.

9 MR. AXELROD: And on Number 66 there's hearsay
10 statements on that document. It's -- there's markings from the
11 trainee that wrote stuff. It's not from the doctor herself
12 and I would object to that as hearsay, can't come in.

13 THE COURT: All right, what is -- what's the -- or ---

14 MR. BRYAN: My ---

15 THE COURT: Let me see 66, let me see 66.

16 MR. BRYAN: My answer is, Your Honor, that of course
17 if we had a big doll and we could use the big doll to
18 demonstrate it and she wouldn't have manufactured the big doll
19 either but she could testify from it and frequently would do
20 something like that. So, it's not that you can't testify or
21 publish something that you didn't produce yourself.
22 Otherwise, we'd have to have the doctors recreate dummies and
23 produce all their own evidence, which obviously they don't do.
24 What she's doing is testifying from something that assists the
25 trier of fact in understanding her testimony. She's laid the

1 -- we've laid the proper foundation for it and we just want
2 her to be able to publish it to the jury. As far as being
3 able to testify from it without publishing it, it defeats the
4 whole purpose and would make it a nonsensical sort of practice
5 to have ---

6 THE COURT: Okay, well, my concern is on the State's
7 Exhibit Number 66 he said there was hearsay, something written
8 -- was this outside the presence of your client, I mean?

9 MR. BRYAN: What she's saying is the trainee made some
10 notations on it.

11 THE COURT: At her direction or at the trainee's own
12 initiative?

13 MR. BRYAN: I don't know, but what she said is that
14 they fairly and accurately reflect the injury, the nature of
15 the injuries that she saw.

16 THE COURT: Okay.

17 MR. BRYAN: I did have her testify to that.

18 MR. AXELROD: Your Honor, without the trainee here to
19 say what she wrote then what would be -- we would have the
20 doctor testifying to something that actually would be hearsay.

21 MR. BRYAN: Well, what she wrote is ---

22 MR. AXELROD: I would ask that that be ---

23 THE COURT: Okay, all right, all right, I'll admit
24 State's Exhibits Number 64, 65 and 66 over Defendant's
25 objection.

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1 (Whereupon, State's Exhibit Numbers 64, 65 and 66
2 [Diagrams] admitted into evidence and appropriately marked.)

3 Q Now you can stand so the jury can see it and show the
4 jury what the nature of the injuries was.

5 A All right, so, State's Exhibit 64 is a drawing of the
6 right ear. On the left side of this, this drawing on the left
7 is the front of the ear. The drawing on the right is the back
8 of the ear and off to the side of these drawings are
9 indications of the size and nature of each of the injuries to
10 the left ear, which include an abrasion, lacerations, several
11 lacerations, an abrasion surrounding one of the piercings, ear
12 piercings. Those are all to the front of the ear and then to
13 the back of the ear lacerations, one to the back of the ear,
14 one at the ear fold, and additional smaller lacerations to the
15 back of the ear and the side of the ear. This was associated
16 with an abrasion. So, those are -- this -- these, these
17 pictures, this cartoon shows all of the different, all of the
18 trauma to the right ear.

19 Okay, State's Exhibit 65 is similar to State's Exhibit 64
20 in that it is cartoon drawing of the ear, this case not the
21 right ear but the left ear, and indicates the trauma to the
22 left ear. Again, we have the front of the ear on the left
23 side of the diagram and the back of the ear on the other side
24 and you can see that the trauma to this ear is at the side of
25 the ear where you have an abrasion here and into the back of

1 the ear we have another abrasion and we have a laceration here
2 that's behind the ear on the skin of the head behind the ear.

3 State's Exhibit 66, this is that photocopied ear from a
4 textbook that shows injuries, again, to the left ear,
5 including that laceration again to the -- behind the ear and
6 the abrasion that was seen also in State's Exhibit 65. So,
7 this is another rendition of the injuries to the left ear.

8 Q And just stay right there. We're almost finished.
9 We're just going to go through the pictures. If you can now
10 publish to the jury that's State's Five and you can just
11 briefly describe your testimony.

12 A Okay, State's Exhibit Five this shows Ms. McPherson
13 still clothed and you can see, so, this is her pajama pant.
14 This is the comforter that was wrapped around her and here is
15 the rope that bound her ankles.

16 Q Right there, and that's State's Six.

17 A State's Exhibit Six, we have unwrapped her from the rope
18 and unwrapped the -- her from the comforter, and you can see
19 her here on her side and this is that ligature furrow that I
20 was describing earlier where the rope had been, so an
21 impression of where the rope had been. It has a yellow base
22 when you look at it closely which indicates that that rope
23 was applied at that position after she was dead.

24 Q State's 17?

25 A State's Exhibit 17 is Ms. McPherson now unclothed and

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1 we're looking at her back and you can see the two strikes that
2 span her back, as well as the two strikes here to the left
3 side of her chest.

4 Q Now that the jury can see it, explain to them why the
5 redness is red where it is as opposed to where it's not?

6 A So, in this instance what we're looking at it is blunt
7 trauma here and a blunt trauma here, as well as here and here.
8 The actual impact site is marked by this central light area in
9 these wounds, and the blood is actually physically pushed to
10 the edges of that actual impact site making the evidence
11 purple discoloration, bruising in the skin around the actual
12 impact site.

13 Q Would those bruises be relative to the broken ribs?

14 A The broken ribs are located on the left posterior, so
15 back here and the left side, over here. So, they are related
16 to these four blows.

17 Q This is State's 18.

18 A All right, in this, in this photograph we're looking at
19 her left side. You can also see her back. So, in this
20 photograph we see those two blows to the left side better,
21 same concept where the strike actually is you have some light,
22 lighter color and then where the blood is displaced to the
23 outside of the injury we have the dark purple color, so
24 similar wounds on the side.

25 Q State's Nine.

1 A State's Exhibit Nine, this is Ms. McPherson's back.
2 Once again we also see the back of her upper right arm. We
3 can see the extent of the strikes to the back here to the
4 right side of her back and we can also see that there are four
5 blows of a similar, of a similar type to the back of her upper
6 arm.

7 Q The ones to the back of the upper arm, would those be
8 likely the same blows as the ones on the back or different?

9 A It's, it's not likely that they're related to the ones
10 on the back, but I cannot tell you that for certain. You
11 would have to appose, put next to each other the arm and the
12 strikes on the back in order to get that configuration and I
13 cannot clearly do that with each of these.

14 Q And also State's Eight.

15 A This is another photograph of her upper right arm from a
16 different point of view, the characteristic appearance of the
17 wounds is behind this area, but you can see the bruising
18 extending to a greater portion of the arm than is seen in the
19 other photograph.

20 Q So, the injuries to Eight and Nine, what do they tell the
21 jury with respect or can you give any expert testimony about,
22 that might instruct them about what the position of the arm
23 might have been relative to what was going on during the
24 altercation?

25 A Again, one can only guess. Often what we see when there

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1 are injuries to the arms or hands it's often as an individual
2 is attempting to defend themselves from an attack, but I
3 cannot say that with certainty.

4 Q Possibly the arm could have been basically being held up
5 to block blows to the head?

6 A That is often the case when we see injuries to the arms
7 and hands is that you're trying to deflect blows or any kind
8 of injuries.

9 Q State's 14.

10 A State's 14 shows Ms. McPherson's head, and in this
11 photograph an area around the laceration that I described to
12 the right side of her head has been shaved so that we can
13 better see that laceration and again this is a blunt trauma
14 causing a splitting of the skin at this area over the skull.

15 Q With respect to bleeding, any amount of blood outside
16 the body, we're talking about some blood inside the body,
17 would that cause blood to come, possibly be left at the scene
18 or be transferred or let out of the body?

19 A Yes, so, the other injuries that we looked at there
20 wasn't any -- that the skin was intact and wasn't damaged. In
21 this case the skin is clearly damaged. So, those vessels
22 within the skin and within the tissues beneath the skin are
23 also damaged and would bleed and the scalp in particular does
24 have a good, a very good blood supply and does tend to bleed
25 quite a bit even with much less of an injury. So, this would

1 have caused a good deal of bleeding.

2 Q Can you demonstrate sort of on your head about where
3 that injury is?

4 A This injury is again on the right side in about this
5 area.

6 Q This is State's 15 and is that similar or the same
7 injury anyway as 14 or just tell what's the difference.

8 A State's, State's Exhibit 15 is the same laceration to
9 her head. The difference here is that the wound is being
10 spread by fingers here to illustrate how deep the wound and
11 that the split in the skin actually extends down to the skull,
12 which is this, the yellow material here is the bone of the
13 skull.

14 Q Would an injury like that, that type of injury, with
15 that type of depth, would that produce a significant amount of
16 bleeding?

17 A Again, the scalp does have a very good blood supply.
18 So, anytime you damage the scalp, go through the skin you will
19 have a good deal of bleeding.

20 Q This is State's 13?

21 A So, State's 13 this is the left ear. So, you can
22 compare later to the diagram, but essentially this is the
23 laceration that is behind the left ear and there is some
24 abrasions that we don't see in this photograph. So, this is
25 the damage to the left ear.

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1 Q State's 12?

2 A State's Exhibit 12 is a photograph of the front surface
3 of the right ear where you can see lacerations, which is
4 splitting of the skin, as well as abrasions, which is scraping
5 of the skin on the front of the right ear.

6 Q State's 11?

7 A State's Exhibit 11 is also the right ear. Here the ear
8 is being turned, held up so that you can see the underside,
9 the back side of the ear, as well as the skin behind the ear.
10 You can see this laceration, so tearing of the skin from
11 blunt trauma, a laceration here and bruising around that
12 laceration.

13 Q You can have a seat in the witness stand.

14 A (Complies with request.)

15 Q All of these photos represent some depiction of injuries
16 sustained by blunt force trauma; is that right?

17 A Yes.

18 Q And you can't tell this jury, in any case can you say
19 what necessarily, what object created a particular injury?

20 A The only, the only way that we can do that is if there's
21 an impression of what we call a pattern injury that -- where
22 there's some measurement that we can make from point A to
23 point B that can match up with an instrument from point A to
24 point B. In this case I don't have that, so, no.

25 Q And so, in this particular case this is a bat, State's

1 51, and are there any kind of impressions, is that generally a
2 smooth surface?

3 A Yes, this, this bat has a smooth surface.

4 Q Would that create the impressions that would allow you
5 to identify it as the particular murder weapon?

6 A Not as the particular weapon, no.

7 Q But is it possible that this bat caused all those
8 injuries that you just testified to?

9 A It is possible.

10 Q I don't have any other questions. Please answer any
11 questions that Mr. Axelrod has.

12 A Yes, sir.

13 CROSS EXAMINATION

14 BY MR. BRYAN:

15 Q Good morning, Doctor.

16 A Good morning.

17 Q Isn't it true that when you did the autopsy you found
18 both legal drugs and illegal drugs in Sheila's body?

19 A We do, on every autopsy we do take samples and

20 ---

21 MR. BRYAN: I'm going to object to the relevance,
22 Your Honor.

23 THE COURT: All right, overruled. I'll allow it.

24 MR. AXELROD: Thank you, Your Honor.

25 A We do on, at every autopsy we do take samples, blood

- 1 samples and urine samples if available and send them for a
2 toxicological testing and we did do so in this case and, yes,
3 she did have drugs on board.
- 4 Q Okay, and one of the drugs you identified was
5 quetiapine, am I saying that correctly?
- 6 A Quetiapine, yes.
- 7 Q Say that again, please.
- 8 A Quetiapine.
- 9 Q Quetiapine and that's used for treatment of
10 schizophrenia?
- 11 A It can be, yes.
- 12 Q Okay, now, also, a drug by the name Nortriptyline.
- 13 A Nortriptyline, yes, sir.
- 14 Q And that's used for depression?
- 15 A Yes, that's a common use.
- 16 Q And in Sheila's body you found Methadone?
- 17 A Methadone, yes, sir.
- 18 Q And is Methadone used for recovering heroine addicts?
- 19 A That's the usual use, yes.
- 20 Q And Methorphan was also found in her body; correct?
- 21 A That's correct.
- 22 Q And would that be the active ingredient that one would
23 find say in a type of dextromethorphan or some type of cough
24 syrup or suppressant?
- 25 A Yes, yes, generally speaking.

1 Q So, this is a drug that would normally be given by
2 prescription?

3 A Yes, I believe that that is the usual way.

4 Q And you found Pseudoephedrine and Ephedrine; is that
5 correct?

6 A Yes, they can't determine which is which. So, yes, it's
7 one or the other or both, Ephedrine, Pseudoephedrine, correct.

8 Q And would that be methamphetamine or speed?

9 A No, Pseudoephedrine is another cold medicine.
10 Ephedrine, if it was Ephedrine, which I don't know, is a
11 stimulant, but again the most common when we get Ephedrine,
12 Pseudoephedrine is that it's just cold medicine.

13 Q But the Pseudoephedrine that's what's been taken off the
14 shelves by the FDA; correct?

15 A That is true. It can be used in manufacture of elicit
16 drugs.

17 Q So, it's possible that the way it got into the body
18 could have been through the vehicle of an elicit drug, but
19 we're not sure.

20 A That I cannot tell you.

21 Q And Sheila was positive for hepatitis C.

22 A She ---

23 MR. BRYAN: Objection to the relevance, Your Honor.

24 THE COURT: All right, ladies and gentlemen, we'll
25 excuse you for just a minute. I've got a matter of law I need

1 to take up with the attorneys. Let me excuse you back to the
2 jury room and we'll bring you back out in just a second.

3 (Whereupon, the following takes place outside the
4 presence of the jury.)

5 THE COURT: All right, Mr. Axelrod, what's the
6 relevance of hepatitis C?

7 MR. AXELROD: Well, Your Honor, the doctor has
8 testified that I believe and I'm not a doctor here but I think
9 hepatitis C effects the liver and I think it effects the
10 organs with inside the body. The doctor has testified, too,
11 that there was liquification of different parts of Sheila's
12 body that she's saying that through the blunt force trauma
13 there was liquification. I'm suggesting that I should be able
14 to go into cross examination that hepatitis C is a very
15 debilitating disease and actually breaks down the body from
16 the inside out and that that was where I was going with that,
17 that line of questioning.

18 THE COURT: Well, I still don't follow you. So,
19 you're saying some of the diagnosed injuries that she has
20 diagnosed was caused by hepatitis C rather than blunt?

21 MR. AXELROD: What I'm saying is that some of the
22 extent of the injuries could not be -- I don't think you could
23 specifically say that the blunt force of the bat, if the bat
24 was used, could have caused every -- it could have caused it
25 but I'm saying that through the hepatitis C could have helped

1 cause it also and I think the jury is allowed to know that all
2 these injuries and the liquification that occurred may not be
3 primarily due to the bat but could have been from other
4 sources, could have been from her illness itself from the
5 hepatitis C.

6 THE COURT: All right, Mr. Bryan.

7 MR. BRYAN: Well, I don't think the testimony is going
8 to show and I don't think there's any good faith basis to
9 argue that she died of liver disease or that any of these
10 broken ribs or busted right side of the head, busted left side
11 of the head, split open top of the head had anything to do
12 with liver disease. I think it's obviously said to inflame
13 the passion and prejudice of the jury and he had a copy of the
14 autopsy report and if he wanted to ask the direct question
15 that I asked of the pathologist, which is, "Did it contribute
16 to the cause of death," he could have called the number on
17 the front cover sheet, asked her the question. She'd told him
18 no like she told me and then he wouldn't have said it in front
19 of the jury, but he didn't do that because he wanted to
20 announce to the jury that she had hepatitis C and I think it's
21 improper and highly prejudicial.

22 THE COURT: All right, well, let's go ahead and
23 explore a little bit of the testimony without the jury and let
24 me see if it's admissible.

25 MR. AXELROD: Thank you, Your Honor.

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1 EXAMINATION

2 BY MR. AXELROD:

3 Q Doctor, you gave testimony earlier that there was
4 liquification in the body, that maybe the fats broke down from
5 the force of the bat, supposedly; correct?

6 A That's correct.

7 Q Okay, now, at this point can you tell the Court how
8 hepatitis C, how that effects the body, from the doctor's
9 point of view, how it effects the internal organs and the body
10 itself? Can we explore that?

11 A Sure. Hepatitis C is a virus and it infects the cells
12 of the liver and over time it can cause liver disease. If the
13 liver disease is extensive and to the point of cirrhosis then
14 the liver functions start to break down. Some of the liver
15 functions include ability to clot and things like that. In
16 her case her liver was not cirrhotic and I don't have any -- I
17 don't believe that she had any liver dysfunction that would
18 have affected her ability to clot. In addition, the
19 liquification that I'm talking about to her soft tissues is
20 purely mechanical and due to the force applied to those
21 tissues.

22 Q But you didn't primarily test the liver to see the
23 extent of dysfunction?

24 A What we do is look at it under the microscope and I can
25 tell you the extent of inflammation, inflammatory response, as

1 well as the extent of fibrosis, whether there was cirrhosis,
2 which there was not. The liver has a great deal of reserve;
3 and so, in the absence of cirrhosis it's highly unlikely that
4 those liver functions would have been affected.

5 Q Did you check at all to see how long the person had
6 hepatitis C?

7 A No, sir.

8 Q Okay, is it your testimony here today that because of
9 the hepatitis C that that would have had no bearing at all on
10 the ability of the body to clot?

11 A I don't believe it would, no, sir.

12 Q Is that to a reasonable degree of medical certainty?

13 A It is.

14 MR. AXELROD: The Court's indulgence one minute, Your
15 Honor.

16 THE COURT: All right.

17 BY MR. AXELROD:

18 Q If you say the liver would be such as it was then she
19 would not -- Sheila would not have needed to seek other
20 treatment for cirrhosis of the liver; would that be correct?

21 A She did not have cirrhosis, that's correct.

22 Q But if she was receiving treatment for cirrhosis what
23 would that treatment be for?

24 A I ---

25 Q If I was to say to you that she was going to a doctor

1 and she was getting shots between her toes for some type of
2 medicine to deal with the cirrhosis of the liver or the
3 effects of hepatitis C what would your, what would your
4 reaction to that be?

5 A Well, they're -- there currently isn't any good
6 treatment for hepatitis C. They are investigating treatments
7 to try to suppress the virus to prevent further liver damage
8 but there is no treatment for hepatitis C and there is no
9 treatment for cirrhosis either. So, I wouldn't know exactly
10 what you were referring to.

11 Q I have no further questions, Your Honor.

12 THE COURT: All right, based upon that I'll sustain
13 the objection by the State and no questioning on hepatitis C.

14 MR. AXELROD: Yes, sir, Your Honor.

15 THE COURT: All right, anything before we bring the
16 jury back in?

17 MR. AXELROD: No, sir, Your Honor.

18 THE COURT: All right, you can bring the jury back
19 in.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: All right, Mr. Axelrod, you can continue
23 with your cross examination.

24 MR. BRYAN: Your Honor, I'd ask that you instruct the
25 jury that the objection was sustained and ask that they not

1 consider that in their deliberation.

2 THE COURT: All right, I sustained the State's
3 objection as to the Defendant's questioning regarding
4 hepatitis C. You're instructed to disregard that question.

5 All right.

6 CROSS EXAMINATION (CONTINUED)

7 BY MR. AXELROD:

8 Q Doctor ---

9 A Yes.

10 Q --- in your report you said there was -- Sheila had
11 benzoylecgonine.

12 A Benzoylecgonine, yes, sir.

13 Q Can you tell the jury what that is?

14 MR. BRYAN: Objection. Asked and answered, Your
15 Honor.

16 MR. AXELROD: I've not asked that, Your Honor.

17 MR. BRYAN: I thought he said, "I thought you
18 testified." I thought the question was you testified to.

19 THE COURT: During direct examination.

20 MR. BRYAN: I'm sorry.

21 THE COURT: I'm going to allow. Overruled.

22 MR. BRYAN: I apologize, Your Honor.

23 THE COURT: I'll allow the question. Go ahead.

24 A Yes, sir. Benzoylecgonine was also found in her
25 toxicology in her blood. Benzoylecgonine is a breakdown

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1 product or metabolite of cocaine.

2 MR. BRYAN: Objection to the relevance of a breakdown
3 product.

4 THE COURT: Okay, overruled. I'll allow it. Go
5 ahead.

6 Q Explain to the jury what a breakdown product is and how
7 it comes into the body or leaves the body.

8 A Benzoylecgonine in particular is a breakdown product of
9 cocaine. So, one would have had to be exposed to cocaine and
10 then ones enzyme systems on ones -- will start to change that
11 -- the structure of that molecule from cocaine to something
12 that is more easy to get rid of to get out of the body. So,
13 one of those products in cocaine and there are many different
14 metabolites or breakdown products is benzoylecgonine. So, the
15 presence of benzoylecgonine means that there was exposure to
16 cocaine.

17 Q Okay, now, also, didn't you find cocaine in her body?

18 A Yes, there was also cocaine. So, when you're, when
19 you're differentiating these things, you know, is there
20 cocaine, is there a breakdown product of cocaine, the
21 difference is that cocaine itself, when you find cocaine
22 itself, that means there is active drug in the system. The
23 breakdown product on the other hand, benzoylecgonine, is not
24 active. So, just finding benzoylecgonine by itself doesn't,
25 doesn't matter except that it means that she was exposed

1 earlier, whereas if you find cocaine that means that she is
2 currently, she does currently have cocaine in her bloodstream.

3 Q And on the benzoylecgonine it was a thousand nanograms
4 per milliliter; correct?

5 A I apologize, yes, sir.

6 Q And can you explain to the jury the significance of that
7 number itself?

8 A It's difficult and I'm not an expert in forensic
9 toxicology. Again, it just, it just means that she was
10 exposed to cocaine.

11 Q And a substantial amount to have it as a byproduct at a
12 thousand nanograms per milliliter, at that?

13 A That's harder to say, the substantial amount. That
14 doesn't really mean anything. Benzoylecgonine in the
15 bloodstream just -- I can't really tell you, you know, how
16 much she was exposed to based on the presence or quantity of
17 the byproduct.

18 Q Well, the reason I ask it is because the product itself,
19 the cocaine in her body at 23, 23 nanograms per milliliter,
20 but the byproduct had a thousand nanograms per milliliter.

21 A That is correct, but I can't make any direct correlation
22 as to what her exposure was from those numbers.

23 Q Okay, and also in the body did you find marijuana?

24 A We don't look for marijuana per se but what we look for
25 is the active substance in marijuana, which we did find. That

1 active substance is called Delta-9-Tetra ---

2 MR. BRYAN: Objection to the relevance. Is there
3 some theory that the marijuana killed her?

4 MR. AXELROD: Your Honor, it's cross examination. I
5 believe I'm entitled to go into that.

6 THE COURT: Yeah.

7 MR. BRYAN: It's just you can cross examine them but
8 it has to be relevant to be admissible within the rules.

9 THE COURT: What's the relevance?

10 MR. AXELROD: To show that this woman had a tremendous
11 amount of drugs in her body, both legal and illegal, at the
12 time of her death.

13 THE COURT: Okay, and that's relevant to the case in
14 support of what?

15 MR. AXELROD: That Walt's saying she comes up and she
16 attacks him.

17 THE COURT: Okay.

18 MR. AXELROD: I think it is relevant.

19 THE COURT: Overruled. I'll allow the question.

20 MR. AXELROD: Thank you.

21 A Okay, so, the active portion of marijuana is THC,
22 Tetrahydrocannabinol. So, Delta-9-THC was found in her blood
23 at what our toxicologist determined was a low level and I
24 guess that answers your question.

25 Q And isn't it true that Sheila was legally drunk at the

1 time of her death?

2 A Let me see, if I may refer directly to the toxicology
3 report. Actually, her ethanol level was well below what is
4 considered the legal level at 10 milligrams per deciliter.
5 That's .010 percent, which is actually significantly below the
6 legal level.

7 Q But isn't it -- don't you get a driving under the
8 influence if you have a .08?

9 A That's correct and hers is .01. So, it's significantly
10 less. I believe there's a typographical error that is in the
11 report that may have misled you.

12 Q There's a typographical error?

13 A Chest blood ethanol is 10 milligrams per deciliter in
14 parentheses, that equates to 0.01 percent.

15 Q But your report says .10; correct?

16 A That's correct. There's a typographical error. That's
17 why I did refer to the toxicology report itself.

18 MR. AXELROD: One minute, Your Honor.

19 BY MR. AXELROD:

20 Q Can you show me your report?

21 A The toxicology report, sir? Yes, sir. Okay, 10
22 milligrams per deciliter which is how it's in there, but that
23 actually equates to .01. So, the typographical error is in
24 the text of the report.

25 THE COURT: All right, we're going to have to speak

1 up so everybody can hear.

2 A I apologize. I'm showing counsel a photocopy of the
3 toxicology report itself that shows the ethanol level to be 10
4 milligrams per deciliter, which is how it is stated in the
5 report and that does equate to .01 percent, which is again
6 well below the, in this state, legal limit of .08 percent.

7 Q Okay, now, did you, did you write your report after this
8 toxicology report or before?

9 A It includes the toxicology report, so, yes.

10 Q The report that was sent away from your organization to
11 somewhere else did you write your report concerning the blood
12 alcohol level before or after you received that report back?

13 A Since it includes the toxicology results it was after I
14 got those toxicology results back.

15 Q So, page 12 of your report was written after you got the
16 results back.

17 A Correct.

18 Q Okay, thank you. Nothing further.

19 MR. AXELROD: Your Honor, one second, Your Honor.
20 Let me check one thing.

21 BY MR. AXELROD:

22 Q And you testified that it was your opinion that the rope
23 was used after she had died.

24 A Yes, sir.

25 Q Nothing further.

1 THE COURT: All right, redirect?

2 MR. BRYAN: None, Your Honor. We'd ask that Dr.
3 Schandl be excused.

4 THE COURT: All right, any objection?

5 MR. AXELROD: Without objection, Your Honor.

6 THE COURT: All right, you may step down and you're
7 excused. Thank you very much.

8 All right, you can call your next witness.

9 MR. BRYAN: The State rests, Your Honor.

10 THE COURT: All right, all right, ladies and gentlemen
11 of the jury, the State has concluded its case and as
12 generally, I don't know this for a fact, but 99 percent of the
13 time there are legal matters at the conclusion of the
14 Plaintiff's or at the conclusion of the State's case that I
15 will need to address outside the presence of the jury. So, at
16 this point in time let me excuse you back to the jury room for
17 just a few minutes. I may bring you right back in and excuse
18 you for lunch. If there's not a whole lot of legal matters I
19 may bring you right back in shortly, but I'll let you know.
20 For right now if you'd just go to the jury room. Please do
21 not begin deliberations. Do not discuss this case even among
22 yourselves. Thank you very much.

23 (Whereupon, the following takes place outside the
24 presence of the jury.)

25 THE COURT: Any motions or matters of law to be taken

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1 up by the State first?

2 MR. BRYAN: No, Your Honor.

3 THE COURT: All right, any motions or matters of law
4 to be taken up by the Defendant?

5 MR. AXELROD: Yes, sir, Your Honor. May we approach a
6 minute?

7 THE COURT: All right.

8 (Whereupon, a bench conference was held.)

9 THE COURT: All right, let's go ahead and bring the
10 jury back in for a minute.

11 (Whereupon, the following takes place in the presence of
12 the jury.)

13 THE COURT: All right, ladies and gentlemen, I
14 sincerely apologize for excusing you and bringing you back and
15 excusing you and bringing you back but I have discussed some
16 legal matters with the attorneys and we do have some matters
17 of law that we need to take up which is going to take us past
18 12 o'clock. So, I brought you back in to let you know it is a
19 good time for you to go ahead and break for lunch and enjoy
20 your lunch and I ask that you be back in the jury room at
21 1:30. We'll try to get started back up. So, I've got a
22 quarter till 12 now. So, that'll give you an hour and 45
23 minutes to enjoy your lunch. Be back at 1:30.

24 I tell you again, do not begin deliberations, do not
25 discuss this case even among yourselves, do not read any

1 newspaper accounts, do not watch any TV reports, do not listen
2 to any radio broadcasts or anything regarding this case
3 because it's still premature for you to begin your
4 deliberations and when you do begin your deliberations it is
5 to be based exclusively on the testimony and evidence you hear
6 during trial.

7 So, I hope everyone has a good lunch. I'll excuse you at
8 this time and please be back at 1:30. Thank you very much.

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right, Mr. Axelrod.

12 MR. BRYAN: Thank you, Your Honor. At this time I'd
13 make a motion for directed verdict, Your Honor, to perfect
14 this record. Definitely there's no evidence to be able to put
15 forth for the jury that they can come back and render a
16 decision in this case, sir.

17 THE COURT: All right, motion is noted. I deny your
18 motion for a directed verdict.

19 MR. AXELROD: I would like to renew an exception to the
20 Court's ruling. I was prohibited from re-crossing Marco
21 Pantovich in the State's case. The State put Marco Pantovich
22 up for a direct exam. I was able to cross. The State was
23 then allowed to redirect on an issue that came up from my
24 cross and I attempted to re-cross on an issue that I believed
25 was raised by the State. I respectfully except the Court's

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1 ruling. I merely perfecting my record and I would ask the
2 Court again to rule on that.

3 MR. BRYAN: Just, Your Honor, if I may just address
4 that just for one issue on the record because I don't think
5 it's on the record. Back in chambers we discussed that issue.
6 My recollection of that discussion was that what Defense
7 counsel said that he would have proffered is that he wanted to
8 ask Marco, the son of the Defendant, if the Defendant had
9 abused a previous wife, not the victim in this case. Clearly
10 that's not relevant under any of the case law, any of the
11 rules; and therefore, I just want the record to be reflected
12 that that was a conversation that we had in chambers and that
13 what he said he was going to do was ask about previous abuse
14 between the Defendant and another person who is not a witness
15 in the case for the victim.

16 MR. AXELROD: Your Honor, what we discussed in chambers
17 was in chambers. Now, what I'm perfecting for the record was
18 and I respect the Court's ruling. I'm not questioning that.
19 The Court questioned, questioned me and said, "It's not the
20 question of what you wanted to put forth in the re-cross."
21 The question the Court looked at was whether I was entitled to
22 the re-cross and ---

23 THE COURT: That's correct.

24 MR. AXELROD: --- I believe it was the Court's ruling
25 that I was not entitled to the re-cross and I just want

1 to perfect that record and take that exception, which I will
2 do at each stage of the trial.

3 THE COURT: As I understand the law there is no
4 inherent right to re-cross examination. Certainly all
5 questioning, whether it's direct, redirect, cross, re-cross,
6 re-re-redirect, whatever the case is, it's within the
7 discretion of the Court, but I find that there is no inherent
8 right to re-cross examination. As a matter of fact there's
9 no inherent right to redirect examination. The only law is is
10 that you are entitled to redirect examination if any new
11 material is brought up during cross examination.

12 MR. AXELROD: And furthermore, Your Honor, I do want to
13 put on the record if I can find it on -- I spoke to the Court
14 -- the Court's indulgence, sir.

15 Your Honor, I'll come back to that in one second. What I
16 wanted to put back on the record was that I read into the
17 record that the legislature in one of the rules of evidence,
18 and I'll find the number in a second, said that after
19 examination by all parties and that was my thought that I
20 thought I should be entitled to have a re-cross on that
21 redirect.

22 THE COURT: And I understand. My ruling I'll deny
23 your motion. It's the Court's ruling is that the Defendant,
24 really none of the parties, in your specific case the
25 Defendant, does not have a right to re-cross examination as to

1 the witness who was testifying, Marco Pantovich.

2 MR. AXELROD: And a little bit later, Your Honor, if I
3 may, I'll just ask that the Court allow me to put in what that
4 rule was that I mentioned. I'll find that during lunch.

5 THE COURT: All right, that'll be fine. I think it's
6 611, 601.

7 MR. AXELROD: I thought it was 6, 611? Yes, Your
8 Honor, it was 611(D), absolutely and all I said, I'm not going
9 to rehash it, all I said was that after examination by all
10 parties.

11 THE COURT: All right.

12 MR. AXELROD: Okay, Your Honor, also, I take exception
13 to the Court allowing in document 64, 65 and 66. I'll address
14 64 and 65 together and ask for the Court to rule on. 66 I'll
15 address after because 64 and 65 kind of go together. Clearly,
16 clearly, the doctor testified that these were, these were
17 drawings done by a trainee, not done by an expert. I don't
18 even know if that person was a legitimate doctor that did the
19 drawings. The drawings were not to scale. They didn't even
20 -- they hardly even looked like an ear and I would just think
21 that it's impermissible for what's on those documents if the
22 doctor didn't draw it or didn't do it that she can't be
23 testifying to what someone else did, and it's different. The
24 State said, "Well, you know, we could bring in a blowup
25 doll," but I don't think that, I don't think that analogy

1 holds water here. I think that the drawings done by the
2 trainee should not have been allowed in.

3 THE COURT: All right, your motion is noted. It's
4 denied. These exhibits remain in evidence.

5 MR. AXELROD: Yes, sir, Your Honor, on Number, on
6 Number 66, Number 66 was, that was -- there were statements
7 written by the trainee on the, on the paper. I think it would
8 have been proper to maybe redact the statements of what the
9 trainee wrote because I'm unable to cross examine the trainee
10 and I said to the Court I believe that it was hearsay
11 statement, you know, in a form of writing that whatever was
12 written on that report I couldn't ask the person that wrote
13 it. I thought redaction would have been better than -- if the
14 Court was going to submit, but I would just take exception to
15 66 going in.

16 THE COURT: All right, motion is noted. It's denied.
17 It stays in evidence.

18 MR. AXELROD: And finally, Your Honor, my last motion
19 is the lady from SLED -- there's a breakdown in the chain.
20 The swabs -- they get, they get the, they get the swabs from,
21 the Georgetown Sheriff's Office gets the swabs and we're
22 talking about a fungible item here, that the chain has to be
23 fully intact. They get the swabs from Georgetown. They send
24 the swabs to the evidence custodian in Georgetown, these
25 fungible swabs and then these fungible swabs are taken from

1 the evidence custodian in Georgetown, they're taken to SLED.

2 Now, at SLED they go somewhere that we don't know because
3 the lady that testified today testified to the results of the
4 tests that were performed but we don't know who performed the
5 tests.

6 THE COURT: So, what's your motion?

7 MR. AXELROD: That all evidence concerning the blood
8 and the serology be kept out of this entire trial, that the
9 jury be instructed that they're not allowed to consider it
10 because, well, the reason being the chain is not, is not
11 secure. It surprised me that the person testifying today was
12 not the one that ran the test. I was expecting a different
13 answer when it was asked.

14 THE COURT: All right, Mr. Bryan, let me hear from
15 you on that.

16 MR. BRYAN: Your Honor, first of all, what should end
17 the conversation is the fact there was no objection made when
18 the testimony came into evidence and that would be the
19 responsibility of the Defendant to object contemporaneously
20 with the objectionable testimony. So, there was no objection
21 on the record. There was no objection made, and the State has
22 rested its case, and obviously it's not the proper time to
23 object to evidence. So, that, that ---

24 THE COURT: Well, I mean, but by the same token you
25 had someone that did not recognize there was an interruption

1 in the chain until it was brought out during cross
2 examination.

3 MR. BRYAN: Well, why not -- well, I'll -- okay, I'll
4 get to that, but why not because I gave them a -- I'm going to
5 make this a part of the record. I'm going to need a copy
6 back. Mr. Axelrod has a 35 page chain of custody provided to
7 him from SLED internally and he was aware of the fact or
8 should have been had he read the documents provided to him by
9 the State of each item of evidence testified to and I can go
10 through them one by one if he wishes me to as to what the ---

11 THE COURT: No, I think his concern is is Katie Coy's
12 testimony to the fact that she tested a swab but that she was
13 not the one who took the swab.

14 MR. BRYAN: Okay.

15 THE COURT: And that there has been no testimony or
16 nobody or the person who took the swab has not testified to
17 say they were the ones that took the swab ---

18 MR. BRYAN: Okay.

19 THE COURT: --- and handed it to Ms. Coy for testing.

20 MR. BRYAN: Well, the issue to me, Your Honor, is
21 simply that he's got the chain of custody. He's aware of the
22 fact and he did not object to the chain at the time that the
23 witness testified. So, at that point he should have objected
24 to the chain and then I could have brought a person down if it
25 were so required, but I guess I'm not sure which swab, which

1 swab is it that you're referring to?

2 THE COURT: As I understand her testimony it was the
3 blood swab taken from the fire poker -- no, the swab from the
4 fire poker that showed no -- that there was nothing -- that's
5 what I've got written in my notes.

6 MR. AXELROD: And furthermore, Your Honor, at that point
7 I followed it up, I said, "Did you test any of these?" I
8 think I asked her if she tested any of those swabs and she
9 said no.

10 MR. BRYAN: She tested them all.

11 THE COURT: She tested them all.

12 MR. AXELROD: She, she, she ---

13 THE COURT: She did not take them all.

14 MR. AXELROD: Wait, she, she analyzed the results. She
15 didn't do the test. I think that's what, what she testified
16 to. She got the results. She analyzed the results, but she
17 was not the one that actually did the test wherever the swabs
18 went in SLED.

19 THE COURT: All right.

20 MR. BRYAN: So ---

21 MR. AXELROD: And ---

22 MR. BRYAN: It may require some amount of preparation
23 on behalf of the Defense to get ready to try a case, but when
24 you're provided with documentation that the swabs went from
25 Amy Stephens to Karanda Williams to Alexis Haselden to Katie

1 Coy to Selena Kinard, when you're provided, that's on item
2 four, on item six he has documentation showing that the items
3 went from Amy Stephens to Karanda Williams to Alexis Haselden
4 to Katie Coy back to Selina Kinard. The fire poker went from
5 Amy Stephens to Patty Ruff to Janice Bryson to Selena Kinard.
6 The swabs from the fire poker went from Janice Bryson to Nicky
7 Perry to Cherie Brown to Katie Coy to Nicky Perry to Selina
8 Kinard. All those -- this is within his custody and control.
9 He is free to call SLED. Their number is on the front of the
10 report. He can speak to the witnesses who are going to be
11 called if they need to be called.

12 THE COURT: All right, now, when did you ---

13 MR. BRYAN: I don't think I have to ---

14 THE COURT: Excuse me, when did you provide that
15 chain of custody? You provided that to the Defendant in
16 discovery?

17 MR. AXELROD: I received it, Your Honor, and I'd like
18 to respond to that.

19 MR. BRYAN: He had and what I'd like to say to
20 further perfect the record is that we stood right here this
21 morning before Ms. Katie Coy testified and it wasn't on the
22 record but as an officer of the court I will tell you that Mr.
23 Axelrod told me, "You know, I'm not going to worry about the
24 chain. You know, once you've had it here from, once you had
25 it here from North Carolina what do I care about the chain?"

1 MR. AXELROD: I said the bat, Your Honor. I was --
2 what I said to the Solicitor was, Your Honor, I said to the
3 Solicitor that I wasn't opposed as long as the police officer
4 from North Carolina said he touched the bat and he brought it
5 here. I was okay with that, but what I am opposed to is, Your
6 Honor, I don't care what the State says. They have not
7 perfected their record on, their chain ---

8 THE COURT: All right.

9 MR. AXELROD: --- on a fungible item. The fireplace
10 poker is different, Your Honor.

11 THE COURT: I understand. I've got a record. I'm
12 going to take it under advisement.

13 MR. AXELROD: Thank you.

14 MR. BRYAN: And Your Honor, just to -- I'll make this
15 a part of the record to show that he had the, he had the
16 entire chain.

17 THE COURT: He acknowledged that he received that.

18 MR. BRYAN: And he didn't object to the testimony at
19 the time. So, if ---

20 THE COURT: Well, he didn't know at the time. It came
21 out during cross examination. At the time your witness
22 testified there was no indication that there had been a broken
23 in the chain.

24 MR. BRYAN: Of course there was. There was a 35-page
25 document that said that the items had not come to her

1 directly.

2 THE COURT: And that was introduced in evidence under
3 her testimony?

4 MR. BRYAN: No, it was provided to him in discovery.

5 THE COURT: And that's what I'm saying.

6 MR. BRYAN: He was aware of the fact ---

7 THE COURT: The Court was not aware of it until it
8 came out during cross examination.

9 MR. BRYAN: Okay.

10 THE COURT: All right.

11 MR. BRYAN: But Defense counsel could have objected
12 and made a timely objection ---

13 THE COURT: I understand your argument.

14 MR. BRYAN: --- as required by the rules.

15 THE COURT: I understand your argument. I'm going to
16 take it under advisement.

17 MR. BRYAN: And I'll give this as a Court's Exhibit.
18 I'll hand it up and what it'll show is -- it shows to
19 Defendant ---

20 THE COURT: Mr. Bryan ---

21 MR. BRYAN: Okay.

22 THE COURT: --- he acknowledges receiving that.

23 MR. BRYAN: Right.

24 THE COURT: He acknowledges he got that report, that
25 there's a chain of custody. It doesn't need to be an exhibit.

Motions

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1 MR. BRYAN: Well, I just ---

2 THE COURT: Do you object to him putting it in?

3 MR. AXELROD: I don't see the need for it being an
4 exhibit, Your Honor.

5 MR. BRYAN: If you're -- well, if you're considering
6 granting the motion I'd like for you to be aware of the fact
7 that he knew that all these people had touched the item.

8 THE COURT: He states he knows that. He had pre-
9 warning of that. He's just saying the basis of his objection
10 is that even though he knows that you still have to establish
11 it in your case in chief.

12 MR. AXELROD: Absolutely.

13 MR. BRYAN: But he doesn't -- okay.

14 THE COURT: That's his argument.

15 MR. BRYAN: And -- okay, my argument is he had to
16 object to it in his case -- in my case in chief.

17 THE COURT: I understand your argument.

18 MR. BRYAN: Thank you, Your Honor.

19 THE COURT: Your argument is he had the knowledge ---

20 MR. BRYAN: Yes, sir.

21 THE COURT: --- and so he should have raised the
22 objection.

23 MR. BRYAN: At the appropriate time, yes, sir.

24 THE COURT: Either through a motion in limine or at
25 the appropriate -- or during your case in chief or whatever.

1 The Defense's argument is regardless of your providing it to
2 him you still have to establish it in your case in chief. I'm
3 taking it under advisement. I don't know the answer at this
4 point in time, but I'll certainly let you know my ruling.

5 All right, sir, next motion.

6 MR. AXELROD: Your Honor, I believe that's it.

7 THE COURT: All right, do we want to go ahead and put
8 your witness under oath. I don't know what we're going to do
9 at this time but I need to question him on his right to
10 testify and things of that nature

11 MR. AXELROD: Your Honor, prior to that if we may, if
12 we could ask the State to provide us with a copy of his
13 criminal record of what would be impeachable if he was to
14 testify.

15 THE COURT: All right.

16 MR. BRYAN: You saying you don't have a copy of his
17 criminal record?

18 MR. AXELROD: Well, I don't, I don't know if I have a
19 full copy. The question I have is I don't think there's
20 anything impeachable on his record that he could be ---

21 THE COURT: Well, I acknowledge the Prosecution has
22 to provide you with.

23 MR. BRYAN: And we have.

24 MR. AXELROD: I have, but my question is I don't think
25 there's anything that can be used to impeach him.

1 THE COURT: All they've got to do is produce his
2 record to you. If they've produced his record to you then
3 they've met their obligation under discovery.

4 MR. AXELROD: I don't know if they produced a full
5 record. I have a record from, I think, the State of South
6 Carolina.

7 THE COURT: Pull out whatever they produced to you
8 and if they try to bring out anything that's not on that
9 report they're not going to be able to.

10 MR. AXELROD: Well, what I'd like to go through with
11 the Court then if we could at this point, Your Honor, what I
12 have is I have a 1999 driving -- in 2004 there's a conviction,
13 might be a blue ticket for marijuana, simple possession of
14 marijuana. I think that would not be something that could be
15 used to impeach Walt with, and other than that he has the --
16 that's it. There's a DUI out there but no, no, no
17 disposition.

18 THE COURT: So, Mr. Axelrod, what are you asking the
19 Court?

20 MR. AXELROD: Well, what I'm asking is that -- it's my
21 opinion, I told my client that I don't think there's anything
22 that he can be impeached with if he testifies according to my
23 records. I just don't want to be broad-sided if there is
24 something out there that I haven't been given.

25 THE COURT: You won't be broad-sided because the

1 rules of discovery are very clear. They have to give you a
2 copy of your client's criminal history record. All right, so
3 they've given you a copy of your client's criminal history
4 record.

5 MR. AXELROD: Yes, sir, Your Honor.

6 THE COURT: All right, anything else?

7 MR. AXELROD: Your Honor, if you want to ---

8 THE COURT: Yeah, all right, Mr. Pantovich, if you'd
9 please come forward, come up here to the front.

10 All right, if you would please put him under oath.

11 (Whereupon, Mr. Pantovich sworn by Clerk.)

12 THE COURT: All right, Mr. Pantovich, at this time
13 I'm going to explain to you your rights as the Defendant in
14 this case and your rights to or your rights to testify or not
15 testify as a Defendant in this case. If you do not understand
16 anything that I say, please let me know. If you want me to
17 explain anything in more detail, please let me know. Do you
18 understand me so far?

19 MR. PANTOVICH: Yes, sir.

20 THE COURT: Okay, now, we've reached the stage of the
21 trial where you may present your own defense. You have the
22 right to claim the protection given to you by the Fifth
23 Amendment to the Constitution of the United States. This
24 amendment states in part that no person shall be compelled in
25 any criminal case to be a witness against himself. This means

1 that you cannot be required to testify in this case. You have
2 the right to testify on your own behalf. However, no one can
3 make you testify. This is a personal right and no one can
4 waive this right except for you. If you decide to testify you
5 will be subject to the same rules that govern other witnesses
6 and you may be examined and cross examined on any relevant
7 issue in this case. In addition, if you have any convictions
8 involving dishonesty or false statement or for crimes
9 punishable by imprisonment for more than one year and this
10 Court determines that -- if you have any convictions involving
11 dishonesty or false statement or for crimes punishable by
12 imprisonment for more than one year and this Court determines
13 that the probative value in admitting that evidence outweighs
14 its prejudicial effect to you, then the Solicitor will be able
15 to introduce your record to attack your credibility. If you
16 decide to testify this decision on your part must be freely --
17 if you decide to testify this decision on your part must be
18 freely, voluntarily and intelligently made, with knowledge of
19 the protections given to you by the Fifth Amendment and the
20 consequences of your decision to testify. If you decide not
21 to testify I will instruct the jurors that they cannot give
22 the fact that you did not testify any consideration whatsoever
23 and that there is to be absolutely no prejudice to you because
24 you did not testify. It is left entirely up to you whether or
25 not you testify. You may talk with your attorney, your

1 family, friends, anyone else but the final decision will be
2 your decision. Do you understand these rights as I've
3 explained it to you?

4 MR. PANTOVICH: Yes, sir.

5 THE COURT: Do you have any questions about what I've
6 explained to you?

7 MR. PANTOVICH: No, Your Honor.

8 THE COURT: All right, do you realize that if you
9 choose not to testify I will instruct the jury not only and
10 I'm going to instruct them this anyway, but that I will
11 instruct them that not only can they not use your silence
12 against you, but that a Defendant is never required to prove
13 his or her innocence and that the burden is on the State to
14 prove your guilt. Do you understand that?

15 MR. PANTOVICH: Yes, Your Honor.

16 THE COURT: All right, we're going to break here for
17 lunch. I want you to discuss this matter with your attorneys.
18 When we come back from lunch then I'll ask you then whether or
19 not you wish to testify; okay?

20 MR. PANTOVICH: Yes, Your Honor.

21 THE COURT: Is there anything you want to ask me at
22 this point in time before we break for lunch?

23 MR. PANTOVICH: No, sir.

24 THE COURT: All right, thank you very much.

25 MR. PANTOVICH: Thank you.

1 THE COURT: All right.

2 MR. CASTRO: Thank you, Judge.

3 THE COURT: All right, anything from the State before
4 we break for lunch?

5 MR. BRYAN: No, Your Honor.

6 THE COURT: Anything from the Defendant before we
7 break for lunch?

8 MR. AXELROD: No, sir, Your Honor.

9 THE COURT: All right, we'll stand in recess until
10 1:30.

11 *****OFF THE RECORD*****

12 (On the record.)

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: All right, gentlemen, over lunch I did do
16 some research regarding Mr. Axelrod's motion to suppress all
17 of the blood and serology testing and while I find that the
18 Plaintiff or the State does have to establish a chain of
19 custody as far as practical it does not require that they call
20 every witness in that chain of custody. I find that the State
21 has established a chain of custody sufficient for that to be
22 admissible. So, I deny your motion, Mr. Axelrod.

23 MR. AXELROD: Your Honor, and I respectfully understand
24 that. I would just like to put on the record if I may a
25 motion for a mistrial at this point based on that fact, Your

1 Honor, that as in State v. Smith as the Court just reiterated
2 complete chain of evidence must be established as far as
3 practical but then in Smith the Court goes on after that
4 comment, Your Honor, and it says, "Tracing possession from
5 the time the specimen is taken from the human body to the
6 final custodian by whom it is analyzed." Now, clearly -- and
7 then in State v. Carter, which is 344 S.C. 419, that's a
8 Supreme Court case from 2001 the Court in Carter said that,
9 "The State must provide a continuous chain of custody through
10 the testimony of all persons who controlled the evidence,"
11 and it's clear that the police officers took the swabs. They
12 testified to that, Your Honor. They testified that they took
13 the swabs and they gave it to the evidence custodian. The
14 evidence custodian, the woman, she testified that she took
15 those swabs in her possession to SLED. Then when the woman
16 from SLED, Katie Coy, that was her name, when that woman from
17 SLED testified today I expected her to be the one that was
18 going to say she ran the test, she analyzed the test. When
19 she got to the fireplace poker, I asked her, I said, "Were
20 you the one that ran this test?" She said, "No, I was not."

21 THE COURT: No, she said she ran the test, she did not
22 take the swab.

23 MR. AXELROD: I believe, Your Honor, if we look back at
24 the testimony she analyzed the results but never ran the test
25 and that's my argument here. She didn't run the test. I

1 think the testimony and I'm not trying to mislead the Court
2 but my notes when I wrote it down was that she analyzed the
3 results of the test that was run and I asked her, I said,
4 ``Did you run this test,'' and she said, ``No, I did not.''

5 THE COURT: Okay.

6 MR. AXELROD: And that is why if the State puts forth
7 evidence that they know they cannot perfect the chain I have
8 no, I have no choice but to ask for the mistrial because as
9 the Court acknowledged we didn't know this was going to happen
10 until it came out.

11 THE COURT: Okay, motion is noted. I deny it. I
12 understand her testimony to be that she did not take the swab
13 from the fire poker, it was taken by a technician at SLED and
14 brought to her for testing.

15 MR. BRYAN: Thank you, Your Honor.

16 THE COURT: All right, any other motions?

17 MR. BRYAN: None from the State, Your Honor.

18 THE COURT: All right, Mr. Axelrod.

19 MR. AXELROD: Sir?

20 THE COURT: Would you please bring Mr. Pantovich
21 forward so I can further question him on his desire to
22 testify.

23 All right, Mr. Pantovich, have you had ample opportunity
24 to speak with your attorney and with whomever else you wish to
25 speak regarding whether or not you will testify in this

1 case?

2 MR. PANTOVICH: I want to testify, sir.

3 THE COURT: Okay, is there anything else you want to
4 ask your attorney, anything you want to ask the Court or
5 anyone else you wish to speak with before making your
6 decision?

7 MR. PANTOVICH: Not at the moment, sir.

8 THE COURT: Okay, do you wish to testify in this
9 case?

10 MR. PANTOVICH: Yes, I do, sir.

11 THE COURT: All right, thank you very much.

12 Well, first let me ask you, is your desire to testify is
13 it voluntary?

14 MR. PANTOVICH: Yes, sir.

15 THE COURT: Is that what you want to do?

16 MR. PANTOVICH: Yes, sir, I want the truth to come out.

17 THE COURT: Has anybody promised you any -- excuse
18 me. Say that ---

19 MR. PANTOVICH: I want the truth to come out.

20 THE COURT: Okay, has anybody threatened you to get
21 you to testify?

22 MR. PANTOVICH: No, sir.

23 THE COURT: Has anybody promised you anything to get
24 you to testify?

25 MR. PANTOVICH: No, sir.

1 THE COURT: All right, thank you very much. You can
2 be seated.

3 MR. PANTOVICH: Thank you.

4 THE COURT: All right, anything from the State before
5 we bring the jury back in?

6 MR. BRYAN: The only thing and you may have asked,
7 Your Honor, but I think it might be appropriate to ask the
8 Defendant if he recognizes that if he were not to testify that
9 the jury would be instructed that they cannot hold that
10 against him.

11 THE COURT: I advised him that prior to lunch, yes.

12 MR. BRYAN: I'm sorry, Your Honor. Thank you, Your
13 Honor. I don't have anything else.

14 THE COURT: All right, anything from the Defense
15 before we bring the jury back in?

16 MR. AXELROD: The Court's indulgence one minute, Your
17 Honor.

18 THE COURT: All right.

19 MR. AXELROD: Your Honor, we're ready.

20 THE COURT: All right, you can bring the jury in.

21 (Whereupon, the following takes place in the presence of
22 the jury.)

23 THE COURT: Ladies and gentlemen, welcome back. The
24 Plaintiff or the, excuse me, I keep saying Plaintiff. The
25 State has rested their case and it is now time for the

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GEORGETOWN) 06-GS-22-126

The State,)
Plaintiff,)
vs.) TRANSCRIPT OF RECORD
Vladimir Pantovich,) February 4-8, 2008
Defendant.) Volume 3: Pages 401-606

B E F O R E :

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

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

William Bryan, Esquire
Attorney for Plaintiff

Stuart Axelrod, Esquire
Chris Castro, Esquire
Attorneys for Defendant

Grace L. Hurley, CVR-CM
Circuit Court Reporter

1 Defense, if the Defense chooses to present a Defense they can
2 and now is the time for them to do that. Mr. Axelrod, you can
3 call your first witness.

4 MR. AXELROD: Your Honor, at this time I believe Mr.
5 Castro will.

6 THE COURT: Excuse me?

7 MR. AXELROD: Mr. Castro will call the witness.

8 MR. CASTRO: Your Honor, we'd call Walt to the stand.
9 Whereupon, Vladimir Walt Pantovich was called to the
10 stand, duly sworn by the Clerk and testified as follows:

11 THE CLERK: Please be seated and state your name for
12 the record, please, spelling your first and last, please.

13 PANTOVICH: Vladimir Pantovich, V-L-A-D-I-M-I-R, P-A-
14 N-T-O-V-I-C-H. I also go by the name of Walt.

15 THE COURT: Thank you, Mr. Castro.

16 MR. CASTRO: Thank you, Your Honor. May it please the
17 Court.

18 DIRECT EXAMINATION

19 BY MR. PANTOVICH:

20 Q Good afternoon, Walt.

21 A Sir?

22 Q Good afternoon.

23 A Good afternoon, good afternoon.

24 Q Walt, please tell the jury your age.

25 A I'm 57, born June 5th, 1951.

1 Q Walt, would you please tell the jury where you were
2 born?

3 A I was born Yugoslavia, Eastern Europe.

4 Q Are you an American citizen now?

5 A Yes, I am.

6 Q Walt, when did you come to the United States?

7 A 1973, October 21st.

8 Q Walt, what kind of work do you do?

9 A I have home repair business. I can just do just about
10 anything around house, wallpaper, painting, tile work,
11 carpentry, plumbing, just about anything around house.

12 Q How long have you been working at that particular trade?

13 A Most of my life.

14 Q Do you own your own company?

15 A Here in Myrtle Beach I been in business for myself since
16 1991. In Virginia I had bigger size business. Here I work by
17 myself most of the time, unless I have big remodeling job then
18 I hire some people.

19 Q What kind of activities did you do when you're not
20 working?

21 A I like racing. I like NASCAR racing. A couple of --
22 few years ago I got into -- I bought motorcycle, like that,
23 too.

24 Q Do you have children?

25 A Five.

1 Q How about grandchildren?

2 A Nine, I just had my son ---

3 MR. BRYAN: Objection to the relevance.

4 THE COURT: All right, overruled. I'm going to allow
5 it. Go ahead.

6 Q You may answer that question.

7 A Nine. My oldest son just had baby, Minor [REDACTED] on
8 [REDACTED]. That's his fifth baby, fifth kid.

9 Q How do you feel about your grandchildren? Do you spoil
10 them at all?

11 A I go there, up there whenever chance I get.

12 MR. BRYAN: Objection to the relevance about spoiling
13 his grandchildren.

14 THE COURT: All right, overruled. I'll allow it. Go
15 ahead.

16 Q You may answer that question.

17 A I go there every chance I have, probably go there once a
18 month or so. They live in North Carolina. My daughter lives
19 in Virginia. I go there -- I don't go there as much as I go
20 to North Carolina.

21 Q We're going to move forward a little bit, Walt. Walt,
22 could you tell the jury when you first met Sheila McPherson?

23 A I met Sheila in 2001.

24 Q Where did you meet her?

25 A At the local bar.

- 1 Q What state was that?
- 2 A The State of South Carolina.
- 3 Q Was that in Myrtle Beach?
- 4 A Garden City.
- 5 Q When did you first start dating Sheila?
- 6 A Well, when I met her she -- that same year, 2001.
- 7 Q And approximately for how long did you date after you
- 8 met her in 2001?
- 9 A About three months.
- 10 Q After three months did you date her?
- 11 A No, she went her way. I went my way.
- 12 Q At some point in time did you and her cross paths again?
- 13 A A couple of years later in 2003, in September I think of
- 14 2003.
- 15 Q Did you begin dating her again?
- 16 A Yes, not, not right away, maybe a month later or so we
- 17 start seeing one another.
- 18 Q At some point did you and her move in together?
- 19 A February 1st, 2004.
- 20 Q Ands where was she living when you moved in with her?
- 21 A At Peachtree Landing in Socastee, at Wilson, Wilson
- 22 Trailer Park, small trailer park, only about eight trailers.
- 23 Q And did she move into your house or did you move into
- 24 her house?
- 25 A No, she asked me to move in with her.

1 Q Just so we're clear who moved into whose home?

2 A I move in her place. She asked me to move in with her.

3 Q And again, I'm sorry, that street address was?

4 A I don't remember the street address but it's Peachtree
5 Landing, Peachtree Road. I don't remember address. I'm
6 sorry.

7 Q Tell the Court what interested you about Sheila when
8 you started dating her.

9 A The first time we were just dating, you know, I met her
10 in a bar and we just became friends that same night and we
11 start just you meet someone in a bar and then, and we was
12 friends for about two, three months and that was it. She went
13 her way. I went my way. I start dating somebody else.

14 Q What did you like about Sheila?

15 A She was, she was nice looking girl. She had pretty
16 smile. She was nice to get along with.

17 Q Now, at some point when you were living with Sheila did
18 you ever experience any troubles in your relationship?

19 A When I move in with her in February of 2004 she changed
20 drastically about, about May, May of that year.

21 Q I'm sorry?

22 A She changed, like her attitude change a lot.

23 Q Is there anything in particular that you can attribute
24 that to?

25 A Well, I was working at that time, probably whole March

1 and a part of April in Lake Marion. I was doing a bunch of
2 tile work up there and I would leave early Monday morning and
3 come back Friday afternoon and I felt like that I wasn't
4 welcome home, you know. Then when I finish the job I start, I
5 start working around, around the beach again and then every
6 time I come home from work it was different person in the
7 house and Sheila was 50 years old and they was like people 25
8 years old, 30 years old, males, and her excuse was always they
9 were coming to get pills from her, but it, it was more than
10 that and people calling all different hours, and people were
11 coming all different hours and I was -- start getting mad over
12 that. I didn't want people around. I asked what would you do
13 if you come home from work and you find different woman in the
14 house? What would you do? We either going to live together
15 like couple, we just split up.

16 Q Did these discussions affect your relationship at all?

17 A Yeah, because I started chasing her friends away. I
18 didn't let them around the house anymore and that caused lot
19 of problems. She wanted her friends.

20 Q How did she react to your actions?

21 A Well, a lot of times with her, with her at first there
22 was, there was verbal abuse, calling you names, putting you
23 down by names and then throwing stuff at you and she would
24 like start arguing and she asked me question, if I tried to
25 answer the question, she turn around and answer it for me and

Vladimir Pantovich - Direct by Mr. Castro

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1 I say, ``Wait a minute then,'' there she goes. She knew how to
2 start argument.

3 Q At some point in time did these disagreements turn into
4 physical confrontations?

5 A Yeah, when I was start -- I didn't want people around
6 house. One time I went to a guy that was married, a boy
7 named Derrick. I went down the street, who several times
8 come to house, he was in the house and after that I finally
9 got mad over that. I said, ``Derrick, if you're there, if you
10 come again you and I are going to be fighting,'' and I went
11 told his wife about that. Boy, we had World War III in the
12 house that night. She threw everything at me, pots, pans,
13 fork, who knows what, because I went to Derrick's wife's
14 house.

15 Q What other behaviors did she exhibit as a result of your
16 confrontation about friends?

17 A I don't understand what you mean. What do you mean what
18 other behavior? Well, she was verbally abuse and throwing
19 stuff at me and then she start slapping me around sometimes
20 and she love to spit in the face. She love to spit in the
21 face. Nobody likes to be spit in the face, nobody. It's ---

22 Q Are you telling this Court that somebody spit in your
23 face?

24 A Sheila did on bunch of occasions and that's low as a
25 person can go if someone spit in your face.

1 Q You mentioned slapping. Were you slapped?

2 A Yeah, I used to have glasses and I had a rope around
3 here, she would go slap. I don't know how many pair of
4 glasses she broke.

5 MR. CASTRO: The Court's indulgence for a moment, Your
6 Honor.

7 THE COURT: All right.

8 BY MR. CASTRO:

9 Q Did Sheila ever break anything at the house?

10 A Yeah, she was, she -- one time she broke mirror in the
11 bedroom. We had a -- it was a small trailer. We had a small
12 mirror by the bed and she, she was mad about something and she
13 broke mirror with both feet and then took piece of mirror and
14 then tried to cut herself and I went to ---

15 Q So, she did what with the glass?

16 A She tried to cut herself. She had piece of, piece of
17 glass and then when I went there, "What you doing," she went
18 after me with that.

19 Q Can you describe her condition at the time when this
20 happened?

21 A She was -- she didn't look good. When I seen her first
22 when we met, she, she, she look nice. She was nice looking
23 woman. When I seen her second time I didn't see her for, I
24 don't know, a couple, three years; and so, then when I seen
25 her in September, October 2003 I didn't recognize her. She,

1 she, she look so bad. I mean, she look bad. She didn't look
2 like Sheila. She gain, she gained 20 years on her at least.

3 Q You described a moment ago about breaking of a mirror.

4 A Yes, sir.

5 Q Could you describe the condition of Sheila at that
6 particular time?

7 A She was -- something was wrong with her. She wasn't
8 drinking. She wasn't drunk. I don't know what kind of drugs
9 she was on, but something was wrong with her. She was, she
10 was red in the face and she was yelling and going with the
11 piece of mirror like that and foam was coming out of her
12 mouth. Foam was coming out of her mouth. When she fell
13 asleep I called her Aunt Margie. I said, "Margie, what I
14 going to do with Sheila?" She said, "Don't, don't give her
15 any liquor." I said, "Margie, she don't have no liquor. I
16 said she had nothing to drink. Something is wrong with her,"
17 and I went to neighbor next door, told Tammy. They were
18 living next door. I said, "Tammy, what I going to do with
19 her? Foam is coming out of her mouth?"

20 Q So, you were concerned for her physical health because
21 of that?

22 A I didn't know what was wrong. I never seen that in my
23 life.

24 Q Now, this abuse that you've described did that continue?

25 A On and off, on and off every time I -- she would

1 sometimes leave for hours, come back and if we get, you know,
2 if I say, "What you doing," there, there, there she go either
3 slapping me or spit at me, "You're nothing," putting me down
4 any chance she had, she had.

5 Q Did you retaliate against her physically?

6 A I walked away most times, go in the bedroom or go across
7 the street to neighbors, next-door-neighbors.

8 Q Now, you testified a little bit earlier, you told the
9 jury that you moved in to her place February 1st of 2004.

10 A Yes, sir.

11 Q About how long did you remain there?

12 A I remained till I moved out on April 1st of 2005.

13 Q Where did you move to in April 1st of 2005?

14 A At the, at the red house at the -- on, off Wachesaw
15 Road, [REDACTED] Lane.

16 Q Now, at that red house, who was paying to rent that?

17 A I was.

18 Q So, that was -- was that your house?

19 A Right, yes, sir.

20 Q And you were renting it; is that correct?

21 A I was renting it from a, from a customer.

22 Q Now, when you moved into the red house in April of 2005
23 did you have a relationship with Sheila at that particular
24 time?

25 A No, I didn't want nothing with her.

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1 Q And then, so, how would you describe your relationship
2 right then and there?

3 A We didn't have a relationship because I moved out. I
4 had enough.

5 Q At some point in time did you and Sheila resume dating?

6 A In June of same year, middle of June, end of June,
7 maybe.

8 Q And June of what year?

9 A 2005.

10 Q And so, you began dating again -- I'm sorry, what month?

11 A Sometimes in June.

12 Q Okay, and could you describe to the jury the nature of
13 your relationship at that period of time?

14 A We were just seeing one another. Sometimes she come
15 spend my nights in my house. Sometimes I spend nights in her
16 house. That was -- we would ride bikes together. That was
17 about, you know, we didn't live together. We go out to eat
18 together sometimes, a couple of times a week and that was
19 about it.

20 Q At some point in time after June 5, did your living
21 arrangements change?

22 A Yes, she, she wanted to move in with me this time.

23 Q And did she, indeed, move in with you?

24 A Yes, she did because she told me if I move her from the
25 hill, which is at Peachtree Landing, they used to call hill

1 she said that everything is going to be different and that she
2 moved in the beginning of September.

3 Q And the beginning of September again of what year?

4 A 2005.

5 Q Okay, could you describe for the jury the nature of your
6 relationship at that point when she moved back in with you?

7 A When she moved back in with me I told her that she can
8 move in with me as long as she don't come and go as she
9 pleased. I didn't want her friends around, the one that she
10 was partying with. If we're going to be couple we going to be
11 couple. I said, "We can go visit your family," which we did
12 on a bunch of occasions. We went to see my son and we were
13 just -- everything was just nice for about a month, month and
14 a half.

15 Q After this month, month and a half what happened?

16 A Well, she start, she start doing something again. What
17 I don't know. She -- or either she was -- she was always
18 doing pills. She was always doing pills. She had pill for
19 everything, pill for up, pill for down, pill for sleep, pill
20 for everything.

21 Q How did that effect your relationship?

22 A She had mood changes which was, which was -- she would
23 go in a split second from nicest person in the world to the
24 something evil and it's hard to describe. It's hard to
25 describe.

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1 Q In your mind is there something you can point to that
2 attributed or caused that mood change?

3 A I don't understand question, sir.

4 Q She was living with you; correct?

5 A Yeah.

6 Q And you just testified that you saw her experience mood
7 changes; correct?

8 A Right, right.

9 Q Is there a cause that you might say caused a mood
10 change?

11 A I think she was missing her friends and she was missing
12 her crack. She was missing her crack.

13 Q Did her behavior towards you worsen?

14 A Yes, there was ---

15 Q And can you describe for the jury -- I'm sorry. I
16 didn't mean to interrupt you.

17 A There were arguments start all over again and all the
18 spitting would start coming all over again. One time I went
19 to for Thanksgiving to friend of mine's, bishop's house for
20 Thanksgiving. On the way back she was slapping me and then
21 spitting in my face and all of that for no reason whatsoever
22 because just mood.

23 Q So, the physical confrontations continued; is that
24 correct?

25 A Yes, sir.

- 1 Q What other behaviors did she exhibit towards you that
2 were physical?
- 3 A Names calling again, calling names, spitting.
- 4 Q Did she ever touch you?
- 5 A Yeah.
- 6 Q And please describe for the jury how she did that.
- 7 A She would slap you out of nowhere.
- 8 Q Did that happen one time?
- 9 A More than one time, several times.
- 10 Q How did you react to that?
- 11 A Walk away.
- 12 Q Did you hit her back?
- 13 A No, sir, never lay hand on Sheila, never lay hand on
14 Sheila.
- 15 Q Now, at some point moving forward a little bit to 2006,
16 I'm going to point you around March of 2006, did Sheila
17 purchase a vehicle?
- 18 A She purchased vehicle on it was Wednesday, 2nd or 3rd of
19 March. I don't remember exactly which day, but I know it was
20 Wednesday, no Thursday, Wednesday she finish school, Thursday
21 she purchase the vehicle at a used car lot there on -- in
22 Murrells Inlet right there by T-Bonz Steakhouse.
- 23 Q That was on a Thursday.
- 24 A Yes, sir.
- 25 Q On a Friday, and let me backtrack just a little bit.

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1 Did Sheila every accompany you to work?

2 A Sometimes, I had a nice job for about eight or nine
3 months with, with my customers. I could just stay from
4 Murrells Inlet, she was helping around house and working
5 around garden and stuff or sometimes she go work with me.

6 Q Did you pay her to work with you?

7 A Yeah.

8 Q Okay, you've testified that she purchased this van on a
9 Thursday.

10 A Yes, sir.

11 Q The next day did she accompany you to work?

12 A She asked me if she can come to work with me so she can
13 get money for insurance to insure the van.

14 Q What happened or did she go to work with you?

15 A Yes, she drove herself to work. I leave early. I leave
16 probably about 6:30. She came around 8:30 or so.

17 Q Could you describe for the jury what kind of job you
18 were working on?

19 A I was working in Surfside and I was laying hardwood
20 floors and I also a few days before that I power wash house
21 and it was a deck in the back. She was staining deck for me,
22 putting a semitransparent stain on a deck.

23 Q What happened at work that day in regard to the work
24 that she was doing?

25 A I don't know if any of you does any stain work, but

1 there is, if you -- there was siding on the house and if you
2 got any, get any stain on the siding if you don't wipe it off
3 right away you can ruin siding. So, it cost money to replace
4 siding. So, what she did when I came around one time after, I
5 don't know, I told her be careful with siding and everything
6 because she didn't have to rush. There was no rush in it and
7 there was some stain on the siding and I told her, "Don't do
8 that no more, please wipe it off," and I went and wiped it
9 off and I went back to do what I was supposed to do and I went
10 outside to cut, to cut some wood and there she come out with
11 drop cloth, two of the drop clothes telling me and she
12 flipped, got in the van, flipped me the bird and took off.

13 Q Did you see her again that day?

14 A No, sir.

15 Q The following day ---

16 A No, sir.

17 Q --- did you see her at all?

18 A No, sir.

19 Q The second following day, Sunday?

20 A She called. No, I didn't see her.

21 Q Did you receive a telephone call?

22 A Yeah.

23 Q And who was that telephone call from?

24 A Late at night from Sheila.

25 Q Did Sheila want to come back?

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1 A She asked, ``Can I come home?''

2 Q What was your response?

3 A I told her I didn't want her in my life no more.

4 Q And why was that?

5 A Because she -- I just didn't want her in my life no
6 more, I had enough of her, had enough of her, and I helped
7 her, I just finished helping her with the, to finish school.
8 Four months she went to school to get her license back. I pay
9 half of that, took her every Tuesday and Thursday to school.
10 Soon she finish school, she took off, she didn't need me no
11 more. I help her through two back surgeries, for six months
12 help her, feed her, carry her, paying bills for her, none of
13 her family come to see her for six months. Nobody come to see
14 her. I was helping her. Soon as she got well she took off
15 for ten days. I had enough of that.

16 Q On the Sunday how did she or what was the reaction to
17 your phone call?

18 A She was, she was, she wasn't talking straight. She was
19 blurring. She was probably drunk or something. She asked --
20 I just told her I didn't want her in the house no more.

21 Q Did she, indeed, come to your house that Sunday?

22 A She slept in the van, in her van.

23 Q Where was the van parked?

24 A Right there by the garage. I can -- you can see it
25 from, from our part. There was house apartment here, there's,

1 there's our living quarters here, there's garage, the garage
2 door, van was parked right here, my truck was parked right
3 there.

4 Q But just to make sure we're clear whose house was the
5 van parked in front of?

6 A My house, my rental place.

7 Q On Monday morning what happened?

8 A I went to work. Van was still there.

9 Q Did you take a break from work at some point that
10 day?

11 A I was working not far from Wachesaw Road where I was
12 living, probably 10 minutes from there. I went home to eat
13 lunch. Van was gone.

14 Q What time did you get home from work that day?

15 A Five o'clock, something like that, 5:30, something like
16 that.

17 Q Did you see the van there at that time?

18 A No, I didn't.

19 Q The next day, Tuesday, did you go to work as
20 usual?

21 A Yes, I did.

22 Q Was the van in your driveway?

23 A No.

24 Q Did you come home at lunch that day?

25 A No, I didn't.

1 Q Did you come home at some point in time that day?

2 A Yeah, late in the afternoon.

3 MR. CASTRO: The Court's indulgence one moment.

4 THE COURT: All right.

5 BY MR. CASTRO:

6 Q I'm going to backtrack just a little bit, Walt. You
7 testified that you broke up at some point?

8 A Yes, sir.

9 Q You've testified about some behaviors between you and
10 her.

11 A Yes, sir.

12 Q I'm going to ask you this question, the abuse you
13 testified to, the surgery you testified to, the time that you
14 spent together, why did you continue to stay with her?

15 A I wanted to help her and I loved her.

16 Q You loved her?

17 A Yes, I did. I still do.

18 Q Let's get back to that Tuesday, that would be
19 approximately the 7th of March. Again, would you just please
20 tell the jury about what time you came home from work?

21 A Late afternoon. I don't know, probably right around
22 5:30, six o'clock, maybe, I'm not sure.

23 Q Were you surprised when you got home?

24 A Yeah.

25 Q And why were you surprised?

- 1 A Because Sheila was, Sheila was just laying on the couch
2 like nothing happened.
- 3 Q What -- when you came home and saw her what did you tell
4 her?
- 5 A I told her that, "What are you doing here? I don't
6 want you in my, in my house anymore."
- 7 Q How did she react to that?
- 8 A "I move out soon, I move out soon."
- 9 Q Did she leave right then?
- 10 A No.
- 11 Q Did you tell her again anything about her being
12 there?
- 13 A Several times.
- 14 Q Did you witness her using any substances?
- 15 A She pulled bag of -- not bag -- she from a cigarette a
16 cellophane that there where she had some pot in there.
- 17 Q What did you tell her about that?
- 18 A I told her not to smoke in the house.
- 19 Q At some point did you attempt to have her leave?
- 20 A I ask her to leave again. I just didn't want her
21 around.
- 22 Q Did you try to call the police?
- 23 A I tried to go to use my telephone.
- 24 Q Were you successful with the telephone?
- 25 A No, she unplugged it somehow.

1 Q Was the phone working?

2 A No.

3 Q At some point did she pick up anything?

4 A She picked the fireplace poker.

5 Q At that time where were you sitting?

6 A I was sitting in a reclining chair right there by the
7 fireplace eating, eating my, my lunch, my dinner.

8 Q What happened with the fireplace poker?

9 A I had a wood tray and she came -- we were going back and
10 forth arguing and she took the fireplace poker and poked a
11 hole in the tray.

12 Q Did she use force?

13 A Yeah, I guess. She had to make hole in the wooden
14 tray.

15 Q Can you describe the implement that she had?

16 A What do you mean? I don't understand what implement
17 means, sir, a fireplace poker we had a ---

18 Q Tell the jury what it looked like with your hands.

19 A We had -- three fire -- the one like scooper, had one
20 with point and one was like, like apart, have like curve on it
21 on the end with two, two like you pull log back to you.

22 Q And is that what was used to jam a hole in the
23 tray?

24 A Yes, sir.

25 Q Now, at some point were you standing up?

1 A I went, took my sandwich, put my sandwich away, put on
2 the countertop and took the tray, put that by the fridge where
3 we keep, where we had two trays there. I put it back by the
4 fridge.

5 Q I'd like you to describe to the jury what Sheila looked
6 like at this time. How was her face?

7 A She was, she was really red in the face. She was really
8 red in the face.

9 Q How was her voice?

10 A Her voice was deep, real deep voice.

11 Q Had you ever seen her like that before?

12 A No. She looked worse than when I seen her one time with
13 foam coming out of the mouth. Never, I never seen her like
14 that.

15 Q At some point did she make a threatening motion with
16 something?

17 A She had, she had fire poker in her hand where she was
18 talking to me.

19 Q At any point in time did she raise it above her head in
20 a threatening manner?

21 A She went after me three different, two different times

22 ---

23 MR. BRYAN: I'm going to object at this point to the
24 leading, Your Honor. I've been letting it go on but ``did she
25 raise it above her head,`` is leading. He can ask him what

1 she did.

2 THE COURT: All right, yeah, ask her [sic] what she
3 did. Don't lead the witness.

4 Q What did she do with this poker?

5 A She went after me with it.

6 Q Can you describe for the jury at this point where were
7 you?

8 A I was at the -- I don't want to use Bible for it but I
9 was, our room there, there's the fireplace is right here,
10 there's the recliner right there that where I was sitting at,
11 there's a door that go into the garage. There's a shelf here
12 and she was coming this way after me.

13 Q What was at your back?

14 A I was back to the door, to the shelf. We had a shelf
15 there behind the door, by the door there.

16 Q Could you go any further?

17 A No, sir.

18 Q Did she threaten you?

19 A Yes, her face was getting redder and redder.

20 Q Did you think that you were going to be -- you were
21 being attacked? Did you -- were you in fear?

22 A She, she was attacking me. Yes, I was in fear.

23 Q Did you fear serious bodily harm or death from
24 this?

25 A I was scared. I was scared.

1 Q What did you do as a result of your fear?

2 A I tried to protect myself the best I can.

3 Q Did she swing the poker at you?

4 A Yes, she went after me, was out there at the door.

5 Q What did you do?

6 A I blocked with one hand and we -- we kept by the door
7 two baseball bats. One was her baseball bat. One was my
8 baseball bat. We kept there at the door and I grabbed
9 baseball bat and hit her. The next thing I remember she was
10 laying on the ground and I was hitting her.

11 Q At some point did the threat to your body stop?

12 A No, I was, I was really -- I didn't know what was going
13 on. I did not know what was going on.

14 Q Describe for the jury at this time your state of
15 mind.

16 A From that point on everything just looked different.
17 Why I don't know. I know why now, but everything looked
18 different at that point.

19 Q Walt, can you tell the jury why you put Sheila in the
20 car?

21 A I was, I was scared and I just everything went through
22 my mind, everything went through my mind. I didn't know what
23 to do. I didn't know what to do.

24 Q Can you describe why you tied her up?

25 A I was still scared from her.

1 Q Explain.

2 A Just scared the way she looked. Just scared the way she
3 looked.

4 Q Were you trying to run from the ---

5 A Excuse me. Judge, may, may you ask detective not to
6 stare at me? I mean, he's really staring at me, please,
7 sir.

8 THE COURT: Just answer the questions that your
9 attorney asks; okay?

10 A Thank you. All right, I'm sorry.

11 Q Were you trying to run from the police?

12 A No, no.

13 MR. CASTRO: Your Honor, may we approach?

14 THE COURT: Yes.

15 (Whereupon, a bench conference was held in the presence
16 but out of the hearing of the jury venire.)

17 THE COURT: All right, ladies and gentlemen, we have
18 another matter of law. We're going to excuse you to the jury
19 room. Plus, we've been going at it for an hour right now.
20 So, it'll give you time to use the restroom, take a little
21 break. We need a little break about now anyway. So, let's
22 take about a 10, 15-minute break. Everyone please remain in
23 place while the jury is excused.

24 (Whereupon, the following takes place outside the
25 presence of the jury.)

1 THE COURT: All right, ladies and gentlemen, let's
2 take about a 10-minute break. I will allow you the break you
3 requested and then when we come back we'll address the issue
4 that we were discussing at side bar. All right?

5 All right, Mr. Pantovich, you're still on the witness
6 stand. You cannot speak with anybody; okay?

7 A Okay, I'm not.

8 THE COURT: All right, we'll stand in recess for about
9 10 minutes.

10 *****OFF THE RECORD*****

11 (On the record.)

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: Thank you very much. Please be seated.

15 All right, Mr. Castro, you had -- you wanted to introduce
16 a duplicate?

17 MR. CASTRO: Yes, sir.

18 THE COURT: All right, and Mr. Bryan, you object; is
19 that correct?

20 MR. BRYAN: Your Honor, I do object to the duplicate
21 but I don't mind the duplicate being used. I just would like
22 for by some either agreement of the parties or instruction to
23 the jury to let them know that there is a substitute because
24 the original has Sheila McPherson's blood on it, which is item
25 27.1. So, we're going to ---

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1 THE COURT: Is the original in evidence?
2 MR. BRYAN: The original is not in evidence and we're
3 not going to put the original in evidence, but they'll have to
4 put the original in evidence unless we -- the testimony in
5 reference to the original is in evidence. So, Katie Coy
6 testified that Item 20 -- I think it's 27.1 was a letter
7 submitted to SLED. That's this. I didn't show it to her. I
8 asked if she received it and if she did analysis on the swab
9 from the blood. She said yes and it was the victim's blood.
10 I didn't move this into evidence. I spoke to Mr. Axelrod
11 earlier and said, "I'm not going to put all this stuff in
12 evidence because of the Hepatitis C so it won't go back to the
13 jury. We'll just refer to it and have it in -- the testimony
14 in evidence without them having the bloody stuff," and I'll
15 have the same agreement as long as it's clear to the party, to
16 the jury either by agreement or by instruction from the Court
17 that the original is the same as Item 27.1 on the -- as
18 referred to by SLED.

19 THE COURT: All right, but I ---

20 MR. BRYAN: And I'm not trying to make it difficult.
21 I'll do it any way you all can figure out that we can explain
22 to the jury that this is a copy and the original has the
23 victim's blood on it.

24 THE COURT: Okay, and I don't know -- Rule 1003,
25 Rules of Evidence, says that a duplicate is admissible to

1 the same extent as an original unless there's a genuine
2 question raised as to the authenticity of the original, which
3 there's not, and in the circumstances it would be unfair to
4 admit the duplicate in lieu of the original. Well, here I
5 don't think it would be unfair to admit unless you say it'd be
6 unfair to admit the duplicate in lieu of the original. How
7 would that be unfair to the State? Unfortunately the notes
8 say there's no case law in the state on the admissibility of a
9 duplicate.

10 MR. BRYAN: Okay.

11 THE COURT: It goes to the best evidence rule.

12 MR. BRYAN: I understand.

13 THE COURT: But I don't see this as a best evidence
14 issue. I think as long as the duplicate reflects the content
15 of that original then they can get it in under Rule 1003.

16 MR. CASTRO: No, I don't think we need a curative
17 would be my understanding of His Honor's ruling.

18 THE COURT: Do what? As I -- as I read Rule 1003,
19 Rules of Evidence, if you want to use the duplicate, you can
20 use the duplicate unless your challenge is ---

21 MR. BRYAN: It's not ---

22 THE COURT: --- "I challenge the duplicate because
23 the original, I doubt the authenticity of the original," or
24 if you're claiming that the duplicate is unfair to your ---

25 MR. BRYAN: I'm not saying it's unfair, Your Honor,

1 but I think it's fair for the jury to know that whatever they
2 bring out in the content of the letter that it's the same
3 letter that ended up with her blood spattered on it and I'm
4 going to, I won't object to the admission of that. What I'll
5 do is I'll get that piece of evidence and I'll present it to
6 him on cross and I'll ask him to open it and say, "Is this
7 the original. What's that red spot?"

8 THE COURT: I think you can do that. So, on the
9 question of your duplicate, you can use it if you want to. I
10 don't know that by using the duplicate that prohibits him from
11 using an original.

12 MR. CASTRO: Fair enough, Your Honor.

13 THE COURT: All right, anything before we bring the
14 jury back in?

15 MR. CASTRO: No, sir.

16 THE COURT: All right, we can bring the jury back in.

17 (Whereupon, the following takes place in the presence of
18 the jury.)

19 THE COURT: Ladies and gentlemen, welcome back. We'll
20 continue with the direct examination of Mr. Pantovich. All
21 right, Mr. Castro, you can continue your questioning.

22 MR. CASTRO: Thank you, Your Honor.

23 (Whereupon, Defense Exhibit Number One [Letter] marked
24 for identification.)

25 Your Honor, I'm going to hand up what's going to be

1 Defense's Number One. I'm going to hand Walt Defense Number
2 One.

3 BY MR. CASTRO:

4 Q Walt, I'm going to give you a second to look at that.

5 MR. BRYAN: You mind if I see it?

6 BY MR. CASTRO:

7 Q Walt, I'm going to hand you what's been marked as
8 Defense Exhibit Number One. I'm going to give you a moment to
9 look at that, familiarize yourself with that. Have you seen
10 that before?

11 A Yes, I did.

12 Q Could you tell the Court what that is?

13 A That's Sheila's letter to me.

14 Q And that's addressed to who?

15 A To me, Walt.

16 Q Now, that is a photocopy. Is that a fair and accurate
17 representation of that letter?

18 A Yes, sir.

19 MR. CASTRO: Your Honor, at this time I'm going to ask
20 that Defense Number One be entered into evidence.

21 THE COURT: Any objection?

22 MR. BRYAN: Yes, sir, Your Honor, relevance. May we
23 approach?

24 THE COURT: All right.

25 (Whereupon, a bench conference was held in the presence

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1 but out of the hearing of the jury.)

2 THE COURT: All right, ladies and gentlemen, I
3 apologize. A matter has come up that should have been brought
4 up before we brought you back in. However, it was not. So,
5 we're going to excuse you to the jury room briefly.

6 (Whereupon, the following takes place outside the
7 presence of the jury.)

8 THE COURT: All right, all right, Mr. Bryan has
9 objected to the introduction of the letter under hearsay.

10 MR. CASTRO: Thank you, Your Honor. I think clearly
11 this letter falls into a hearsay exception, namely Rule 803,
12 803 number three, then existing mental, emotional or physical
13 condition, and I'd be happy to hand this up to His Honor and
14 let him take a look at that, but I think clearly it falls in
15 803-3, Your Honor. Also, Your Honor, I think 803-1 may apply
16 as well.

17 MR. BRYAN: And Your Honor, I have, I have argument
18 on both those issues.

19 THE COURT: All right, Mr. Castro, let me hear from
20 you now.

21 MR. CASTRO: Your Honor, I think that 803, Rule 803,
22 present sense, let me, let me look to it if I may.

23 THE COURT: Show the state of mind?

24 MR. CASTRO: Yes, sir, then existing mental, emotional
25 or physical and it mentions there in the parenthetical it says

1 such as intent, etcetera, and then it says mental feeling, and
2 I think if you'll examine the letter it talks, it goes to her
3 state of mind and the fact of it being an apology for some of
4 her past actions. I think it's clearly, that it is her mental
5 feeling as it existed at that time, but then also I think,
6 number one, a present sense impression, a statement describing
7 or explaining an event or condition made while perceiving the
8 event. She's actually putting pen to paper when this is going
9 through her mind.

10 THE COURT: Yeah, well, I don't think it's admissible
11 under number one. Number two, or let me hear, Mr. Bryan, your
12 argument regarding whether or not it shows the existing
13 mental, emotional or physical condition.

14 MR. BRYAN: Well, Your Honor, the only concern I have
15 is we haven't established when it was written. I don't know
16 if the witness knows or we can ask the witness when it was
17 written because when existing and the question is if we're
18 going to put it in under then existing mental, emotional,
19 physical condition then the question, I guess, is in then when
20 existing, when are we talking about, when was the letter
21 written? That's what we're talking about is the state of mind
22 at that particular time when the letter is written; right?
23 When was the letter, when was the letter written? Does anyone
24 know? Does the witness know?

25 THE COURT: You're going to have -- I don't think

1 you've laid enough ground work. So, I sustain the objection.

2 MR. CASTRO: Well, Your Honor, if I may briefly ---

3 MR. BRYAN: Maybe you'll just proffer that question
4 before we bring the jury back out and I object again.

5 THE COURT: If you want to.

6 MR. BRYAN: I mean, if you want to try get back into
7 it.

8 MR. CASTRO: Well, she's penning this letter. The date
9 is not relevant. She's penning this letter basing on her
10 then existing state of mind. So, whenever she's penning this
11 letter that's going to be her existing state of mind. "I'm
12 writing this letter about the facts as I, you know, I'm
13 sensing in my mental condition at the time. I'm putting these
14 thoughts to paper." So, the fact of when it was offered, two
15 weeks, three weeks, four weeks, a month doesn't really effect
16 the fact that this is her mental condition as she's perceiving
17 it and it's going down in this letter. So, any time she
18 drafts this letter it's going to be, the wording they use here
19 is ---

20 THE COURT: No, I disagree. I think ---

21 MR. CASTRO: --- mental feeling is what they say.

22 THE COURT: Yeah, but I mean, I don't think her mental
23 feelings from two, three, four years before the incident has
24 any relevance. So, I think the time at which this was penned
25 is -- it bears on relevancy to this case. I don't think you

1 can get in anything under the mental state of mind unless the
2 mental state of mind is relevant to the case at hand.

3 MR. BRYAN: What I was trying to do was to get the
4 witness to answer before we let him know what the correct
5 answer is.

6 MR. CASTRO: Can we -- may we, may we proffer his
7 testimony regarding ---

8 THE COURT: All right, yeah, you can go ahead and
9 proffer the testimony.

10 PROFFER

11 EXAMINATION BY MR. CASTRO:

12 Q Walt, you've heard us talk about this -- I'm going to
13 hand you again Defense Exhibit One. You've heard some
14 discussion about this letter. Can you tell the Court
15 approximately when you got this letter?

16 A Sometimes after first of the year 2006.

17 Q Okay, so, you received it in ---

18 A Was that ---

19 Q Again, the first of the year.

20 A Beginning ---

21 Q Can you be more, a little more specific?

22 A Beginning of the year, beginning of the year 2006.

23 Q Was that letter delivered to you? Was that given to
24 you?

25 A She gave it to me.

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1 Q Did she tell you why she gave that to you?

2 A It was over some argument that we had and she
3 apologizing for it.

4 Q So, this letter was an apology to you?

5 A Sir?

6 Q So, this letter was an apology? Is that what you're
7 telling the Court?

8 A Yes, sir; yes, sir. I had more. This the only one
9 letter that I had on the table at the time. I had some other
10 letters, too. When she's in good mood she apologize. She's
11 in bad mood she don't apologize.

12 Q That would be ---

13 A I didn't want to say that I got this letter on Tuesday,
14 this March 7. I could have said that, Mr. Prosecutor. I
15 could have said that. I didn't. You know?

16 MR. CASTRO: That would be the, that, that would be my
17 proffer, Your Honor.

18 THE COURT: All right, I sustain the objection.

19 MR. BRYAN: Thank you, Your Honor.

20 THE COURT: Defendant's Exhibit One is inadmissible.

21 A I'm sorry, Judge.

22 THE COURT: Just answer his questions.

23 A Yes, sir; yes, sir.

24 THE COURT: All right, anything before we bring the
25 jury back in?

1 MR. CASTRO: No, sir, Your Honor.

2 THE COURT: Anything from the State?

3 MR. BRYAN: If I can just have just a second, Your
4 Honor, I'll try to make sure I don't have any.

5 So ---

6 THE COURT: The evidence doesn't -- the Defendant's
7 Exhibit Number One ---

8 MR. BRYAN: It's not coming in.

9 THE COURT: --- I sustained your objection.

10 MR. BRYAN: I don't have anything else, Your Honor.

11 THE COURT: All right, all right, you can bring the
12 jury back in.

13 (Whereupon, the following takes place in the presence of
14 the jury.)

15 THE COURT: All right, ladies and gentlemen, welcome
16 back. We will continue with the direct examination of Mr.
17 Pantovich. Mr. Castro.

18 MR. CASTRO: Thank you, Your Honor. Thank you, Walt.
19 Please answer any questions the Solicitor has for you.

20 A Thank you.

21 CROSS EXAMINATION

22 BY MR. BRYAN:

23 Q So, you lived at [REDACTED] is that right?

24 A At that time, yes, sir.

25 Q And at the time you also lived there with Sheila. So

- 1 that was her house, too; wasn't it?
- 2 A Yes, sir, she moved in sometime September, I guess.
- 3 Q And you all lived there together.
- 4 A Yes, sir.
- 5 Q Anybody else live there?
- 6 A No, sir.
- 7 Q And that's the location where she died; is that correct?
- 8 A Yes, sir.
- 9 Q How tall are you?
- 10 A Six-two, six two and a half.
- 11 Q And what do you weigh? What did you, what did you weigh
- 12 at the time of the incident?
- 13 A Probably 190, 195. I was under a lot of stress for
- 14 several months.
- 15 Q What kind of work were you doing?
- 16 A Construction work.
- 17 Q Manual labor, physical labor?
- 18 A Not manual labor, nice work, sir.
- 19 Q You did your construction behind a desk?
- 20 A No, no, but it's -- I did tile work, wallpaper. It's
- 21 not manual work.
- 22 Q You testified that you never laid a hand on Sheila; is
- 23 that what you said?
- 24 A Never hit her, sir, never lay hand on her.
- 25 Q So, you were arrested ---

1 MR. AXELROD: Your Honor, may we approach?

2 Q --- on 5 -- I'm sorry.

3 (Whereupon, a bench conference was held in the presence,
4 but out of the hearing of the jury.)

5 THE COURT: All right, Mr. Axelrod, I sustain your
6 objection. I'll instruct the jury to disregard the last
7 question.

8 BY MR. BRYAN:

9 Q April the, excuse me, May the 4th of 2004 you pushed
10 Sheila down and hit her; didn't you?

11 A Push Sheila down and hit her?

12 Q You pushed her down and hit her; did you not?

13 A I never push Sheila down. I put her on the bed.

14 Q Put her in bed because the night before she had left you
15 and when you got back you put her in bed?

16 A I don't -- I ---

17 Q You don't remember the incident in May?

18 A When was the date again, sir?

19 Q May the 4th, 2004, she left. She came back. When she
20 came back you hit her and you pushed her down; isn't that
21 true?

22 A I hit her? Never hit Sheila.

23 Q So, this house on Labruce Lane you testified that she
24 moved in with you. That was your house; wasn't it?

25 A I was renting it from a customer.

1 Q And you testified on direct examination that you set the
2 rules; didn't you? You told her she couldn't have her friends
3 there and she doesn't go and come when she pleased. Was that
4 your testimony?

5 A I didn't set rules, sir. I didn't set it. That's my
6 testimony, but I didn't say rules. I just didn't want her
7 friends around because they were all using crack cocaine and
8 pills and all. That's why I didn't want them around her.
9 That's why.

10 Q So, you saw the people smoking crack in your house?

11 A No, never. She was going to people's houses, staying
12 four, five hours at a time, sir.

13 Q And because she was gone four or five hours you know
14 that she was smoking ---

15 A Not, not, not, not when she was -- not of, not in
16 Labruce Lane, at Peachtree Landing she was gone a bunch of
17 nights, three, four, five hours at the time. She was crack.

18 Q Okay, so, you saw her smoking the crack?

19 A I never said that. I never saw her smoking the crack.

20 Q You talked a lot about the fact that she spit in your
21 face a lot. When did she spit in your face?

22 A When she gets in the argument she'll spit in the face,
23 slap me or spit in the face like spit in the face.

24 Q And that, and that caused you to get very emotional. In
25 fact, you cried on direct examination.

- 1 A Yes, that's very low, person can go very low that way.
- 2 Q When was it that she was spitting in your face?
- 3 A Several times.
- 4 Q Several times and you stayed with her through that
- 5 though.
- 6 A Yes.
- 7 Q Didn't cause you to leave her, wasn't so bad that you,
- 8 that you were leaving.
- 9 A Sir, a lot -- I was trying to help her. I was trying to
- 10 help her.
- 11 Q You were trying to help her.
- 12 A Whatever she done to me I forgave her.
- 13 Q And she also physically -- you were also abused
- 14 physically by her?
- 15 A Yeah.
- 16 Q And so, we talked a little bit about the spitting in the
- 17 face and your physical abuse which consisted of what? Tell us
- 18 again how she physically abused you.
- 19 A She will hit me with something and throw stuff at me,
- 20 hit me with her hands, slap me, spit in the face, pick up
- 21 objects and hit me with them.
- 22 Q And those were all times that you didn't provoke her and
- 23 it was always her fault; wasn't it?
- 24 A We had argument. We had argument.
- 25 Q But those were, she was the aggressor in those. She was

1 the one who was, who was starting the argument and then
2 beating on you; is that your testimony?

3 A I'm not saying, I'm not saying she started every
4 argument, sir. I never said that, never said that.

5 Q You just testified that she knew how to start an
6 argument.

7 A She knew how to start argument very well.

8 Q But we didn't, we didn't really spend much time on your
9 direct examination about March the 7th of 2006. We didn't
10 talk about that very much. In fact, you -- let's talk about
11 that for a little while.

12 A Okay.

13 Q That incident where you beat Sheila to death with a bat
14 that occurred at your home on Labruce Lane; is that right?

15 A Yes, sir.

16 Q And she attacked you with a tray, I'm sorry, she
17 attacked you with a fire poker; is that right?

18 A Yes, sir.

19 Q Did you see State's 50?

20 A No.

21 Q There was a fire poker in evidence. Is this what she
22 attacked you with?

23 A That is the one.

24 Q This is the one?

25 A That's the one.

- 1 Q And was it -- it was already broken; wasn't it?
- 2 A Yeah.
- 3 Q So, she didn't break it in the attack; did she?
- 4 A No.
- 5 Q And ---
- 6 THE COURT: All right, if you could speak up so the
- 7 jury can hear you. Speak up.
- 8 A Yes.
- 9 Q She attacked you with this?
- 10 A Yes, sir.
- 11 Q Okay, and is this how you got the scratches on your arm?
- 12 A What is that?
- 13 Q I'm asking you, is this fire poker how you got the
- 14 scratches on your arm?
- 15 A I don't know how I got scratches on my arm.
- 16 Q Okay, so, the -- is that a picture of your right arm,
- 17 State's 34?
- 18 A I guess, I guess, yes, sir.
- 19 Q You had Detective Pennell in North Carolina he took some
- 20 pictures of you the day after the incident or the day of;
- 21 right?
- 22 A Right, right.
- 23 Q And this little, see this little scratch right here?
- 24 A Right.
- 25 Q Is that, is that as a result of her attacking you?

- 1 A Could be with her hands first.
- 2 Q Could be with her hands first?
- 3 A Yes, sir.
- 4 Q She attacked you with her hands first?
- 5 A Yes, yes.
- 6 Q And State's 33, that, that's a little picture of your
7 left arm; is that right?
- 8 A Yeah.
- 9 Q And is that -- did you, did you get that when she
10 attacked you?
- 11 A I don't know.
- 12 Q You don't know?
- 13 A Could be. I don't know, sir, could be. Everything was
14 going so fast.
- 15 Q And so, you don't know if she hit you with the fire
16 poker to create those injuries or not?
- 17 A No, I don't.
- 18 Q That's your testimony is you don't know how you got
19 those injuries.
- 20 A I got them that night from her somehow.
- 21 Q But you don't know how?
- 22 A Somehow.
- 23 Q You don't remember at what point she physically -- at
24 what point did she physically lay hands on you?
- 25 A When she unplugged my telephone when I was trying to

- 1 call police.
- 2 Q Which telephone did she unplug?
- 3 A The one that was on the kitchen counter. There was
- 4 bunch of wires behind, telephone was unplugged behind the
- 5 television.
- 6 Q How many phones were in your house?
- 7 A One right there by the, by the ---
- 8 Q How many phones at your house?
- 9 A One that I know.
- 10 Q One telephone at your house?
- 11 A Right.
- 12 Q And it had an answering machine built in?
- 13 A Yes, sir.
- 14 Q It's white?
- 15 A I think so, tan or white, light tan or white.
- 16 Q Okay, so, when she unplugged the telephone is when she
- 17 physically -- the question was when did she physically attack
- 18 you and your answer was when she unplugged the telephone.
- 19 A When I tried to call police.
- 20 Q Okay, and did you tell Marco that she yanked the phone
- 21 out of the, out of the wall? You have to answer out loud.
- 22 A That's I told, I told Marco she -- my telephone wasn't
- 23 working. She unplugged the telephone.
- 24 Q Okay, and that's true that she did unplug the telephone.
- 25 A That is true.

1 Q Okay, and what happened after she unplugged the
2 telephone?

3 A We start arguing over that again. She wanted to smoke
4 some -- the reason she unplugged the telephone I was going to
5 call police because she pull weed out. She wants to smoke
6 some marijuana. I didn't ---

7 Q Yeah, my question was when did she hit you, not when she
8 wanted to smoke marijuana. The question was when did she hit
9 you.

10 A She was tried to hit me with fireplace poker on three,
11 four different occasions.

12 Q And did she ---

13 A I was -- excuse me.

14 Q I'll let you finish but I was going to ask when you say,
15 "She tried to hit me," it implies that she did not hit you.
16 If one hits you then you would say ---

17 A I was avoiding it.

18 Q Okay, so, she didn't hit you with the fire poker.

19 A I avoided it, yes, sir.

20 Q Okay, and so, again, my question is at what point did
21 she physically lay hands on you?

22 A Everything was going so fast. I don't know exactly on
23 what point, sir. I don't know what time. I don't know what
24 point.

25 Q Don't know.

- 1 A But before, before, before she got hold of fireplace
2 poker. I know that.
- 3 Q And at what point did you pick the bat up?
- 4 A When she back, when she back me up to the door.
- 5 Q She backed you up to what door?
- 6 A The door, the only door in the house.
- 7 Q And that's the door that goes to the outside?
- 8 A No, to the garage.
- 9 Q Okay, is the garage inside or outside?
- 10 A What do you mean by that?
- 11 Q I asked you, is that a door to the outside and you said
12 it goes to the garage. So, I'm asking you is the garage
13 inside or outside?
- 14 A Every garage is inside, sir.
- 15 Q All right, can you get out, can you go outside, away
16 from your home, away from Sheila, away from where she was
17 living by going out that door that she backed you up?
- 18 A Can I go out?
- 19 Q Yeah.
- 20 A Yeah.
- 21 Q Okay.
- 22 A Could I go out or can I go, it was happening so fast I
23 didn't have chance to go out.
- 24 Q Okay, but you had a chance to pick up the bat; right?
- 25 A I was scared.

1 Q Well, my question was you had a chance to pick up the
2 bat.

3 A I was scared. I was scared.

4 Q Obviously ---

5 A I was trying to protect myself.

6 Q Okay, so, you picked up the bat?

7 A I don't remember when I picked up bat, the only thing I
8 remember her laying down and I was hitting her.

9 Q So, you remember that she attacked you, you remember
10 that she scratched you or attacked you with her hands, you
11 remember that she unplugged the phone, but you don't remember
12 picking up the bat.

13 A Everything was going so fast.

14 Q Okay, at what point did it start going so fast that you
15 can't remember? At the point in which you picked up the bat?

16 MR. CASTRO: Your Honor, asked and answered.

17 THE COURT: Hold for a second. Objection?

18 MR. CASTRO: That's been asked and answered three or
19 four times now.

20 THE COURT: All right, ask him one more time. Go
21 ahead.

22 MR. BRYAN: It's a different question.

23 BY MR. BRYAN:

24 Q I'm asking at what point things started going so fast
25 that he could not remember.

- 1 A When she start chasing me, that I can remember?
- 2 Q Yes.
- 3 A When she backed me up to the door.
- 4 Q And you can't remember anything after she backed you up
- 5 to the door?
- 6 A No, I didn't say that.
- 7 Q Oh, okay, what did you say?
- 8 A I remember, I remember when she was -- that she laid
- 9 down in the floor and I was hitting her with bat. I remember
- 10 that part.
- 11 Q You do remember that part.
- 12 A Yes, sir.
- 13 Q So, you only remember some parts after she backed you up
- 14 to the door.
- 15 A I might have black out. I don't know. I just, I just
- 16 honestly don't remember that part.
- 17 Q Did she chase you around with the fire poker before or
- 18 after she backed you up to the door?
- 19 A Excuse me?
- 20 Q When did she chase you around with the fire poker?
- 21 A Before.
- 22 Q Okay, and then when she backed you up to the door and
- 23 you picked up the bat, that's when you don't, when your memory
- 24 problems started?
- 25 A I remember her laying down I was hitting her.

1 Q Okay, now, what about the first blow? When you, when
2 you first hit her what's the first place you hit her?

3 A I don't remember none of that, sir.

4 Q Don't remember none of that part; do you?

5 A She was, she was laying, she was laying on the floor and
6 I was hitting her. I don't remember which part of the body.
7 I was just hitting her.

8 Q How did she get on the floor?

9 A How she got on the floor?

10 Q Yeah, she just laid down?

11 A She lost balance somehow.

12 Q I'm sorry?

13 A She lost, probably lost balance somehow, maybe when she
14 went after me with the fireplace poker.

15 Q So, she lost her balance when she went after you with
16 the fire poker? That's what you just said to this jury; is
17 that right?

18 A Yes, she lost balance somehow. I either block the blow
19 with my hand, push her hand around or something and then she
20 went on the floor.

21 Q So, you didn't knock her down by a shot to the head; did
22 you?

23 A I don't remember that. I don't remember, I don't
24 remember hitting her first time. I remember hitting her on
25 the ground. I remember being with her laying on the ground.

1 Q Then you testified that she must have lost her balance
2 and that's how she got on the ground.

3 A I didn't say that. She must lost her balance when she
4 moved -- when she turned around and then I hit, start hitting
5 her. When she lay, when she fell on the ground that's what I
6 remember when I start hitting her.

7 Q Okay, did you have a chance, once she was on the ground
8 did you have a chance to use the door and leave? Could you
9 have left once she was on the ground or did she somehow kept
10 you from leaving while she was on the ground?

11 A Sir, everything changed at that moment, everything
12 changed.

13 Q How did everything change?

14 A Everything changed in my mind at that moment, sir,
15 everything, everything was just so different because I never
16 done nothing like that before, nothing.

17 Q You've never been that ---

18 A I never seen nothing like that in my life.

19 Q You never been that mad; have you?

20 A No, sir; no, sir.

21 MR. CASTRO: Your Honor, may we approach one moment,
22 please?

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

25 BY MR. BRYAN:

- 1 Q So, when she falls down did she do something prohibiting
2 you from leaving at that point?
- 3 A No, sir.
- 4 Q Okay, and you testified in front of the jury -- did you
5 hit her first on the top of the head?
- 6 A I never said where I hit her first, sir. I don't know
7 where I hit her first. I just know I was hitting her.
- 8 Q Okay, and do you know how it is that she managed to get
9 a blunt force trauma to the top of her head, both sides of her
10 head?
- 11 A I don't know that.
- 12 Q You don't know?
- 13 A I don't know that.
- 14 Q Nobody else was there; right?
- 15 A Nobody else was there.
- 16 Q And she didn't do it to herself; did she?
- 17 A No, sir, I done it.
- 18 Q Okay, and all the eight cracked ribs and all the shots,
19 have you seen the pictures of the injuries across the back?
- 20 A Yes, sir.
- 21 Q Did you do that?
- 22 A I was hitting her.
- 23 Q Okay, and also the four shots to the side did you do
24 those?
- 25 A I was hitting her, sir.

1 Q And also to the side of the ribs, you hit her there,
2 too; didn't you?

3 A Yes, sir.

4 Q And your testimony to this jury is you can't tell them
5 whether she was on her feet or on the ground when you did
6 that, when you did those things to her; that's what you're
7 telling this jury?

8 A Excuse me?

9 Q You're telling this jury that you have no idea whether
10 she was on her feet or on the ground ---

11 A No, I said she -- when she was on the, when she was on
12 the ground that's when I start hitting her. I don't remember
13 first blow. I do not remember picking up baseball bat. I
14 remember hitting her on the ground. That's about -- I had
15 blacked out for the whatever time was that in my, in my mind I
16 had black out. I don't remember none of that.

17 Q You blacked out just the time you were hitting her.

18 A Yes, sir, and I can take polygraph test for that, too.
19 I don't lie.

20 Q And you said you started hitting her when she was on the
21 ground; right? Didn't you just say that? Did you say you
22 started hitting her ---

23 A I didn't say I started, I was hitting her when -- I know
24 she was on the ground and I was hitting her.

25 Q But you don't know how she got on the ground?

1 A I don't remember that. I don't remember how exactly she
2 got on the ground if I hit her or not.

3 Q So, what happened? At what point do you regain your
4 recollection of the events?

5 A I really never, I really never regained that. I never
6 regained that. I was in a different world, everything looked
7 so different. Everything was different.

8 Q Well, how about the next day or two days later, did you
9 regain your recollection at that point?

10 A I was breaking down a lot for weeks ---

11 Q What's the next thing you ---

12 A --- for several, excuse me.

13 Q What's the next thing you remember after your blackout?
14 So, you are hitting her when she's on the ground, right, and
15 you blacked out, right, and you don't remember that and then
16 the next thing you remember is what?

17 A Before I was, before I was hitting her on the ground I
18 black out before that.

19 Q Okay.

20 A That's what I said.

21 Q You blacked out exactly when, before she was on the
22 ground?

23 A When she went after me with fireplace poker, when I was
24 cornered, when I was scared to death from her that's when for
25 I don't know how many -- I don't think it was even seconds.

1 With there I just remember parts. I remember hitting her on
2 the ground, what be happen, happened in that frame I don't
3 know, I don't remember.

4 Q Starting when she backed you in the corner.

5 A Yes, sir.

6 Q And my question to you, sir, is I think we've testified
7 -- you've testified numerous times that you blacked out and
8 you don't remember.

9 MR. CASTRO: Your Honor, we've been there and back ---

10 Q But my question ---

11 THE COURT: Hold it. There's an objection.

12 MR. CASTRO: --- several times. He's testified he
13 blacked out and didn't remember. We've had the same question
14 now ten times.

15 THE COURT: Sustained.

16 MR. BRYAN: Well, Your Honor ---

17 THE COURT: Asked and answered. Let's move on. We've
18 covered it several times.

19 BY MR. BRYAN:

20 Q At what point -- what is the next thing that you
21 remember? That's what I'm trying to ask him. What's the next
22 thing you remember?

23 A Hitting her while she was laying on the ground.

24 Q Okay, what's the next thing you remember after that?

25 A I just sat in a chair for I don't know how long, some

1 period of time. I was just -- I didn't know what was it -- I
2 was just sitting in the chair there.

3 Q And what was she doing while you were sitting in the
4 chair?

5 A She was on the ground.

6 Q How did she look? Did she look well to you? Was she
7 breathing?

8 A Sir, she was dead, I guess.

9 Q Okay, and how long did you sit there in the chair after
10 she was dead?

11 A I don't know, 10, 15, I don't know, several minutes.

12 Q All right, so, you sat there in the chair for several
13 minutes and then what did you do?

14 A And I start panicking.

15 Q You were panicking. What did you do when you panicked?

16 A Tried to get rid of body.

17 Q Okay, and how did you try to get rid of the body?

18 A Put it in the trunk.

19 Q Did you put her in the trunk just the way she was?

20 A No, I tied rope around her.

21 Q Why did you tie the rope around her?

22 A Because I was still scared from her.

23 Q So, she was dead and you were still afraid of her?

24 A Yes, sir.

25 Q And you tied her up. If she's dead and you're still

1 scared, what do you think a rope is going to do?

2 A I wasn't in the right state of mind at the moment, sir.

3 THE COURT: Hold it, hold it for a minute. We've got
4 a court reporter that can only take down one at a time. Let
5 him ask the question.

6 A Okay, okay.

7 THE COURT: Then you can answer it.

8 A Yes, sir.

9 THE COURT: And then you can ask your next question.
10 Go ahead.

11 Q How is it that you're afraid of a dead person?

12 A I was in different state of mind, sir.

13 Q You just tied her up to make her more manageable; didn't
14 you, so that she wouldn't flop all around? It's a little
15 easier to carry her that way; isn't it?

16 A No. Why would I do that?

17 Q I'm asking you why you would tie up a dead person or why
18 you would be afraid of a dead person.

19 A Because I was scared of her. After I put her in the
20 trunk I would go out there for every 10, 15 minutes and open
21 the trunk and poke it.

22 Q And you wrapped her up in a comforter? Was that also
23 because you were afraid of her?

24 A No.

25 Q Why did you wrap her up in a comforter?

- 1 A So blood don't get all over the trunk.
- 2 Q Exactly, and how about the plastic bag?
- 3 A So, I didn't have to look at her face.
- 4 Q Well, she was bleeding from her head; wasn't she?
- 5 A Not, because way her face look like, she looked evil
- 6 that day. I never seen her like that. She look evil that
- 7 day. My lawyer won't let me show her picture, but if you see
- 8 her picture you'll know what I'm talking about how Sheila look
- 9 like.
- 10 Q You want me to show you a picture of her evil face?
- 11 A My lawyer has a picture but he said they don't want to
- 12 show it. If you see how Sheila look like they'll understand
- 13 what I'm talking about. May I present that picture, please,
- 14 sir?
- 15 THE COURT: All right, you just answer the questions;
- 16 okay?
- 17 Q Let me see if I can find it.
- 18 A No, the Sheila that I met, the Sheila that I fell in
- 19 love with.
- 20 Q I'm sorry? You said something. I didn't hear it.
- 21 A I said the Sheila's picture then I met, then I fell in
- 22 love with her. That's picture I want to show you, show the
- 23 jury.
- 24 Q Oh, you don't want to show a picture of the one that you
- 25 were scared of. You want to show the one that you fell in

1 love with. Is that what you're saying?

2 A Her face, her face.

3 Q So, you tied her up, you put her in a comforter, you
4 covered her bag, head in a bag, you tied her up and you put
5 her in the trunk to dispose of the body. Yes?

6 A That was, that was cross my mind. I was going to kill
7 myself and dispose body.

8 Q Okay, and you had been attacked and you had acted in
9 self defense; right?

10 A Yes, sir.

11 Q And so, at that point you called 911 so that they could
12 come ---

13 A I never call, I never call 911.

14 Q --- and process ---

15 THE COURT: Let him finish answering the -- asking the
16 question ---

17 A I'm sorry.

18 THE COURT: --- before you start answering.

19 A Yes, sir.

20 Q Well, you had been attacked and so you called 911 at
21 that point; right?

22 A I didn't call 911.

23 Q Right, what you did was you wanted to hide the body
24 because you didn't want anybody to see the incredible amount
25 of damage that you did to her.

- 1 A I was scared, yes.
- 2 Q Yes, and you didn't want the evidence to be preserved so
3 that a jury could later look at it; did you?
- 4 A No, that has nothing with that, sir. I didn't even
5 think about coming to court or seeing jury or nothing, none of
6 that crossed my mind, none of that crossed my mind, sir.
- 7 Q Where were you taking her body?
- 8 A I don't know.
- 9 Q You don't know.
- 10 A I don't know.
- 11 Q Well, how is it that deputies were on Highway 16 in
12 North Carolina and knew exactly where you'd be going if you
13 don't know.
- 14 A So, I can get, so I can get caught there. That's why I
15 was driving to my son's house so I can get -- I could not call
16 police. I could not call 911.
- 17 Q Your ---
- 18 A I could not admit, I could not admit what I done.
- 19 Q Your testimony is that you ran to your son's house so
20 you could get caught there?
- 21 A Yes, on the way to there because they knew where I was
22 going.
- 23 Q Well, why did you take the bat?
- 24 A Excuse me?
- 25 Q You took the bat to dispose of the evidence that you

1 killed her with in addition to the -- her dead body that you
2 had killed; right? Why would you take the bat with you?

3 A Because that was first thing cross my mind was to get
4 rid of the body. I admit that. I never said I didn't.

5 Q And you were also going to get rid of the bat; weren't
6 you?

7 A Well, that was in the trunk, yes, sir.

8 Q Yeah, and also there was a placemat. Was that placemat
9 something you normally carried around in your trunk?

10 A No, I said earlier I put it there so blood don't get all
11 over the trunk.

12 Q There was some other -- you tried to pick up anything
13 with blood in it and stick it in the car along with her;
14 didn't you?

15 A No, just what I picked up I picked up.

16 Q What about the rug? She bled on the rug pretty good;
17 didn't she?

18 A Yeah, I folded the rug.

19 Q Yeah, why did you fold the rug?

20 A I folded that to hide the evidence.

21 Q To hide the evidence?

22 A Yes, sir.

23 Q Now, your testimony is that you were in a panic and did
24 not know what to do. Was that -- were you in the courtroom
25 when we played the 911 tape earlier?

- 1 A Yeah.
- 2 Q And the one where Jessica Branton of Horry County 911
3 called you and she said, ``Whom am I speaking with,'' and you
4 said, ``This is Walt.''
- 5 A Yes.
- 6 Q And you said, ``Why are you calling so late?'' Did you
7 -- is that the way you sound when you're excited and don't
8 know what to do on that tape?
- 9 A That was -- that happened several hours back, late.
- 10 Q So, why do you say that? Is that responsive to my
11 question?
- 12 A No, but if someone calls that late at night ask who's
13 calling so late, that's, that's normal question.
- 14 Q Okay, so, you were asking normal questions and reacting
15 like you normally would when she ---
- 16 A No, sir; no, sir.
- 17 Q Okay.
- 18 A No, sir, I wasn't acting normal.
- 19 Q Is it your testimony before this jury that that was you
20 in an excited state when you spoke to Jessica Branton?
- 21 A Was I in excited state?
- 22 Q Yeah, you said you were, you were scared, you were --
23 you didn't know what to do, you were panicked; right?
- 24 A That was several hours later.
- 25 Q Okay, so, well, my question to you is -- answer the

1 question please and then you can explain your answer. Are you
2 saying that the voice on that tape that was you was that you
3 being in a panic or that you not being in a panic?

4 A I wasn't panicked at the time.

5 Q You were not panicked at the time?

6 A I don't think so.

7 Q Okay.

8 A I was still scared though. My state of mind wasn't,
9 wasn't the regular state of mind.

10 Q Right, but you were at the house; right?

11 A Yes, I was at the house.

12 Q You hadn't fled for North Carolina yet; had you?

13 A No, sir.

14 Q But you weren't panicked at that point; were you?

15 A I was scared.

16 Q Okay, and you wanted to get caught. That's why you ran
17 to North Carolina; right?

18 A Yes, sir.

19 Q All right, and 911 calls you on the telephone and what
20 did you tell them where you lived?

21 A In Peachtree Landing.

22 Q Was that where you lived?

23 A No, sir.

24 Q Where did you live?

25 A Labruce Lane.

- 1 Q Why would you tell them something different?
- 2 A Because, because that's first thing that crossed my
3 mind, that's where I met the evil.
- 4 Q The first thing that crossed your mind was to lie;
5 wasn't it?
- 6 A No, it wasn't lie.
- 7 Q That was the truth?
- 8 A I used to live in Peachtree Landing, that's the first
9 thing that crossed my mind.
- 10 Q She asked you where you used to live?
- 11 A No.
- 12 Q She wanted to come -- her question to you was, "We're
13 worried about you. Your son called. We need to come check on
14 you"; right?
- 15 A I know. Yes, she said that, and I told her there was
16 nothing wrong. I lied.
- 17 Q So, clearly you lied.
- 18 A Yes, I did.
- 19 Q And you told her that you lived somewhere you didn't
20 because you didn't want anyone to come discover the evidence
21 ---
- 22 A I was going to, I was going to buy some time.
- 23 Q Let me finish my question, because you didn't want
24 anyone to come to that location where you had just murdered
25 Sheila and find the evidence; isn't that true?

- 1 A No, I was just buying some time so I can run away.
- 2 Q Right.
- 3 Q And was that you on the tape when they said, "We need
4 to come check on you?" Was that you that said, "I'm fine?"
- 5 A Yes, I did.
- 6 Q So, what you told that officer was not that, "I'm not
7 in my right state of mind. I don't know what to do. I'm
8 scared. She attacked me," you didn't say any of those
9 things, you said, "I'm fine"; didn't you?
- 10 A No, I didn't.
- 11 Q You didn't mention that Sheila was dead on the floor;
12 did you?
- 13 A No, sir. She wasn't on the floor. She was already in
14 the trunk.
- 15 Q And you testified that you had -- so, you did clean up
16 the crime scene a little bit and you took with you the bat;
17 right? You didn't take the fire poker?
- 18 A No, I put the fire poker back.
- 19 Q You put the fire poker back?
- 20 A Yeah.
- 21 Q Why would you do that?
- 22 A I don't know. I don't know. I don't know at the moment
23 why I done that.
- 24 Q You would admit that that -- so, you put back the weapon
25 because you saw that it was in evidence earlier; right? You

1 did see when we presented the evidence of the fire poker, you
2 were in the courtroom and you saw the fire poker was in the
3 stand; didn't you?

4 A Yeah, that's where I put it.

5 Q So, you're testifying before this jury that in your
6 state of panic and fear of the dead person that you cleaned up
7 after her with what she attacked you with, you put it back in
8 the stand? That's your testimony to this jury.

9 A I would just put it back where fireplace belongs to,
10 fireplace poker, I'm sorry.

11 Q No question in your mind that the officers didn't put
12 the fire poker back. When they got there that fire poker was
13 right where it belonged in the fire, in the fire poker stand;
14 right? They didn't plant that fire poker there; did they?

15 A I never said that.

16 Q Okay, and you cleaned up some of the evidence?

17 A Yes, I did, sir.

18 Q And you also testified that you had one phone and that
19 you believed that it was -- she ripped it out of the wall;
20 right? She yanked the cords out of the wall and it wasn't
21 working; right?

22 A She unplugged it.

23 Q She unplugged it. I'm going to hand you what's been
24 marked for identification purposes as State's 67. I'm going
25 to hand you what's been marked for identification purposes as

1 State's 68. What is that?

2 A That's telephone.

3 Q That's a -- you're going to have to speak up, sir.

4 A That's the telephone.

5 Q Whose phone?

6 A My phone.

7 Q Your one and only phone?

8 A I guess so.

9 Q Yeah, okay, is it plug in or unplugged?

10 A This telephone here?

11 Q Yes.

12 A There's a bunch of wires. Across from here was

13 television. All the wires were there for two computers and

14 stuff and one of the wires was going to the telephone there,

15 too. That's where she unplugged it behind the television set.

16 Q Oh, she -- so, what you're saying then is that it was

17 unplugged but all these, this jack here that shows everything

18 plugged in means that -- doesn't mean anything. It was

19 unplugged somewhere else. Is that what you're saying?

20 A She ran bunch of wires to feed two computers.

21 Q Uh-huh.

22 A I don't know much about that. I don't know much about

23 computers.

24 Q Yeah, well, how about this part of it? What's this

25 little yellow piece right here? Is that where it lights up

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1 and turns yellow like a light when it's on?

2 A I don't know. I can't see it.

3 Q You don't know?

4 A I know -- I don't remember. It's been two years, sir.
5 I don't remember.

6 Q So, you don't remember the nature of the phone and you
7 couldn't say that that's actually, that that phone is lit up
8 with working lights on it? You can't testify to that?

9 A I don't know.

10 Q You can't tell?

11 A I don't know.

12 MR. BRYAN: At this point I'd ask that State's 68 be
13 admitted into evidence.

14 THE COURT: Any objection?

15 MR. AXELROD: Without objection, Your Honor.

16 THE COURT: State's Exhibit Number 68 admitted into
17 evidence without objection.

18 (Whereupon, State's Exhibit Number 68 [Photograph]
19 admitted into evidence and appropriately marked.)

20 Q Did you -- did you speak to your son, Marco, that
21 evening before you left after you murdered Sheila and you
22 spoke to Marco; right? You've got to answer out loud.

23 A Yes, I did, sir.

24 Q And then you spoke to him how many times?

25 A One time.

- 1 Q Okay, and then you left and you don't know if he called
2 and left anything on your machine after that; do you?
- 3 A No.
- 4 Q And is it your testimony, I don't think you've mentioned
5 anything about plugging the phone back in before you left.
6 Did you plug the phone back in before you left?
- 7 A I had to call Marco. I did plug the phone but I found
8 out where she unplugged it behind television. I plugged it
9 in. That's where I call my son.
- 10 Q I understand, but you left that part out of your direct
11 examination.
- 12 A Nobody asked me that.
- 13 Q Nobody asked you. They did ask you about the phone
14 being unplugged; didn't they?
- 15 A Yes, nobody asked me did I ever plug the telephone back
16 in, nobody asked me that.
- 17 Q You know a man named Cory Rutledge?
- 18 A Yes, I do.
- 19 Q You told him that you beat her down with the bat and
20 afterwards you stood over her and said, ``Call the police now,
21 bitch.''
- 22 A I don't know that. I don't, I don't remember that.
- 23 Q You didn't say that?
- 24 A I don't remember that.
- 25 Q So, you're saying not that you didn't say it, you're

1 saying that you don't remember that?

2 A I don't remember saying, I don't remember what I said.

3 I don't think I said anything like that.

4 Q You don't think you said anything like that?

5 A Excuse me, sir, does jury know who Cory Rutledge is?

6 THE COURT: Sir, he asks the questions.

7 A Okay.

8 THE COURT: You don't get to ask questions.

9 A Okay.

10 THE COURT: You just answer the questions that the

11 attorney asks; okay?

12 A Yes, sir; yes, sir. I'm sorry.

13 THE COURT: All right.

14 Q All right, let me ask you this, did you tell Cory

15 Rutledge that she said that she was going to call the police,

16 she threatened to call the police.

17 A No.

18 Q You didn't say that.

19 A No.

20 Q And you did not say that after you beat her down with

21 the bat you stood on top, stood right over her and said,

22 "Call the police now, bitch." You deny saying that?

23 A No, no. I don't remember saying nothing like that. I

24 don't remember saying nothing like that. I wasn't in right

25 state of mind. I don't remember saying nothing like that.

1 Q I don't have any other questions. Please answer any
2 questions that Mr. Axelrod has if there's any redirect. I
3 apologize.

4 THE COURT: All right, all right, anything on
5 redirect?

6 REDIRECT EXAMINATION

7 BY MR. CASTRO:

8 Q That night when you got home from work and Sheila was
9 there did you plan to kill her?

10 A No.

11 Q When she swung that fireplace poker at you were you
12 scared?

13 A Yes.

14 Q Had you ever seen her look like that before?

15 A No, sir.

16 Q Did you hit her until you perceived this threat that
17 stopped?

18 A What do you mean? I don't -- rephrase the question,
19 please.

20 Q When did you stop hitting her?

21 A I don't know. I don't know how many times I hit her. I
22 just, I just stop and I just sat down.

23 Q You said you tied her up because you were still scared
24 of her.

25 A Yes, sir.

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1 Q And were you scared that she still might do something to
2 you in your mind?

3 A I was just, I was just scared. I wasn't in right state
4 of mind, sir.

5 Q Do you remember these events or was your memory affected
6 by the conditions of that night?

7 A Very much.

8 Q Were you trying to flee?

9 A No, I wasn't running.

10 Q Were you in a panicked state of mind?

11 A Yes, I was.

12 Q Would you have felt safe at your son's house?

13 A Did I felt safe at my son's house?

14 Q Would you have felt safe there?

15 A I really wasn't trying to go to stay at my son's house.
16 I was just -- police knew where I was going and I was just
17 going there -- I knew I was going to get caught. That's why I
18 was going that way. I wouldn't get my son involved in nothing
19 like that if I was trying to -- he helped me get rid of body,
20 no. I knew I was going to get caught. That's why I went to,
21 to, towards Marco's house, Hickory, in Hickory, North
22 Carolina.

23 Q Did you love Sheila?

24 A Very much.

25 MR. CASTRO: Nothing further, Your Honor.

1 THE COURT: All right, sir, you may step down.

2 A Thank you, sir.

3 THE COURT: All right, ladies and gentlemen, let's
4 take about a 10-minute break. I'm going to excuse you back to
5 the jury room so we can do some housekeeping matters. We'll
6 bring you back out in just a second.

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right, Mr. Axelrod, during cross
10 examination of Mr. Pantovich you made a timely objection to
11 Mr. Bryan's questioning regarding his arrest. I understand
12 you got a motion you wanted to put on the record.

13 MR. AXELROD: Yes, sir, Your Honor. Your Honor, at
14 this time I'd like to put on a motion for a mistrial. I was
15 surprised that the Solicitor elicited, the statement the
16 Solicitor elicited on Mr. Pantovich was have you ever been
17 arrested. At that point I shot up and we approached the bench
18 and I told the Court that I wanted to make a motion for a
19 mistrial. The Court as it has just stated allowed me to
20 preserve that, to make the motion outside the presence of the
21 jury at this point.

22 Your Honor, two issues, first, the Solicitor is not
23 allowed to say that. He's just not allowed to say it. He can
24 impeach Walt on prior convictions of a crime that exceed one
25 year in sentence or crimes of moral turpitude, which we would

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1 define, I guess, as dishonesty. If he was say even
2 shoplifting, if he was convicted of shoplifting, yes, he could
3 say, "Haven't you been convicted of shoplifting," but what
4 the Solicitor did was he said, "Have you ever been arrested."
5 Now, what's so egregious about that, Your Honor, is that the
6 issue in this case is our client's character and credibility.
7 It's not that he asked it of another witness or some other
8 person. He asked it of the Defendant. "Have you ever been
9 arrested." Now, no curative instruction can settle this
10 issue. I'm going to ask for the mistrial. I'm going to go
11 home tonight. I'm going to find case law that says that this
12 cannot be cured by a curative instruction because I believe
13 that's out there. I'm not sure right now. I'll look tonight,
14 but I can't see how this jury can be impartial when they heard
15 this man say, "Have you ever been arrested?" He's not
16 allowed to ask that question, no door was opened, and what
17 he's done is closed the door on his credibility issue because
18 now the jury in their mind is going to say, "All right, well,
19 maybe he was arrested, maybe he wasn't arrested. Well, we
20 don't know," but the word arrest came in. If Walt had been
21 convicted of trafficking cocaine he could have said, "Weren't
22 you convicted of trafficking cocaine?" "Yes," all right,
23 but you can never, ever ask somebody, "Have you ever been
24 arrested," especially when there is no conviction.

25 THE COURT: All right, sir, all right, your motion is

1 noted. I deny it. I find that I did -- I think it is
2 sufficiently curative to -- what I instructed the jury to
3 disregard the last question. Likewise, in closing
4 instructions to the jury they're going to be told that even
5 your client's arrest in this case is no evidence of any guilt.
6 So, I think it's been cured sufficiently. So, I deny your
7 motion.

8 MR. AXELROD: Yes, sir, Honor, and if I'm able to, if
9 I'm able to find case law I would like to bring it to the
10 Court's attention in the morning if I ---

11 THE COURT: That'll be fine.

12 MR. AXELROD: Thank you, sir.

13 THE COURT: All right. Ready to call your next
14 witness or ---

15 MR. AXELROD: Your Honor, at this point the -- I think
16 we have two or three witnesses. We asked them all to come in
17 at nine o'clock in the morning. They'll be short witnesses
18 and I would ask that the Court, if we could break for the day
19 at this point.

20 THE COURT: All right, any objection?

21 MR. BRYAN: No, not objection, Your Honor, just that
22 if we're going to try to start and not hold the jury up and
23 it's only four o'clock right now, maybe we can go through what
24 I believe are going to be my numerous objections to the nature
25 of their testimony or at least clarify some parameters. I'm

1 going to -- I know we can't proffer the testimony, but our
2 investigator has spoken to five people on the witness list and
3 I think they got about maybe two sentences of admissible
4 testimony between all five witnesses.

5 THE COURT: All right, well, let's go ahead and we'll
6 bring the jury in and I'll excuse them for the evening and
7 then we'll take up your motions while we've still got some
8 time today; okay?

9 All right, let's bring the jury back in.

10 (Whereupon, the following takes place in the presence of
11 the jury.)

12 THE COURT: Ladies and gentlemen, the attorneys have
13 advised me this is a good stopping point for today. The next
14 witness we have might take some time. We don't know. We got
15 a number of witnesses, but it's a good time for us to break
16 for the day. So, I'm going to go ahead and excuse you for the
17 evening. Please be back in the jury room at nine a.m.
18 tomorrow morning. Once again I caution you. Do not begin
19 your deliberations. Do not speak about this case to anyone,
20 even among yourselves. Do not watch any TV accounts, listen
21 to any radio accounts, read any newspaper accounts or anything
22 regarding this trial. So, you're excused for the evening and
23 we'll see you back tomorrow morning at nine a.m. Thank you
24 very much.

25 (Whereupon, the following takes place outside the

1 presence of the jury.)

2 THE COURT: All right, Mr. Bryan, you have a motion?

3 MR. BRYAN: Your Honor, my motion would just

4 be to exclude -- shouldn't have to make the motion, but feel

5 likes it's for us to be able to have any continuity in the

6 trial of the case tomorrow that I probably need to go on

7 record and say my motion is to exclude any inadmissible

8 evidence of bad character that's not a pertinent trait in this

9 particular case. For instance, no references to the fact

10 that the victim was selling drugs, which I don't think one of

11 the witnesses said that she was selling drugs and then the

12 question was, "Well, did you see her sell drugs?" "No."

13 She was also alleged to have been smoking crack. "Well, did

14 you see her smoke crack?" "No, I did not." One of them

15 suggested that she was turning tricks for crack and when the

16 question was asked, "How do you know that?" "Well, I don't

17 know. I just know that that's what Walt told me and she was

18 gone for hours at a time." So, what I'm hoping is that we're

19 not going to have in front of the jury a series of people come

20 in and say things that are not inadmissible in addition to the

21 fact that she was on drugs. So, whether she was on drugs at

22 the time of the incident I think is admissible. If you say,

23 "She was on drugs and she attacked me that night," that's one

24 thing. If he had somebody who did a lot of coke with her on

25 the 7th he can bring that person in. He can't bring somebody

1 in to say that, you know, she was whacked out at the bar and
2 he had to drive her home sometime. ``Well, when?'' ``I don't
3 remember when. I just know Walt had to drive her home one
4 time.'' That was some of the other testimony that we're
5 getting. We -- I got maybe -- we talked to five witnesses.
6 Investigator Brown talked to them for probably two hours and I
7 think there was maybe two or three sentences of instances
8 where there was prior difficulties between the parties that
9 would indicate that she was the primary aggressor. I think
10 that's the only issue of character that they can bring in. I
11 don't think just a general characterization of the victim as a
12 quote, unquote, whore, or as a -- on crack or on drugs
13 generally or any other character evidence other than specific
14 instances that the Defendant was aware of where he was either
15 the victim or particularly saw the victim in the case attack
16 somebody. So, another example is, ``I saw her attack a guy
17 one time.'' Well, I think the case law is very clear that
18 that is not admissible testimony, only instances where she has
19 attacked this Defendant which would go to his state of mind
20 for self-defense or battered spouse; and so, there is several
21 witnesses who just say things like, you know, ``She was, you
22 know, one way this way and one way the other day, another
23 day,'' and I don't think that that is at all admissible, and
24 so, just I'm asking that the Defense counsel instruct their
25 witnesses not to testify to inadmissible and character

1 evidence that is not an issue in this case.

2 THE COURT: All right, Mr. Axelrod.

3 MR. AXELROD: Thank you, sir.. Well, Your Honor, it's
4 clear that the Solicitor says that his investigator goes out
5 and investigates and spoke for several hours with people and
6 asked them probably a lot of questions that elicited testimony
7 that a trained lawyer is not going to ask them in the
8 courtroom. I don't understand what the Solicitor is trying to
9 say. I just don't understand. We've had no testimony and we
10 have some statements out there that an investigator got from
11 people. I'm sure that, you know, I agree with the Solicitor
12 that what can come in will be specific acts of violence that
13 have been inflicted on Walt and possibly specific acts of
14 violence in a near proximity to the time of this incident that
15 occurred. That would be able to come in and whatever else is
16 allowed to come in I'm sure will come in and we're okay with
17 that. To make a motion on speculation I think is
18 inappropriate at this point.

19 THE COURT: All right, we'll deal with them as they
20 come up. If they're inadmissible then they're inadmissible.

21 MR. BRYAN: Thank you, Your Honor.

22 THE COURT: We'll just deal with them when they're
23 tendered. Okay?

24 MR. AXELROD: Thank you, sir.

25 THE COURT: Anything else before we break for the

1 day?

2 MR. AXELROD: Your Honor, if impossible, I come a long
3 way in the morning. 9:30 would be great for me or nine, if
4 it's nine o'clock, but it's real hard coming down that 701
5 with the logging trucks right then. If we could have a little
6 ---

7 THE COURT: I go to Conway a bunch. I'm usually
8 there at 8:30. Does it matter whether we start at 9:30 to
9 you all? I told -- well, no, I've already told the jury to be
10 back at nine. So, let's go ahead and start at nine. All
11 right, we're in recess till nine tomorrow morning.

12 *****OFF THE RECORD*****

13 (On the record, Thursday, February 7, 2008.)

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Anything from the State before we bring
17 the jury in?

18 MR. BRYAN: No, Your Honor.

19 THE COURT: Anything from the Defense?

20 MR. AXELROD: Got to get Mr. Castro, Your Honor.

21 THE COURT: Excuse me?

22 MR. AXELROD: I have to get Mr. Castro.

23 THE COURT: Okay.

24 Anything before we bring in the jury?

25 (No response.)

1 THE COURT: All right, if you'd bring in the jury,
2 please.

3 (Whereupon, the following takes place in the presence of
4 the jury.)

5 THE COURT: Ladies and gentlemen, welcome back.
6 We'll now resume the case of the State of South Carolina
7 versus Vladimir Pantovich. I hope everyone had a nice restful
8 evening but we'll go ahead now and we'll resume the Defense of
9 this case. Mr. Axelrod, you can call your next witness.

10 MR. CASTRO: Your Honor, we'd call Andy Seifert.

11 THE COURT: All right.

12 WHEREUPON, Andy Seifert was called to the stand, duly
13 sworn by the clerk and testified as follows:

14 THE CLERK: State your name for the record, spelling
15 your last.

16 MS. SEIFERT: Andy Seifert, S-E-I-F-E-R-T.

17 THE COURT: All right, sir.

18 DIRECT EXAMINATION

19 BY MR. CASTRO:

20 Q Good morning, Andy.

21 A Good morning.

22 Q Andy, please tell the jury where you live.

23 A Surfside Beach.

24 Q How long have you lived in this area?

25 A Thirteen years.

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1 Q Please tell the jury what kind of work that you do.

2 A I'm a stay-at-home mom.

3 Q In the past what kind of things have you worked?

4 A Oh, me and my husband owned a bar.

5 Q Do you have children?

6 A Yes.

7 Q And how many children do you have?

8 A Two.

9 Q Andy, do you know Walt?

10 A Yes.

11 Q Please tell the jury how you know Walt.

12 A He used to be a very good friend of my husband before he
13 passed away and he used to do some work for us at our bar and
14 he'd come in, have a beer after work.

15 Q About how long had you known Walt?

16 A About as long as I've been here, about 13 years.

17 Q In this 13 years you've known Walt have you been able to
18 form an opinion about Walt?

19 A Oh, yeah.

20 Q Please tell the jury your opinion of Walt.

21 A Very nice, very respectable, hard-working, great with
22 kids, my kids loved him, that's pretty much it.

23 Q So, when you say your children loved him, was he around
24 your children?

25 A Oh, yeah.

1 Q On more than one occasion?

2 A Oh, yeah.

3 Q And you say your children, characterize your children's
4 attitude towards Walt.

5 A I'm sorry, what?

6 Q Please tell us how the kids felt about Walt.

7 MR. BRYAN: Objection to how his kids -- her kids felt
8 about Walt.

9 THE COURT: Sustained.

10 Q Did your children like Walt?

11 A Yes.

12 MR. BRYAN: Objection.

13 THE COURT: Sustained.

14 Q Do you know who Sheila McPherson is?

15 A Yes.

16 Q Tell the jury how you know Sheila McPherson.

17 A She was my neighbor's or my mother's neighbor, and she
18 came, she came to work for me at the bar for a day and I
19 believe that's how Walt met her.

20 Q Now, you say she was your mother's neighbor.

21 A Uh-huh.

22 Q And where was that?

23 A Peachtree Landing out in Socastee.

24 Q And when you say neighbor, could you describe the
25 vicinity, was it two houses down, one house down?