

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Benjamin H. Culbertson, Circuit Court Judge

RANDAL WILLIAM BENTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002021

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT

2010-GS-18-1675

State of South Carolina)
))
Plaintiff,)
))
v.) Transcript of Record
))
Randal Benton,)
))
Defendant.)
))
_____)

January 6, 2012
St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein, Judge

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

Russell Hilton, Esquire
Attorneys for the State

John Loy, Esquire
Attorneys for the Defendant

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Circuit Court Reporter

I N D E XWITNESS/DESCRIPTIONPAGE NO.

PLEA

EXHIBITS:

There were no exhibits marked to this proceeding.

Certificate of Court Reporter 29

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1 MR. HILTON: This is Randal Benton. He is charged in
2 Indictment 2010-GS-18-1675 with the offense of murder. He
3 will be pleading guilty to that offense with a negotiated
4 sentence of forty years.

5 MR. LOY: And, Your Honor, Mr. Benton is supported in
6 Court by his mother and step-father. They ask if they could
7 stand with their son during the proceeding.

8 THE COURT: All right. Are y'all getting him from
9 downstairs?

10 MAJOR MOULTRIE: Yes, ma'am, he's on the way.

11 THE CLERK: Please raise your right hand. State your
12 full name for the record.

13 MR. BENTON: Randal William Benton.

14 (WHEREUPON, Randal Benton was sworn
15 to tell the truth.)

16 THE CLERK: Thank you.

17 THE COURT: All right. You are Mr. Randal William
18 Benton?

19 MR. BENTON: Yes, ma'am.

20 THE COURT: And you're represented by Mr. John Loy?

21 MR. BENTON: Yes, ma'am.

22 THE COURT: Mr. Loy, Mr. Benton indicates that you
23 represents him; is that right?

24 MR. LOY: That's correct, Your Honor.

25 THE COURT: Have you advised your client regarding the

1 nature of this offense, the maximum possible penalty and
2 consequences and his constitutional rights including his
3 right to a jury trial?

4 MR. LOY: I have, Your Honor.

5 THE COURT: And, in your opinion, does your client
6 understand the nature of this offense, the maximum possible
7 penalty and his rights?

8 MR. LOY: Your Honor, I'm sure that he does.

9 THE COURT: Tell me how he wishes to plead?

10 MR. LOY: Your Honor, it's not reflected on the sheet,
11 but it is what Mr. Hilton and I discussed. He wishes to
12 plead guilty under North Carolina verses Alford to the
13 negotiated forty year sentence.

14 THE COURT: Okay.

15 MR. LOY: And that was part of our agreement. It occurs
16 to me now that I didn't see it on the top of the sheet.
17 That is our agreement with the State.

18 MR. HILTON: That is correct.

19 THE COURT: Okay. All right.

20 And do you concur with his decision?

21 MR. LOY: Yes, Your Honor.

22 THE COURT: From your investigation of the facts and
23 circumstances of your client's case, do you believe that the
24 State could produce sufficient evidence to convict and
25 establish your client's guilt beyond a reasonable doubt?

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1 MR. LOY: I certainly do, Your Honor.

2 THE COURT: And do you believe that if your client was
3 to stand trial that his conviction would be viable?

4 MR. LOY: I do, Your Honor.

5 THE COURT: Very well. All right. Do you have any
6 questions or concerns regarding Mr. Benton's competency?

7 MR. LOY: None, Your Honor.

8 THE COURT: Has Mr. Benton had any sort of evaluation?

9 MR. LOY: None, Your Honor.

10 THE COURT: Very well.

11 All right, Mr. Benton, I have many questions to ask of
12 you. If you do not understand my question do not answer it,
13 all right?

14 MR. BENTON: Yes, ma'am.

15 THE COURT: But do let me know that you don't understand
16 my question. If you answer my question, Mr. Benton, I'm
17 going to believe that you understood it, okay?

18 MR. BENTON: Yes, ma'am.

19 THE COURT: All right. And so if you do not understand
20 my question don't answer it. Let me know that you don't
21 understand my question. There are many ways to explain any
22 one thing and I'm happy to try, perhaps, a different way if
23 you don't understand the question. Please do not answer a
24 question you do not understand.

25 Also, Mr. Benton, if you need to take a break during

1 these proceedings I want you to feel free to take that
2 break, particularly in the event that you need to speak with
3 Mr. Loy. Mr. Loy is right here. He is representing you
4 throughout these proceedings as well. If you need to stop
5 and speak with him you just let me know that you need to
6 stop and speak with him, okay?

7 MR. BENTON: Yes, ma'am.

8 THE COURT: Very well. You have fine volume now but I
9 do need to be sure that you have sufficient volume so that
10 our court reporter does not have to struggle to hear you,
11 okay?

12 MR. BENTON: Yes, ma'am.

13 THE COURT: Tell me how old you are?

14 MR. BENTON: Currently, I'm forty-eight years old.

15 THE COURT: Tell me how far you went in school?

16 MR. BENTON: Eighth grade.

17 THE COURT: All right. Do you have your GED?

18 MR. BENTON: No, ma'am.

19 THE COURT: Why did you stop school in the eighth grade?

20 MR. BENTON: I left home.

21 THE COURT: All right. How long have you been locked
22 up?

23 MR. BENTON: Approximately, fourteen months.

24 THE COURT: Before that time where did you work?

25 MR. BENTON: A landscaping company called Pleasant

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1 Places, ma'am.

2 THE COURT: Have you ever been treated for alcohol, drug
3 abuse or mental health issues?

4 MR. BENTON: No, ma'am.

5 THE COURT: Within the last seventy-two hours have you
6 had any alcohol, any drugs or any sort of medication?

7 MR. BENTON: No, ma'am.

8 THE COURT: Are you aware of any problems, Mr. Benton, a
9 physical problem, a mental problem, a nervous problem, a
10 drug or alcohol problem; are you aware of any problem that
11 you have that might or that could interfere with your
12 ability to know exactly what you are doing here today?

13 MR. BENTON: No, ma'am.

14 THE COURT: Now, Mr. Benton, I want to talk with you
15 about the charge of murder. First of all, do you understand
16 that you have been indicted by a Dorchester County Grand
17 Jury for the offense of murder?

18 MR. BENTON: Yes, ma'am.

19 THE COURT: All right. Do you understand that murder
20 carries a minimum, a minimum sentence of thirty years in
21 prison to life in prison?

22 MR. BENTON: Yes, ma'am.

23 THE COURT: All right. Do you understand that the
24 maximum possible penalty for this offense is life in prison?

25 MR. BENTON: Yes, ma'am.

1 THE COURT: And that, of course, is life without the
2 possibility of parole?

3 MR. BENTON: Yes, ma'am.

4 THE COURT: All right, sir. Do you understand that the
5 minimum sentence that you can be given for this offense is
6 thirty years in prison?

7 MR. BENTON: Yes, ma'am.

8 THE COURT: And do you understand that that is a real
9 thirty years, that's day for day thirty years?

10 MR. BENTON: Yes, ma'am.

11 THE COURT: All right, sir. It is my understanding that
12 the attorneys in your case have negotiated a forty years
13 sentence; is that your understanding?

14 MR. BENTON: Yes, ma'am.

15 THE COURT: All right, sir. Do you understand that if I
16 accept this plea then I also must accept the negotiation of
17 the forty year sentence; do you understand that?

18 MR. BENTON: Yes, ma'am.

19 THE COURT: And do you understand that this forty years
20 is a real forty years?

21 MR. BENTON: Yes, ma'am.

22 THE COURT: And this is not an offense for which you
23 would be eligible for parole?

24 MR. BENTON: Yes, ma'am.

25 THE COURT: All right, sir. Now, there are some other

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1 consequences to this offense, Mr. Benton, and they are as
2 follows. This is -- under our law there are some additional
3 classifications for this offense. Murder is a violent
4 offense. It has that classification under our law. Do you
5 understand that?

6 MR. BENTON: Yes, ma'am.

7 THE COURT: And when a crime is classified as a violent
8 offense it has many consequences. I'm not going to go into
9 all of them. For example, it has implications for the
10 facility where you will be housed within the South Carolina
11 Department of Corrections. Do you understand that?

12 MR. BENTON: Yes, ma'am.

13 THE COURT: It has implications for the inability, the
14 inability for you to earn work credits and educational
15 credits. Do you understand?

16 MR. BENTON: Yes, ma'am.

17 THE COURT: All right. And there are many other
18 consequences to the fact that this is a violent offense.
19 Have you had an opportunity to talk to Mr. Loy regarding the
20 implications, the consequences of this offense being a
21 violent offense?

22 MR. BENTON: Yes, ma'am.

23 THE COURT: All right. This is also a most serious
24 offense. It has that classification as well, Mr. Benton.
25 Do you understand that?

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1 MR. BENTON: Yes, ma'am.

2 THE COURT: All right. And what that means is under 17-
3 25-45, if over the course of someone's life they have been
4 convicted of two most serious offenses, then if the person
5 is charged with a second most serious offense if the State
6 gives notice to the Defendant that the State intends to seek
7 life without the possibility of parole and that person is
8 then convicted of that second most serious offense, then
9 that person spends the rest of their life in prison without
10 the possibility of parole. Do you understand that?

11 MR. BENTON: Yes, ma'am.

12 THE COURT: Do you understand that this is a most
13 serious offense if you are over the course of your life
14 every convicted of another most serious offense and the
15 State serves notice that it intends to seek life without the
16 possibility of parole and you are then convicted that it is
17 mandatory that you would spend the rest of your life in
18 prison without the possibility of parole?

19 MR. BENTON: Yes, ma'am.

20 THE COURT: All right. Tell me what that means to you;
21 life without the possibility of parole?

22 MR. BENTON: I will never be able to get out.

23 THE COURT: That is correct. You would die in prison.

24 MR. BENTON: Yes, ma'am.

25 THE COURT: Very well. It is also important that I

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1 address with you that if, over the course of someone's life,
2 they are convicted of one most serious offense and two
3 serious offenses. The person stands charged with that
4 second serious offense, which is another classification for
5 certain crimes that are most serious and there are certain
6 crimes that are serious offenses. If the person stands
7 convicted of one most serious and one serious and charged
8 with a second serious offense, again, and the State sends
9 notice to that person, to that Defendant, that the State
10 intends to seek like without the possibility of parole and
11 that person is then convicted of that second serious
12 offense, then in that event you would spend the rest of your
13 life in prison without the possibility of parole. Do you
14 understand that?

15 MR. BENTON: Yes, ma'am.

16 THE COURT: All right. Now, I'll ask -- first of all
17 the Solicitor and then Mr. Loy and then you, Mr. Benton --
18 Mr. Hilton, does Mr. Benton have any other serious offenses?

19 MR. HILTON: He does not, Your Honor.

20 THE COURT: Or most serious offenses?

21 MR. HILTON: He does not, Your Honor.

22 THE COURT: Is that your understanding?

23 MR. LOY: That is my understanding, Your Honor.

24 THE COURT: And Mr. Benton is that your understanding?

25 MR. BENTON: Yes, ma'am.

1 THE COURT: If you were to some day, some how, find out
2 that you, in fact, had convictions for other most serious
3 offenses or serious offenses would you be surprised?

4 MR. BENTON: Yes, ma'am.

5 THE COURT: Would you be concerned?

6 MR. BENTON: Yes, ma'am.

7 THE COURT: Would you want to speak to your lawyer about
8 that?

9 MR. BENTON: Yes, ma'am.

10 THE COURT: All right. It's part of your reliance on
11 your plea here today that this will be your first serious
12 offense?

13 MR. BENTON: Yes, ma'am.

14 THE COURT: And that you have no serious offenses on
15 your record?

16 MR. BENTON: No, ma'am.

17 THE COURT: All right. And so you're relying on that
18 today?

19 MR. BENTON: Yes, ma'am.

20 THE COURT: That you have no serious offense on your
21 record?

22 MR. BENTON: Yes, ma'am.

23 THE COURT: All right. Now, Mr. Benton, are you
24 currently on probation or parole?

25 MR. BENTON: No, ma'am.

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1 THE COURT: You understand, Mr. Benton, that if I follow
2 the negotiations here today that you need to count on
3 spending all forty years in prison. Do you understand that?

4 MR. BENTON: Yes, ma'am.

5 THE COURT: Do you have any questions about that?

6 MR. BENTON: No, ma'am.

7 THE COURT: Now, are you on probation or parole at this
8 time?

9 MR. BENTON: No ma'am.

10 THE COURT: All right. Mr. Benton, here's what you have
11 told me. You have told me that you understand this event,
12 you understand this is a murder charge. You understand the
13 minimum sentence of thirty years, you understand the maximum
14 sentence of life in prison, you understand the consequences
15 of your plea here today, this is a most serious offense, you
16 understand the consequences of that, you understand that
17 this is a violent offense. Keeping these matters all in
18 your mind, Mr. Benton, how do you plead to offense of
19 murder?

20 MR. BENTON: Well --

21 MR. LOY: How do you plead?

22 THE COURT: How do you plead, guilty or not guilty?

23 MR. BENTON: I guess guilty, Your Honor.

24 THE COURT: All right, sir. Your lawyer has indicated
25 to me that you intend to plead guilty under what is called

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1 North Carolina verses Alford. Is that correct?

2 MR. BENTON: Yes, ma'am.

3 THE COURT: All right. Let me talk to you about that
4 for a moment. Mr. Benton, there is, under our law, based on
5 a case called North Carolina verses Alford or Alford verses
6 North Carolina. I think there were two cases that went to
7 the United States Supreme Court, and, in those cases, Mr.
8 Alford was charged with capital murder. That was actually a
9 case up in North Carolina. And Mr. Alford, quite frankly,
10 wasn't sure whether he had done the things that he was
11 alleged to have done, but he had been over the evidence with
12 his lawyer, he was well informed of all the circumstances of
13 his case and he believed that he had probably done the
14 things that he was alleged to have done. And in the
15 negotiations his lawyer was able to negotiate that if Mr.
16 Alford would plead guilty the state would take the death
17 penalty off the table, but he would be pleading to life. He
18 wanted to take advantage of that deal, if you will, those
19 negotiations, but when the judge asked him did you do these
20 things he could not truthfully answer yes because he didn't
21 know. He thought he had based upon what he knew, thought he
22 was going to be found guilty, but he didn't know. And that
23 case ended up in the United States Supreme Court. What the
24 United States Supreme Court said was yes, in fact, in the
25 event that someone is very familiar with their case, that --

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1 and they believe that they're going to be found guilty,
2 based on all their information, and there is a deal that is
3 offered and they wish to take advantage of that deal and
4 they have, of course, all the requisite mental capacity to
5 make those decisions that that person can plead guilty under
6 what is called North Carolina verses Alford. Meaning, I've
7 looked at all the information and I think I'm going to be
8 found guilty and I want to take advantage of the deal. That
9 is what a plea of guilty under North Carolina verses Alford
10 is. Do you understand that?

11 MR. BENTON: Yes, ma'am.

12 THE COURT: All right, sir. Now, Mr. Benton, other than
13 the fact that you're telling me that you're pleading guilty
14 under North Carolina verses Alford, here today, and we'll go
15 through it a little bit more, other than telling me today
16 that it is plea under North Carolina verses Alford going
17 forward there will be no indication that you pled guilty
18 under North Carolina verses Alford. It will simply be a
19 conviction for murder. Do you understand?

20 MR. BENTON: Yes, ma'am.

21 THE COURT: Okay. Now, as I say guilty as we go forward
22 today I'm going to have a little asterisk because what I
23 mean is guilty under North Carolina verses Alford, because I
24 may not say that each time as we go forward. If you said
25 guilty as we go forward today you will have a little

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1 asterisk too, meaning that you meant to say guilty under
2 North Carolina verses Alford, okay.

3 MR. BENTON: Yes, ma'am.

4 THE COURT: But beyond that there will be no asterisk on
5 your sheet, there will be no asterisk on your record, it
6 will simply be a conviction for murder, okay?

7 MR. BENTON: Yes, ma'am.

8 MR. LOY: Your Honor, I'm in the courtroom, my client
9 sounded a little raspy. I'm just going to step to the bar
10 and get him a glass of water. I'm not going to abandon him
11 here.

12 Thank you, Your Honor.

13 THE COURT: Yes. All right. Now, Mr. Benton, do you
14 understand that when you pled guilty to include guilty under
15 North Carolina verses Alford that you give up certain very
16 important constitutional rights?

17 MR. BENTON: Yes, ma'am.

18 THE COURT: We will talk about some of them, we will not
19 talk about them all. You give up the right to remain
20 silent. The Fifth Amendment right because you tell me that
21 you're guilty. You give up your right against self-
22 incrimination because you tell me you're guilty. You give
23 up your right to require the State prove you guilty beyond a
24 reasonable doubt if they can. You give up your right to
25 have your lawyer confront and cross-examine witnesses who

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1 would testify against you. You give up your right to summon
2 witnesses to come testify in your defense. You give up your
3 right to present defenses. You give up your right to
4 challenge any incriminating statements that you may have
5 made in your case and you give up your right to challenge
6 any stops or searches or seizures that you think were not
7 appropriate and, of course, you give up your right to a jury
8 trial, and, Mr. Benton, if you wanted a jury trial you would
9 have a jury trial and at that trial it would be completely
10 up to you whether or not you wish to plead guilty, and
11 whether or not you wish to testify, because you would
12 certainly be entitled to your Fifth Amendment right not to
13 testify, and in the event that you chose to go to trial and
14 not testify, meaning you exercise your Fifth Amendment
15 right, the judge would tell the jury that they could not
16 consider your decision not to testify on the issue of
17 whether you were guilty or not guilty. The judge would tell
18 the jury they could not even discuss your decision not to
19 testify in the jury room, because that was the exercise of
20 your Fifth Amendment right, and you have that right. And
21 the judge would tell the jury that the burden was and would
22 remain on the State of South Carolina to prove guilty beyond
23 a reasonable doubt. You don't have any burden of proof.
24 They burden was and would remain on the State.

25 So it is important that you know that in the event that

1 you chose to go to trial, there would be a trial, first of
2 all. It would be your trial and only you can waive that
3 right. Secondly, if you went to trial it would be solely up
4 to you as to whether you wish to testify or not testify.
5 Certainly that would be your decision whether to exercise
6 your Fifth Amendment right or not.

7 Now, there are other rights that we have not
8 specifically discussed, but I ask if you understand your
9 rights?

10 MR. BENTON: Yes, ma'am.

11 THE COURT: Do you understand, Mr. Benton, that your
12 constitutional rights are preserved for you at trial. Do
13 you understand that?

14 MR. BENTON: Yes, ma'am.

15 THE COURT: And do you understand that you waive certain
16 important constitutional rights when you plead guilty?

17 MR. BENTON: Yes, ma'am.

18 THE COURT: And I ask, is that what you want to do?

19 MR. BENTON: Yes, ma'am.

20 THE COURT: Do you clearly understand that when you
21 plead guilty you give up your right to have a jury determine
22 if you're guilty or not guilty; do you understand?

23 MR. BENTON: Yes, ma'am.

24 THE COURT: And do you further understand if I accept
25 your plea I will sentence you?

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1 MR. BENTON: Yes, ma'am.

2 THE COURT: All right. We're going to pause here for
3 just a moment and we're going to review, because Mr. Benton
4 up to this point this is what you have told me. You have
5 told me that you understand this charge of murder, you
6 understand the minimum sentence of thirty years to a maximum
7 of life. You understand the consequences, you understand
8 that this is a violent offense, a most serious offense and
9 the consequences associated with being a violent, most
10 serious offense. And you have also told me that you
11 understand your constitutional rights. Keeping all of these
12 matters in the absolute forefront of your mind, Mr. Benton,
13 do you still wish to continue with your plea of guilty under
14 North Carolina verses Alford?

15 MR. BENTON: Yes, ma'am.

16 THE COURT: Let me tell you what happens next. What
17 happens next is that I must know what happened, because
18 every plea must be supported in factual basis.

19 I'm going to call on Mr. Hilton to go over the facts
20 that the State intends to prove at trial to prove your
21 guilt. When he's finished I'm going to ask you this
22 question. Mr. Benton, do you believe that those are the
23 facts for which you believe the State could produce
24 sufficient evidence to convict and establish your guilt
25 beyond a reasonable doubt and are those the facts for which

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1 you believe you would be found guilty if you were to go to
2 trial. So it is very important, sir, to listen very
3 carefully to what Mr. Hilton is going to tell me, okay?

4 MR. BENTON: Yes, ma'am.

5 THE COURT: Very well.

6 Yes, sir.

7 MR. HILTON: Thank Your Honor. May it please the Court.

8 THE COURT: Yes.

9 MR. HILTON: This offense occurred on October 30, 2010
10 at 1700 Trolley Road, which is actually the Perkins
11 Restaurant located right there at Trolley Road and a little
12 side road called Cross Creek.

13 Just as a little history the victim in this case, Ms.
14 Treva Benton, had been married to the defendant and they
15 were married for quite some time, eight to ten years. They
16 had separated prior to this incident for several months and
17 Mr. Benton had moved out of the house located at Waldon
18 Ridge Way. On October 30, the day of the incident, of 2010,
19 Mr. Benton, along with several other individuals helped Ms.
20 Benton move out of the house. The two of them had
21 maintained, at least what she believed was a friendly
22 relationship up until that time and he ended up helping her
23 move out of the house on this Saturday. It was --
24 everything went well that day. Around 8:00 o'clock or so
25 p.m. Mr. Benton came back to Waldon Ridge Way, I think

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1 hoping to find the victim there. He confronted a neighbor
2 who indicated that they may have, in his words, they may
3 have gone back to his house or something to that effect
4 signifying that she may be with her new boyfriend. Mr.
5 Benton had information that she had this new boyfriend prior
6 to this, but this kind of fueled it a little bit, if you
7 will. From 8:00 o'clock we believe he then went back to his
8 resident where he was staying with a niece of his over on
9 Frankie Lane near College Park Road. He went back to his
10 house and smashed a picture that he had located on the night
11 stand of himself and the victim. We believe at that point
12 and I believe we would be able to produce evidence to show
13 from there he went to a bar somewhere, likely Shooters
14 located next to the Perkins restaurant. He went there and
15 drank for several hours until about the 10:00 o'clock, 10:30
16 hour where he then drove his truck over to the intersection
17 of Cross Creek Road and Travelers Boulevard where a day care
18 center is situated. That's only about three-tenths of a
19 mile from where the victim's residence was at Waldon
20 Ridge Way. From that day care center, which is kind of
21 directly behind Perkins he armed himself with a pistol that
22 he had in his car and went towards her house. When he got
23 to her house at Waldon Ridge Way he came in the back
24 door. There he confronted the oldest son of the victim,
25 Michael Palmer and Michael kept him on the porch, asked him

1 what was going on. At that time he said my truck had broken
2 down at Shooters and that he needed a ride home and where's
3 your mom, where is Treva. And at that point Michael called
4 his mother. His mother was on the way home at that point.
5 She came home. Mr. Benton came in the house. She indicated
6 to him at that point that she would give him a ride home,
7 just go get in the car. It was evidence to Michael at that
8 point he had been drinking. He was intoxicated to some
9 degree, although, that degree is somewhat disputed. He went
10 and got into her Trailblazer. She changed her clothes
11 upstairs. Just before she left she told Michael if I'm not
12 back in about 20 minutes, call me. If I don't answer call
13 the police.

14 At that time she left. Believe she left Waldon Ridge
15 Way turned right onto Travelers Boulevard, left onto Cross
16 Creek and then pulled into the Perkins parking lot, actually
17 on the north side of the Perkins parking lot where she just
18 pulled up and stopped. That was about ten minutes to
19 eleven. The witnesses inside of Perkins, which was some
20 employees inside the restaurant, saw the two of them pull
21 up. They saw the two of them in the vehicle and knew that
22 they were arguing. Couldn't really tell about what. The
23 windows were rolled up in the car and he had -- the way he
24 was situated his back was facing them and looking out
25 through the window. They stayed there and argued some time.

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1 By roughly all accounts it was roughly five to ten minutes
2 that they were arguing in the car. At one point in time the
3 victim got out of the Trailblazer and he got out as well.
4 The manager at the Perkins, at that time, said let's go
5 outside and tell them -- talking to the other employees,
6 said, let's go outside and tell them if they're going to
7 fight they need to do that elsewhere. So they walked
8 outside and got to the corner of the sidewalk and at that
9 time they could hear what this argument was about and it was
10 pretty clear to them that they were arguing about somebody
11 leaving and going on their way. We believe that was Ms.
12 Benton saying I want to just leave. I just want to be done
13 with this. And, you know, we're through.

14 When they got to the corner of the sidewalk that's when
15 he said you want to leave and then the shots began and he
16 shot her. There's somewhat conflicting stories. By some
17 accounts all the shots occurred at one time, all eight
18 shots. And by another witness that was in the parking lot
19 after those witnesses ran inside, after he pointed the gun
20 at them he shot again. After all the shooting occurred, the
21 eight shots, he fled the scene and fled down Cross Creek.
22 At that point in time the police department responded out.
23 Of course, the victim, at that point, was dead in the
24 parking lot.

25 Just a second, let me catch up with my notes.

1 Police department responded out, the victim was dead in
2 the parking lot, the car was still there and they began
3 interviewing the witnesses and so forth. The witnesses
4 indicated the defendant's hat had flown off while he was in
5 the parking lot. The police department recovered that hat,
6 recovered shell casings at the scene and, of course,
7 submitted the body for autopsy. They also started
8 interviewing the witnesses and got a description of the
9 defendant. He was wearing a black hoodie, a pair of blue
10 jeans and while they're investigating the scene Michael
11 Palmer -- the twenty minutes had expired, if you will. He
12 had called his mom and she didn't answer. At that point in
13 time he had armed himself with a baseball bat and began
14 walking towards Shooters to see if the defendant's vehicle
15 was actually at Shooters where he said it was. When he got
16 almost to Perkins, of course, the police department sees
17 this individual at 11:00 o'clock at night with a baseball
18 bat and they stop him and say, you know, what's going on. He
19 begins to tell the story about his step-father coming to the
20 house and so forth. At the time, they didn't put two and
21 two together. They took him almost back to his house and
22 the officer said, oh, by the way, what was your step-father
23 wearing, where he gives a description then matching the
24 description that the witnesses at Perkins had given. At
25 that time they take him back to the scene and get the whole

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1 story out of him as to what happened up to that point and it
2 was there that he learned it was actually his mother covered
3 up under the sheet.

4 Based on the information and the description, the fact
5 that he was the last individual seen with the victim at the
6 time he was wearing clothing consistent with what everybody
7 was saying they issued a warrant for his arrest. It was the
8 next morning about 8:30 in the morning the defendant was
9 found in Alabama where he came into a convenience store.
10 When he walked into the convenience store he told the clerk,
11 I'm not sure where I am, you know, can I use your phone to
12 call my mother. The clerk let him use her cell phone and
13 then he couldn't describe exactly where he was. He ended up
14 giving the phone to the clerk. The mother at that time, the
15 defendants mother said, I believe my son is wanted for
16 murder, you know, don't alarm him. The clerk then hit the
17 panic button on the store, police responded very quickly.
18 He was found at the scene, he was taken into custody at that
19 point and his vehicle was impounded. The search warrant was
20 conducted on his vehicle there where they recovered a 9
21 millimeter Smith and Wesson handgun. He was then brought
22 back to South Carolina on November 4, where a buccal swab
23 was done pursuant to a search warrant and they obtained a
24 DNA sample from the defendant at that point. SLED analyzed
25 the baseball cap that was found at the scene and the buccal

1 swab submitted by the defendant and that ended up matching
2 the defendant in a DNA hit. They also compared all the
3 shell casings and the bullets found inside the victim's body
4 during the autopsy and they matched all of those to the
5 Smith and Wesson nine millimeter handgun found in his
6 possession in Alabama.

7 The defendant never gave any statements and here we are
8 today. This case was scheduled for trial over the course of
9 the next two weeks. The victim's family is here and there
10 are several members who wish to address the Court.

11 THE COURT: Certainly, certainly. I will do that
12 shortly.

13 Very well. Are those the fact, Mr. Benton, that you
14 believe that the State could produce sufficient evidence to
15 convict you and establish your guilt beyond a reasonable
16 doubt?

17 MR. BENTON: I don't know, Your Honor.

18 THE COURT: All right. And are those the facts for
19 which you believe you would be found guilty?

20 MR. BENTON: Yes, ma'am.

21 THE COURT: Well, if those are the facts which you think
22 you would be found guilty of then why is it that you say
23 that you don't know if those are the fact which you believe
24 the State has evidence to present at trial; have you not
25 been over the evidence that the State has available?

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1 MR. BENTON: Yes, ma'am.

2 THE COURT: Have you been over that evidence with your
3 lawyer?

4 MR. BENTON: Yes, ma'am.

5 THE COURT: All right. Have you been over every bit of
6 that evidence?

7 MR. BENTON: No, ma'am, I wouldn't say every bit of it.

8 THE COURT: Very well. Thank you.

9 MR. LOY: Thank Your Honor.

10 THE COURT: Uh-huh. (Affirmative response)

11 Yes, thank you. I'm not going to take the plea. If he
12 doesn't know the evidence and he can't tell me if he
13 believes that that's the evidence that the State has and
14 he's been over it and he thinks there's evidence he hadn't
15 been over I can't take the plea.

16 MR. LOY: Thank Your Honor.

17 THE COURT: Uh-huh. (Affirmative response) Thank you,
18 sir.

19 Monday, just so everybody's clear, I am hopeful to
20 begin this matter on Monday if we can get our jurors here.

21 MR. HILTON: Of course.

22 THE COURT: If not, as soon as we can get them.

23 MR. HILTON: Jury actually comes in Tuesday morning.

24 THE COURT: Oh, we didn't try to change that?

25 MR. HILTON: Grand Jury comes in Monday.

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1 THE COURT: Grand Jury comes Monday and jury comes in
2 Tuesday. We'll begin Tuesday morning. Very well.

3 (This proceeding was concluded.)
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1 STATE OF SOUTH CAROLINA
2 COUNTY OF DORCHESTER

COURT OF GENERAL SESSIONS
2010-GS-18-01675

3 STATE OF SOUTH CAROLINA)

4 Plaintiff)

5 V.)

TRANSCRIPT OF RECORD

6 RANDAL WILLIAM BENTON,)
7 Defendant.)

8 February 9, 2012
9 St. George, South Carolina

10
11
12 B E F O R E:

13 THE HONORABLE STEPHANIE P. McDONALD, JUDGE
14
15
16
17

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

19 Mr. Russell Hilton, Assistant Solicitor
20 Mr. Barney Giese, Assistant Solicitor
Representing The State

21 Mr. John Loy, Assistant Public Defender
22 Ms. Michelle Suggs, Assistant Public Defender
Representing The Defendant

23
24 Anne Bouley Meyer, RPR
25 Circuit Court Reporter

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1 MS. SUGGS: May it please the Court. May I
2 approach?

3 THE COURT: You may.

4 MS. SUGGS: Judge, I filed some motions with the
5 court. These are unsigned, but they're copies of what
6 I filed.

7 The top one is an exhaustive list of the
8 discovery that has been received in this case. Mr. Loy
9 in this case has filed a motion for discovery. And
10 what I have handed up to the Court is what we have
11 received in the case.

12 THE COURT: Okay.

13 MS. SUGGS: I know that the solicitor, when we
14 met with him last week, showed us some pictures and
15 made available to us some pictures that they had taken
16 recently. And that's not on here because it actually
17 hasn't been physically given to us. But we did get a
18 chance to look at those and so there's no issues there.

19 And I don't perceive any issues with discovery,
20 but I did want to hand that up to the Court.

21 THE COURT: Okay.

22 MS. SUGGS: Pursuant to our discussions in
23 chambers, some of my motions I think can be dealt with
24 fairly quickly. The first motion we have is a motion
25 to sequester the State's witnesses. I think the State

1 has consented to sequestration.

2 MR. HILTON: That's correct. With the exception
3 the mother of the victim, Ms. Mynda Poff; the son of
4 the victim, Jesse Scott Michael Palmer, IV, I think is
5 his name, it's the victim's son; and then our case
6 officer will be Shannon Sharp.

7 THE COURT: Okay. Great that motion is granted
8 with consent.

9 MS. SUGGS: Yes. I think under the crime
10 victim's act they're allowed to do that, Judge. We
11 have obviously no objection to that.

12 Our third motion is one that I -- it's a written
13 filed motion which is our Lyle motion, trying to
14 preclude the state from introducing any prior bad act
15 evidence. And I believe that the state has indicated
16 that they do not intent to introduce any prior bad act
17 or character evidence.

18 THE COURT: My understanding was absent some
19 opening of the door, they were not going to bring
20 anything in. But I'm certainly happy to hear from
21 them, and some of that we will have to deal with as it
22 goes.

23 MR. HILTON: That's correct, Your Honor. Unless
24 something goes in some unexpected fashion during trial
25 and we feel it necessary at that time to get into

1 something. Our intent is not to bring up any prior
2 crimes, any prior bad acts, any character evidence,
3 that sort of thing.

4 THE COURT: Okay.

5 MS. SUGGS: Judge, my fourth motion was a
6 Biggers motion to prohibit any identification without a
7 hearing, without a Neil versus Biggers hearing. My
8 understanding is that the state is not intending to
9 introduce any ID of the defendant.

10 MR. HILTON: That's correct. Unless there is
11 some indication that the witness had no idea who this
12 person was. Because as the facts would play out, if we
13 got into this, she identified someone and said, this
14 looks most like the defendant, and in fact it was the
15 defendant.

16 But it's not a full-blown identification. And
17 so we have no intention of getting into that as an
18 identification, again, unless something comes up at
19 trial to where that credibility or something is
20 attacked.

21 THE COURT: Okay. So for now that's not an
22 issue.

23 MS. SUGGS: Not an issue at this point. The
24 last three motions are motions to suppress. One of
25 them is going to be argued tomorrow. But the next one

1 that I have submitted to the Court is a motion to
2 suppress the defendant's phone records that were
3 obtained as a result of what we would perceive to be an
4 invalid search warrant.

5 My understanding is the solicitor has stated
6 that he is not intending to introduce those phone
7 records at this point. So that would make that motion
8 moot at this point.

9 MR. HILTON: They will not be introduced in our
10 case in chief. Again if something comes up and
11 something changes, we will certainly let the Court and
12 the defense know ahead of time before we just spring
13 into that.

14 THE COURT: That's moot then.

15 MS. SUGGS: That leaves us with my final motion,
16 Judge, to suppress the defendant's DNA that was
17 collected as a result of a defective search warrant.
18 I've handed that motion up to you, and I've handed up a
19 memo in support of that motion.

20 What I've handed the Court now is actually a
21 copy of that search warrant, as well as the case law
22 that I've referenced in my motion.

23 On November 4th, 2010, police officers went to
24 the Dorchester County Detention Center to collect
25 Randal Benton's DNA. The way they did that was because

1 they had gotten a search warrant signed by a judge.
2 The affidavit to support that search warrant read as
3 follows: On October 30th, 2010, officers of the
4 Summerville Police Department responded to a possible
5 shooting at the Perkins Restaurant, located at 1700
6 Trolly Road, Summerville, South Carolina.

7 Upon arrival officers located the victim, Treva
8 Dawn Benton, deceased on the ground by her husband's
9 2003 Chevrolet Trailblazer; lists the VIN number and a
10 license number.

11 Then it goes on to say: Witnesses on the scene
12 placed the victim and the shooter inside the
13 aforementioned vehicle minutes prior to the shooting.
14 A search warrant was obtained for the aforementioned
15 vehicle, evidence to include DNA samples were taken
16 from the vehicle. And the laboratory analysis of
17 Benton's saliva will aid in this investigation by
18 corroborating evidence and statements made by the
19 witnesses.

20 And that was the entirety of the affidavit given
21 to the judge for probable cause.

22 As you know under Schmerber versus California
23 our United States Supreme Court has said that one of
24 the most invasive things you can do to a person's
25 privacy is to invade their body to procure evidence

1 from their body. Schmerber tells us that it is a
2 violation, it constitutes a search and seizure under
3 the Fourth Amendment.

4 In our jurisdiction, South Carolina, we've
5 actually looked at two different cases, the State
6 versus Weston and the State versus Smith, which I have
7 handed up to Your Honor.

8 State versus Weston instructs us that an
9 affidavit for probable cause must have more just
10 conclusory statements in it. It must have more than
11 just a victim was found outside of a defendant's
12 vehicle. It's got to have something that actually ties
13 that defendant to that crime.

14 That is continued in State versus Smith which
15 was decided by our Supreme Court. And our Supreme
16 Court there refused to uphold a finding of probable
17 cause because the affidavit failed to set forth facts
18 as to the connection of the evidence with the
19 defendant.

20 What we have is an affidavit that has
21 approximately five sentences. The only thing that
22 connects Randal Benton to the potential crimes was that
23 the victim was found outside of his vehicle. It has no
24 statements as to whether or not witnesses placed him in
25 the vicinity. It has no statement as to whether or not

1 witnesses placed him near or close to the victim at the
2 time of the murder. There is actually nothing to
3 connect Randal Benton to that scene.

4 THE COURT: Let me ask you this question, and
5 then I don't want to cut you off. I want you to put
6 everything that you need to on the record.

7 Assuming, even if I take as true and assume that
8 the warrant affidavit is itself defective, why does the
9 good faith exception not apply?

10 MS. SUGGS: Because the courts actually tell us.
11 And the Court in State versus Weston tells us that the
12 good faith exception does not apply to a warrant that
13 is facially defective. It only applies in cases where
14 information may have been supplied that wasn't
15 completely accurate.

16 But when a warrant completely fails to provide
17 probable cause, State versus Weston instructs that you
18 can't use the good faith exception. There actually is
19 no exception when a warrant does not give enough for an
20 issuing magistrate to make a determination of probable
21 cause.

22 THE COURT: Do we know whether or not there was
23 any sworn supplemental information provided to the
24 magistrate, or do we just not know that?

25 MS. SUGGS: Well I can tell you as an officer of

1 the Court that I have spoken to the detective who
2 obtained this warrant and was advised by her that, no,
3 she did not give any verbal testimony to the magistrate
4 who signed this warrant.

5 I think the warrant very clearly is defective.
6 In fact there were several warrant in this case. There
7 were several search warrants. They got phone records
8 from the victim. Alabama went ahead and got a search
9 warrant for the defendant's car. We aren't challenging
10 those warrants, Judge.

11 We are challenging this one because it is so
12 very clearly defective on its face that the DNA that was
13 collected from Randal Benton was collected in violation
14 of the constitution.

15 THE COURT: Okay. Yes, sir.

16 MR. HILTON: Your Honor, I respectfully disagree
17 with the defendant's position. I think it does state
18 probable cause in the affidavit. Not only do you have
19 the victim dead beside the defendant's car, but you
20 also have witnesses at the scene that put them together
21 minutes prior to the shooting.

22 And they get these statements from these
23 eyewitnesses, and that coupled with the fact of these
24 DNA swabs that were subsequently processed from the car
25 pursuant to another search warrant, they have these

1 unknown samples, they have this information that Mr.
2 Benton was the shooter in this case, and they needed to
3 match those two up.

4 So while the affidavit isn't exhaustive of all
5 of the stuff that they had, it does state probable
6 cause that would give a magistrate or municipal court
7 judge sufficient information to be able to determine
8 whether probable cause existed. And I think that's
9 clear from the face of the affidavit.

10 THE COURT: Yes, ma'am, or Mr. Loy.

11 MS. SUGGS: Judge, I would just -- whether or
12 not they had witnesses that placed him at the scene,
13 whether or not they had eyewitnesses that described
14 what the shooter looked like, none of that was in the
15 affidavit. None of that was given to the magistrate.

16 We can't look back now and say, oh well, it's
17 fine now. What was given to the magistrate just wasn't
18 enough to rise to the level of probable cause. And I
19 think that's what you are getting at when you say is
20 there a good faith exception. There just isn't.

21 THE COURT: Well sometimes there isn't.

22 MS. SUGGS: So --

23 THE COURT: However, comma, Johnson should not
24 be read as prohibiting application of the good faith
25 exception every time an affidavit fails to satisfy the

1 technical requirements of the police.

2 MS. SUGGS: I agree, Judge. If I may respond?

3 THE COURT: You may.

4 MS. SUGGS: Weston goes on to say, and Weston is
5 actually on point, in a case where there is absolutely
6 nothing connecting the defendant to the crime. And in
7 this case there is actually, if you read the affidavit,
8 there is nothing connecting him to the crime.

9 The one thing that they may have put in there is
10 that witnesses saw the victim and the defendant at the
11 crime scene, but they don't even say that. They said,
12 the witnesses saw the victim and the shooter at the
13 crime scene. So at that point they're not even willing
14 to go as far as to say that it was Randal Benton that
15 was at the scene.

16 So, you know, Weston and Johnson both tell us
17 that while they're not willing to say that they would
18 never excuse a warrant, they are willing to say that
19 when there is no connection between the defendant and
20 the crime itself.

21 THE COURT: I think that the fact that the
22 officer used perhaps poor language and could have been
23 more specific in her affidavit is not enough to viciate
24 the good faith exception. And it's certainly more than
25 we have here in State v Weston which I just read while

1 we were arguing.

2 They placed -- even if she had put witnesses on
3 the scene, placed the individuals, the victim and
4 someone inside the vehicle, a reasonable magistrate
5 could have interpreted this to mean placed the victim
6 and Benton, and she just happened to refer to Benton as
7 the shooter instead.

8 So I'm going to respectfully deny the motion to
9 suppress the DNA.

10 MS. SUGGS: Thank you, Your Honor. Those are
11 all the motions we have at this point.

12 THE COURT: That's all? Okay.

13 MR. HILTON: Your Honor, if I can clarify.
14 There was some discussion earlier in chambers about the
15 motion to suppress that I guess the gun was found in
16 Mr. Benton's truck down in Alabama. And if I heard
17 correctly just a few minutes ago Ms. Suggs said that
18 they weren't going to contest that.

19 And we just need to know for scheduling purposes
20 with our witnesses from Alabama.

21 MS. SUGGS: I didn't say that. We are still
22 planning on going forward on the motion at this point.

23 THE COURT: I think the understanding was that
24 those folks weren't going to be here until tomorrow.
25 So I wasn't going to make them argue a motion when the

1 witnesses they might need to cross aren't here yet.

2 MR. HILTON: Right. And one thing in addition
3 to that, Judge, is we were talking about this over the
4 lunch break, and we had talked about putting that
5 motion off until tomorrow.

6 If possible, we'd like to do any motions before
7 the Court now, and then if there is testimony that
8 needs to be heard we just need to know so that we can
9 get those witnesses from Alabama.

10 I mean, it's not really judicially efficient or
11 doesn't really serve any purpose to hold off until
12 tomorrow on those motions and then find out that we
13 need a particular witness who wasn't scheduled to come.

14 THE COURT: Why aren't they here today then,
15 whoever we needed for the motions? I think she's filed
16 the motions a while back, correct?

17 MS. SUGGS: No, ma'am.

18 THE COURT: You knew the car and the warrant
19 were going to be an issue I would assume.

20 MR. HILTON: This is the first I have got any of
21 these motions. And so, you know, those witnesses were
22 scheduled to come for the trial tomorrow. We have
23 called them to be here earlier tomorrow. But if we
24 need additional witnesses and so forth, I just need to
25 know now.

1 Unless they plan on subpoenaing those witnesses.

2 THE COURT: That's what I was going to say.

3 Have you subpoenaed anybody to be here?

4 MS. SUGGS: We have not subpoenaed anyone from
5 Alabama to be here, Judge. I can't imagine calling
6 anyone that the State doesn't already know. I mean,
7 everyone that is on the arrest warrant, everyone that
8 was involved in the warrant itself. We would certainly
9 not be calling anybody else.

10 THE COURT: What exactly is your issue? I
11 thought we had resolved that we were going to do any
12 motions dealing with Alabama and the car tomorrow.

13 MR. HILTON: We were. But over the lunch break
14 we thought about what witnesses we may need. If the
15 motion includes Captain Van Jackson and Officer Dan
16 Davis, if it's those two individuals and that will
17 suffice what the defense needs, then they're scheduled
18 to be here and so that's really all we need to know.

19 If it's someone in addition we would like to
20 know that so that we can make arrangements for them.

21 THE COURT: If it's somebody in addition that
22 they need, I would say that they need to put a subpoena
23 on them.

24 MR. LOY: Your Honor, it's our intention
25 tomorrow to contest the original seizure of Mr. Benton,

1 his arrest on scene, as well as the initial seizure of
2 his truck.

3 THE COURT: And this all happened in Alabama,
4 correct?

5 MR. LOY: This all happened in Alabama. I don't
6 think -- if the officers that we would need for that
7 are not here, then that evidence is not coming in at
8 any rate.

9 THE COURT: Right. I'm not quite sure why this
10 is an issue.

11 MR. LOY: But that would be our motion in the
12 morning is just to suppress the initial seizure of Mr.
13 Benton, as well as the seizure of his property. And
14 any search or seizure which arose as a result of that
15 are the fruit of that initial illegal seizure.

16 THE COURT: I understand.

17 MR. HILTON: And those officers will be here for
18 that.

19 THE COURT: Okay, that's what they need.

20 What we are going to do, you know we are going
21 to strike the jury first. So whenever I can get your
22 all's voir dire that would be great, or if you all can
23 agree on it. And then I want to be able to let the
24 part of the panel go that isn't part of this trial.

25 Do you think we need two alternates?

1 MR. HILTON: Yes, ma'am.

2 THE COURT: Okay. And then we will hear any
3 motions you need. And that will just make the decision
4 over when I tell them to come back. So you all just
5 give me a ball park, if we need an hour to hear those
6 suppression motions, those may take a little longer, 30
7 minutes, whatever, we will just use that to gauge what
8 our break is tomorrow.

9 How's that?

10 MR. HILTON: That's fine with the State.

11 MS. SUGGS: Sounds good.

12 THE COURT: All right. What else housekeeping
13 wise before we get started?

14 MS. SUGGS: I have nothing further.

15 MR. HILTON: Nothing from the State, Your Honor.

16 THE COURT: Great. And do I already have a copy
17 of the motions for tomorrow?

18 MS. SUGGS: No, ma'am.

19 Do you need our voir dire right now also?

20 THE COURT: If you have it. The more I can get
21 right now the better. It's just more work I can get
22 done today if we don't have a lot of pleas.

23 Any exhibits that you all can get pre-marked, or
24 things you know you can agree on, that will certainly
25 make things move more smoothly.

1 MR. LOY: Your Honor, we have discussed with the
2 solicitor, I know they intent to introduce photographs,
3 we have been shared reams of photographs. Some of
4 those are obviously objectionable. And we have
5 discussed getting together and looking at the ones they
6 intended to submit.

7 I don't know whether or not they have culled
8 them down at this point or have a packet proposed that
9 we could look at to see whether or not we do have
10 objections to those or not.

11 MR. HILTON: We can certainly do that this
12 afternoon. I agree there are some in there that may be
13 a little too prejudicial. We will ferret those out.

14 THE COURT: Great. The more you all can
15 pre-mark the better. And then we will rule on the ones
16 we need to rule on.

17 MR. HILTON: I will go ahead and give a copy of
18 my witness list to the defense, and the court if you
19 like.

20 THE COURT: Thank you. Great, that would be
21 wonderful.

22 MR. HILTON: And just for the record, the
23 defense asked for rap sheets on lay witnesses. We
24 talked about that in chambers. And those rap sheets,
25 with the exception of the defendant's two ex-wives,

1 have been provided. At this time the two ex-wives are
2 not going to be used in the case in chief, and may not
3 be used at all.

4 If they are, we will provide those rap sheets at
5 the time. We just don't have sufficient information to
6 run rap sheets on those two individuals.

7 MS. SUGGS: May I approach?

8 THE COURT: Yes, thank you.

9 Okay, what is next? Anything?

10 MR. HILTON: Nothing from the State, Your Honor.

11 THE COURT: All right.

12 MS. SUGGS: Nothing from defense.

13 MR. HILTON: In the recess we will go through
14 these photographs and so forth and try to give you what
15 we can.

16 THE COURT: Okay. Thank you all.

17 (Whereupon, the proceedings in this matter
18 before the Court were adjourned for the evening.)

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1 THE COURT: Okay. I think we worked everything
2 out with voir dire. I wanted to put a few things on
3 the record while Mr. Loy and Ms. Suggs' client was
4 present. The State objected to Number 1, Number 6 and
5 Number 13 of defendant's requested voir dire.

6 The objection to Number 1 was to insert a close
7 personal friend, not just a friend or acquaintance of a
8 member of law enforcement agency. The defense
9 consented, and the Court would have granted that either
10 way.

11 Has any member of the panel discussed this case
12 or heard anyone else discuss this or a similar case was
13 Number 6. That was somewhat over-broad because of the
14 similar case just opens that up. Again the defense
15 consented to this specific case and whether anyone had
16 discussed it and with whom. So the Court will ask that
17 question striking the language, this or a similar case.

18 And Number 13, has any member of the panel ever
19 sat on a jury before, if so what type and what was the
20 verdict. And has any member of the panel ever received
21 assistance from the victim's advocacy program. The
22 State objected to that request, and the Court
23 respectfully denied that objection and will be asking
24 that of the panel.

25 Anything else we need to put on the record

1 before we bring them back? We still have a couple
2 minutes.

3 MR. LOY: Your Honor, for the defense only that
4 the Court's representations as read into the record are
5 correct. That did reflect, we acquiesced in those
6 modifications.

7 THE COURT: I appreciate that, thank you.

8 What about anyone else? Were there any other
9 specific objections to anyone, or can we bring them up
10 during the rest of the voir dire process? I just
11 wanted to make sure you all are protected on the
12 record.

13 MR. LOY: Your Honor, our only objection is to
14 the gentleman who stood up and said he worked for the
15 North Charleston Police Department and he's a
16 commissioned law enforcement officer. We believe that
17 would be cause for --

18 THE COURT: Okay. Anything from the State on
19 that?

20 MR. HILTON: As far as the animal control
21 officer?

22 THE COURT: Was he the animal control officer?

23 MR. LOY: He is, but he indicated he works for
24 the North Charleston Police Department in their animal
25 control department.

1 MR. HILTON: I think the question is whether he
2 has power of arrest.

3 THE COURT: Isn't it a state commissioned law
4 enforcement officer as well? I mean I've had local law
5 enforcement on juries before.

6 MR. LOY: He is a constable also, Your Honor.

7 MR. HILTON: I think the inquiry is whether he
8 has the authority to arrest. And that wasn't clear
9 from what he said in here.

10 THE COURT: I agree. I will take a look at
11 that. I'm going to deny that for now.

12 My law clerk is telling me animal control
13 officers can arrest people. And they can carry a
14 Glock. Okay. All right. I'm going to let him go
15 then. What was his juror number, do we know?

16 MS. SUGGS: 7.

17 THE COURT: All right. Number 7 will be
18 excused.

19 MR. HILTON: Your Honor, we have confirmed with
20 regard to Juror Number 138, Mr. Javon Townes, he came
21 up to the side and said that he had been convicted of
22 criminal conspiracy and indicated Mr. Jim Smiley was
23 his attorney. That information has been verified on
24 the Charleston County clerk of court's page.

25 We noticed when we ran his rap sheet, we spelled

1 his last name wrong, transposed two letters. So we do
2 believe he has been convicted and is disqualified.

3 THE COURT: Okay. So Number 7 and Number 138
4 will be disqualified. Okay, anybody else?

5 MR. LOY: No, Your Honor, thank you.

6 THE COURT: We are going to go through the voir
7 dire and we will see if we have enough to go. You
8 know, you all have your strikes. And you certainly are
9 going to have some people that probably will be
10 excused, it just happens every time. We will make sure
11 that everybody gets protected.

12 why don't you take a five minute break, then we
13 will be back.

14 Thank you.

15 (Whereupon, a recess was taken.)

16 The COURT: You all ready?

17 MS. SUGGS: Ready from the defense.

18 MR. HILTON: State is ready.

19 (Whereupon, the jurors enter the courtroom.)

20 (Whereupon, a discussion was held at the bench
21 off the record.)

22 THE COURT: Ladies and gentlemen, we are
23 selecting a jury this week in the case of State of
24 South Carolina versus Randal William Benton. This case
25 involves indictment 2010-1675 which is a murder

1 indictment.

2 The indictment states that in Dorchester County,
3 on or about October 30, 2010, with malice aforethought,
4 the defendant, Randal William Benton, did kill one
5 Treva Dawn Benton, by means of shooting the victim with
6 a pistol, and that the victim died as a proximate
7 result of the shooting. This is the shooting that took
8 place in the Perkins parking lot.

9 The indictment is in no way evidence in the
10 case. This is just the procedural document by which
11 the case is brought into court. Nothing in the
12 indictment is evidence. The burden is on the State to
13 prove beyond a reasonable doubt any and all facts as
14 alleged in the indictment, and the elements of the
15 crime if they are to convict of the defendant, who is
16 presumed innocent throughout the entire proceeding.

17 However, I give you this information not just to
18 publish the indictment but to let you know which case
19 we will be trying this week in case any of you have
20 special knowledge, or there is some reason why you
21 could not be fair and impartial, or why it would be
22 inappropriate for you to sit as a juror on this
23 particular case.

24 To that end, I have a series of questions that
25 specifically could apply to this case that will help

1 both the state and the defense select a fair and
2 impartial jury. We are going to go through these
3 additional what we call voir dire requests now.

4 And as before, if any of them apply to you, if
5 you will stand and give us your name and juror number
6 and answer the question. And if we need to further
7 inquire, we might bring you forward as we did before.
8 Again, you are under oath. And we need you to answer
9 these questions appropriately and as accurately as
10 possible pursuant to the oath that you took this
11 morning.

12 The first question, is any member of the jury
13 panel related by blood or marriage to, or a close
14 friend of a member of any law enforcement agency, if so
15 please stand.

16 And on that note we are going to excuse Juror
17 Number 7. Thank you for bringing that up, sir. You
18 may go. You are excused.

19 Anybody else, a member of the panel related by
20 blood or marriage, or a close personal friend of a
21 member of any law enforcement agency, if so please
22 stand.

23 Yes, sir. If you could give us your name and
24 juror number.

25 A JUROR: Jerremy Strickland, 129. My father is

1 a retired highway patrol.

2 THE COURT: Okay. Sir, would that in any way
3 affect your ability to be fair and impartial in this
4 case?

5 A JUROR: No, ma'am.

6 THE COURT: Thank you, sir. Yes, ma'am.

7 A JUROR: Heather Matthews, Juror 78. My father
8 is a corrections officer in Noble County, Ohio.

9 THE COURT: Okay. You said 78?

10 A JUROR: Yes.

11 THE COURT: Ma'am, would that in any way affect
12 your ability to be fair and impartial in this case?

13 A JUROR: No.

14 THE COURT: Thank you, ma'am, I appreciate that.
15 Yes, ma'am.

16 A JUROR: Debra Thomas, 132. My brother-in-law
17 is a retired highway patrolman from South Carolina.

18 THE COURT: Would that in any way interfere with
19 your ability to be fair and impartial in this case?

20 A JUROR: Yes.

21 THE COURT: It would. Number 132 is excused.
22 Thank you. Ma'am, you are excused for this particular
23 trial. If you would call in after 6 o'clock if you
24 would.

25 A JUROR: Okay.

1 THE COURT: Thank you, ma'am. I appreciate
2 that.

3 In addition from earlier this morning, Number
4 138 is excused from the trial of this case and for the
5 week. Thank you, sir.

6 I'm going to ask the counsel for the State to
7 stand up and introduce themselves to you and the folks
8 at their table.

9 Oh, wait a minute. Yes, sir.

10 A JUROR: Your Honor, the assistant solicitor
11 here, Russell Hilton and I, are life-long friends. we
12 did everything together. I just wanted to let you know
13 that.

14 THE COURT: What's your juror number, sir?

15 A JUROR: Michael Kimmerlin, 71.

16 THE COURT: Number 71. Would that friendship
17 interfere with your ability to be fair and impartial in
18 the trial of this case?

19 A JUROR: None whatsoever.

20 THE COURT: 71, thank you. You will remain.
21 Okay, and -- yes, sir.

22 A JUROR: I know one of the solicitors, Mandy
23 Kimmons.

24 THE COURT: Okay. And what is your juror
25 number, please?

1 A JUROR: 154.

2 THE COURT: Okay. Would that friendship or
3 knowledge interfere with your ability to be fair and
4 impartial in this case?

5 A JUROR: No, ma'am.

6 THE COURT: Okay. 154 will remain.

7 I'm going to ask counsel for the State to stand
8 up if they would and face the panel and introduce
9 yourselves.

10 MR. HILTON: Thank you, ladies and gentlemen.
11 I'm Russell Hilton with the solicitor's office.
12 Together with me in this case is Mr. Barney Giese,
13 another solicitor here in the office.

14 In our office we also have Mr. Vergil Deas;
15 Miley Coleman, both of those individuals do family
16 court work. We also have Glenn Justis, Matt Austin,
17 Meghan Hall, Mandy Kimmons. And our elected solicitor
18 is Mr. David Pascoe.

19 THE COURT: Is any member of the panel related
20 by blood or marriage to, or a close personal friend of
21 anybody employed with any of the folks sitting at the
22 table, or with the solicitor's office of the First
23 circuit, if so please stand.

24 Close personal friend, related by blood or
25 marriage, if you have not already stood.

1 How about the office of the attorney general,
2 any solicitor or prosecuting attorney's office, or has
3 anyone worked -- does anyone work with, or worked in
4 the past, with either the South Carolina Attorney
5 General's office, a solicitor's office, or any
6 prosecuting attorney's office. If anyone on the panel,
7 or a member of your family or a close personal friend
8 has worked for any of those offices, please stand.

9 Okay.

10 Mr. Loy, if you and Ms. Suggs could introduce
11 yourselves to the panel and your client, please.

12 MR. LOY: Thank you, Your Honor. I'm John Loy.
13 At the table with me today also is Ms. Michelle Suggs.
14 I'm a public defender, as is she. This is Mr. Randal
15 Benton who's case some of you will be hearing this
16 week.

17 Also in the public defender's office is Mr.
18 Mitch Farley, Mr. Ash Chisolm, Mary LeMatty, all of
19 those are public defenders. We have juvenile public
20 defenders also, and that would be Al Biggs and Ms. Gina
21 McAhany. Katie Dalheim is also a lawyer who's employed
22 with our office.

23 Our circuit public defender is Mr. Mark
24 Leiendecker. And we all work under his guidance.
25 Thank you.

1 THE COURT: Any member of the panel related by
2 blood or marriage, or a close personal friends of any
3 of these folks with the public defenders office or Mr.
4 Randal William Benton, if so please stand.

5 Okay, I find none.

6 Has any member of the panel ever been employed
7 by any civilian or military law enforcement agency, if
8 so please stand.

9 Finding none.

10 I'm going to read a list of witnesses. These
11 are just potential witnesses that may be called in the
12 trial of the case. I'm going to ask you to listen to
13 this list.

14 And if any member of the panel is employed by,
15 related by blood or marriage to, or a close personal
16 friend of any of these witnesses on this list I'm about
17 to read, I'm going to ask you to please stand for us.

18 Potential witnesses, Captain Van Jackson of the
19 Lee County Sheriff's Office in Alabama. Mynda Poff.
20 Salina Kinard of SLED. Sgt. Cassandra Williams of the
21 Summerville Police Department. Jesse Scott, goes by
22 Michael Palmer the IV.

23 Trey Hardee of the Summerville Police
24 Department. Calder Scott Herbert. Suzanne Cromer of
25 SLED. Sgt. Dan Davis of the Phoenix City Police

1 Department in Alabama.

2 Jesse Scott Palmer, III. Detective Shannon
3 sharp of the Summerville Police Department.
4 Pathologist Kelly Rose. Veronica Collins. Sgt. Randy
5 Olsen of the Summerville Police Department. Jessica
6 Russell. Katie Urka, U-R-K-A, of SLED.

7 Officer Mary Sullivan of the Summerville Police
8 Department. Erica Hill. Officer Steve Allison. Illa
9 Simmons of SLED. Brad Morelli. Maryann E. Boehm of
10 SLED. Officer Hobie Williams of SLED. Toni Broome of
11 SLED.

12 Irene Kantor. Rita Cunningham. Angel Sheree
13 Bolling. Vicky Wyndham. Marguerite Stead. Mindy
14 Steele. Michelle Herbert. Jeremy Palmer. Tamera
15 Manahan. Kama Brown. Mark Fike. Brandy Dewitt.
16 Kathy Bryant. Melissa Skipper. Jerry Riley.

17 If any member of the panel has ever been
18 employed by, is related by blood or marriage to, or a
19 close personal friend of any of the prospective
20 witnesses in this case, please stand.

21 Okay, I find none.

22 Has any member of the jury panel discussed this
23 case that we are going to hear this week, or heard
24 anyone else discuss it either today or before today, if
25 so please stand.

1 Finding none.

2 Has any member of the panel already formed any
3 opinion about this case?

4 Finding none.

5 Has any member of your family, or any close
6 personal friend ever been the victim of murder, if so
7 please stand.

8 Find none.

9 Is any member of the panel, a member of your
10 family, or a close personal friend a member of MADD,
11 Mothers Against Drunk Driving; SADD, Students Against
12 Drunk Driving; CAV, I think that's Citizens Against
13 Violent Crime; or any other similar type organization
14 which has a goal of promoting law enforcement, if so
15 please stand.

16 Anybody a member of any such organization, or
17 close personal friend or member of your family is.

18 yes, ma'am. Stand please.

19 A JUROR: Juror Number 34. I'm not a member,
20 however, we -- I work with the Alcohol and Drug
21 Commission and we educate about DUI and drunk driving.

22 THE COURT: Okay. Ma'am, would that work in any
23 way interfere with your ability to be fair and
24 impartial in the trial of this case?

25 A JUROR: I don't think so.

1 THE COURT: Well you don't think so or you --
2 can you be fair and impartial?

3 A JUROR: I can be fair, yes.

4 THE COURT: Okay. Number 34 will remain.
5 Anyone else?

6 Is there anything about the nature of the
7 allegations in this case, from what you've heard or may
8 know about it, which would cause any member of the
9 panel to have a problem sitting as an impartial juror
10 for this trial?

11 Any reason why you could not be impartial in the
12 trial of this case, if so please stand.

13 Find none.

14 Is any member of the jury panel related to by
15 blood or marriage, or was a friend or acquaintance of
16 Treva Benton, if so please stand.

17 Okay, find none.

18 This case may involve some testimony regarding
19 the use of alcohol and/or drugs. Does any member of
20 the jury panel have any moral or religious opposition
21 to the use of alcohol or drugs, if so please stand.

22 Has any member of the panel ever sat on a jury
23 before?

24 And if you have, I'm going to ask you to stand
25 and tell us what type of case it was, and what the

1 verdict was.

2 Yes, ma'am. Your name and juror number, please.

3 A JUROR: 103. It was an insurance fraud.

4 THE COURT: Okay. I'm going to ask this just to
5 be on the safe side. Would that, participation as a
6 juror in an insurance fraud case interfere with your
7 ability to be fair and impartial in this case?

8 A JUROR: No, ma'am.

9 THE COURT: Thank you. Yes, ma'am, Number 34.

10 A JUROR: Yes. I did sit on a jury for a child
11 sexual abuse case.

12 THE COURT: Okay. And would that, work on that
13 jury in any way interfere with your ability to be fair
14 and impartial in this case?

15 A JUROR: No.

16 THE COURT: What was the verdict in that case?

17 A JUROR: Guilty.

18 THE COURT: Okay, thank you ma'am. Yes, ma'am.

19 A JUROR: Number 87. I have served on a jury
20 for spousal abuse.

21 THE COURT: Okay. What was the verdict in that
22 case?

23 A JUROR: It was dismissed.

24 THE COURT: Okay. Would that jury work in any
25 way interfere with your ability to be fair and

1 impartial in this case.

2 A JUROR: No.

3 THE COURT: Thank you, ma'am.

4 Yes, sir.

5 A JUROR: 99, a drunk driving case.

6 THE COURT: What was the verdict?

7 A JUROR: Guilty.

8 THE COURT: Would service on that jury and
9 rendering of the verdict in any way interfere with your
10 ability to be fair in this case.

11 A JUROR: Not at all.

12 THE COURT: Thank you.

13 Yes, sir.

14 A JUROR: Number 80. Medical malpractice.

15 THE COURT: Okay. And what was you all's
16 verdict?

17 A JUROR: Not guilty.

18 THE COURT: For the defendant?

19 A JUROR: Yeah. Would that work on that civil
20 jury in any way interfere with your ability to be fair
21 in this case?

22 A JUROR: No.

23 THE COURT: Thank you, sir.

24 Yes, ma'am.

25 THE COURT: 136. I worked in the state of New

1 York City of racketeering and drugs.

2 THE COURT: And what was the verdict?

3 A JUROR: Both were guilty.

4 THE COURT: And would that service in any way
5 interfere with your ability to be fair in the trial of
6 this case?

7 A JUROR: No, ma'am.

8 THE COURT: Thank you.

9 Yes, sir.

10 A JUROR: 129, driving under the influence,
11 guilty.

12 THE COURT: And would work on that jury in any
13 way interfere with your ability to be fair in the trial
14 of this case?

15 A JUROR: No, ma'am.

16 THE COURT: Thank you, sir.

17 Anybody else?

18 Has any member of the jury panel ever received
19 assistance from a victim advocacy program, if so please
20 stand.

21 Yes, ma'am.

22 A JUROR: About five years ago I was a victim of
23 domestic violence.

24 THE COURT: Okay. And what is your juror
25 number, please, ma'am?

1 A JUROR: 105.

2 THE COURT: And would that experience in any way
3 interfere with your ability to be fair and impartial in
4 the trial of this case?

5 A JUROR: No, ma'am.

6 THE COURT: Okay, thank you.

7 Anyone else?

8 Has any member of the jury panel, or any member
9 of your family, ever been prosecuted here or anywhere,
10 and you have not already brought that to the court's
11 attention, because I have already spoken to a couple of
12 you all, if so please stand.

13 Yes, ma'am.

14 A JUROR: Number 16, Corine Britt. I have a
15 nephew in prison in Florida for attempted murder.

16 THE COURT: All right. And would that
17 experience in any way interfere with your ability to be
18 fair and impartial in this case?

19 A JUROR: No.

20 THE COURT: Thank you, ma'am.

21 Yes, ma'am.

22 A JUROR: Juror Number 41. My estranged husband
23 has been convicted of drug-related charges in the past.

24 THE COURT: And would that in any way interfere
25 with your ability to be fair and impartial in this

1 case?

2 A JUROR: No, ma'am.

3 THE COURT: Okay, thank you.

4 Anybody else?

5 okay, if I could see the attorneys real quick.

6 (Whereupon, a discussion was held at the bench
7 off the record.)

8 THE COURT: Ladies and gentlemen, I have a
9 matter I need to put on the record with the attorneys,
10 so I'm going to ask you all to step out for about five
11 minutes and then we will bring you back in and we will
12 get ready to strike.

13 (Whereupon, the jurors exit the courtroom.)

14 THE COURT: All right, we had a couple things we
15 were going to strike for cause, or move to strike for
16 cause and I want to make sure everybody gets their
17 information to put on the record.

18 MR. LOY: Thank you, Your Honor. First as to
19 Juror Number 71, Michael Kemmerlin, who to my
20 recollection stood and indicated, I am a life-long
21 friend of Mr. Russell Hilton, who is in fact lead
22 counsel for the state on this case. And he detailed
23 some of their activity and things that they had done
24 together.

25 I do think that that's such a close personal

1 relationship as a matter of law I'd ask the Court to --

2 THE COURT: Thank you. Anything on the record
3 you want to put about that?

4 MR. HILTON: Nothing, Your Honor.

5 THE COURT: Thank you. I will strike Mr.
6 Kemmerlin, Number 71, for cause.

7 Yes, sir.

8 MR. LOY: Your Honor, I'm sorry, I'm having a
9 hard time coming up with a jury number. But there was
10 another young lady who toward the end of the jury
11 questions indicated that she had been a victim of
12 criminal domestic violence.

13 THE COURT: I think she was 105.

14 MR. LOY: Yes, ma'am, Ms. Proveaux indicated she
15 had been a victim of criminal domestic violence. And
16 my concern is that her circumstance may so closely
17 parallel this case and she doesn't really have the
18 information at this point in time to know whether or
19 not her prior experience would impact upon her ability
20 to be fair and impartial.

21 It's not just a crime of violence, it's a crime
22 between husband and wife. Her implication was that
23 that's what she suffered also. And I don't want us to
24 be in a situation where halfway through the proceeding
25 or something it does become an issue and she says, wait

1 a minute, I have been through this myself.

2 THE COURT: I certainly appreciate that.

3 MR. LOY: So, Your Honor, I would move to ask
4 the Court to strike her from the panel for cause.

5 THE COURT: Okay. I believe she was pretty
6 unequivocal in stating that she could be fair and
7 impartial. But I'm happy to hear from the State on
8 that.

9 MR. HILTON: I agree, Your Honor. And that is
10 certainly somebody that the defense would be able to
11 use one of their strikes on.

12 THE COURT: And I agree. I'm going to deny your
13 request to strike her for cause. If you want to use
14 one of your preemptory strikes you certainly may.

15 MR. LOY: And, Your Honor, if I may make the
16 Court aware, that in the event she is called and I have
17 a strike, I intend to strike her. However, just for
18 preservation of my record I would ask you to strike for
19 cause at that point, and then strike.

20 THE COURT: Okay, that's fine.

21 I think it has been denied, I think you are
22 protected. But I certainly will let you double protect
23 it.

24 Anybody else?

25 MR. HILTON: Nothing from the State.

1 THE COURT: Anything else?

2 MR. LOY: No, Your Honor, thank you.

3 THE COURT: Okay, great. Thank you. Strikes
4 are 5 and 10 and 2 alternates.

5 MR. LOY: And just for purposes of our record,
6 Your Honor, we would waive formal arraignment unless
7 the State insists upon it.

8 THE COURT: Thank you, I appreciate that.

9 What about, are the folks here from Alabama to
10 do the motions we need to do?

11 MR. HILTON: They are, Your Honor.

12 THE COURT: So what my thought is we will strike
13 the jury. Let them go. You all need to go have time
14 to eat lunch. So you all tell me what time you want to
15 come back to do the motion. You all want to come back
16 at 1:30 and then bring them back 45 minutes later or an
17 hour later?

18 I just want to be able to tell them. I just
19 don't know how long your motions are going to take.

20 MR. LOY: Your Honor, as to the motions to the
21 initial seizure in Alabama, those are waived at this
22 point unless something comes up in the testimony they
23 may be renewed. But we do not need a pretrial motion
24 on this.

25 THE COURT: Okay. Anything else we need a

1 pretrial motion on before we get started?

2 MR. LOY: No, Your Honor.

3 MR. HILTON: So if I understand right, there are
4 no Alabama motions?

5 MR. LOY: Mirroring the State's position as to
6 every witness and piece of evidence at this time, Your
7 Honor. I mean if it becomes relevant then we may
8 object. But we do not need a hearing at this point
9 and I do not anticipate. And we do not need a pretrial
10 or an in limine hearing as to the --

11 THE COURT: Okay, no, I appreciate that. When I
12 left yesterday we still needed one. So that's why I
13 want to make sure we are all on the same page.

14 MR. LOY: We are, Your Honor.

15 THE COURT: Okay, great.

16 MR. HILTON: If we strike and select the jury,
17 and then maybe come back. It's 11:30 now, so an hour
18 after we pick the jury.

19 THE COURT: You all want to come back and get
20 ready to roll?

21 MR. LOY: Or 90 minutes, Your Honor.

22 THE COURT: Yes, let's take an hour and a half.
23 You all can have time to get ready for opening and then
24 we can get started.

25 And just so you all know for planning purposes,

1 I have a legislative matter I have to deal with in
2 Columbia tonight, and I have to be there right around 6
3 o'clock. So we will probably go until 4:45.

4 So I may stop a little earlier today than I
5 normally would because I know we have got to get this
6 in this week. I will probably try to stop around 4:30,
7 4:45 so all the judges of the State can go host the
8 legislature for a reception. So anyway, I apologize.

9 All right. I guess we are ready.

10 Are you all ready?

11 MR. LOY: Ready for the defense, Your Honor.

12 MR. HILTON: State is ready.

13 THE COURT: All right. Thank you, sir.

14 (Whereupon, the jurors enter the courtroom.)

15 THE CLERK: As I call your name, please come
16 forward, turn around and face the back of the
17 courtroom.

18 Juror Number 69, Anthony Kalafus.

19 (Whereupon, a white male approaches.)

20 What say you for the State?

21 MR. HILTON: Please seat this juror.

22 THE CLERK: What say you for the defense?

23 MR. LOY: Please excuse the juror.

24 THE CLERK: You can have a seat back in the
25 audience.

1 Juror Number 60, Calvin Howard.
2 (Whereupon, a black male approaches.)
3 THE CLERK: What say you for the State?
4 MR. HILTON: Please seat this juror.
5 THE CLERK: What say you for the defense?
6 MR. LOY: Please seat this juror.
7 THE CLERK: Have a seat in the jury box to your
8 left. Thank you.
9 Juror Number 41, Shelley Forest.
10 (Whereupon, a white female approaches.)
11 THE CLERK: What say you for the State?
12 MR. HILTON: Please seat this juror.
13 THE CLERK: What say you for the defense?
14 MR. LOY: Please seat this juror.
15 THE CLERK: Have a seat in the jury box to your
16 left.
17 Juror Number 87, Victoria Mizell.
18 (Whereupon, a white female approaches.)
19 THE CLERK: What say you for the State?
20 MR. HILTON: Please seat this juror.
21 THE CLERK: What say you for the defense?
22 MR. LOY: Please seat this juror.
23 THE CLERK: Thank you.
24 Juror Number 77, Steven Mann.
25 (Whereupon, a white male approaches.)

1 THE CLERK: What say you for the State?
2 MR. HILTON: Please seat this juror.
3 THE CLERK: What say you for the defense?
4 MR. LOY: Please seat this juror.
5 THE CLERK: Have a seat in the jury box to your
6 left.
7 Juror Number 28, Cindy Cooper.
8 (Whereupon, a black female approaches.)
9 THE CLERK: What say you for the State?
10 MR. HILTON: Please seat this juror.
11 THE CLERK: What say you for the defendant?
12 MR. LOY: Please seat this juror.
13 THE CLERK: Have a seat in the jury box.
14 Juror 136, Aliza Tortosa.
15 (Whereupon, a black female approaches.)
16 THE CLERK: What say you for the State?
17 MR. HILTON: Please seat this juror.
18 THE CLERK: The defense?
19 MR. LOY: Please seat this juror.
20 THE CLERK: Have a seat in the jury box.
21 Juror Number 5, Paula Alexander.
22 (Whereupon, a white female approaches.)
23 THE CLERK: What say you for the State?
24 MR. HILTON: Please seat this juror.
25 THE CLERK: What say you for the defense?

1 MR. LOY: Please excuse the juror.
2 THE CLERK: Have a seat back in the audience.
3 Juror Number 91, Eleanor Marrow.
4 (Whereupon, a white female approaches.)
5 THE CLERK: What say you for the state?
6 MR. HILTON: Please seat this juror.
7 THE CLERK: The defense?
8 MR. LOY: Please seat this juror.
9 THE CLERK: Have a seat in the jury box.
10 Juror 141, Joseph Vella, Jr.
11 (Whereupon, a white male approaches.)
12 THE CLERK: What say you for the State?
13 MR. HILTON: Please excuse the juror.
14 THE CLERK: Have a seat back in the audience.
15 Juror Number 99, Randal Patrick.
16 (Whereupon, a white male approaches.)
17 THE CLERK: What say you for the State?
18 MR. HILTON: Please seat this juror.
19 THE CLERK: The defense?
20 MR. LOY: Please excuse the juror.
21 THE CLERK: Juror Number 64, Richard Hutson.
22 (Whereupon, a white male approaches.)
23 THE CLERK: What say you for the State?
24 MR. HILTON: Please excuse the juror.
25 THE CLERK: Have a seat back in the audience.

1 Juror Number 100, Edward Pelzer, Jr.
2 (Whereupon, a black male approaches.)
3 THE CLERK: What say you for the state?
4 MR. HILTON: Please seat this juror.
5 THE CLERK: What say you for the defense?
6 MR. LOY: Please excuse the juror.
7 THE CLERK: Have a seat back in the audience,
8 please.
9 Juror Number 23, Ralph} Carter.
10 (Whereupon, a white male approaches.)
11 THE CLERK: What say you for the state?
12 MR. HILTON: Please seat this juror.
13 THE CLERK: What say you for the defense?
14 MR. LOY: Please seat this juror.
15 THE CLERK: Have a seat in the jury box.
16 Juror Number, 18 Johnathan Brown.
17 (Whereupon, a white male approaches.)
18 THE CLERK: What say you for the state?
19 MR. HILTON: Please seat this juror.
20 THE CLERK: What say you for the defendant?
21 MR. LOY: Please excuse the juror.
22 THE CLERK: Thank you.
23 Juror Number 9, Martyna Beasley.
24 (Whereupon, a black female approaches.)
25 THE CLERK: What say you for the state?

1 MR. HILTON: Please seat this juror.
2 THE CLERK: The defense?
3 MR. LOY: Swear the juror, please.
4 THE CLERK: Have a seat in the jury box.
5 Juror Number 78, Heather Matthews.
6 (Whereupon, a white female approaches.)
7 THE CLERK: What say you for the state?
8 MR. HILTON: Please seat this juror.
9 THE CLERK: What say you for the defense?
10 MR. LOY: Please excuse the juror.
11 THE CLERK: Thank you.
12 Juror Number 95, David Ockerman.
13 (Whereupon, a white male approaches.)
14 THE CLERK: What say you for the state?
15 MR. HILTON: Please seat this juror.
16 THE CLERK: What say you for the defense?
17 MR. LOY: Please seat this juror.
18 THE CLERK: Have a seat in the jury box.
19 Juror Number 25, Lisa Cobbs.
20 (Whereupon, a black female approaches.)
21 THE CLERK: What say you for the state?
22 MR. HILTON: Please seat this juror.
23 THE CLERK: What say you for the defendant?
24 MR. LOY: Swear the juror, please.
25 THE CLERK: Have a seat in the jury box.

1 Juror Number 29, Ann Corley.
2 (Whereupon, a white female approaches.)
3 THE CLERK: What say you for the state?
4 MR. HILTON: Please seat this juror.
5 THE CLERK: The defense?
6 MR. LOY: Please seat this juror.
7 THE CLERK: Have a seat in the jury box.
8 Judge, that's 12.
9 THE COURT: Okay. Striking for the alternate.
10 THE CLERK: Jury Number 10, Melissa Bissett.
11 (Whereupon, a white female approaches.)
12 THE CLERK: What say you for the state?
13 MR. HILTON: Please seat this juror.
14 THE CLERK: The defense?
15 MR. LOY: Please excuse the juror.
16 THE CLERK: Juror Number 143, Kenneth Wahl, Sr.
17 (Whereupon, a white male approaches.).
18 THE CLERK: What say you for the state?
19 MR. HILTON: Please seat this juror.
20 THE CLERK: The defense?
21 MR. LOY: Swear the juror, please.
22 THE CLERK: Have a seat in the jury box.
23 Alternate number one.
24 Juror Number 103, Margie Port.
25 (Whereupon, a white female approaches.)

1 THE CLERK: What say you for the State?

2 MR. HILTON: Please seat this juror.

3 THE CLERK: The defense?

4 MR. LOY: Please seat this juror.

5 THE CLERK: Have a seat in the jury box.

6 Thank you, Judge.

7 THE COURT: Yes, ma'am, thank you.

8 Ladies and gentlemen, if you have not been
9 selected on the trial of this case, if you would please
10 just call back the number on the card after 6 o'clock
11 tonight and that will give you further instructions.

12 Probably you need to call back after 6:00 every
13 night until Thursday night, but the message will let
14 you know what to do the next day. So if you'll call
15 back tonight after 6 o'clock. You are excused if you
16 have not been selected to sit as a juror on the trial
17 of this case. Thank you for your time.

18 (Whereupon, the jurors exit the courtroom.)

19 THE COURT: Ladies and gentlemen, thank you.
20 You have been selected to serve as our 12 jurors and
21 our 2 alternates on the trial of this case which is
22 expected to last three days. We never can completely
23 accurately estimate how long the trial will take
24 because trials are often uncertain and different issues
25 come up.

1 But these are all excellent attorneys and I know
2 they will keep the evidence moving. But we expect to
3 be here about three days, but definitely finish it
4 before the end of the week.

5 We usually break about an hour and a half for
6 lunch to give everybody a chance to get something to
7 eat. I sometimes have matters of law to take up with
8 the lawyers, and they sometimes have to work through
9 part of lunch. But I still have to let them have a
10 chance to eat as well.

11 I'm going to ask you all to be back in your jury
12 room at 1:15 today. You are not allowed to discuss the
13 case at all with anyone not on the jury, or even with
14 each other, until it has been given to you to
15 deliberate.

16 And at that point, after all of the evidence has
17 been heard and you are given to leave to deliberate,
18 you are only allowed to discuss it with each other at
19 that point. And we will release our alternates at that
20 point because only the 12 jurors can deliberate.

21 So you can't deliberate until you are instructed
22 to do so. You are also not allowed to do any outside
23 research. So don't go home and Google it or try to
24 find out anything about the history. You are limited,
25 as is proper, to the evidence and the exhibits that are

1 introduced, the testimony that you hear here in the
2 courtroom.

3 So I'm going to ask you to break for lunch and
4 be back at 1:15. The more on time we all get back, the
5 better we can get moving and efficiently get you back
6 to your everyday lives. We do appreciate it, and I
7 know all the folks here do as well.

8 Have a nice lunch and I'll see you back at 1:15.

9 (Whereupon, the jurors exit the courtroom.)

10 THE COURT: All right. Anything before we go?
11 And I didn't ask you all if you all had any objections
12 to the seating or selection of the jury. I didn't note
13 anything that would be objectionable, but I apologize
14 for not doing that before I let everybody go.

15 Anything we need to put on the record?

16 MR. HILTON: No motions from the State.

17 MR. LOY: I have no motions as to the jury
18 selection. There is still a door open.

19 THE COURT: Is there? Thank you.

20 MR. LOY: Your Honor, housekeeping. When we
21 broke yesterday we did meet with the solicitor's office
22 and Ms. Suggs and I went through a voluminous stack of
23 photos. I think we have narrowed them down a great
24 deal. There were a couple that were still in
25 contention.

1 I don't know if we have contentions as to the
2 photos or not if there is something that needs to be
3 heard. Anything that we are going to objection to?

4 THE COURT: Thank you all, appreciate that.

5 MR. HILTON: We have pre-marked I think it was
6 22 exhibits. Those photographs I don't think defense
7 had any contention with. They're welcome to look
8 through them again. There were several photographs
9 that -- I guess we need to mark for the purposes of
10 this hearing.

11 THE COURT: Okay.

12 (Whereupon, State's Exhibit Nos. 23 through 26
13 are marked for identification.)

14 MR. HILTON: May it please the Court. There are
15 several photographs marked for identification as
16 State's 23 through 26. And we will discuss 23, 24 and
17 25 at the moment.

18 These are three photographs we can pass up to
19 the Court from the bench you can see them. They're
20 photographs of a back wound. Obviously the relevance
21 may not be clear at this point. The pictures aren't
22 that prejudicial as far as the body being there, there
23 is not a lot of blood and so forth.

24 But it's important what the pathologist
25 testifies to show that there was an entry wound that

1 was inflicted to the back of the victim. And these
2 three photographs, again they're essentially all the
3 same picture, just from varying degrees of closeness.
4 So we'd pass those up to the Court.

5 THE COURT: Okay. Do we need more than one of
6 them? Or do they all show something different and
7 relevant?

8 MR. HILTON: We can probably get by with two of
9 them. I just wanted one at least with the whole body
10 where you could see where it was on the back. The one
11 that was the closest, I mean we can do without that
12 one.

13 THE COURT: Okay. And I'm going to let Mr. Loy
14 put his objection on the record as to -- do we have
15 extra copies of these, or are these it?

16 MR. LOY: I have them on CD, Your Honor. I have
17 been provided copies but I don't have them at hand.

18 THE COURT: Let's address the full body photo
19 first, No. 23.

20 MR. LOY: May I approach, Your Honor?

21 THE COURT: Yes, sir.

22 MR. LOY: Your Honor, State's Exhibit No. 23
23 shows the victim in this case clad in pajama bottoms,
24 as well as what appears to be a sweater or a hoodie
25 lying in the pavement of a parking lot, white lines

1 showing on the parking space. Also it does show what
2 appears to be a wound or a bloody spot on the back.

3 And it's hard for me to say for certain whether
4 this was her hair that surrounds her laying in the
5 parking lot, or whether this darkness is blood. I
6 think that this is in fact blood, or partially blood.
7 And as there was a shot, a wound shot, or a shot that
8 hit her in the head, essentially through the eye, I
9 think that that's quite likely.

10 Mr. Hilton's position, as I understood it was,
11 we need this picture to show that there was an entry
12 wound, that this woman was shot in the back at one
13 point. He also indicated that this would be helpful to
14 the pathologist.

15 If this is being offered for that purpose, Your
16 Honor, it's not necessary because we will stipulate
17 that this woman received a bullet wound that was in the
18 back. The pathologist can so testify. I also know
19 that as a matter of routine, when the pathologist does
20 testify there is a chart or whatever, a body picture,
21 simply a silloutte.

22 Much less prejudicial, not showing the blood,
23 not invocative of sympathy or shocking of the
24 conscience such as I would consider this to be. I
25 don't think that there is anything that the pathologist

1 can't testify to and explain to, particularly with our
2 stipulation and our own charts and diagrams, that is
3 any way elucidated upon -- pour word choice, I
4 apologize -- but I don't think this is probative of
5 anything that is a matter in dispute. And it's merely
6 prejudicial.

7 If it doesn't prove anything, because we don't
8 contest about a gunshot to the back, then the
9 prejudicial value clearly outweighs the probative value
10 and I'd ask the court to exclude it.

11 THE COURT: Why are they not properly admitted
12 under State v Nance where, based on what I've heard
13 from the State, they would corroborate the testimony of
14 the pathologist regarding the places where the victim
15 was shot; they would corroborate the testimony that I
16 expect to hear indicating that the victim died of the
17 gunshot wounds; they're used to show malice, which
18 would be an element of the crime charged; and they are
19 not overly gruesome. Why, under Rule 403; are they
20 more prejudicial than probative?

21 MR. LOY: Because at the point that we stipulate
22 that she received this wound, at the point that the
23 pathologist can testify and point to the entry wounds
24 on her graphs on her pictures, they're not probative of
25 anything beyond that. They're merely cumulative. And

1 I do think they have a prejudicial value.

2 And while I know the Court sees a lot of
3 pictures that may be shocking to a bunch of people who
4 don't work in the world in which we work, I do think
5 with these 12 people, who have probably not been
6 involved in a situation such as this, viewing the
7 bloody corpse stretched in the parking lot with the
8 holes in her back is inflammatory, and I think it's
9 unnecessary.

10 So at that point I think the probative value is
11 outweighed by the prejudicial value.

12 THE COURT: Appreciate that. Counsel?

13 MR. HILTON: Your Honor, I'd just say that we
14 don't have to accept their stipulation, we are entitled
15 to prove our case and we would intend to do that.

16 And just for the record, and we can produce
17 other pictures if need be, but there are other pictures
18 that are extremely inflammatory, and we've agreed to
19 keep those out.

20 And this is one that we pulled out that wasn't a
21 frontal view. It didn't show her from the face. It
22 didn't show the bullet hole through the eye. We will
23 use the charts and graphs for that stuff, at least at
24 this point.

25 But as far as the back wound, it's not

1 prejudicial to the degree that it should be excluded
2 under Rule 403 and we think it's properly admitted.

3 THE COURT: I agree. Under State v Nickels and
4 state v Nance, these photographs are not unduly
5 gruesome nor prejudicial considering the insignificant
6 amount of blood, and the clearly material purpose for
7 their introduction.

8 So under 403 they are certainly more probative
9 than they are prejudicial. And I accept your objection
10 but I overrule it.

11 MR. LOY: Your Honor, and I have -- I was handed
12 one photograph from the bench.

13 THE COURT: That's 23.

14 MR. HILTON: That was 23.

15 MR. LOY: Your ruling you addressed these
16 photographs.

17 THE COURT: 23 is what we were talking about
18 before. I don't think he needs all of them, I think it
19 would be cumulative. I think 23 he indicated he needed
20 the full body shot to corroborate the pathologist's
21 testimony and to show the position of the victim.

22 And I think he wanted a close-up shot. Again I
23 don't find them overly graphic. I don't think we need
24 more than one of them. So why don't you pick the one
25 you find the least harmful.

1 MR. LOY: Your Honor, may I approach?

2 THE COURT: Yes.

3 I have 25 and 24, which both are somewhat more
4 close-up than 23. But I agree to put both of them in
5 would be cumulative.

6 MR. LOY: Then, Your Honor, can I have one
7 moment?

8 THE COURT: Of course. And 23 is going to be
9 admitted over objection, and then you can pick one of
10 the other two. Again over your objection. I know your
11 objection is to all of them.

12 MR. LOY: I understand, Your Honor. Of the
13 other I find No. 25, for the record, inflammatory,
14 prejudicial, et cetera. But of these two I find it to
15 be less. And so I'd ask the State to -- I mean the
16 Court to exclude No. 24 pursuant to your ruling as I
17 understand it.

18 THE COURT: Yes, sir. No. 24 will be excluded
19 as cumulative. 23 and 25 will be admitted. The full
20 body shot, and the more close-up shot under Nickels and
21 Nance to corroborate the pathologist's testimony, and
22 because they are not unduly gruesome nor prejudicial in
23 a case of this type where malice is a necessary element
24 that must be proven.

25 MR. LOY: Thank you, Your Honor.

1 THE COURT: Thank you.

2 MR. LOY: Nothing further from the defense, Your
3 Honor.

4 THE COURT: Okay.

5 MR. HILTON: Nothing from the State, Your Honor.

6 THE COURT: Okay. Why don't you grab something
7 to eat for lunch and I'll see you back here at 1:15. I
8 will give them a basic, short intro that I'll give
9 them, that you all probably have heard a bunch of times
10 before, and then we will go from there.

11 MR. LOY: Thank you, Your Honor.

12 THE COURT: Thank you. Have a nice lunch.

13 (Whereupon, a recess was taken.)

14 THE COURT: I hope everybody had a nice lunch.
15 I think all the jurors are here. A couple of issues
16 that came up while we were at lunch. We did rule on
17 some photographs, and whether they may be admissible at
18 a later time.

19 I know that this is a sensitive trial for many
20 of you. Some of them may upset you or be disturbing
21 and I don't know what you've seen before. But we need
22 to make sure and keep the courtroom a place of decorum
23 and not prejudice the trial in anyway.

24 So if you think something is going to upset you,
25 I am going to ask that you just step out. But we won't

1 tolerate any outbursts or any kind of attention drawing
2 because that's not appropriate in a court of law.

3 In addition, it was brought to my attention by
4 court personnel that some folks may have been making
5 some gestures while one or more of the counsel, the
6 attorneys were speaking. I can promise you that won't
7 be tolerated. So don't let me see anything or let
8 anything be reported to me. And I will appreciate that
9 and we will move forward.

10 And I believe all the jurors are present, so if
11 the attorneys are ready I will bring them on in.

12 MR. HILTON: Yes, Your Honor. At this time we'd
13 ask all witnesses to be sequestered.

14 THE COURT: All right. There were a few
15 witnesses that were permitted to remain. I know the
16 attorneys have gone over that with you. But if you are
17 going to be a witness, and you are not on that small
18 list of the folks that were allowed to remain, I'm
19 going to ask that you step out at this time.

20 I think that one witness did go. Anybody else?

21 MR. HILTON: You may have had on your list, I
22 indicated to the Court Shannon Sharp as the lead
23 detective. It's actually going to be Detective
24 Cassandra Williams. I talked to the defense about
25 that, and that didn't seem to be an issue.

1 THE COURT: That's fine. Thank you.

2 Anybody else? You can look out in the gallery
3 and see who needs to go.

4 MR. HILTON: I didn't see anybody else.

5 THE COURT: Okay, I appreciate it. Anything
6 else?

7 MR. LOY: Nothing from the defense.

8 THE COURT: Okay, then we'll bring in the jury.

9 (Whereupon, the jurors enter the courtroom.)

10 THE COURT: Okay, thank you, ma'am, I appreciate
11 it.

12 Ladies and gentlemen, I hope you all had a nice
13 lunch. We are about to begin to try the case of the
14 State versus Randal William Benton. And before we
15 begin the trial, I want to tell you all that it will
16 probably be different than what you might expect.

17 Many people do not have the chance to ever
18 attend court sessions, as you are doing now, and may
19 think that from watching TV or movies or reading books,
20 that trials are always full of high drama and intense
21 action, and also that they're sometimes compressed into
22 a one-hour period which is rarely, if ever, the case.

23 Some of these things regarding high drama and
24 intensity may be true in real courts at times. It's
25 important to remember that a trial is not for our

1 entertainment. It's a fundamental part of our
2 democracy, and a search for truth in an effort to make
3 sure that justice is done between the parties who are
4 here before the Court.

5 As I said before, the defendant is charged in
6 this case by an indictment filed with this Court. And
7 the indictment is for murder, the elements of which I
8 will explain to you later when we change on the law
9 after all of the evidence is presented.

10 As I said before, the indictment is simply the
11 charge by which the case is brought into court. And it
12 is not in any way evidence of any of the allegations
13 that it contains. The defendant has pled not guilty to
14 this indictment. And the State has the burden of
15 proving each of the elements of the indictment, and of
16 the charge therein, beyond a reasonable doubt.

17 It will be your duty, ladies and gentlemen, to
18 decide whether the State has met that burden. But the
19 defendant is presumed innocent throughout this entire
20 proceeding.

21 Your purpose as jurors is to find and determine
22 the facts in the case. You are the sole judge of the
23 facts. If at any time I make any comment regarding the
24 facts, or in anyway that I'm trying to judge the facts,
25 that would be improper and you must disregard that.

1 You are to determine the facts from the
2 testimony that you hear, and the other evidence
3 introduced in court. It is then up to you to draw the
4 inferences which you feel may be properly drawn from
5 the evidence when it's presented.

6 On the other hand, the same law that makes you
7 the judges of the facts, makes me the judge of the law.
8 The law as given by the court is the only law you may
9 consider. You must accept and follow it even if in
10 some instances you disagree with it. Just like I
11 cannot tell you what the facts are, you cannot disagree
12 with the Court about what the law is or should be.

13 Your job is to take the law as the Court gives
14 it to you and apply it to the facts as you find them
15 from the testimony of the witnesses and any other
16 evidence that is introduced. After doing that, you
17 will render your verdict, a true and just verdict under
18 the oath that you just took this morning as jurors.
19 And we will swear you again shortly before the parties
20 argue.

21 Until I advise you to begin your deliberations,
22 you must not discuss the case with anyone, including
23 your fellow jurors, friends, family members, or anyone
24 involved in the case. This includes face-to-face
25 discussions, telephone, email, text, blogs, any method

1 of communication.

2 You may not use a computer, cell phone or other
3 electronic devices at any time in the courtroom or
4 during your deliberation. When we break at meals or
5 overnight you are allowed to use your phones for
6 reasons unrelated to the trial. But you are still not
7 allowed to discuss the trial or do any research.

8 You may not ever use them to send information
9 about the case. And this would include information
10 about a party, a witness, a lawyer, a court officer,
11 anything. You may not watch any news accounts that
12 there may be about the case. I don't know if there
13 will be any or not. Only the testimony and evidence
14 that is presented here in court is for your
15 consideration.

16 After the case is submitted to you, you must
17 discuss it only in the jury room with your fellow
18 jurors. One important thing about this, and it always
19 was hard for me when I was lawyer, the attorneys are
20 not allowed to talk to you all.

21 And we all say hey when you see somebody to be
22 polite. But if you see one of them turn around and go
23 the other way, they're not being rude to you, they've
24 just been instructed that they're not allowed no talk
25 to you or interact in any way.

1 Likewise, anyone that is here for either of the
2 parties, families, or any of the attorneys or
3 witnesses, you are not to interact with them at all.
4 And they have been advised as to that.

5 It's important that you listen to the evidence
6 as presented and not decide any issue at all in the
7 case until all of the evidence has been presented, the
8 attorneys have made their closing arguments, and I have
9 instructed you as to the law in the case. It is your
10 solemn responsibility to determine the guilt or
11 innocence of this defendant. And your verdict must be
12 solely based on the evidence as presented to you in
13 this trial, and on the law as I instruct you at the
14 close of the trial.

15 In just a moment the solicitor will make what is
16 called an opening statement in which he'll explain to
17 you what he thinks the issues in this case will be.
18 The attorney for the defense may also make an opening
19 statement, although he or she is not required to do so.

20 The defense is not required to put up any
21 evidence whatsoever at any time as the burden remains
22 on the State throughout this proceeding to do its job,
23 if it can, of proving the defendant guilty beyond a
24 reasonable doubt. That is solely for you to determine.

25 There will be objections during the trial.

1 These are good lawyers, I know they'll have objections.
2 And you may see one of them stand up and say, Judge, I
3 have a matter of law. I'm going to try to minimize the
4 times we have to send you all in and out of the
5 courtroom.

6 But because of the way the courtroom is laid
7 out, and because they have to protect their record --
8 you see the court reporter taking everything down --
9 there will be times that I need to send you all out so
10 that we can take up a matter.

11 Please don't hold objections against the
12 attorneys. They are doing their job. And they're not
13 doing it if they don't object when they think that
14 there is a rule of procedure or evidence or matter that
15 they need to bring to the Court's attention.

16 Likewise, don't in any way attempt to interpret
17 the way that I rule on these objections or matters of
18 law against or for one side or the other. I have no
19 opinion about the facts in this case. I don't know
20 anything about them, quite frankly, other than what I
21 have been told in the motions and seen in the items
22 that I have ruled on.

23 I just rule on the objections as they come. But
24 you don't try to devine anything from the way that I
25 may rule one way or another.

1 One important thing that you need to do is
2 determine which witnesses are credible, what testimony
3 you believe. And when you do that you would consider
4 the witness's demeanor; whether they have a bias or a
5 prejudice that they might have in favor of one party or
6 the other, and the way they testify.

7 What is their body language; how much could they
8 have been in a position to know about the facts; is
9 what they say consistent with the rest of their
10 testimony, or even with what the other witnesses say.

11 I generally let my juries take notes. Do we
12 have notebooks for them?

13 THE BAILIFF: Yes, we do.

14 THE COURT: They will provide you all with note
15 pads. The notes aren't evidence, they're just for your
16 reference. I would ask that if you choose to take
17 notes, don't let your note-taking interfere with your
18 ability to observe the witness in the witness box.

19 Don't be so intent that you are not watching the
20 witness. I think we all know from our common sense and
21 daily lives that often the way a person says something
22 can be just as important as what they actually say.

23 And again, as the fact finder, that's for you to
24 determine. So I ask you to pay close attention to
25 them. Your notes will not be read by anyone. We will

1 destroy them at the end of the trial unless for some
2 reason they're made part of the record. And then we
3 won't look at them, they will just be made a Court's
4 exhibit. Those are for your use and your use alone.

5 I talked a little bit about breaks as you all
6 were walking out. We generally break for lunch around
7 12:30, but it truly depends on where we are in the
8 testimony. I try not to break witnesses up if at all
9 possible. Sometimes we have to if there's going to be
10 a real long witness and you all need a break.

11 We usually go about an hour and a half before we
12 take a break. People need to take a little bathroom
13 break or maybe get a snack really quick if they need
14 one. We usually take a morning break, we will break
15 for lunch, and then we will take an afternoon break.

16 If at any time you need a break or are in
17 distress about something, please just raise your hand.
18 I don't want anybody to be uncomfortable. We are not
19 trying to torture you all. But also, if you are
20 uncomfortable, you can't give these parties their full
21 attention, if you are worried about watching the clock
22 about when you need to get out the door.

23 I'm will tell you now, I'm not good at seeing it
24 when people raise their hand and need a break. My
25 court reporter, Anne, will sometimes need a break. But

1 my law clerk is real good at watching for that. So get
2 someone's attention and we will make sure and get you a
3 break. And please don't be embarrassed about doing
4 that. Occasionally a lawyer or a witness or somebody
5 might need a break.

6 We are going to keep it moving as efficiently as
7 we can. But like I said, I want you all to be able to
8 pay attention and not be uncomfortable. Normally we go
9 until about 5:00 or 5:30. We need to adjourn a little
10 early today because I have a legislative matter in
11 Columbia that I need to attend to, and I need to be on
12 the road in time to get to that. So we may stop about
13 4:30, 4:45 today.

14 But generally around 5:00 or 5:30 unless we are
15 right in the middle of a witness. And then when we do
16 get the case to you for deliberation, we will plan on
17 staying perhaps a little later that night if we need
18 to.

19 And without further ado, are there any
20 objections from either side regarding the opening
21 comments I've made to the jury?

22 MR. HILTON: Nothing from the State.

23 MR. LOY: No, Your Honor, thank you.

24 THE COURT: Okay. Well I appreciate that. I
25 will let the pencils get passed out and then I will

1 call on the state to make their opening statement.

2 Okay. Yes, sir.

3 MR. GIESE: May it please the Court, Your Honor.

4 THE COURT: Yes, sir.

5 MR. GIESE: On October 30, 2010, Treva Benton
6 was 35 years old. She's a mother of two, lived here in
7 Dorchester in Summerville, this area, living her life.
8 She is trying to escape a bad relationship that she was
9 in. On that day one man, and one man alone, decided
10 that he was going to end her life.

11 That man took a .9 millimeter Luger, and as the
12 victim, Treva, tried to get away from him, that man
13 took that weapon and shot her eight times. He pulled
14 that trigger eight times. Hitting her once in the eye,
15 five other times in her front torso, and two shots in
16 her back.

17 That man, who decided that day and that night to
18 end her life, is in this courtroom today. He is the
19 defendant, Randal Benton. He decided. He decided.
20 And he did it.

21 Ladies and gentlemen of the jury, my name is
22 Barney Giese. I'm an assistant solicitor in the First
23 Circuit. I work for David Pascoe, who is the solicitor
24 for the First Circuit. Today it's my job to prosecute
25 the defendant in this case for the crime of murder.

1 He has been indicted. And because of that
2 indictment it is my job and Mr. Hilton's job to
3 prosecute him. And the indictment reads that in
4 Dorchester County, on or about October 30, 2010, with
5 malice aforethought, the defendant, Randal William
6 Benton, did kill one Treva Dawn Benton, by means of
7 shooting the victim with a pistol.

8 The victim did die as a proximate result
9 thereof. This offense being in violation of the common
10 law and section 16-3-10 of the state code of laws as
11 amended.

12 Now I read you that indictment because it is
13 totally up to the State of South Carolina to prove
14 every element of this indictment. As I said, that's
15 our job. So what does the State have to prove in this
16 case? Well the State obviously has to prove that the
17 defendant with a pistol shot the victim in this case.
18 And that that shooting caused her death.

19 But that's not all. We also have to prove it
20 was in Dorchester County. But more importantly, we
21 have to prove, the State has to prove that that
22 shooting was done with malice aforethought.

23 Now Her Honor is going to tell you what malice
24 aforethought is when she charges you the law. But
25 suffice it to say at this point that it's a legal term.

1 It's a term of art in our law. And it's been defined
2 as a dark or evil heart. A heart fatally bent on
3 mischief, and devoid of all social duty and social
4 conscience.

5 well obviously we can't cut open Randal Benton
6 and look inside him and decide whether or not he had
7 malice when he pulled that trigger eight times. But
8 what can we do? We can present evidence to show what
9 Randal did that day, what the defendant did.

10 And as jurors you can decide from his actions
11 that day whether or not this killing was malicious or
12 not. And the state submits in this case what could be
13 more malicious than shooting someone eight times.

14 Now to prove the elements of this indictment we
15 are going to present witnesses, they're going to get up
16 here, they're going to swear an oath to tell the truth.
17 And they're going to tell you what they saw and what
18 they did on October 30th of 2010.

19 And the state submits they're going to tell you
20 this. That on the 30th of October, that the victim was
21 living with her son, and that she has been separated
22 from her husband, the defendant, for approximately
23 eight months. That she was trying to get out of the
24 relationship that they had.

25 And on the 30th, the defendant drives over if

1 his pickup truck to her residence, discovers that she
2 is not there and leaves for several hours. Several
3 hours later in the nighttime on the 30th of October,
4 the defendant comes back. The defendant comes back.

5 But the State submits that this time it's
6 different. Because he is not driving his pickup truck,
7 he is walking. And the State submits it's different
8 this time because he is armed. No one knows it at the
9 time, but he goes to the house and he waits on the
10 victim to come home.

11 And tells everyone that the reason he walked
12 there is because his truck has broken down, and that's
13 why he was walking. The same truck that he had driven
14 earlier that day to the same house.

15 The victim comes home. He asks the victim to
16 drive him to his house. She reluctantly agrees. In
17 her pajamas she drives him toward the house.

18 Several minutes later they pull into the parking
19 lot of the Perkins Restaurant here in Summerville.
20 Lighted, it's at night. The State submits at that
21 point you are going to hear from witnesses who watched
22 what happened. They saw what happened. And they're
23 going to come in here and tell you what they saw.

24 And what they saw were the two people having a
25 conversation, may even be termed an argument, in the

1 car. The victim, who was driving, gets out of the car
2 and tries to walk away. Mr. Benton gets out of the
3 car, approaches her again, confronts her as she is
4 trying to leave. And at some point pulls that gun, the
5 .9 millimeter Luger out from under his hoodie, points
6 it at her and shoots her eight times.

7 But you know, it doesn't end there. The case
8 doesn't end there. Because the State submits at that
9 point the defendant, witnesses from inside the Perkins
10 have come out, try to render aid, he points the pistol
11 at them and tells them, get back inside. And they do.
12 They run back inside.

13 The story doesn't end there though. Does he
14 stick around and try and help his wife? The state
15 submits he runs. He leaves. And leaves her to die, to
16 die in that parking lot.

17 Remember the truck I told you about? That he
18 drove up in the first time and came back and said it
19 wasn't there? Guess what. That same truck, the
20 defendant the next day is caught near Auburn University
21 in that truck that he said was disabled. Low and
22 behold, he still had the .9 millimeter.

23 Ladies and gentlemen, that is what the State
24 intends to prove to all of you beyond a reasonable
25 doubt. The State submits the issue in this case is

1 going to be whether or not that's malicious. The State
2 submits that it is. There can be nothing more
3 malicious than this.

4 And as Her Honor told you, and I have said, it's
5 up to the State of South Carolina to prove him guilty
6 beyond a reasonable doubt. And the State in this case
7 gladly accepts that burden. Because the State contends
8 and submits that when the evidence is over from this
9 witness stand, there will be no doubt in anyone's mind
10 but that that man maliciously murdered Treva Benton.

11 Thank you all.

12 THE COURT: Thank you. Yes, sir.

13 MR. LOY: Thank you, Your Honor, may it please
14 the Court.

15 Good afternoon, ladies and gentlemen. All of
16 you all have heard at various points in time, we talked
17 about the presumption of innocence. It basically says
18 that any person accused of a crime is presumed to be
19 innocent.

20 And you heard Her Honor a few moments ago talk
21 to you and say, any person accused of a crime comes
22 into the courtroom presumed to be innocent. And that
23 that presumption follows them all the way through the
24 trial, up until the close of the evidence, up to the
25 argument of counsel, and up until whoever the presiding

1 judge is on that day and in that courtroom bangs the
2 gavel and says, I'm going to tell you what the law is,
3 and then sometime later says, now I've told you, go out
4 and deliberate.

5 That's what the law says. Each person is
6 presumed innocent right up until that point. I will
7 tell you that in the real world, in everybody's life,
8 that's not the way it really is. What we really have
9 in America, and maybe in the world, is a presumption of
10 guilt. And I don't say that glibly or lightly. I will
11 tell you why I say that.

12 And that is there is nobody, or at least it's a
13 rare person, who gets up in the morning, pours a cup of
14 coffee, picks up the newspaper, and looks at their
15 husband or spouse or child across the top of that paper
16 or across that cup of coffee and says, well they have
17 arrested two people who are suspected of having been
18 the guys who robbed that convenience store. Or, it
19 says here in the paper that they have arrested a person
20 who is charged with having cocaine in a neighborhood
21 near ours.

22 That's just not how it works. What they do is
23 they look up and they say, look at this. They got
24 those guys who robbed the convenience store. Or, look
25 at this, two streets over these people had cocaine.

1 That's what I mean by a presumption of guilt.
2 And there is probably a variety of reasons for it, and
3 I cannot explain it, but that's just the reality.

4 And every other day of the year, every other
5 room you may find yourself in that's fine. But for
6 today the presumption of innocence is something so
7 fundamental, so vital, and in all candour I would say
8 sacred to our system of justice that you all will or
9 will be required to take an oath that you will presume
10 the defendant innocent of these proceedings all the way
11 through.

12 So for today and tomorrow and maybe the next day
13 I want you to simply acknowledge that, yes, the initial
14 inclination is, as I said, to assume when a person is
15 arrested, to assume when a person is charged that law
16 enforcement got it right. That the State got it right
17 and the person is guilty. You can do it every other
18 day, just not for these few days. And that is the oath
19 that you've taken or will shortly take.

20 Now when a person charged with a crime is
21 presumed to be innocent, as Mr. Benton is in this case,
22 what that does is place the burden or proof upon the
23 State to come in here and prove every element of the
24 offense charged. Because they have the burden of
25 proof, they go first. So shortly when witnesses are

1 called, you'll see the Judge look at the State's table
2 and say, Mr. Solicitor, call your witness, or words to
3 that effect.

4 They're going to then call witnesses to the
5 stand one by one who will offer testimony, that is say
6 the things that they saw, heard or in some cases maybe
7 have an expert opinion about. Or they may offer
8 physical pieces of evidence, items that will be marked
9 and submitted for you to take back to your jury room.
10 They will do those one by one.

11 Now it may have been a little disconcerting to
12 some of you to hear this list that was run through of
13 42 potential witnesses. I don't know why they do it
14 that way and why they put 42 witnesses on that list.
15 They're not required to tell me who they intend to
16 really call but I will tell you, I don't think they're
17 going to call 42 witnesses to testify in this case.
18 But in the event that has caused you any concern, set
19 that aside.

20 I will tell you that every case we try, every
21 case that is called has different people in it,
22 different players if you will, different witnesses and
23 every fact scenario is different. We never try the
24 same case twice here or in any other courtroom.

25 What that means is the way the proceedings go

1 each time are different. And that's why Her Honor
2 says, well, she makes rulings on objections as they
3 come up. Because at this point she, no more than the
4 rest of us, know exactly how this is likely to unwind.

5 What I will tell you, and this is a little
6 unusual but I will tell you that in this case there
7 will be witnesses that the state calls, maybe quite a
8 few witnesses that the state calls -- I don't know,
9 because again, they're not required to tip their
10 strategy and tell me what they're going to do before we
11 get in here and it actually happens.

12 But they're going to call witnesses, I suspect,
13 of whom we will ask very few questions. And maybe we
14 will ask no questions of them. That doesn't mean that
15 we don't think their testimony is important, or that we
16 are not participating in the proceeding, or that in
17 some way we are not fully contesting the indictment
18 that brings us here today. Because I promise you,
19 ladies and gentlemen, we certainly are.

20 All it means, and I think it's fair for you all
21 to assume if that's the case is that, well these are
22 not the points they're arguing about. And in this
23 case, unlike a lot of cases, I do believe that there
24 will be a lot of points that the State, as well as the
25 defense, will agree on. We're just not going to

1 contest it.

2 Not going to waste your time, the Court's time
3 or anyone else's. But what I will tell you is the real
4 question is is Randy Benton a murderer. Because that's
5 what the State has accused him of. And we intend to
6 fully contest that charge.

7 According to the oath that you all took, you are
8 required to look at the table now and presume him
9 innocent of that charge. What that means is when he
10 walked into this courtroom today he is presumed
11 innocent, that is he is not a murderer.

12 I will tell you that back on the day this
13 happened, or Mr. Benton will tell you, that back on the
14 day this happened, he and his wife were together in the
15 early part of the day. Their marriage was splitting
16 up. And he was unhappy about it. He didn't want it to
17 end. But it was ending.

18 He met with her in the early part of the day,
19 along with some other people, he helped her to move.
20 He had a pickup truck. He load some of her items, he
21 helped her move items. He was involved in that. And
22 later in the day they revisited, they got back
23 together.

24 And I, along with everybody else and you all, at
25 the end of this proceeding wish it never happened.

1 Because that visit, that reunion led to a tragedy. And
2 it led to Treva's death, she is dead. And that is
3 tragic.

4 I will also tell you, however, that really this
5 case is a dual tragedy. Because two lives were
6 effectively destroyed that day. Treva is dead and Mr.
7 Benton is not dead, he is at the table with Ms. Suggs
8 at this point. But effectively he is a ruined man.

9 And at the close of this trial, he will still be
10 a ruined man. But at the close of this trial he will
11 not bear the brand of a murderer because he simply is
12 not one. And that the evidence that the State will
13 produce in this case will not support that verdict.

14 Having said that, ladies and gentlemen, I thank
15 you very much for your attention. I will take my seat.

16 Thank you, Your Honor.

17 THE COURT: Thank you, sir.

18 Can I get you to swear the jury for me, please.

19 THE CLERK: Yes, ma'am.

20 THE COURT: Thank you.

21 (Whereupon, the clerk administers the oath to
22 the jury.)

23 MR. GIESE: State calls Maury Sullivan.

24 THE COURT: Thank you, sir. If you would come
25 forward and be sworn please.

1 MR. MAURY SULLIVAN,
2 after having first been duly sworn to state the truth,
3 the whole truth and nothing but the truth, testified on
4 his oath as follows:

5 DIRECT EXAMINATION

6 BY MR. GIESE:

7 Q Officer Sullivan, where do you work?

8 A Summerville Police Department.

9 Q What is your rank there?

10 A Patrolman First Class.

11 Q All right. As a Patrolman First Class, what are
12 your duties?

13 A My duties are mainly to patrol the zones that
14 I'm assigned to on a nightly basis, and answer any
15 calls for services.

16 Q How long have you worked there?

17 A Six years.

18 Q And is that your first working relationship with
19 law enforcement?

20 A Yes, sir, it is.

21 Q So you have been there all six of your years in
22 law enforcement?

23 A Yes, I have.

24 Q Now I want to draw your attention to October 30,
25 2010. Were you on duty that night?

1 A Yes, I was.

2 Q What route or where were you actually stationed
3 that night?

4 A I was on the southwest zone of town, which is on
5 the other side of Main Street in town.

6 Q Is that in Dorchester County?

7 A In Dorchester County, yes, it is.

8 Q Now as you were on the -- what part, southwest
9 you said?

10 A Southwest zone, yes, sir.

11 Q What does that encompass?

12 A That encompasses south Main Street, some of
13 Trolley Road and Bacons Bridge, and the Berlin G. Myers
14 Parkway in town.

15 Q Did you get a call that night?

16 A Yes, I did.

17 Q What type of call was it?

18 A It was a call of shots fired at the Perkins
19 Restaurant.

20 Q Now how far were you at that point from the
21 Perkins Restaurant?

22 A I was maybe about a mile-and-a-half out. I was
23 at the Five Points intersection on Main Street.

24 Q Now when you get a call like that, what do you
25 do?

1 A Basically per our policy, and also our
2 supervisors, we are allowed to code, license/sirens, to
3 a call like that.

4 Q Do you know what time you got that call?

5 A It was maybe about 10:55, 10:56.

6 Q In the evening?

7 A Yes, sir.

8 Q What by military time, do you all do military
9 time?

10 A Yes we do.

11 Q What time is that?

12 A 2256 or 2255.

13 Q So at the time you got the call and you were
14 about a mile and a half from there?

15 A Yes, sir.

16 Q Tell this jury what you did.

17 A I, once I got the call I arrived on scene and
18 made contact with Officer Williams who was also there
19 and was working off duty.

20 Q Now who is that? What is his first name?

21 A Hobie Williams.

22 Q All right. Go ahead.

23 A Met with him and saw the Chevrolet and I saw a
24 body laying near the Chevrolet.

25 Q What kind of Chevrolet was it?

1 A I think it was a Trailblazer.

2 Q All right. But you said that officer Williams
3 was there first?

4 A Yes.

5 Q Where is he now, do you know?

6 A I think he is stationed overseas in the
7 military.

8 Q So when you get there, approximately how long
9 does it take you to get there?

10 A It only took me maybe like a minute.

11 Q You turned your blue light on and all that?

12 A Yes, sir.

13 Q Because of the type of call?

14 A Yes, sir.

15 Q So you get there, your blue lights are going,
16 you arrive and you see the body?

17 A Yes, sir.

18 Q And a car?

19 A Yes.

20 Q Do you see anybody else?

21 A I see several people standing adjacent to the
22 car, they were on the side of the Perkins Restaurant.
23 I guess they were employees and customers.

24 Q All right. Were they dressed like employees,
25 some of them?

1 A Yes.

2 Q And was Perkins I guess open at that time?

3 A Yes, it was.

4 Q Now describe that parking lot. Is it lit? Is
5 it lighted? I guess that's the right word.

6 A It was lit up, yes, sir.

7 Q And the inside of the Perkins was lit up?

8 A Yes.

9 Q Now you got there, Officer Williams was there.
10 What do you do when you arrive on a scene like that? I
11 mean, what's the most important thing to do?

12 A The most important thing to do is set up a
13 perimeter, have the other units responding to go to the
14 cross streets around the area to look for any
15 suspicious vehicle or persons walking around.

16 And then as the responding officer on the scene
17 I go ahead and set crime scene tape around the scene
18 and gather the witnesses to see if they were willing to
19 wright statements or tell me what happened.

20 Q Now you say you secured the scene. Why do you
21 secure a scene?

22 A Basically to contain the evidence and make sure
23 no one touches anything or moves anything out of place.

24 Q And this crime scene tape, did you actually put
25 that up?

1 A Yes, I did.

2 Q Is that like the yellow tape you see on TV?

3 A Yes.

4 Q How much of the area did you rope?

5 A We roped the whole entire parking lot around the
6 restaurant and all the way back almost to -- there's
7 another business behind the restaurant -- almost to
8 that business.

9 Q So you've crime taped it off, you've secured the
10 scene. Have you secured the witnesses?

11 A Yes.

12 Q And they are kept somewhere?

13 A Yes. They were separated, yes.

14 Q You actually separated them?

15 A Yes.

16 Q Now while you are doing all this, have other
17 officers from Summerville Police Department arrived?

18 A Yes, they have.

19 Q Now tell the jury, who is that? Who comes?

20 A I want to say my supervisor, Lt. Doug Wright,
21 and Sgt. Steve Allison they arrived on scene. And
22 basically they also directed other units to go to other
23 areas and basically took over as well.

24 Q Now I failed to ask this originally and I will
25 go back to it if I could. When you arrived on the

1 scene, you saw a body?

2 A Yes.

3 Q Did you go over to the body?

4 A I went close to it but not too close. Just
5 close enough to see. And that's when Officer Williams,
6 he is also a fire fighter, he basically called for EMS
7 as well because that's the protocol to call EMS as the
8 first responders.

9 Q And did EMS arrive?

10 A Yes, they did.

11 Q Now when you called EMS, did it look like the
12 victim was alive or dead to you?

13 A No, she was motionless.

14 Q But you still called?

15 A Yes, we still called.

16 Q And they arrive and declare her deceased?

17 A Yes, sir.

18 Q Now so you've taped off the area, you've
19 separated the witnesses, you've called EMS. Did you
20 take, at that point, do you take statements from
21 witnesses? Tell us how that works.

22 A Yes. I took statements from the witnesses,
23 basically gave them our voluntary statement form, asked
24 them if they could recall what happened and to take
25 their time writing the statement. And just being very

1 detailed as to what happened, what they saw.

2 Q So you don't actually sit down with the witness
3 and go over their statement, you just hand them a
4 witness form?

5 A Yeah. I kind of stay with them just for a
6 little bit because there was just so much going on.
7 Then I went and started making sure everybody else was
8 okay, and whatever assistance anyone else needed.

9 Q So those witnesses at the scene filled out their
10 own witness forms, wrote them themselves?

11 A Uh-hum.

12 Q Did you collect them at that time, or did an
13 investigator?

14 A No, I did not collect them. I believe it was
15 turned over to detectives.

16 Q And now this Perkins Restaurant parking lot that
17 you went to where you saw the dead body?

18 A Yes.

19 Q Is that in Dorchester County?

20 A Yes, it is.

21 MR. GIESE: Thank you. That's all I have.

22 THE COURT: Thank you.

23 MR. LOY: One moment, Your Honor.

24 THE COURT: Yes, sir.

25 MR. LOY: No questions. Thank you, Your Honor.

1 THE COURT: Thank you, sir.

2 Sir, you may step down.

3 Mr. Hilton, Mr. Giese.

4 MR. HILTON: State would call Erica Hill.

5 THE COURT: Ms. Hill, come forward to be sworn.

6 MS. ERICA HILL,

7 after having first been duly sworn to state the truth,
8 the whole truth and nothing but the truth, testified on
9 her oath as follows:

10 MR. HILTON: Thank you, Your Honor, may it
11 please the Court.

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. HILTON:

15 Q Ms. Hill, where are you working now?

16 A I work at Perkins on Main Street.

17 Q And back in October of 2010, where were you
18 working?

19 A At Perkins on Trolley Road.

20 Q And back on that day, October 30, 2010, do you
21 remember the night when something happened in the
22 parking lot out there?

23 A Yes, I do.

24 Q And tell the jury a little bit about that night,
25 kind of starting from around the 10:30 hour or so?

1 A All right. We were -- it was about 15 minutes
2 before closing. We were sitting at it's called the
3 island we have right there by the register to where we
4 could see out to the parking lot. And --

5 Q And let me just interrupt you for a second.
6 Your job title there at that time was what?

7 A A manager.

8 Q Okay. Go ahead.

9 A Okay. We were getting ready to close up. We
10 were rolling the silverware, the last of it, when we
11 noticed a car pulling into the parking lot. They
12 pulled to the side of the building.

13 We were kind of like, you know, mad because we
14 thought it was another customer and we were ready to go
15 so we were like, oh man. But they kind of stopped,
16 they didn't park. And I told them, I said, you know,
17 look, see who it is, because they kind of sat there for
18 a minute.

19 When Jessica looked outside she said, it's two
20 people sitting out in the parking lot.

21 Q Let me stop you right there for a moment.

22 A Okay.

23 Q Let me show you what has been marked for
24 identification as State's Exhibit 22 and ask if you
25 recognize this?

1 A Yes, I do.

2 Q What is that a picture of?

3 A It's our parking lot.

4 Q Is this an accurate layout of the parking lot as
5 it was back on October 30th, 2010?

6 A Yes, it was.

7 MR. HILTON: Your Honor, at this time we offer
8 State's Exhibit 22 into evidence.

9 MR. LOY: Without objection, Your Honor.

10 THE COURT: State's 22 admitted without
11 objection.

12 (Whereupon, State's Exhibit No. 22 is admitted
13 into evidence.)

14 Q (By Mr. Hilton) And I'm just going to hold this
15 up over here, Jessica. When you said that car pulled
16 into the parking lot -- Erica, I'm sorry.

17 A That's fine.

18 Q Which way did it pull in from?

19 A They pulled in from the side right here, came
20 in. They stopped right here. We could see them
21 through this window because we were about right here
22 rolling silverware we could see them. They stopped
23 right here where they were parked.

24 They didn't pull into a parking spot or
25 anything, they stopped right here.

1 Q Okay. So you all were there rolling silverware
2 and you saw the car pull up and they were outside. And
3 then how did things develop after that?

4 A Well she was like, Erica, they look like they're
5 arguing. Jessica said that, which was Jessica Russell.
6 I said, well keep an eye on them, make sure it doesn't
7 escalate, we don't have to call the cops or anything,
8 or have to go out and tell them to leave.

9 We finished up what we were doing. I checked on
10 my last table. Well, had the server check on the last
11 table that was getting ready to leave. At this time
12 Jessica Russell said, they're getting out of the car.
13 As I said that she was like, they're going around the
14 car, I can't see them anymore.

15 Q So let me get you to stop for a second. So up
16 to that time were they inside of the car or outside of
17 the car?

18 A They were first inside the car arguing. I told
19 her to watch them. A couple of minutes later they got
20 outside of the car and walked around to the driver's
21 side of the vehicle.

22 Q Okay. Now at some point in time did you all
23 make your way outside?

24 A No. At this time we just kind of sat there and
25 told her to continue watching them. When she said that

1 she saw them and she can't see them no more, I walked
2 over there. We both stood up on the booth so we can
3 kind of see over the car, we could kind of see their
4 head a little bit because they would move further back
5 into the light.

6 Q When you say over there, where do you mean?

7 A On the driver's side. They were closer to the
8 car door.

9 Q I think you said you walked over there?

10 A Oh, I walked over to the booth inside the
11 restaurant to the window. That is when Jessica was
12 already on the booth. I jumped on the booth as well to
13 look to where we could see higher. That's when we seen
14 them in the light further away from the vehicle. And I
15 could see his face, her face. And then they kind of
16 moved forward towards the vehicle to where we couldn't
17 see them no more. All we seen was kind of like the top
18 of the heads.

19 Then couple seconds later I seen his hat come
20 off his head and fly to the back of the vehicle. So to
21 my understanding, you know, usually when you see
22 something fly there's somebody is angry, or upset, or
23 they're fighting.

24 So my knowledge was I'm going to go outside,
25 told everybody to stay where they're at, I'm going to

1 check it out, tell them to leave. I was started to
2 proceed outside to go tell them to stop. I moved up
3 slowly to them because I didn't want them to think I
4 was eavesdropping or anything.

5 I didn't hear what they were saying but he
6 looked really mad. She looked like she was crying and
7 very distraught. I moved up a little bit further. And
8 once I moved up first all I heard her say was, can you
9 just leave me alone. Why can't you just leave me
10 alone. She put her hands on her head like this,
11 (witness indicating), and was shaking her head.

12 He said something very calmly, quietly to where
13 I couldn't hear. And then he said something really
14 loud, oh, you just want to leave. And that's when he
15 draw the gun from the front of his jacket and begin to
16 shoot repeatedly.

17 Q Now was the -- you say he and she, there was a
18 man and woman out there?

19 A Yes, sir.

20 Q And you didn't know who these people were, did
21 you?

22 A No, sir.

23 Q And the female, did she come at the male at any
24 point in time?

25 A No, sir.

1 Q No aggression or anything on her part?

2 A No, sir.

3 Q And this hat that you've described, you say you
4 saw a hat come off?

5 A Yes, sir.

6 Q Do you know how that took place?

7 A At the time I didn't know why he took the hat
8 off and flew it, or I couldn't really tell how it got
9 off of his head. But I know that it just flew to the
10 back of the vehicle.

11 Q And do you remember what the hat looked like?

12 A Yes, I do.

13 Q What did it look like?

14 A It was a blue yankee hat. Like an NY hat.

15 Q All right. Let me show you what has been marked
16 for identification as State's Exhibit 13. Just ask if
17 you recognize this item?

18 Does that appear to be the hat that came off of
19 his head?

20 A Yes, it was.

21 Q All right. So now you are outside and I think
22 that was after the hat came off. You walk outside and
23 you hear them talking about some stuff?

24 A Uh-hum.

25 Q And what was that again? What did you hear them

1 discussing?

2 A I heard her sit there and say, why can't you
3 just leave me alone, just leave me alone. She put her
4 head down. Basically didn't even see him draw the gun
5 or anything.

6 At that point he said to her something I
7 couldn't hear because he said it low. And then he
8 said, fine, you want to leave, or proceeded to pull the
9 gun out and shoot.

10 Q Okay. And after he shot, what happened to the
11 victim?

12 A She actually started to fall forward towards us,
13 looked at us, and kind of like started to stumble a
14 little bit.

15 She kind of fell to the ground. Tried to crawl
16 but couldn't. And the last shot kind of like put her
17 to the ground.

18 Q At some point in time did the shooter notice
19 that you all were standing out there?

20 A Yes. Because when it was happening it was the
21 day before Halloween. We had Shooters right next door,
22 which is a bar, they were having a Halloween party. We
23 had the Fire House was having some kind of Halloween
24 party.

25 The way the gun sounded, it didn't sound like a

1 regular loud gun. It sounded like a popgun or had a
2 silencer on it or something. So my initial thought was
3 it's a prank. Someone is joking around.

4 When I seen the blood, it turned into serious
5 shock mode. Oh my God, what do I do. At that point
6 when I just sat there and watched him repeatedly do it,
7 I could not move at the time, I guess because of shock.
8 Really didn't know what to do.

9 As soon as I realized that I have to get in
10 somewhere or away from this situation before he notices
11 me, I heard Jessica McClean say, oh my God. And I
12 realized at that point she was behind me. And she was
13 not supposed to be, she was supposed to be inside like
14 I told her to stay.

15 And when she said, oh my God, he heard her,
16 turned and looked at us and pointed the gun at us and
17 said, if you don't get back inside you are next. So I
18 grabbed her hand, ran inside, locked the doors, told
19 everybody to get away from the windows, call 911.

20 Q Do you remember what he was wearing?

21 A He was wearing a black hoodie, the one where the
22 hood is up here and you got the front pockets; black
23 pants, and I couldn't remember the shoes.

24 Q Okay. Do you remember about how many shots
25 there was?

1 A It seemed like a lot. But if I had to count I
2 would say about six, seven, maybe nine.

3 MR. HILTON: Please answer any questions Mr. Loy
4 or Ms. Suggs may have for you.

5 THE WITNESS: Okay.

6 THE COURT: Thank you.

7 Yes, sir, Mr. Loy.

8 MR. LOY: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. LOY:

11 Q Good afternoon, Ms. Hill.

12 A How are you doing.

13 Q Ms. Hill, you were working at Perkins. And you
14 may have told us but if you did I missed it. What was
15 your position, were you a manager?

16 A Yes, sir.

17 Q So as far as that shit goes at least, you were
18 in charge on that particular evening at the restaurant;
19 is that fair to say?

20 A Yes, sir.

21 Q And you say you all were near closing or near
22 shift change?

23 A Near closing.

24 Q Okay. And so a vehicle pulled in and you say
25 you all were actually a little disappointed, like we

1 are trying to get out of here, and someone is going to
2 want to come in and eat. Is that right?

3 A Yes, sir.

4 Q Okay. Now you weren't in a position at that
5 point to actually observe what was taking place in the
6 parking lot? or were you?

7 A I could see through the window. I could see him
8 in the passenger side. And I seen that it was a
9 female. I couldn't really see her whole face because
10 he was mainly in the way.

11 But I seen his -- I seen him. I didn't see her
12 really. I knew it was a lady because of the hair, but
13 I couldn't see her face.

14 Q Okay. But pretty quickly you realized, you all
15 folks in the restaurant realized that there was a
16 problem out there in the vehicle or in the parking lot;
17 is that right?

18 A Yes, sir.

19 Q And as the manager, I guess, you felt like if it
20 was going to be a problem you were the going to be the
21 person who needed to deal with it, at least from you
22 all's business perspective?

23 A Yes, sir.

24 Q And as a matter of fact, pretty quickly somebody
25 told you, they're fighting or they're arguing?

1 A Yes, sir.

2 Q And could you see that, that is from where you
3 were, the arms waving in the vehicle, et cetera, folks
4 being agitated?

5 A I seen his hands more than I seen her hands.

6 Q When you say more than you saw hers, does that
7 mean you could tell they were both arguing?

8 A I seen her hands move, keep going like this with
9 her hair. I seen her put her head down. But more his
10 moving up and down like he was arguing with her more.

11 Q He was more agitated?

12 A Yes.

13 Q And so basically you hoped that they were going
14 to pull out and go somewhere else and be something you
15 all didn't have to deal with. Is that fair to say?

16 A Yes, sir.

17 Q That's not what happened, is it?

18 A No, sir.

19 Q So then somebody said they're continuing to
20 fight, or they're getting out of the vehicle; is that
21 right?

22 A Yes, sir.

23 Q Had you decided before you learned that they
24 were getting out of the vehicle that you were going out
25 there? Or were you just going to give them space to

1 take care of their business as long as they stayed in
2 the vehicle?

3 A I was giving them space because I really didn't
4 want to stay there longer and have to call the police.
5 Because technically we are supposed to call the police
6 regardless if anybody is arguing on the premises, or
7 ask them to leave.

8 So my initial thought was, okay, they're in
9 their car, they're not harming anybody, let me just see
10 what happens. If it escalates, I will either call the
11 police or go ask them to leave.

12 Q Okay. And do you recall about how long they
13 were arguing? And I'm asking you, in your statement
14 you say they were arguing. It's your perception that's
15 what was happening; is that right?

16 A Yes, sir.

17 Q About how long do you think they were arguing
18 before you decide to walk out there?

19 A I would say about at least a good 5 to 6 minutes
20 before they stepped out of the vehicle and I proceeded
21 to the window.

22 Q And you gave a written statement on that
23 particular night as far as what had happened, did you
24 not?

25 A Yes, sir.

1 Q Have you seen that statement since you gave it?

2 A I looked over it. I haven't looked over it too
3 much lately. It will be a year go.

4 Q It has been a long time, that's why I'm asking
5 you. Have you reviewed that statement since you gave
6 it?

7 A No, sir.

8 Q Okay. Well if I told you in your statement you
9 said it was about 2 to 5 minutes, is that range, does
10 that still sound accurate for the time they were
11 arguing?

12 A It could have, yes, sir.

13 Q And in your experience, would it be fair to say
14 you tend to overestimate?

15 A Yes. But it wasn't -- we were 10 minutes to
16 closing so it really didn't escalate over 10 minutes.
17 So I would say in the range of that time.

18 Q Okay. Somewhere less than 10 minutes?

19 A Yes.

20 Q So they were arguing in the car. And what was
21 it that caused you to make the decision, no I guess I
22 better go out there and tell them to leave?

23 A When I seen the hat fly I figured they were
24 fighting. So I then figured it was escalating, let me
25 go ahead and intervene and stop it, tell them to leave.

1 If they didn't leave, I was going to call the police.

2 Q Okay. At the time that you say, I saw the hat
3 fly, you mean exactly what you say, you saw the hat fly
4 and not that you saw what happened or what caused it to
5 fly; is that right?

6 A Yes, sir.

7 Q So whether somebody had knocked it off of
8 somebody's head, or whether somebody threw that hat,
9 whatever, you don't know. All you know is you saw it
10 sail out into your field of vision?

11 A The way that it flew to the way to the back of
12 the truck, I would say nobody knocked it off of her
13 head, or his head.

14 Q I don't understand what you mean by the way that
15 it flew.

16 A It almost looked like somebody took it off and
17 threw it because it traveled a long distance. It
18 didn't just travel up in the air and fall down.

19 Q And as far as who might have done that or why,
20 other than pure speculation, you really have no idea.
21 You couldn't see what was taking place?

22 A No, sir.

23 Q And at that point you couldn't hear the
24 conversation that was taking place?

25 A No, sir.

1 Q You were still inside?

2 A Yes, sir.

3 Q But at that point -- and no one was running from
4 the scene?

5 A No, sir.

6 Q The driver had exited the driver's side of the
7 vehicle?

8 A No, the passenger side.

9 Q So the passenger got out first?

10 A Well she actually got out of her vehicle, her
11 driver's side first. He got out and walked around
12 towards her.

13 Q That's just what I'm asking. The driver got out
14 of the driver's side of the vehicle?

15 A Yes, sir.

16 Q And then she was still there?

17 A Uh-hum.

18 Q She wasn't running or anything, was she?

19 A No.

20 Q So apparently the conversation was continuing,
21 the argument whatever it was that was taking place; is
22 that fair to say?

23 A Yes.

24 Q And he exited the vehicle also?

25 A Yes, sir.

1 Q And he walked around to the driver's side of the
2 vehicle?

3 A To her, yes.

4 Q And is it at that point that you began to
5 approach them?

6 A No. It's when I seen the hat fly I proceeded to
7 walk outside after I seen that.

8 Q I'm sorry I didn't mean to talk over you. So at
9 the time that they got out of the vehicle and met there
10 at the driver's side, you were already en route to go
11 and see them; is that right?

12 A Well, yes, after I seen the hat fly. I knew
13 that I had to go outside and stop it.

14 Q So you were walking over there. And according
15 to your statement you said, I was going out to tell
16 them if they were going to fight they had to leave, or
17 something to that effect; is that right?

18 A Yes, sir.

19 Q So at this point, based on everything you'd seen
20 and everything you heard that was your position. If
21 you guys are going to fight, you all are going to have
22 to leave?

23 A Or call the cops, yes.

24 Q Or I'm going to call the police. And your
25 statement says, they were moving arms around, that she

1 kept putting her hands on her head, et cetera.

2 It appears, though, they were both agitated and
3 arguing; is that right?

4 A She seemed more like she was frustrated that he
5 wouldn't go or stop what he was doing. Kind of like
6 when a person wants to walk away from a situation but
7 it's like they know they're going to follow them. It's
8 kind of aggravated.

9 She was more like, you know, leave me alone.
10 Kind of putting her hands on her head and shaking her
11 head. He seemed more agitated, angry, hands moving
12 very fast, up high kind of stuff.

13 Q When you say, I was going to go out and tell
14 them if they were going to fight they had to leave?

15 A Uh-hum.

16 Q That is what your statement says; is that right?

17 A Yes.

18 Q So you weren't going out to try to rescue
19 anybody at this point, you were just going out to say,
20 you guys got to take this problem somewhere else?

21 A Yes, sir.

22 Q Okay. And then you state that sometime after
23 that he produced a firearm; is that right?

24 A Yes, sir.

25 Q Are you familiar with firearms? I mean, have

1 you shot pistols before?

2 A I have heard them before. We live in the
3 country so a lot of people go squirrel hunting and
4 'coon hunting. They're pretty loud, so.

5 Q Right, I understand that. But my question
6 really is, would you consider yourself familiar with
7 firearms?

8 A Some, yes, not all.

9 Q Do you know the difference between what we call
10 an automatic pistol and a revolver?

11 A No.

12 Q Okay. But regardless a handgun was produced and
13 almost immediately shots were fired?

14 A Yes, sir.

15 Q And then there were a lot of shots? I would
16 call 6 shots a lot. Would it be fair to say a lot of
17 shoots were fired?

18 A Yes, it was repeatedly.

19 Q Okay. And you state that the shots were fired
20 so fast, it's hard to say exactly how many there were?

21 A Yes.

22 Q Is that right?

23 A Yes.

24 Q So it was bam, bam, bam, bam, until the shots
25 stopped?

1 A Yes, sir.

2 Q And at that point you were warned to go back in
3 the restaurant and you did and took your -- encouraged
4 your employee to follow you; is that right?

5 A Yes, sir.

6 Q And you didn't hear anymore shots after that?

7 A No, he took off running.

8 Q And you didn't hear anymore shots after that?

9 A No, sir.

10 MR. LOY: One moments, Your Honor.

11 Nothing more. Thank you, Your Honor.

12 THE COURT: Any redirect?

13 MR. HILTON: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. HILTON:

16 Q When you all went back inside the restaurant,
17 was it loud in there, or were you hollering, or what
18 was going on?

19 A Right when I grabbed Jessica we started to
20 proceed back inside. I grabbed the key, I locked the
21 door, because we have an outer door and then you have
22 to walk into an inner door.

23 So I locked the outer door, ran inside. When I
24 went inside I told the guests that we had sitting to
25 the opposite side of the restaurant to the window to

1 please come over here because something has happened.

2 I didn't want to alarm them.

3 So I went to the register and I told our cook
4 that happened to be getting ready to leave because we
5 were at that time closed, I told him to call 911.
6 Jessica Russell was still at the window. She is the
7 one that seen him run down the street. At that time we
8 got a hold of 911.

9 When she said that he ran, me and Jessica
10 McClean went outside to try to see if we could maybe
11 live save her or pull her in or try to do something for
12 her because we didn't want to just leave her out there
13 in the meantime because we didn't know if he was coming
14 back or anything. We told them to watch the door. To
15 open it for us.

16 MR. LOY: Objection, Your Honor. I do believe
17 this is outside the scope of cross.

18 THE COURT: Objection sustained.

19 MR. HILTON: I will stop you right there.

20 Thanks, Erica.

21 THE WITNESS: Thank you.

22 THE COURT: Thank you. Ma'am, you may step
23 down.

24 MR. HILTON: This witness can be excused as far
25 as the state is concerned.

1 MR. LOY: No objection, Your Honor.

2 THE COURT: Thank you, ma'am. You may be
3 excused.

4 MR. HILTON: State calls Jessica Russell.

5 THE COURT: Thank you. Ma'am, come forward to
6 be sworn.

7 MS. JESSICA MARIE RUSSELL,
8 after having first been duly sworn to state the truth,
9 the whole truth and nothing but the truth, testified on
10 her oath as follows:

11 DIRECT EXAMINATION

12 BY MR. HILTON:

13 Q Thank you, Ms. Russell. Where were you employed
14 back in October of 2010?

15 A At Perkins.

16 Q Are you working anywhere now?

17 A Nope.

18 Q And back in when you were working at Perkins
19 there in 2010, what was your position there?

20 A I was a server, a waitress.

21 Q Were you working there on October 30th?

22 A Yeah.

23 Q And do you remember something happening in the
24 parking lot that night?

25 A Yeah, a lady got shot.

1 Q Tell the jury about that incident. What were
2 you all doing around say 10, 15 minutes before closing?

3 A We were cleaning up, trying to get everything
4 straight and everything so that we could leave. And
5 they pulled up, him and her, the woman and a man in the
6 car, and they started arguing.

7 And we were being noseey looking out the window,
8 you know, they started arguing and everything. We were
9 making sure that it didn't go any further.

10 Q Okay. Where were you inside the restaurant?

11 A By the window where they parked on the side of
12 the building.

13 Q Let me show you what has been in evidence,
14 State's Exhibit 22, just ask if you recognize this
15 item?

16 A Yeah.

17 Q Is that the Perkins you were working at?

18 A Uh-hum.

19 Q And do you remember what window you were at?

20 A I was right there at this window.

21 Q Okay. And where did the car pull up?

22 A They parked right here.

23 Q Okay. So from that window were you able to see
24 what was going on?

25 A Yeah.

1 Q And while you all were watching them, what were
2 some of the things that you saw?

3 A Just them arguing. And then they looked like
4 they were going to get a little bit more heated or
5 whatever, so they got out of the car and started
6 arguing some more.

7 Q You say they, do you know --

8 A It was a man and a woman.

9 Q And do you know where they were sitting?

10 A He was in the passenger seat and she was in the
11 driver's seat.

12 Q From inside the restaurant through that window,
13 could you hear anything that they were saying?

14 A Not through the window.

15 Q Okay. I think you said they got out of the
16 truck. And then what happened after that?

17 A They were kind of arguing back and forth. And
18 then we were going to go outside to, you know, make
19 sure that everything was okay.

20 And, you know, maybe ask them if they were going
21 to argue if they could take it somewhere else because
22 we were trying to close and we didn't want them there
23 arguing.

24 Q How could you tell that they were arguing?

25 A Just because their gestures. He was throwing

1 his hands up and she was crying and everything. And he
2 was screaming out like, why are you doing this. And
3 she was like, let's just go.

4 Q And you said you couldn't hear them through the
5 window, but when could you hear that?

6 A No. When we walked outside. We walked outside
7 to tell them to -- see if they were all right, you
8 know. And ask them if they could maybe leave the
9 parking lot.

10 Q All right. So when you went outside to tell
11 them that, what took place?

12 A He was coming like a little bit approaching her
13 in like a weird, aggravated way. So she kind of just
14 went like this to maybe like, like don't come at me.
15 And she ended up in the middle of all that hit his hat
16 off, went flying to the back of the car.

17 Q Did she attack him or something?

18 A No, she didn't attack him. No, she was like on
19 the defense, like don't come at me type.

20 Q Now you said they were saying something when you
21 all went outside. What were they saying outside?

22 A He was just asking her why she was doing this,
23 why is this happening. And she was just crying and,
24 you know, she was like, let's just go and everything.
25 And that's kind of basically all I heard.

1 Q Okay. Is that all that happened that night?

2 A No.

3 Q What happened after that?

4 A Then he pulled out a gun and shot her a few
5 times. And then turned around and I guess he realized
6 that we were standing there and he pointed the gun. I
7 had already started to go back inside so that we could
8 tell them to call the cops, the people that were still
9 inside.

10 And Erica and Jessica were still out there and
11 he pointed the gun at them. And when we turned around
12 he walked off and told us to go back inside. So I
13 already had my back to him though. I was walking back
14 inside.

15 Q Did you hear anymore shots after that?

16 A Yeah.

17 Q About how many?

18 A Couple more rounds.

19 Q So if I understand you right, there was some
20 shots?

21 A Uh-hum.

22 Q He turned the gun on you all?

23 A Uh-hum.

24 Q And then there were some more shots?

25 A Uh-hum.

1 Q And when you say uh-hum, that's yes?

2 A Yes, sorry.

3 Q About total how many shots do you think there
4 was?

5 A I would say eight or nine.

6 Q Did you see where he went?

7 A He went, yeah, he ran off towards the back of
8 like our parking lot down the street towards those
9 apartments back there.

10 Q Are you familiar with that area in the road that
11 goes besides Perkins?

12 A Yeah. I know there is a bunch of apartments
13 back there.

14 Q Let me show you what has been marked for
15 identification as State's Exhibit 21. Just ask if you
16 recognize that?

17 A Yeah, that's the back of our parking lot.

18 Q Okay. And is this an accurate layout of the
19 road beside Perkins in the back of your parking lot?

20 A Yeah.

21 MR. HILTON: Your Honor, at this time we offer
22 State's 21 into evidence.

23 MR. LOY: Without objection, Your Honor.

24 THE COURT: State's 21 is admitted without
25 objection.

1 (Whereupon, State's Exhibit No. 21 is admitted
2 into evidence.)

3 Q (By Mr. Hilton) Jessica, if you will describe
4 for the jury what's where in this picture?

5 A This is the back of our parking lot. And this
6 would be the entrance where they may have came in on
7 this side, then came up this way. So he had been
8 running off back this way.

9 Q Did he --

10 A I don't know where he went from that like after
11 that. He just ran off towards the back of the parking
12 lot this way.

13 Q All right. If I put these two pictures
14 together, is this about how they would go? Something
15 like that?

16 A Yeah.

17 Q Do you remember what he was wearing that night,
18 the shooter?

19 A Yeah. He was wearing like a black, dark hoodie
20 and some dark, darker jeans. And then the hat until
21 she hit it off.

22 Q Did he leave the hat there at the scene?

23 A Uh-hum.

24 Q Do you remember what the hat looked like?

25 A It was like navy blue dark. It was dark, but it

1 was a darker color like navy blue to black probably.

2 Q Let me show you what has been marked for
3 identification as State's Exhibit 13 and just ask if
4 that appears to be the hat?

5 A Yeah.

6 Q Jessica, when you turned and walked back inside
7 the restaurant, you said there was a couple more shots
8 after that. Were you already back inside when you
9 heard those shots? Or where were you at that time?

10 A No, I was pretty much like just at the door
11 getting ready to walk inside.

12 Q Okay. And did you see him do that, or you just
13 heard those shots.

14 A I didn't see the rest of them, no, but I heard
15 it.

16 Q And just for clarification, will you point out
17 for the jury where you all were -- and this is State's
18 Exhibit 22 -- point out where you all were standing?

19 A We were standing right around right here. Then
20 I was already back that way when he did the rest of the
21 shots and they were coming right behind me.

22 Q And where's the front door?

23 A Right there.

24 Q And that's where you all were coming in and out
25 of?

1 A Uh-hum.

2 MR. HILTON: Please answer any questions Mr. Loy
3 or Ms. Suggs may have for you.

4 MR. LOY: Thank you, Your Honor.

5 THE COURT: Mr. Loy.

6 CROSS-EXAMINATION

7 BY MR. LOY:

8 Q It's Ms. Russell?

9 A (Affirmative head shake.)

10 Q Ms. Russell, you were working at Perkins when
11 this problem arose; is that right?

12 A Yes.

13 Q And were you the first person who noticed that
14 there was a problem out there in the parking lot?

15 A We saw them, me and Erica saw them pull up and
16 we were sitting there -- I was sitting by the bar, we
17 have this bar thing, we are rolling silverware and
18 stuff. And we looked out there and saw them pull up.

19 And we were like, oh no, more customers, because
20 we were trying to close. Then we realize that they
21 weren't customers because they didn't pull up to a
22 parking spot, they just pulled up on the side.

23 And we started nosing around, looking out there
24 to see what they were doing.

25 Q So you were nosing around, looking out there?

1 A Yeah.

2 Q So then you were the person in the restaurant
3 who was watching most closely; is that right? You were
4 talking to Erica about what was going on out there?

5 A Yeah. At that point, yeah.

6 Q At least up until the time you all went out?

7 A Uh-hum.

8 Q You had the best view of the parking lot; is
9 that right?

10 A Uh-hum.

11 Q You said that the two of them were arguing back
12 and forth?

13 A Yes.

14 Q He seemed very upset?

15 A Yeah.

16 Q She seemed upset, he seemed very upset?

17 A Right.

18 Q The argument -- how long do you think they sat
19 in the truck and argued?

20 A For about 5 or 10 minutes this went on.

21 Q Okay. And you sort of kept an eye on things at
22 that point?

23 A Yeah.

24 Q Were you discussing it with your manager at that
25 point, there is a problem, we might need to do

1 something, they're not leaving yet, that sort of thing?

2 A Yeah.

3 Q And as you watched, you didn't see anything at
4 that point that caused you to think, oh no, call the
5 police right now?

6 A No, uh-uh.

7 Q And eventually the driver's side door opened and
8 a young lady got out of the driver's side?

9 A Yeah, they got out. I don't know if they -- I
10 don't know but they both got out. She got out and then
11 he got out.

12 Q But just as far as what you saw. We are not
13 trying to figure it out. But her door flipped open and
14 she got out and sort of stood there or stayed within
15 close proximity to the driver's side. Is that right?

16 A Right.

17 Q And then his door flipped out and he came around
18 to her; is that right?

19 A Uh-hum.

20 Q And they continued to talk. They were both
21 talking, they were both engaged in a discussion at that
22 point?

23 A Yeah.

24 Q or they appeared to be?

25 A Yeah.

1 Q And at one point he came near to her, and you
2 say that he was coming toward her in a funny way as she
3 knocked his hat off his head. Is that right?

4 A Kind of an aggressive way.

5 Q Right. But it wasn't a struggle, nobody grabbed
6 anybody --

7 A Nope.

8 Q They weren't wrestling or throwing punches?

9 A No.

10 Q It was just a highly charged and emotional
11 scene. I don't mean to put words in your mouth?

12 A They both seemed really upset.

13 Q So then it would it be fair to say it was a
14 highly charged and emotional scene, and as you say they
15 both seemed very upset?

16 A Yeah. He seemed a little bit more upset than
17 her.

18 Q I understand. And after his hat was knocked off
19 his head, and you actually saw that occur, did you not?

20 A Yeah.

21 Q After that was knocked off of his head, did the
22 argument continue? And was it at that point that you
23 either said, Erica, somebody needs to do this? or she
24 said, no, I'm going to go out and deal with this?

25 A Well we said we were going to go out there and

1 maybe just ask them -- make sure that it doesn't
2 escalate any further, and maybe ask them to leave the
3 parking lot and take it somewhere else or whatever.

4 Q Because we will be here a couple hours more if
5 the police come, et cetera.

6 A Yes.

7 Q And you all were ready to go. I understand.

8 A Yeah.

9 Q And Erica was the manager; is that right?

10 A Yeah.

11 Q So she was first out the door, the person with
12 responsibility I take it; is that right?

13 A Yeah.

14 Q And you more or less followed her out either as
15 backup or just to kind of see what was going to happen
16 next?

17 A Yep.

18 Q And as she went out the door the problem
19 escalated or it continued?

20 A Yeah. Yeah. But then he pulled out the gun.

21 Q But before he pulled out the gun there was some
22 more discussion. You could finally hear discussion
23 when your walked or --

24 A Yeah.

25 Q Words exchanged.

1 A Yeah.

2 Q And I believe you characterized him as he was
3 screaming; is that right?

4 A Uh-hum.

5 Q And he was screaming something along the lines
6 of, why, man? why? why?

7 A Yeah.

8 Q Something to that effect?

9 A Yeah, why are you doing this? why?

10 Q But mainly it was why, why. And she was crying
11 and her response was something, I don't know or I don't
12 know why or something like --

13 A Yeah, let's just go.

14 A Let's just go, I don't know, something to that
15 effect?

16 A Uh-hum.

17 Q And how far -- and you can point to something --
18 would you say the place where they were standing was
19 from the door of the restaurant? The door that you
20 used walking out into the parking lot. And I can move
21 forward or back up.

22 A Probably from me would be the door, to probably
23 back about where the desk is where they are sitting.

24 Q The front of this desk?

25 A Yeah, about that. A little bit further maybe.

1 Q Back of this desk?

2 A Yeah, about

3 Q 25 or 30 feet?

4 A I would say about that.

5 Q Okay. As you walked out and you heard that
6 verbal exchange, how far were you behind Erica? You
7 said she went out first. Did you all go out together
8 or did you sort of follow her out?

9 A Yeah, we pretty much went out together. Her and
10 Jessica were up there and I was with them kind of we
11 were just like all grouped up. And then I kind of
12 stayed back a little tiny bit because, I don't know.

13 Q I understand. You stayed a little closer back
14 towards the door; is that right?

15 A Yeah.

16 Q And how many steps would you say you took out of
17 the door before this firearm was produced?

18 A About ten. Ten steps, give or take.

19 Q Well, okay. About how far from the door would
20 you say you got? Let me do it a different way.

21 A To about right there where the end of that.

22 Q This bar right behind the court reporter?

23 A Yeah.

24 Q This is the court reporter.

25 A Yeah, okay.

1 Q About this far?

2 A Yeah.

3 Q So you walked out about this far, and a gun was
4 produced and shots began to be fired; is that right?

5 A Yeah.

6 Q Well you walked out and as you covered this
7 territory you heard those exchanges, why? why?

8 A Yeah.

9 Q And then shortly after a gun was produced and
10 shots were fired?

11 A Yeah.

12 Q At that point you ran back to the restaurant?

13 A We started to come back inside because he turned
14 around and was like, go back inside, or whatever so.

15 Q When the shots began to be fired.

16 A Yeah.

17 Q You were visual full on, I mean you were looking
18 in that direction; is that right?

19 A Yes.

20 Q And instinctively did you at that point turn and
21 run back toward the restaurant?

22 A Yes.

23 Q Okay. As shots were fired, as soon as they
24 began, bam, bam, bam, you turn and ran toward the
25 restaurant?

1 A Yes.

2 Q okay. And were those shots that you heard, were
3 they fired in pretty rapid succession? And what I mean
4 was it like bam, bam, bam, bam, bam?

5 A It was like pop, pop, pop, like that.

6 Q okay. Are you familiar with firearms? Do you
7 shoot pistols and stuff?

8 A I have shot guns, yeah.

9 Q okay. Do you know the difference between a
10 revolver and an automatic pistol?

11 A I think it's like a revolver you keep going, and
12 an automatic you have to stop or something.

13 Q That sounds like a no.

14 A I haven't shot a whole bunch of guns, I'm not --

15 Q You are not an aficionado?

16 A Yeah.

17 Q I understand, thank you. Just one moment.
18 Just for clarity's sake, when you state the
19 person in the parking lot, the man was screaming.

20 A Uh-hum.

21 Q Did you tell me he was screaming why, why man,
22 why, something like that?

23 A Yeah.

24 Q And those were the words?

25 A Yeah.

1 MR. LOY: Thank you. Then I have nothing
2 further.

3 THE COURT: Any redirect?

4 MR. HILTON: Just briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. HILTON:

7 Q You said during Mr. Loy's questions, you said
8 someone was aggressive. Who was the aggressive one?

9 A He was.

10 Q Not her?

11 A No.

12 Q And just so we all have it clear in our minds,
13 I think you said you all came out and that was the
14 conversation you heard between the two of them, is
15 that?

16 MR. LOY: Object to the leading, Your Honor.

17 THE COURT: Sustained, don't lead.

18 Q (By Mr. Hilton) After you all came out, is that
19 when you heard the conversation?

20 A Yes.

21 Q Okay. And when did you hear the gunshots?

22 A After -- after he got done saying -- after their
23 conversation and after he said, why are you doing this
24 to me? Why is this happening? Why? And she said, I
25 don't know, let's just go, and everything else. Then

1 he pulled out the gun and shot her.

2 Q And then when did he point the gun at you all?

3 A After he had already put a few bullets in her,
4 then turned around and pointed it at us as we were
5 going to go back inside.

6 Q Then were there anymore shots?

7 A Yes, sir.

8 Q About how many total you said?

9 A About 8 or 9.

10 Q How many was in the first group of shots?

11 A Like maybe three. She was already down.

12 Q And how many was in the second group of shots?

13 A About like three or four more. Then there was
14 another round of like three or four more, two or three.

15 MR. HILTON: All right. No further questions.

16 MR. LOY: Nothing, Your Honor, thank you.

17 THE COURT: Ma'am, you may step down.

18 Any objection to this witness being excused?

19 MR. LOY: None, Your Honor, thank you.

20 THE COURT: Ma'am, you may be excused.

21 Let's take our ten minute break now, and we will
22 come back for our next witness. Please do not discuss
23 the case.

24 (Whereupon, the jurors exit the courtroom.)

25 THE COURT: We will be at ease until 3 o'clock.

1 (Whereupon, a recess was taken.)

2 (Whereupon, the jurors enter the courtroom.)

3 THE COURT: Yes, sir.

4 MR. HILTON: Thank you, Your Honor. The State
5 would call Veronica Collins.

6 THE COURT: Come forward to be sworn, please.

7 MS. VERONICA LYNN COLLINS,
8 after having first been duly sworn to state the truth,
9 the whole truth and nothing but the truth, testified on
10 her oath as follows:

11 MR. Hilton: May it please the Court.

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. HILTON:

15 Q Ms. Collins, are you working anywhere right now?

16 A No, sir.

17 Q All right. And you do something on the side,
18 right, something with dogs?

19 A Breed boxers.

20 Q All right. And let me take you back to October
21 30, 2010. Do you remember what you were doing that
22 evening?

23 A Sitting in front of Perkins parking lot.
24 Perkins, sitting in front of the front door waiting on
25 Jessica Russell to get off work.

1 Q Do you know Jessica Russell?

2 A She is the neighbor across the street.

3 Q Why were you picking her up that night?

4 A She needed a ride.

5 Q Do you remember about what time that was?

6 A 11:00, 11:15 maybe. 11:10, I'm not sure.

7 Q Okay. Somewhere around 11 o'clock you think?

8 A (Affirmative head shake.)

9 Q Let me show you what has been entered into
10 evidence as State's Exhibit 22. Just ask if you'll
11 point out for the jury, this is Perkins parking lot.
12 Do you remember where you were parked?

13 A In the handicapped parking space.

14 Q Right in there?

15 A Uh-hum.

16 Q And the front door is right near that?

17 A Uh-hum.

18 Q As you were sitting there in front of the
19 Perkins in your car, what were you doing?

20 A I had gotten out and got a Summerville Journal
21 and got back in the truck and heard gunshots.

22 Q All right. Prior to hearing the gunshots had
23 you seen anybody come up, had you seen anything?

24 A I seen a car come in a side street and park over
25 on the side.

1 Q And that would have been to your right or your
2 left?

3 A To my right.

4 Q And did you pay them much attention when they
5 drove up?

6 A A little. I heard some arguing going on.

7 Q Could you hear what they were arguing about?

8 A No.

9 Q Then you said you heard gunshots. What happened
10 after that?

11 A I heard three or four gunshots. Couple girls
12 came out of the restaurant and he approached them and
13 told them to get back in the store and walked back over
14 and shot the lady some more.

15 Q Then what did he do?

16 A Took off down the street.

17 Q In front, behind, beside the restaurant?

18 A To the right of the restaurant.

19 Q Was he going in front of it or behind it?

20 A Behind it.

21 Q Do you remember what he was wearing?

22 A A dark hoodie and dark jeans or dark pants.

23 Q When you heard the first group of shots, where
24 was the female at that point?

25 A She dropped after the first shot.

1 Q And then when you heard, when you saw the second
2 group -- do you hear them or see the second group?

3 A Saw them.

4 Q And when you saw the second group of shots,
5 where was the victim at that point?

6 A She was on the ground.

7 Q Just once again showing you State's Exhibit 22.
8 About where had that car pulled up?

9 A Over in here.

10 Q All right. When you saw him run off, which
11 direction did he run?

12 A Down this way.

13 Q Is there a side street?

14 A Uh-hum.

15 Q I show you State's Exhibit 21 is a picture of
16 that street. Which direction did he run?

17 A Down that way.

18 Q Down the street?

19 A Yes.

20 Q After that, what did you do?

21 A Went inside.

22 Q All right. About how many shots did you hear
23 total would you say?

24 A Eight or nine.

25 Q Ms. Collins, just to make it clear, to make sure

1 we got the sequence of events right, you were sitting
2 in your truck, right?

3 A Yes.

4 MR. LOY: Objection, Your Honor, leading.

5 THE COURT: I don't think that was leading, but
6 don't lead.

7 Q (By Mr. Hilton) And you said that the car came
8 up to the side, right?

9 A Yes, sir.

10 Q At what point in time did you hear the first
11 group of shots?

12 A They had gotten out of the car and were arguing.

13 Q Okay. And once the first group of shots
14 occurred, what happened to the victim?

15 A She dropped after the first shot. And that's --
16 he shot into her a couple of times. And then somebody
17 came out -- two girls came out of Perkins and he walked
18 up and pointed the gun at them and told them to get
19 back inside.

20 And then turned around and went back and shot
21 the victim again and again and again.

22 Q After that where did he go?

23 A He took off down, running down the road.

24 MR. HILTON: Please answer any questions Mr. Loy
25 may have for you.

1 THE COURT: Yes, sir.

2 MR. LOY: I have no questions for this witness,
3 Your Honor

4 THE COURT: Thank you.

5 Ma'am, you may step down. Thank you.

6 MR. LOY: I have no objection to her being
7 excused, Your Honor.

8 THE COURT: Thank you, I appreciate that.

9 MR. GIESE: State calls Trey Hardee.

10 MR. ALBERT HARRIS HARDEE, III,
11 after having first been duly sworn to state the truth,
12 the whole truth and nothing but the truth, testified on
13 his oath as follows:

14 DIRECT EXAMINATION

15 BY MR. GIESE:

16 Q State your name for the record, please?

17 A Albert Harris Hardee, III.

18 Q Where are you employed?

19 A Summerville Police Department.

20 Q What is your position there?

21 A I'm assigned to patrol, K-9 Team Four.

22 Q All right. Patrol, K-9 Team Four?

23 A Four.

24 Q So I assume you're K-9 officer?

25 A Yes, sir.

1 Q All right. Just -- how many of them do you have
2 in Summerville?

3 A We have four K-9s active right now.

4 MR. LOY: Your Honor, can you have the witness
5 speak up? I'm having a hard time hearing him.

6 THE COURT: Yes, sir.

7 THE WITNESS: Is that good?

8 THE COURT: Thank you.

9 Q (By Mr. Giese) So you have a K-9 unit. Just
10 tell the jury what that means? What do you do?

11 A The dogs we work in Summerville are considered
12 utility dogs. Many dogs can be considered as narcotics
13 dogs, search dogs, search and rescue.

14 The dogs we work are considered utility dogs,
15 which is the highest rank they can obtain. They are
16 certified nationally in obedience, article search, area
17 search, tracking, building search, aggression control,
18 and narcotic team detection.

19 Usually there is two on day shift and night
20 shift.

21 Q Do you have a certain number? I guess one for
22 each shift?

23 A One for each shift, correct.

24 Q So there is one always on duty?

25 A Correct.

1 Q Specifically I want ask you if you responded to
2 Perkins Restaurant on Trolley Road about locating
3 someone on the 30th of October, 2010?

4 A Yes, sir, that is correct.

5 Q All right. Before -- but you actually responded
6 at that time, right?

7 A Yes, sir.

8 Q Approximately what time? Do you know?

9 A I don't have a specific time notated. I do know
10 it was before midnight on the 30th. When my report was
11 completed was actually after midnight on the 31st.

12 Q All right. Now let's go just before we get to
13 the specifics of what you did that night, let's talk
14 about your dog and the dog training.

15 What is your dog's name?

16 A His name is Rex. He is a black, Czechoslovakian
17 german shepherd.

18 Q How long have you worked with him?

19 A Since 2006.

20 Q Tell the jury what your relationship with Rex
21 is? I mean, how does all that work?

22 A We basically function as a team. He is my
23 partner. He lives with me. He stays in my house with
24 my family. He rides with me everytime that I'm on duty
25 unless he is sick, or the vet determines that he needs

1 to stay home, or possibly take a couple days off. Just
2 like any other officer.

3 Q How old is Rex?

4 A Rex right now is about to turn eight years old.

5 Q All right. So you have been with him four
6 years?

7 A Almost six years.

8 Q Six years, okay. And these six years that
9 you've had him, you spend a lot of time together,
10 correct?

11 A We live together 24/7. I have been separated
12 from him for maybe a 48-hour period that entire six
13 years. He even travels with us on airlines.

14 Q Now you talked about -- inside the cockpit or
15 inside the plane or underneath it?

16 A Underneath it.

17 Q Explain to the jury exactly for a dog like Rex
18 to get certified, tell the jury exactly what has to
19 happen before a dog gets certified?

20 A NAPWDA is the North American Police Work Dog
21 Association. It's a national organization started I
22 believe in 1979. They have certain standards for each
23 task that that dog must perform, and it has to perform
24 up to those standards.

25 To be certified as a tracking dog, usually a

1 track is listed as no less than one hour old, multiple
2 surfaces. Multiple surfaces could be gravel, asphalt,
3 grass, concrete, and also it has to contain at least
4 two cross tracks. So if I'm tracking this gentleman
5 right here in the blue shirt, if I'm tracking him, a
6 cross tracking involved would be two different other
7 people on that track crossing that track to try to
8 throw the dog off.

9 With narcotics you are required to be within 98
10 percent. Everything that I listed has to be met to
11 standards before that dog is certified to work. If he
12 fails any of those areas, he does not qualify as a
13 utility dog. And if he fails something like narcotics,
14 he is not qualified to be used as a narcotic drug on
15 the street until he is recertified through that
16 organization or another nationally.

17 Q officer Hardee, what kind of training does that
18 actually take? How long does that take for a dog to be
19 certified in Rex's case? Specifically on tracking?

20 A Well that's a hard question to answer.

21 Q Well just as a utility dog then.

22 A Utility dog certification takes a minimum of a
23 week, and it's sponsored by different agencies across
24 the state. But I would say to keep a dog in a prepared
25 state that you want him to be able to be certified at

1 any given time is a minimum of 32 hours a month
2 in-the-field training with the dog. That doesn't
3 include what you do on your off time, what you do the
4 rest of the year.

5 So it's a minimum 32 hours a month for our
6 department. And that's you and the dog and the K-9
7 team training. There is no other work involved, it's
8 strictly training the dog, setting up scenarios for the
9 dog to rehearse.

10 Q Once the dog is certified by NAPA, I think you
11 said it was NAPA?

12 A NAPWDA.

13 Q NAPWADA. Do you have to keep up with
14 certification?

15 A Yes.

16 Q And how often do you do that?

17 A Annually.

18 Q So once a year you have to go be recertified?

19 A Correct.

20 Q So how many times have you been recertified with
21 Rex?

22 A We have certified as a utility dog title since
23 2006.

24 Q Just how many, generally if you can remember,
25 how many times have you used Rex like tracking, drugs,

1 whatever?

2 A Thousands.

3 MR. GIESE: Your Honor, we'd offer I believe Rex
4 through this officer as a certified tracking dog, and I
5 guess for lack of a better term, an expert in that
6 area.

7 MR. LOY: Can I have one moment, Your Honor?

8 THE COURT: You may.

9 MR. LOY: Your Honor, at this point the defense
10 is willing concede that this dog is certified as a
11 tracking dog. I think that covers it.

12 MR. GIESE: That will be fine.

13 THE COURT: Thank you.

14 MR. GIESE: Thank you.

15 Q (By Mr. Giese) Now back on October 30th of 2010,
16 did he have his training and certification at that
17 time?

18 A Yes, he did.

19 Q All right. And take us through what happened,
20 the scene at Perkins Restaurant parking lot, and what
21 exactly you did?

22 A I responded to the scene and met with Officer
23 Sullivan, Lt. Wright and Randy Olsen who were already
24 on scene. I had to come from Mount Pleasant. Took me
25 probably about 25 minutes to get there.

1 Once there I was directed to the side parking
2 lot where the victim was, there were certain articles
3 found in the parking lot, and they gave me a general
4 direction that they thought the subject had left on
5 foot.

6 From there you do what is called casting the
7 dog. You put him out and he is going to find the
8 freshest human odor to follow. That being the side
9 parking lot, there was not a lot of foot traffic or
10 much chance of confusion that he would track the wrong
11 person.

12 We wound up tracking down Crosscreek Boulevard
13 toward Travelers Boulevard. I want to say it was
14 probably about three blocks the dog was actively
15 tracking. We reached a gravel area and a day care just
16 before Travelers Boulevard when the dog picked his head
17 up and began to wind scent, meaning that he no longer
18 had the scent --

19 MR. LOY: Objection, Your Honor. I don't think
20 there is a foundation laid for this particular
21 testimony as to what the dog is communicating to
22 officer Hardee. He said he's certified as a tracking
23 dog, and he followed this dog that was tracking this.

24 THE COURT: I think he is in the process of
25 laying the foundation right now. And also as odd as it

1 would be, I think it would be present sense impression
2 on what the dog is relaying, what he's experiencing as
3 he leads him.

4 MR. LOY: My objection is not to what the dog
5 did or how the dog lifted his head, but to Officer
6 Hardee's testimony then meaning this, this is what the
7 dog was relaying to me. And that's where he went with
8 that. I object to that hearsay on the dog.

9 THE COURT: I think you originally objected to
10 foundation, which I ruled on. Then you objected to
11 hearsay on the dog which I also ruled on under 803(1).

12 Now if we need to qualify him as an expert to be
13 able to give an opinion about what the dog was
14 relaying, you all can go through that procedure. I
15 thought you just agreed that he was a certified
16 tracking dog, and I think that's what we were trying to
17 do before.

18 MR. LOY: I've agreed that he is a certified
19 tracking dog, Your Honor.

20 THE COURT: Okay. So since you object to him
21 giving opinion testimony about that, let's go ahead and
22 go through that process.

23 objection is overruled.

24 Q (By Mr. Giese) If you would tell the jury and
25 the court the certification process that you also have

1 to go through to determine what Rex is following and
2 not following. What kind of certification process do
3 you do?

4 A It falls more under a partnership with you and
5 the dog. If you cannot tell where the dog is leading
6 you or the dog is doing, he is not going to be
7 successful. And you are definitively not going to be
8 successful. More than likely you'll sabotage the dog
9 if you are trying to lead him.

10 So by watching his body actions, his body
11 posture, his breathing patterns, whether he is actively
12 picking up scent, when he changes those body behaviors
13 to his actions, something has changed in the
14 environment that the dog is reading.

15 Q And you're taught that, correct?

16 A Correct.

17 Q Specifically you were taught that as in regards
18 to Rex?

19 MR. LOY: Objection, Your Honor, leading.

20 MR. GIESE: I believe in a situation like this I
21 can.

22 THE COURT: I think he can lead here. You are
23 welcome to voir dire him as well.

24 Q (By Mr. Giese) So you and Rex go through
25 training?

1 A Correct. We also do multiple scenarios that we
2 set up, all of them being different, so that you can
3 read the dog and determine whether he is successful or
4 not, his training is working, or whether something
5 needs to be changed.

6 Q And these things like when you mentioned
7 sniffing in the air, that's all things that you're
8 taught?

9 A Correct.

10 MR. GIESE: We offer him at this time, Your
11 Honor.

12 THE COURT: Any voir dire?

13 MR. LOY: Your Honor, I don't have any questions
14 for him at this point. I would object. I don't think
15 the foundation has been laid.

16 I don't know if he's ever passed a test, if he's
17 ever gotten a certificate, if he's ever been to a
18 school. I just heard his conclusory statements that a
19 dog changing his pattern means he may have dropped the
20 scent or something along those lines.

21 I don't think foundation has been laid for his
22 qualification as an expert, and I object to his
23 qualification.

24 THE COURT: And that's why I'm asking you if you
25 want to voir dire him.

1 MR. LOY: I do not, Your Honor. I don't want to
2 qualify him. I don't think he's qualified and I
3 object to his qualification as an expert.

4 MR. GIESE: I'll proceed further.

5 THE COURT: Thank you, sir.

6 Q (By Mr. Giese) Okay. Do you go to the classes
7 and the school also in certifications?

8 A Yes, sir. I have the past two year's
9 certifications right here with me from the National
10 Police Work Dog Association, as well as I have back to
11 2006. I brought the previous 2011, 2010 with me.

12 Q And when you say that you are also certified,
13 you and Rex are certified together?

14 A That is correct.

15 Q That is training that you've taken with Rex?

16 A Correct.

17 MR. GIESE: Can we make a copy, Your Honor? I'd
18 like to present it, but I would like for him to be able
19 to keep it.

20 THE COURT: Certainly.

21 MR. GIESE: We'd like to offer those two copies.

22 MR. LOY: Without objection, Your Honor.

23 THE COURT: Thank you. The certificates are
24 admitted without objection

25 (Whereupon, State's Exhibit Nos. 33 and 34 are

1 admitted into evidence.)

2 Q (By Mr. Giese) So State's Exhibit Nos. 33 and 34
3 are your two most recent certifications.

4 MR. GIESE: And if I may publish it, Your Honor.
5 It's the North American Police Work Dog Association.
6 This is to certify that Alford Hardee and Canine Rex
7 have achieved the high standards set forth by the --
8 and to the satisfaction of the North American Police
9 Dog Work Dog Association.

10 Q (By Mr. Giese) So you're accredited, is that
11 correct?

12 A Yes, sir.

13 Q That's what these things are. Now State's
14 Exhibits 33 and 34, you have how many more of those?

15 A That would be 2009, 2008, 2007 and 2006.

16 Q Tell Her Honor and the jury what training and
17 what classes you take to get those certifications?

18 A Normally we basically train in tracking. Like I
19 said, we do different environments. We use a known
20 control, such as another canine handler, to lay that
21 track so we can verify if the dog is performing
22 correctly.

23 We also set up different scenarios. The
24 scenario where somebody went into a building, so now
25 the surroundings have changed, we have gone into a

1 building. Or possibly that subject that you are
2 tracking got on a bicycle which now changes the
3 environment on how that dog is going to track.

4 Or even getting into a vehicle would cause an
5 environmental change. If that person is now concealed
6 in a vehicle, they're not laying human skin cells on a
7 track.

8 Q But you have training in classes in regards to
9 all this; is that correct?

10 A Correct.

11 Q And you have done that for the last six years?

12 A Yes, sir.

13 MR. GIESE: We'd offer him at this time.

14 THE COURT: Thank you.

15 MR. LOY: I think he is qualified, Your Honor.

16 THE COURT: Thank you, sir. He will be so
17 qualified as an expert in canine handling.

18 Ladies and gentlemen, normally a witness cannot
19 give opinion testimony. Normally they may only give
20 testimony as to what they have seen, heard, sensed,
21 felt or otherwise experienced. We have an exception in
22 our rules when someone is qualified because of their
23 education or experience. Those people that are so
24 qualified are permitted to give an opinion in the
25 certain areas in which they are specifically qualified.

1 This witness has been qualified in the area of
2 canine handling and canine law enforcement to give
3 opinion testimony in that area. This does not mean
4 that you must accept his testimony. You must consider
5 it as you would any other testimony, and it is up to
6 you to give any weight and credibility if any that you
7 see fit and appropriate.

8 Just because he has been qualified as an expert
9 does not render his testimony any more or less valuable
10 than any of the other testimony in the case, it simply
11 permits him to give an opinion. Thank you.

12 MR. GIESE: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 Q (By Mr. Giese) So to get back to the scene at
15 Perkins parking lot. You responded to the call?

16 A Correct.

17 Q And tell the jury one more time what you did?

18 A We started from the incident location where the
19 victim was in the parking lot and very near the vehicle
20 that evidently I was informed that brought them to the
21 scene. From there casting the dog led across the
22 parking lot to Crosscreek Drive.

23 Down Crosscreek on the left-hand side --

24 Q Let me stop you first --

25 THE COURT: Real quick, if you could speak up

1 just a little bit. I know if I'm having trouble
2 hearing you, they certainly are.

3 Q (By Mr. Giese) You said you started to do a
4 sweep. Tell the jury what you mean by that?

5 A It's called casting the dog.

6 Q What does that mean?

7 A If I don't know exactly where you were standing
8 when you fled a scene, you will take your dog and give
9 him about a 15-foot lead and let him find the trail
10 himself, and he will pick up on the freshest human odor
11 in that area.

12 Q So you are near where the body is when you did
13 this?

14 A Correct.

15 Q And you know what general direction where this
16 person allegedly went?

17 A Correct?

18 Q And at that point you cast the dog to see if he
19 can find the scent?

20 A Correct.

21 Q And you did that?

22 A Yes.

23 Q Now I show you what has been marked State's
24 Exhibit No. 22, the Perkins parking lot. Where -- show
25 this jury where on this you did the casting or the

1 sweep that you talk about?

2 A It would have been somewhere right back in this
3 area right over here.

4 Q And that's with Rex?

5 A Correct.

6 Q Did he find a scent at that time?

7 A Yes.

8 Q Where did you go?

9 A We went through the back of the parking lot,
10 Crosscreek Road.

11 Q Hold on. You went out the parking lot. Showing
12 you State's Exhibit No. 21.

13 MR. LOY: Your Honor, particularly when he turns
14 from the mic I just can't hear. May I come up here?

15 THE COURT: You may.

16 Q (By Mr. Giese) Do you recognize that?

17 A Yes.

18 Q Show us where you tracked, or Rex tracked?

19 A Coming out of the parking lot down Crosscreek.
20 This is the waste management right here. We tracked
21 all the way down to Travelers Boulevard. And there is
22 a gravel parking lot in a day care on the other side of
23 this tree.

24 It was at that point that we lost the scent and
25 began circling around. From there we did not reacquire

1 a track, but what we do do is we do what is called a
2 reverse track. We track backwards to the scene of the
3 crime to see possibly a gun, money, items from the
4 crime can be located and it's called an article search.

5 oftentimes people when they're running will drop
6 things, possibly guns, shell casings, bullets. But
7 nothing was located at that time to be associated with
8 the crime.

9 Q And when you track back, do you track back, do
10 you allow Rex to track back? Does he go back? Or do
11 you just follow the path that he came?

12 A He will follow the path that he came, but he
13 will sweep very wide because I give him a different
14 command now. It's called report and it's called an
15 article search where he is looking for articles that
16 have human odor on them.

17 Q So you follow -- Rex follows the track down
18 past, a little bit past these woods and you come to a
19 gravel parking lot?

20 A There was a gravel area on the right-hand side
21 of the road on the other side of these trees, as well
22 as a day care that adjoins it. And that's where we
23 tracked no further.

24 Q Could Rex track through gravel?

25 A Yes.

1 Q Because I think he is trained to do that?

2 Q He is trained on multi-surfaces.

3 Q But that's where the track ended?

4 A Correct.

5 Q You then turned back around to come back?

6 A Yes, sir.

7 Q And as an expert in this area in tracking, what
8 would that indicate to you when a dog quits tracking?
9 When Rex quit tracking in this instance?

10 A There are several things it could indicate.
11 Either the person you were tracking got into a vehicle
12 and left with him driving. Oftentimes people get
13 picked up by somebody driving a getaway vehicle. Like
14 I said, a bicycle will also change things, or whatever
15 usually happens.

16 If you've completely lost a hot track when the
17 dog is actively following something, usually a vehicle
18 has been involved. And we have documented that
19 numerous times in the past with our robberies where we
20 later found that they actually did have a car parked on
21 the next block over.

22 MR. GIESE: Thank you, that's all I have.

23 THE COURT: Thank you.

24 CROSS-EXAMINATION

25 BY MR. LOY:

1 Q Did you prepare a written report from your
2 involvement in this case, Officer Hardee?

3 A Yes, sir, I did.

4 MR. LOY: And if I could approach just one
5 moment, Your Honor.

6 THE COURT: You may.

7 Q (By Mr. Loy) I have got this one, two, three,
8 four, five lines. Is this the report that you
9 prepared?

10 A Yes, it is.

11 Q And this is the entire paperwork that you
12 produced for this case?

13 A Yes, sir.

14 Q And you understand that having been qualified as
15 an expert you are entitled to give your opinion on
16 matters relating to this dog handling; is that correct?
17 Do you understand that?

18 A Yes, sir.

19 Q So it's your opinion that the dog would have
20 done what he was trained to do and pick up the freshest
21 human track?

22 A Correct.

23 Q But you don't know who that would have been?

24 A There is no way that I can validate that. We
25 were going off the assumption that it was a low traffic

1 area, and that was the highest probability the dog
2 selected occurred.

3 Q so the answer is yes, but this is what you
4 assumed?

5 A Correct.

6 Q And there are various ways I could leave a
7 scent, some of which might be stronger than others; is
8 that not right? By which I mean this.

9 If the dog is trained to track a human trail,
10 and I'm barefoot and run down the road, and five
11 minutes later a person in hiking boots goes down the
12 road, is it your experience that that dog might pick up
13 on that barefoot track? Or is that something you
14 haven't experienced?

15 A That's a very good possibility because you're
16 right, it does leave a stronger odor.

17 Q Okay. So in this case what you are saying is
18 you followed the procedures, you did the things that
19 you were supposed to do, and this is the way that the
20 dog performed?

21 A Yes, sir.

22 Q And based on that, you have an opinion as you've
23 given us?

24 A Yes, sir.

25 MR. LOY: Thank you. Nothing more.

1 THE COURT: Thank you.

2 MR. GIESE: Nothing further. He just can be
3 excused.

4 THE COURT: Okay. Any objection?

5 MR. LOY: None, Your Honor.

6 THE COURT: Sir, you man excused. Thank you.

7 MR. HILTON: State would call Randy Olsen.

8 MR. RANDAL GEORGE OLSEN,
9 after having first been duly sworn to state the truth,
10 the whole truth and nothing but the truth, testified on
11 his oath as follows:

12 MR. HILTON: May it please the Court.

13 THE COURT: You may.

14 DIRECT EXAMINATION

15 BY MR. HILTON:

16 Q Thank you, Detective Olsen. Where are you
17 employed?

18 A Summerville Police Department.

19 Q How long have worked there?

20 A 20 years now.

21 Q And in what capacity do you have there at the
22 police department?

23 A At this time I'm a crime scene investigator and
24 evidence room custodian.

25 Q And is that what you did back in October of

1 2010?

2 A Yes, sir.

3 Q How long have you been in that position?

4 A For the last 11 years now.

5 Q And what was your title again?

6 A I'm crime scene investigator.

7 Q What does that mean?

8 A I do -- I investigate all the major crime scenes
9 that we usually have, process the evidence, take the
10 evidence to SLED for testing or wherever it has to go
11 for testing.

12 Q Does that include like evidence custodian?

13 A Yes. I do custodian of the evidence room at the
14 same time because it's not nearly -- not like some of
15 the big cities where you have a lot of crime.

16 Q So as the crime scene tech, you are also in
17 charge of the evidence room?

18 A Yes.

19 Q And did you get a call to respond out to Perkins
20 Restaurant on Trolley Road on October 30th, 2010?

21 A Yes, I did.

22 Q What was that call in reference to?

23 A I was called out in reference to a shooting at
24 the Perkins parking lot.

25 Q And describe for the jury and the Court what

1 that scene looked like when you got there?

2 A When I got there the entire Perkins parking lot
3 was taped off. One of the fire trucks was out on the
4 street with its lights on so to light up the scene.

5 And there was a car. And there was a body
6 laying in the parking lot next to the car that was
7 covered with a sheet.

8 Q And it's not common for you to be the first one
9 on the scene, right?

10 A No. I'm never the first one on the scene.

11 Q Let me show you what has been introduced into
12 evidence as State's Exhibit 22. And you have described
13 some things, one of which you said was a car in the
14 parking lot?

15 A Yes.

16 Q Where was that?

17 A The car was right about in this area here.

18 Q All right. And where was the body located?

19 A Right about this lane or this lane right here.
20 I couldn't say for sure right now.

21 Q All right. Now as a crime scene technician or
22 crime scene investigator, is there like a process you
23 go through when you go to any particular scene?

24 A Yes. I usually once I get to the scene I will
25 check with the on-scene supervisor to find out what is

1 going on, what has been done so far at the scene. Like
2 I said, when I got there I could see that it had been
3 taped off.

4 And I will usually go to the supervisor and ask
5 them what information they have to give me about the
6 scene and what they know happened so far, who has been
7 in the scene, and who's introduced anything to the
8 scene.

9 Q Did you determine that in this case?

10 A Yes. There is the sheet that was covering the
11 victim was introduced into the scene by EMS. And then
12 there was styrofoam cups covering up all -- turned
13 upside down covering up all the shell casings they had
14 seen on the ground.

15 They covered them up with that to make sure
16 nobody walking through the scene kicked them or moved
17 them.

18 Q Okay. And what is the first step you do as far
19 as documenting the scene when you get to one?

20 A What I will do is I will go up, like I said,
21 after I talk to the supervisor to find out what is
22 going on, I kind of look around, see what I see from
23 outside.

24 This type of scene outside you can look from
25 outside the scene. And I will get my camera and start

1 taking pictures around the scene, to what it's like.
2 Then I will walk inside the tape. And when I go inside
3 the tape I will start taking pictures as I'm looking on
4 the ground for anything that might be of evidentiary
5 value.

6 Like in this scene, I already knew where some of
7 the shell casings were because they were covered up.
8 But there is also a hat back behind the car over there
9 so I would take pictures of everything the way it was
10 initially.

11 And after I do all those pictures, then I will
12 usually take and get my marker numbers and put them in
13 the scene to mark what I have found as evidence that
14 might possibly be evidence.

15 Q Do you take just one or two pictures? Or how
16 many?

17 A I just keep clicking. It's nice now-a-days with
18 digital cameras you can take as many pictures as you
19 want and it doesn't cost anything. I will maybe
20 sometimes at a scene take 100 to 200 pictures.

21 Q All right. Then after you photograph this
22 evidence, what do you do after that point?

23 A After it has been photographed the initial
24 photographs with the markers, then I will come back
25 through to document what each item is. And each

1 markers are little yellow placards that have numbers on
2 them.

3 And I want to put the numbers down next to each
4 of the items. In this case the shell casings and stuff
5 like that. I will come back up and take a picture from
6 about 10 feet away to show where the casing is in the
7 whole scene with that number.

8 Then I take a medium range picture to show a
9 little bit better so now you can see that what I'm
10 taking a picture of is a casing. Then I will take a
11 close-up just of the casing with the placard there.
12 That way it can all be associated together where it's
13 at overall and individually.

14 And I will take and mark them on a piece of
15 paper, write down what it is. A lot of times,
16 sometimes I will take all of them if they're scattered.
17 But in this case some of them were close together, so
18 when I took those pictures like that, as soon as I took
19 the picture I picked it up and bagged the casing so
20 that they wouldn't get knocked out of the way or moved
21 around or anything like that.

22 Then went around, collected all the evidence
23 that way and put them all in individual bags.

24 Q And in this particular case did you measure and
25 document exactly where things were?

1 A Yes.

2 Q Do you use a reference point? or how do you
3 determine where to measure from?

4 A You use a fixed reference point to do your
5 diagram. You'll try to find something like a fire
6 hydrant or telephone pole, or utility pole of some
7 sort.

8 Because SCE&G numbers all their poles. If you
9 ever go to the light poles you'll see a little placard
10 that says SCE&G with a number. That number has a
11 geographical position attached to it in their database.

12 Q And it's the idea that you can go back to that
13 fixed point and kind of place things where they were?

14 A Right. You can go back anytime. If they were
15 to widen that road, for some reason at that
16 intersection they decided they wanted to make that a
17 four-lane intersection. I could still go back with the
18 GPS and find that spot, put a nail in the road so I
19 know that's where my position was and remeasure
20 everything back.

21 Q And did you do that in this case?

22 A Yes.

23 Q All right.

24 Let me show you what has been marked for
25 identification as State's Exhibit 20, and ask you to

1 take a look at this.

2 Do you recognize this item?

3 A Yes. That's the diagram I did up on the
4 computer.

5 Q All right. And is this the diagram of this
6 scene that we are talking about?

7 A Yes.

8 Q And is this a fairly accurate drawing of where
9 things were situated in the Perkins parking lot?

10 A Yes, sir.

11 MR. HILTON: Your Honor, at this time we'd offer
12 State's Exhibit 20 into evidence.

13 MR. LOY: Without objection.

14 THE COURT: Thank you. State's 20 is admitted
15 without objection.

16 (Whereupon, State's Exhibit No. 20 is admitted
17 into evidence.)

18 Q (By Mr. Hilton) We will come back to this in
19 just a minute, Detective Olsen.

20 I'm going to show you a series of pictures. I
21 just want you to look at these pictures and just answer
22 simply do you recognize these items. And that would be
23 State's 1 through 13?

24 A Okay.

25 A Yes, I do.

1 Q All right. Are all those photographs that you
2 took of the scene that night?

3 A Yes, they are.

4 Q And are these accurate photographs of the scene
5 as it was when you found it on October 30th of 2010?

6 A After I went through and took the initial photos
7 and then put my placard in, yes.

8 Q But these are pictures of your placards?

9 A Yes.

10 MR. HILTON: Your Honor, at this time we would
11 offer State's 1 through 13 into evidence.

12 MR. LOY: Your Honor, only over my earlier
13 objections.

14 THE COURT: Thank you. State's 1 through 13 are
15 admitted without objection pursuant to the earlier
16 objection. If I could get counsel to approach.

17 (Whereupon, the a discussion was held at the
18 bench off the record.)

19 MR. LOY: Your Honor, I didn't earlier object to
20 the introduction of these photographs, and I don't now.

21 THE COURT: Thank you, sir, appreciate you all
22 keeping the record straight.

23 State's 1 through 13 are admitted without
24 objection.

25 (Whereupon, State's Exhibit Nos. 1 through 13

1 are admitted into evidence.)

2 MR. HILTON: Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. HILTON: Your Honor, at this time I will
5 attempt to publish these photographs to the jury.

6 THE COURT: You may.

7 Q (By Mr. Hilton) Detective Olsen, I'm going to
8 display on the screen State's Exhibit 1 and just ask if
9 you will describe this photograph for the jury.

10 A That's a picture taken from behind the vehicle
11 at an angle. The Number 12 is the ball cap that was
12 laying in the parking lot. You can still see the
13 victim covered. And the numbered placards around were
14 some of the casings and other items I recovered were
15 laying.

16 Q And again referring to State's Exhibit 22. Kind
17 of where were you standing when State's Exhibit 1 was
18 taken?

19 A I would have been standing probably right about
20 here. The vehicle was over here, kind of at an angle
21 like that. The ball cap was right back in here
22 somewhere.

23 So I was standing back in that direction over
24 there.

25 Q Then these yellow, you call them placards?

1 A Placards, yes.

2 Q That are on the pavement there, what are those
3 again?

4 A Those are the number placards. And just depends
5 on which ones, the 1 through I think 8 would be the
6 shell casings. And any of the numbers after that would
7 be some different items that were in the parking lot
8 there.

9 Q Okay. Let's go through those items
10 individually. Each numbered item, does it have
11 individual significance?

12 A Yes.

13 Q Let's talk about Item Number 1. And I will try
14 to go in order. What is that item?

15 A That's one of the .9 millimeter shell casings
16 recovered from the scene.

17 Q Number 2?

18 A Is another .9 millimeter shell casing we
19 recovered.

20 Q Number 3?

21 A Is a .9 millimeter shell casing.

22 Q Number 4?

23 A Is a .9 millimeter shell casing.

24 Q Now all of these are individual shell cases; is
25 that correct?

1 A Yes, separate shell casings.

2 Q And then this is State's Exhibit 6, showing
3 items 5 and 6. What are those?

4 A Those are both .9 millimeter shell casings.

5 Q And item in this area over here, what is that?
6 And If I need to show you the picture I will.

7 A I believe that's going to be -- that's the
8 victim's feet.

9 Q If you will, just can you point out on the
10 screen?

11 A That's the victim's feet here.

12 Q The shell casings were about how far from the
13 body? We're talking about numbers 5 and 6 there?

14 A Just the -- 5 looks to be about 6 to 8 inches.
15 And probably about 8 to 10 for number 6.

16 Q And then that would be your placard number 5?

17 A Yes. That's just a closer -- because there was
18 two of them close in the scene for close up, I did both
19 of them separately as 5 and 6 separately.

20 Q And that was State's Exhibit 7. Then State's
21 Exhibit 8?

22 A That is casing number 6 again separately.

23 Q State's Exhibit 9 is your placard number 7.

24 A That's another spent shell casing, .9
25 millimeter.

1 Q State's Exhibit 10, your number 8?

2 A And that's the eighth shell casing.

3 Q Then what is this item?

4 A Number 9, that was the purse, the victim's
5 purse. I believe that's a pack of cigarettes and a
6 lens from her glasses.

7 Q Okay. This is State's Exhibit 12?

8 A And that's the other lens from her glasses. And
9 there is a bullet hole in the lens.

10 Q And then finally State's Exhibit 13, your
11 placard number 12?

12 A That's the hat found in the parking lot.

13 Q And these items, I'm going to go back to State's
14 Exhibit 1 which you referred to. Those items that are
15 just spread out in the parking lot there, what are
16 those?

17 A Those are all the items. You can see most of
18 them, one, two, three, four, five and six are in back,
19 the casings, and some of the other ones are on the
20 other side of the truck. Ten is right next to the left
21 rear tire on the vehicle. And the rest you can't see
22 from that photo because they're behind the car.

23 Q Now this item over here, I can't quite tell what
24 number it is?

25 A That would be Item Number 11. I can see 13 on

1 the other side is a partially smoked cigarette butt
2 that was laying in the parking lot by the car.

3 Q And let me just ask you about that. Is it times
4 when you go to the crime scene and you end up
5 recovering items that have nothing to do with the
6 scene?

7 A Yes. If it's there and it's not anchored down
8 and you don't know for sure what is going to be later
9 on, you collect it then because it's not going to be
10 there the next time you trying to go back.

11 Q Okay. Now with regard to those items of
12 evidence that we talked about, did you actually pick up
13 those items of evidence?

14 A Yes. I picked them all up and put them in
15 envelopes.

16 Q Let me show you what has been marked State's
17 Exhibit 28 and just ask, for identification, and ask if
18 you recognize this?

19 A That would be the spent shell casings picked up
20 from the parking lot. After they have been taken to
21 SLED and they're SLED's plastic bags, and my paper bags
22 with each one numbered from which placard I got them
23 from.

24 And they packaged them back -- that casing back
25 with that envelope so that they can stay marked.

1 Q And those are all the shell casings that you
2 recovered that night?

3 A Yes.

4 MR. HILTON: Your Honor, at this time we offer
5 State's Exhibit 28 into evidence.

6 MR. LOY: I don't have an object, Your Honor.

7 THE COURT: Thank you, sir.

8 State's 28 is admitted without objection.

9 (Whereupon, State's Exhibit No. 28 is admitted
10 into evidence.)

11 Q (By Mr. Hilton) Let me show you what has been
12 marked for identification as State's Exhibit 31 and ask
13 if you recognize that item?

14 A That's the item number placard number 10.
15 That's the lens with the bullet hole in it.

16 Q And that was recovered at the scene as well?

17 A Yes.

18 MR. HILTON: Your Honor, at this time we offer
19 State's Exhibit 31 into evidence.

20 MR. LOY: Without objection, Your Honor.

21 THE COURT: Thank you.

22 State's 31 is admitted without objection.

23 (Whereupon, State's Exhibit No. 31 is admitted
24 into evidence.)

25 Q (By Mr. Hilton) Let me show you what has been

1 marked for identification as State's 30 and just ask if
2 you recognize this item?

3 A That's going to be the ball cap recovered from
4 the parking lot and sent to SLED with my paper bag and
5 my label on it. I can still see my extra tape.

6 Q I know you can't see what's inside that brown
7 bag, but what's inside the bag?

8 A It should be the ball cap that was item number
9 12, placard number 12.

10 MR. HILTON: Your Honor, at this time we offer
11 State's Exhibit 30 into evidence.

12 THE COURT: No objection? State's 30 is without
13 objection --

14 MR. LOY: No, Your Honor. It is not without
15 objection at this point.

16 Your Honor, I don't have an object to the
17 introduction of the ball cap. But until I confirm that
18 that's what it is, and this one is sealed up, I don't
19 want to be surprised.

20 THE COURT: All right. Well let's open it up so
21 we can take a look at it.

22 Q (By Mr. Hilton) Detective Olsen, can you open
23 that up for us.

24 THE COURT: Can I see the attorneys real quick.

25 (Whereupon, a discussion was held at the bench

1 off the record.)

2 A This is the white wrap that the SLED, when it
3 goes -- what they do is it goes into trace, trace
4 evidence tries to recover any possible DNA. When we
5 request DNA analysis of it, they did their swabs or
6 whatever they had to do to get traces, then they wrap
7 it up in their own paper again and put it inside my
8 bag.

9 It's got their item number on it. And the
10 analyst's initials, the lab number, the date that they
11 sealed it back up.

12 Q (By Mr. Hilton) And if you will preserve that
13 package as much as you can, and just go ahead and open
14 that up.

15 A Yes. That would be the ball cap.

16 MR. LOY: Without objection, Your Honor

17 THE COURT: Thank you. The ball cap is admitted
18 without objection.

19 (Whereupon, State's Exhibit No. 30 is admitted
20 into evidence.)

21 Q (By Mr. Hilton) Thank you. Now at some point
22 in time after the scene, did you end up towing the
23 victim's vehicle?

24 A Yes. We had a tow truck come and pick up the
25 victim's vehicle. And I drove the vehicle onto the

1 back of the tow truck.

2 Q Did you process that vehicle?

3 A After we took it to the station, we put it in
4 the fire department bay. I followed the truck, the tow
5 truck to the station. I drove the tow truck -- or the
6 vehicle back off the tow truck so I was the only one
7 inside with gloves on.

8 Nobody else left any DNA in it. And we parked
9 it in the fire department bay and secured it in there
10 and waited until we got a search warrant to search it
11 in the morning.

12 Q All right. Thank you. Now do you recall
13 executing a search warrant on November 4th, a couple
14 days after the incident, in reference to a buccal swab
15 on the defendant?

16 A Yes.

17 Q And did you end up taking that buccal swab?

18 A Yes. They had a search warrant for the buccal
19 swab from the suspect.

20 Q And let me just ask you, what is a buccal swab?

21 A It's basically just a swab that you use to swab
22 the inside of the cheek to get fresh -- that's the
23 freshest skin cells you can get off the inside of the
24 cheek.

25 It's not just a slide reaction, you're actually

1 pulling the skin cells off the inside and they use that
2 for a DNA sample. Instead of having to draw blood, you
3 can just get as good a sample from that as you can from
4 drawing blood.

5 Q Is that what is considered a known sample?

6 A Yes, that would be a known sample.

7 Q And who did you take that sample from?

8 MR. LOY: Again, Your Honor, this would be over
9 our objection.

10 THE COURT: Certainly. And I recognize and your
11 objection is preserved subject to my previous ruling.

12 MR. LOY: Thank you, Your Honor.

13 Q (By Mr. Hilton) who did you take the sample
14 from?

15 A From the defendant, Mr. Benton.

16 Q Do you see him seated in the courtroom today?

17 A Yes, he's sitting at the table over there.

18 Q Can you describe what he's wearing for the jury?

19 A A blue suit with a multi-color tie, right in the
20 middle.

21 Q And let me show you State's Exhibit 27 and just
22 ask if you recognize that item.

23 A That's the envelope I put the buccal swab in for
24 transport to SLED.

25 MR. HILTON: Your Honor, at this time we'd offer

1 state's Exhibit 27 into evidence now, or we can finish
2 the foundation if we need to.

3 THE COURT: Well and that's going to be my
4 question. Other than the previous objection that has
5 been preserved, is there any objection to the?

6 MR. LOY: I don't think the foundation has been
7 laid pursuant to the introduction at this point.

8 THE COURT: Then go ahead and lay it.

9 MR. HILTON: We will keep it marked for
10 identification at this point.

11 THE COURT: Okay.

12 Q (By Mr. Hilton) Now subsequent to that,
13 Detective Olsen, or it may have been a few days prior,
14 I'm not sure, did you meet with the pathologist in this
15 case?

16 A Yes. I attended the autopsy in New Berry, South
17 Carolina.

18 Q And did you recover any items of evidence from
19 the pathologist?

20 A They recovered the bullets from inside of the
21 victim's body and any of the blood and toxicology and
22 tissue samples that they normally send for autopsy
23 examination purposes. I took all that stuff to take to
24 SLED.

25 Q And was one of those items the projectiles?

1 A Yes, sir.

2 Q And let me show you what has been marked for
3 identification as State's Exhibit 29.

4 Do you recognize that item?

5 A That's the four projectiles that were recovered
6 from the victim.

7 Q And that came from the pathologist?

8 A Yes.

9 Q Now with regard to the hat, the buccal swabs,
10 the shell casings, the projectiles, do you remember
11 where you took those items on November 15, 2010?

12 A To SLED.

13 Q Okay. And what was the purpose of that?

14 A That was to have the bullets were taken for
15 bullet comparison with the gun that was recovered. And
16 also the DNA samples and all that stuff was taken at
17 one time to be compared with the samples we had, like
18 from the vehicle I got some DNA samples from the
19 vehicle, possible testing.

20 Q And with regard to any of those items, did you
21 alter them or tamper with them or anything like that?

22 A No.

23 Q Other than I guess what you testified to,
24 picking them up and that sort of thing?

25 A Yeah, picking them up and carrying. Even with

1 the projectiles were still in the containers, in the
2 plastic bags like that from the pathologist. I didn't
3 repackage them or do anything at all.

4 MR. HILTON: One moment, Your Honor.

5 THE COURT: That's fine.

6 MR. HILTON: Please answer any questions Mr. Loy
7 or Ms. Suggs may have for you.

8 THE COURT: Thank you. Mr. Loy.

9 MR. LOY: Very briefly.

10 CROSS-EXAMINATION

11 BY MR. LOY:

12 Q When you arrived on the scene you said other
13 people had been there, the victim had been covered with
14 a sheet, other officers had responded and people were
15 about. Is that fair to say?

16 A Yes.

17 Q So -- and the bulk, if not all of the items that
18 you recovered of evidence and that you marked with
19 these placards, are items that are easily moveable; is
20 that correct?

21 A Yes.

22 Q Okay. And the area where these items were
23 recovered is a paved parking lot; is that right?

24 A Yes.

25 Q So when you introduce or show us a picture and

1 say, here's where I found number 8, and here's where I
2 found number 5, et cetera, you are not testifying this
3 is where 8 and 5 were, or 1 through 7, or any of the
4 rest of them, this is not where they were at the time
5 the crime was committed, but merely this is where they
6 were when I got there?

7 A Yes.

8 Q Because other people walking in and out, moving
9 around, et cetera, could easily have relocated or
10 disturbed those things prior to you getting there?

11 A They could have. That's why I know the patrol
12 units marked them with the cones so nobody would mess
13 with them, so they wouldn't get kicked around.

14 Q But whether they were marked prior to EMS
15 arriving, whether the sheet was there, or whether prior
16 to the patrol units getting there people had rushed
17 back out, the wind had blown, et cetera, you simply
18 can't testify this was the crime scene pristine upon
19 its completion?

20 A No.

21 MR. LOY: Thank you.

22 THE COURT: Thank you, sir.

23 REDIRECT EXAMINATION

24 BY MR. HILTON:

25 Q Detective Olsen, just one quick question. The

1 chart that you made that has been introduced into
2 evidence now as State's Exhibit 20, the pictures that
3 we introduced, for example State's Exhibit 12 that has
4 placard number 10, is that item number 10 on here as
5 well?

6 A Yes. What I do is when I put the placards down
7 and I number them, I've used the same thing with my
8 diagram. And I also put them on my report. And that's
9 my item number when I take it to SLED.

10 I have found if you -- SLED renumbers theirs
11 anyhow by how they take it in. They'll add stuff to it
12 when they find more things, so sometimes your numbers
13 can kind of get messed up.

14 Actually in this case my first few items would
15 have been stuff I took from the autopsy, because I took
16 that down first, because I took that down that
17 following Monday. Then I took the rest of this stuff
18 after I recovered them from when we recovered the
19 handgun and took them all down at one time for
20 comparison.

21 Q Just so the jury knows how the ready this chart,
22 if they see a number at the scene, that's the number on
23 here?

24 A Yes.

25 Q Okay, thank you.

1 MR. HILTON: Nothing further, Your Honor.

2 THE COURT: Thank you.

3 MR. LOY: Nothing, Your Honor.

4 THE COURT: Thank you.

5 Yes, sir, you may step down.

6 Is it okay if he is excused?

7 MR. LOY: We have no objection, Your Honor.

8 MR. HILTON: No objection.

9 THE COURT: Sir, you may be excused.

10 MR. HILTON: May we approach?

11 THE COURT: You may.

12 (Whereupon, a discussion was held at the bench
13 off the record.)

14 THE COURT: Okay, ladies and gentlemen. The
15 attorneys have gotten through a good bit of evidence
16 today. You all have been very patient. If we call the
17 next witness, it's likely to be a longer one. We are
18 going to start with that witness in the morning.

19 And this will give us a chance to take a break
20 and take up some matters of law so that we hopefully
21 don't have to send you all back and forth. So I'm
22 going to let you go for the night. We're going to come
23 back, if you'll be in the jury room at 9:30.

24 Again do not discuss the case with anyone, and
25 please don't do any research or try to Google it or

1 know that at some point. There's no hurry because
2 we're not going to finish tomorrow, but I do want to
3 start and make sure I get the charge so I like to give
4 it to the lawyers to look at it and see.

5 MR. LOY: We can do this later.

6 THE COURT: No problem at all. Just to make
7 your all lives easier. I don't have to have them any
8 special time.

9 MR. LOY: Thank you, Your Honor.

10 THE COURT: Thank you, guys. You all did a
11 great job getting through stuff today, appreciate it.
12 And they're paying attention.

13 See you all in the morning at 9:30. If anything
14 comes up I will be here, you all can email us.

15 MR. HILTON: Thank you, Your Honor.

16 (Whereupon, the proceedings in this matter
17 before the court were adjourned for the evening.)

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1 MR. HILTON: Your Honor, we found out yesterday
2 that Betty Butler is one of the forensic technicians at
3 SLED. She actually processed what has not been marked
4 for identification as State's Exhibit 36, and her name
5 is on here.

6 And it's actually a DNA swab that she developed
7 from the hat being State's Exhibit 30. She actually
8 did the work on that development and is certainly part
9 of the chain of custody.

10 She is available, the only problem is that she
11 has also got a subpoena for York County today. When we
12 called yesterday to be here this afternoon she said,
13 I've got to be in York County.

14 THE COURT: I understand.

15 MR. HILTON: So what we would offer is to do
16 whatever we can and admit anything under the
17 conditional relevance, and then have her come in and
18 complete that condition.

19 THE COURT: That sounds reasonable. Any
20 objection?

21 MR. LOY: No, Your Honor.

22 THE COURT: Okay. I understand. She can't be
23 in -- I remember one time Donna Schwartz-Watts was
24 supposed to be in five different places in one day.
25 Beaufort and Spartenburg were two of the places. I

1 said, that isn't going to work.

2 MR. HILTON: So fully expect to finish the
3 state's case today with the exception of --

4 THE COURT: That's fine. I will explain that
5 to these folks so they'll understand. I think we are
6 still running pretty efficiently so far.

7 MR. LOY: Yes, ma'am.

8 THE COURT: And then tomorrow morning we have
9 the juror that has the medical appointment in Mount
10 Pleasant at 8:00. So I imagine we probably won't be
11 able to get started until about 10:00 or 10:15. But I
12 figured everybody would like a little extra time to
13 work in the morning and get ready.

14 You all ready?

15 MR. HILTON: We are.

16 MR. LOY: Yes, ma'am.

17 THE COURT: Okay.

18 (Whereupon, the jurors enter the courtroom.)

19 THE COURT: Ladies and gentlemen, I hope you all
20 had a nice evening. Thanks for your patience. We are
21 trying to get everything set for this morning.

22 We should get through a good bit of the
23 testimony today. We have one witness who has an
24 availability issue in that she is under subpoena in two
25 different counties, one of which is York. So I don't

1 know that she will be able to get here until tomorrow
2 morning. But I expect we will be able to get a good
3 bit of the case in today.

4 We have had a request from the Post and Courier
5 to have a camera in the courtroom which is pretty
6 standard and I have granted that. I just want you all
7 to know they won't be allowed to film you at all. They
8 aren't allowed to take any photographs or take any
9 pictures of anything of you all.

10 So I didn't want anybody to be concerned about
11 that. And when we take our morning break either this
12 morning or at lunch, I'm going to ask you all to select
13 your foreperson. You all have been together for a
14 little bit now, and you may be ready to go ahead and do
15 that.

16 So those are really our administrative things
17 this morning. Thank you.

18 Yes, sir.

19 MR. HILTON: Thank you, Your Honor.

20 The State would call Calder Scott Herbert.

21 MR. CALDER SCOTT HERBERT,
22 after having first been duly sworn to state the truth,
23 the whole truth and nothing but the truth, testified on
24 his oath as follows:

25 DIRECT EXAMINATION

1 BY MR. HILTON:

2 Q Thank you, Mr. Herbert. You go by Scott?

3 A I do.

4 Q And where are you living now?

5 A I live off of Travis Boulevard across from where
6 we used to live.

7 Q And where did you used to live?

8 A Walden Ridge Way.

9 Q And were you living there back in October of
10 2010?

11 A Yes.

12 Q How far is that from the Perkins Restaurant?

13 A I would say a mile and a half maybe. walking
14 distance.

15 Q It's walking distance?

16 A It is.

17 Q Let me take your attention back to October 30,
18 2010. Do you remember seeing the defendant Randal
19 Benton that afternoon?

20 A I do.

21 Q And that was the night that Treva was killed?

22 A Yes.

23 Q And about what time do you remember seeing him?

24 A It was around 8:00.

25 Q And what was that encounter about?

1 A He had come to the house. Where we live is
2 adjoined with the same condo that they were living in,
3 which Treva was living in. He had come to see where
4 she was at looking for her.

5 Q So essentially you were Treva's neighbor?

6 A Yes.

7 Q Okay. Go ahead.

8 A And he came looking for her. And I guess he'd
9 knocked on the door and found out she wasn't there.
10 And my wife and I were standing outside smoking a
11 cigarette like we normally do outside.

12 And he come up and asked if we had seen her.
13 And I said -- I made the statement, they just left a
14 little while ago, you just missed them. And we said a
15 few other things and he said, yeah, she is probably
16 with her damn boyfriend. And got in his truck and sped
17 off.

18 Q You say he sped off, can you describe that for
19 the jury?

20 A He was pretty upset. I hadn't seen him that mad
21 since I have known him. He was pretty mad.

22 Q How fast would you say he left the area?

23 A Pretty fast.

24 Q What would you consider his mood to be at that
25 time?

1 A He was angry. Very angry.

2 Q Just a moment.

3 I forgot to ask you, Mr. Herbert. Do you
4 remember what kind of truck he was driving that
5 evening?

6 A Chevy two-tone, blue and silver.

7 Q Let me show you what has been marked for
8 identification as State's Exhibit 14. And just ask if
9 this was the truck he was driving that afternoon?

10 A Yes, that's his truck.

11 MR. HILTON: Your Honor, we'd offer State's
12 Exhibit 14 into evidence at this time.

13 MR. LOY: Without objection, Your Honor.

14 THE COURT: State's 14 is admitted without
15 objection.

16 (Whereupon, State's Exhibit No. 14 is admitted
17 into evidence.)

18 Q (By Mr. Hilton) That's the blue truck you were
19 describing?

20 A Yes.

21 MR. HILTON: Thank you, Mr. Herbert, please
22 answer any questions Mr. Loy may have for you.

23 MR. LOY: Thank you for coming, Mr. Herbert. I
24 don't have any questions.

25 THE COURT: Thank you, you may step down.

1 MR. HILTON: State would call Michael Palmer.

2 MR. MICHAEL PALMER, IV,
3 after having first been duly sworn to state the truth,
4 the whole truth and nothing but the truth, testified on
5 his oath as follows:

6 DIRECT EXAMINATION

7 BY MR. HILTON:

8 Q Michael, how old are you?

9 A I'm 19.

10 Q And how are you related to the victim in this
11 case, Treva Benton?

12 A She is my mother.

13 Q And how about the defendant, who was he?

14 A Stepfather.

15 Q Do you know how long they were married?

16 A Five years, something like that.

17 Q When I say they, I'm referring to the defendant
18 and your mom?

19 A Yeah.

20 Q About five years you say?

21 A Yeah, I'm just guessing.

22 Q Back during October of 2010, what were the
23 living arrangements between the two of them?

24 A They were separated at the time. She was
25 staying at Walden Ridge, and he was staying off of

1 Frankie Lane.

2 Q Do you know how long they had been split up?

3 A For about six months.

4 Q Now did he still have contact with your mom at
5 that time?

6 A Yes, sir.

7 Q And you said she lived over on Walden Ridge.
8 Let me show you what is in evidence as State's Exhibit
9 22 -- I'm sorry, State's Exhibit 21. The road behind
10 the Perkins here, where would Walden Ridge be, just
11 kind of on this map?

12 A It would be over here somewhere to the right.
13 Walden Ridge ends by the day care. Not Walden Ridge,
14 but this road ends by the day care and then you take a
15 right and it's down here, that general area.

16 I can't really be sure because of the trees over
17 there.

18 Q Is it a long distance from Perkins?

19 A No, not a long distance. Half a mile maybe.

20 Q Now let me take you back to October 30, 2010.
21 Do you remember what you all were doing that day,
22 earlier that day?

23 A Yes, sir, we were helping her move. I was
24 helping my mother move.

25 Q Okay. And was she moving out?

1 A Yeah, she was moving out of her place at Walden
2 Ridge.

3 Q Where was she going?

4 A She was putting her stuff in the storage unit
5 and she was going to stay with my aunt just
6 temporarily. I'm not sure after that.

7 Q All right. Who all was helping her move that
8 day?

9 A It was me; my girlfriend at the time, Kimberly;
10 my little brother, Jeremy; my father, Scott; Randal;
11 her roommate Brandy.

12 Q You said Brandy?

13 A Yes.

14 Q Okay.

15 A Myself; Brandy's parents. I think that's it.

16 Q You said Randal, is that the defendant was there
17 helping you out as well?

18 A Yes, sir.

19 Q What was the mood that day during the move?

20 A Everything seemed peaceful.

21 Q Do you remember what time you all finished up?

22 A Not exactly, but I would say somewhere between
23 1:00 and 2:00, somewhere around there.

24 Q Okay. And after that, did the defendant stick
25 around or leave or what?

1 A He left.

2 Q Do you ride in his truck that day?

3 A Yes, sir, to the storage unit and back to Walden
4 Ridge.

5 Q For what purpose?

6 A To deliver some of the stuff to the storage
7 unit. He had a truck so we loaded up a lot of his
8 stuff in the bed of the truck.

9 Q I show you what has been into evidence as
10 State's Exhibit 14. Is that the truck you rode in?

11 A Yes, sir.

12 Q Is that the defendant's truck?

13 A Yes, sir.

14 Q Was it running fine that day that you were in
15 it?

16 A Yes, sir.

17 Q Who is Mark Fike?

18 A That was -- is -- was my mother's boyfriend at
19 the time.

20 Q How long had she been seeing him?

21 A Month and a half, two months.

22 Q Did the defendant know about Mike -- Mark? I'm
23 sorry.

24 MR. LOY: Objection, Your Honor. Not foundation
25 for him to speak as to what Mr. Benton knew or didn't

1 know.

2 THE COURT: Sustained.

3 Q (By Mr. Hilton) After you all had moved that
4 day, when is the next time that you saw the defendant,
5 Mr. Benton?

6 A It would be around 10 o'clock that night.
7 Somewhere between 10:00 -- somewhere between 9:45 and
8 10:00 when he showed up on the back porch and opened
9 the door.

10 Q Okay. And who all was at the house at that
11 time?

12 A Me; Kimberly, my girlfriend at the time; and my
13 little brother.

14 Q What were you all doing?

15 A We were just sitting around watching TV. He was
16 about to go to bed.

17 Q He being?

18 A My little brother.

19 Q And what happened? Who came up?

20 A Well I heard a disturbance at the back door, so
21 I started walking through the kitchen towards the back
22 door. And at that time the defendant entered the back
23 door and met me in the kitchen.

24 Q Did it appear to you that he had been drinking?

25 A He smelled of alcohol, but didn't act as if he

1 was intoxicated, no.

2 Q Did he appear to be upset or angry or anything?

3 A No, not really. He just -- he had a nonchalant
4 attitude about him. Kind of relaxed, just like, I
5 don't know it was more of a friendly type attitude.
6 But he seemed out of it. Like maybe he had been
7 drinking, but I don't know.

8 Q Did he ever ask where your mom was or anything?

9 A Yeah, he asked if she was there. But her car
10 wasn't in the driveway, so he -- like, I don't know, he
11 should have known that she wasn't there if he had come
12 in through the front.

13 But, yeah, he asked if she was there and I told
14 him no, she wasn't here at the time.

15 Q And when he came up, what reason did he give you
16 for being there?

17 A His truck -- he said his truck had broke down at
18 the bar just up street called Shooters, and he was just
19 coming to ask my mother for a ride home.

20 Q And what happened after that?

21 A Well I called my mom. And she said, keep him on
22 the back porch.

23 Q Let me stop right there a second. Did he ever
24 show you any money or anything?

25 A Yes, sir, that would be after the phone call to

1 my mother. We were sitting on the back porch talking.
2 He pulled out large quantities of money stating that
3 his friend from another state had passed away and left
4 it to him.

5 Q And how much money are we talking about?

6 A Substantial amount, \$300 or \$400.

7 Q I'm sorry, I cut you off, go ahead. You said
8 you called your mom and?

9 MR. LOY: Your Honor, I object to the content
10 of the conversation. It would be hearsay if nothing
11 else between he and his mom.

12 THE COURT: Sustained.

13 Q (By Mr. Hilton) You said you called your mom,
14 and then what happened after that?

15 A After I called her she said keep him on the --

16 MR. LOY: Objection, Your Honor, this was my --

17 THE COURT: Sustained.

18 Q (By Mr. Hilton) You can't say what she said so
19 just back at the house, you know, what happened after
20 that?

21 A Yes, sir. I went on the back porch with him
22 where we, me and Kimberly, were talking to him. That
23 was when he pulled the money out and said, you know,
24 his friend had passed away and left him some money.

25 And he was saying basically that his truck had

1 broke down and it was small talk. It wasn't anything
2 that I found important to really remember. We were
3 just talking about, me and Kim were talking about
4 things we were going to do in our life. And it was
5 just small talk waiting for her to get home.

6 Q And at what point in time does your mom come
7 home, if she does?

8 A She came home at around 10:00, 10:30ish.
9 Immediately went upstairs as soon as she walked in. I
10 followed her. I came inside and followed her up there
11 to ask what was going on. And she said --

12 MR. LOY: Again, Your Honor, I would object to
13 the hearsay. I don't know where it's going, but it's,
14 and she said, in response.

15 A Sorry.

16 THE COURT: Sustained.

17 Q (By Mr. Hilton) You cannot say what she said.
18 You said you went up there, you talked to her?

19 A Yeah, went up there to talk to her. I asked why
20 was he here.

21 Q Where was he at this point?

22 A I thought he was still downstairs on the back
23 porch, but just a few moments after we were talking I
24 turned around and he was at the top of the stairs
25 inside.

1 Q Okay. And when your mom came in you said she
2 went upstairs. What did she go upstairs for?

3 A I believe to change.

4 Q So you said he followed you up the stairs, then
5 what happened after that?

6 A Well we go back downstairs. He walked out the
7 front door. She went to walk out the front door and
8 then turned around and asked me if she wasn't back
9 in --

10 MR. LOY: Objection again, Your Honor, hearsay.

11 MR. HILTON: Your Honor, it's -- may we
12 approach?

13 THE COURT: You may.

14 (Whereupon, a discussion was held at the bench
15 off the record.)

16 THE COURT: Overruled, 803(1) and (3).

17 MR. HILTON: Thank you.

18 Q (By Mr. Hilton) Michael, you said your mom was
19 walking out the door. She had turned to you and said
20 what?

21 A My cell phone is on. If I'm not back in 20
22 minutes, call me. If I don't answer, call the police.

23 Q Okay. And where did they go after that?

24 A Well I was under the impression that she was
25 going to take him home.

1 MR. LOY: Objection, Your Honor, calls for
2 speculation.

3 Q (By Mr. Hilton) I guess my question is, did they
4 leave after that?

5 A Yes, sir.

6 Q And do you remember what they drove off in?

7 A They drove off in her Trailblazer.

8 Q Okay. Do you remember what he was wearing?
9 When I say he, I'm talking about the defendant?

10 A Yes, sir. It was a dark blue or black pullover
11 hoodie, dark jeans. I don't remember the shoes.

12 Q Okay. Now let's talk about after they left your
13 house. What were you doing at that time?

14 A Me and Kimberly were sitting down watching TV,
15 getting ready to put Jeremy to bed. She was dying her
16 hair. We got into somewhat of an argument and I lost
17 track of time.

18 I then noticed that the 20 minutes had passed,
19 so I called her. She didn't answer, so I called her
20 again. She didn't answer. Then I -- I felt something
21 wasn't right so I proceeded to head out the door with a
22 baseball bat down to Shooters to confirm that his truck
23 was actually broken down there.

24 Q And did you make it up that far?

25 A No, sir.

1 Q What happened?

2 A On the way to Shooters I had to pass the Perkins
3 parking lot to get there. And it was taped off, police
4 officers everywhere, and they stopped me because I was
5 carrying a weapon.

6 Q And they asked you a bunch of questions?

7 A Yeah.

8 Q At what point in time did you find out that your
9 mom had been killed?

10 A It would be about an hour to an hour and a half
11 after I reached the Perkins parking lot. There was
12 many questions. They actually went to drive me home.

13 After taking a trip around the Shooters parking
14 lot to look for his truck, after I saw that it wasn't
15 there, I asked them to take me immediately home so that
16 I could see if my mom had made it back or, you know,
17 see if everything was okay.

18 On the way back home the officer started talking
19 to me, asking me what was going on that night, why I
20 had a baseball bat. Then he asked me what my stepdad's
21 description was, because I told him the story about how
22 he showed up on the porch and everything.

23 He asked me what his description was. I gave
24 him the description of what he was wearing, how he
25 looked and he immediately stopped and turned around and

1 went back to the parking lot.

2 Q At that time did you know what was going on in
3 the Perkins parking lot?

4 A No, sir.

5 Q Now you said you rode in the defendant's blue
6 truck that day, earlier that day?

7 A Yes, sir.

8 Q Let me show you what has been marked for
9 identification as State's Exhibit 26. Did you ever see
10 that item in the truck that day?

11 A No, sir.

12 Q Okay. Did you ever see any pistol or anything
13 when he came to Walden Ridge Way?

14 A No, sir.

15 Q You know, the encounter around 10 o'clock?

16 A No, sir.

17 Q Did you ever see a pistol any that day?

18 A No, sir.

19 Q The guy you described as leaving with your mom
20 in the Trailblazer, is that the defendant over here?

21 A Yes, sir.

22 Q He was the one wearing the dark hoodie and
23 jeans?

24 A Yes, sir.

25 MR. HILTON: Please answer any questions Mr. Loy

1 may have for you.

2 THE COURT: Thank you. Mr. Loy.

3 MR. LOY: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. LOY:

6 Q I just have a couple of questions, Mr. Palmer.

7 Mr. Palmer, you gave a written statement to the
8 police that night, did you not?

9 A Yes, sir.

10 Q I mean they told you it was important to write
11 down things exactly how they happened, and to be as
12 complete as you possibly could; is that right?

13 A Yes, sir.

14 Q That's what you did, I mean you wrote down
15 pretty much the same sort of stuff that you are telling
16 us here today; is that right?

17 A Yes, sir.

18 Q Have you had a chance to review that statement
19 since that night? Have you looked it over before you
20 came here today or anything?

21 A I had a chance to review it, they gave me the
22 statement. But I was pretty clear-headed that night.
23 I remember all of the details pretty vividly.

24 Q So you haven't looked over your statement again;
25 is that what you are telling me?

1 A Not for a while. It has been a while.

2 Q Okay. Would you agree with me that in your
3 statement you write out what happened and you state
4 that, my mom said if she is not back in 20 or 25
5 minutes to call her phone. My ringer is on.

6 Your mom told you that, right?

7 A Yes, sir.

8 Q And in your statement you don't make mention of
9 her saying, and then if I don't answer call the police.
10 That's not in your statement, right?

11 A I would not know. I have not reviewed it.

12 Q Do you want to review your statement? Would
13 that help you to answer that question?

14 A I mean if I didn't write it in there, it wasn't
15 written. But it was said.

16 Q I understand. And I will just hand you this
17 and ask you, if reviewing that, does that help you to
18 remember whether or not you put that in your statement?

19 A Okay, yeah, it's not in here. It's not in the
20 statement, the written statement.

21 Q Okay. And you would also agree that when your
22 mom didn't answer the phone after that 20 or 25
23 minutes, you didn't call the police before you left
24 home, what you did was go walking up the road like you
25 described?

1 A Yes, sir.

2 MR. LOY: Thank you very much. I don't have
3 anymore questions.

4 THE COURT: Thank you.

5 Any redirect?

6 MR. HILTON: No further questions, Your Honor.

7 THE COURT: Thank you.

8 Sir, you may step down.

9 MR. GIESE: State call Corporal Dan Davis.

10 MR. DANIEL DAVIS,

11 after having first been duly sworn to state the truth,
12 the whole truth and nothing but the truth, testified on
13 his oath as follows:

14 DIRECT EXAMINATION

15 BY MR. GIESE:

16 Q Corporal Davis, where are you employed?

17 A Actually, it's Sergeant Davis now.

18 Q I'm sorry. Congratulations.

19 A I'm employed with the Phoenix City Police
20 Department, Phoenix City, Alabama.

21 Q Now tell the jury where that is.

22 A It is eastern central Alabama. We are right
23 across the river from Columbus, Georgia. Anybody
24 that's in the military, it's just north of Fort
25 Benning, Georgia.

1 Q Is there a university near there?

2 A Up the road in Auburn there is Auburn
3 University, which is about 30 minutes north of where we
4 are at.

5 Q And Phoenix City Police Department, how big of a
6 department is that?

7 A We have roughly about 100 sworn officers.

8 Q What county is that in?

9 A It's actually in Russell and Lee County,
10 Alabama.

11 Q And I guess did you drive here in the last
12 couple days?

13 A I did.

14 Q And approximately how far is it?

15 A My GPS said 382, 383 miles.

16 Q Now back on October 31st of 2010, what were your
17 duties then?

18 A I was general investigator for the criminal
19 investigation division for the police department.

20 Q All right. And did you have an opportunity to
21 respond to a store alarm on that day?

22 A Yes, sir, we did. I believe it was
23 approximately 9:00 a.m. we had received a call through
24 our police radio in reference to a panic alarm at a BP
25 station. It was -- the address was 5407 Summerville

1 Road there in Phoenix City.

2 Q The actual road is called Summerville Road?

3 A Yes, sir. Part of the broadcast was we received
4 information that there was a male there that had
5 possibly just killed somebody.

6 And when we arrived -- actually when I arrived
7 Corporal Roberts, who's a patrol officer, had made
8 contact with a white male in front of the parking lot
9 and was placing him in handcuffs.

10 Q Approximately how long did it take you to get
11 from where you were to the convenience store on
12 Summerville Road that day?

13 A Well it was a Sunday morning, so we were -- the
14 investigation, we were leaving Hardies. But it
15 probably took no less, running blue lights and siren,
16 five minutes to get there.

17 We were arriving at the same time that Corporal
18 Roberts was placing the male into handcuffs.

19 Q Describe the situation if you could. He is in
20 handcuffs. Could you tell by his appears anything?

21 A I work narcotics. I wouldn't necessarily say
22 that he was under the influence, but the male appeared
23 overly stressed, kind of we say he had like a 20-mile
24 stare.

25 Based on that I asked him simple questions, what

1 his name was, if he had ID, if his wallet was in his
2 back packet. We obtained that. At no point in time,
3 just looking at his demeanor, did I ask him any
4 questions. And we just placed him in the back of the
5 patrol car that was there.

6 Q So you got his name?

7 A Yes, sir.

8 Q What name was that?

9 A It was Randal Benton.

10 Q Now did you have an opportunity at that time to
11 see a truck?

12 A Yes, sir.

13 Q Describe that for us if you would.

14 A I believe it was Chevy Silverado, like a 1500.

15 Q Was the door open or shut at the time?

16 A The vehicle was closed. From what I saw the
17 vehicle was locked. The male, he had the vehicle keys
18 on him that we just set to the side.

19 Q Now did you have an opportunity to actually look
20 into the truck?

21 A I did. I looked inside the vehicle through
22 plain view, through the glass. Down in the floorboard
23 there was actually a pistol. The windows were kind of
24 tinted so it kind of appeared to be chrome or like a
25 nickel-plated firearm.

1 Q And you actually saw that?

2 A Yes, sir.

3 Q Did you see anything else?

4 A Not that I can recall at this point.

5 Q After seeing that and after having Mr. Benton
6 placed under arrest, what if anything did you do?

7 A We ran Mr. Benton's name through our dispatch,
8 through NCIC to see if he had any warrants. His actual
9 name at the time didn't have any warrants.

10 But we ran the vehicle tag. The vehicle tag
11 itself was entered in NCIC as being driven by a
12 homicide suspect from Summerville, South Carolina.

13 From there I made contact with the Lieutenant
14 from investigations for Summerville PD. He explained
15 that indeed they had -- Mr. Benton has a homicide
16 suspect or homicide offender; that he, I believe they
17 had warrants active at that time and they were faxing
18 us the warrants.

19 During this time, because again Phoenix City is
20 in two jurisdictions, primarily, I would say probably
21 80 percent my work is conducted in Russell County, the
22 other 20 percent is done in Lee County. But the county
23 seat is in Opelika, Alabama.

24 So just corresponding with my supervisor and
25 trying to work effectively what we made the decision

1 was to contact Lee County Sheriff's Office and, you
2 know, advise them of the, you know, fugitive from
3 justice from South Carolina, as well assisting
4 Summerville PD with potentially getting a search
5 warrant for the vehicle.

6 Q And in fact did you turn that over to Lee
7 County?

8 A Yeah. There was two patrol deputies come out,
9 and then an investigator that was working the weekend,
10 Daniel Sabick (phonetic), he arrived. They looked at
11 the vehicle. They took custody of Mr. Benton. They
12 transported him and the truck on the back of rollback.
13 Last time I saw them they were going up Summerville
14 Road.

15 MR. GIESE: Thank you, that's all I have.

16 MR. LOY: Nothing, thank you.

17 THE COURT: Thank you.

18 Sir, you may step down.

19 MR. LOY: For purpose of our record, if he wants
20 to be released to go back to Alabama, I have no
21 objection.

22 THE COURT: May he be excused?

23 MR. GIESE: Yes, ma'am.

24 THE COURT: Sir, you may be excused. Thank you.

25 MR. GIESE: State calls Captain Van Jackson.

1 THE COURT: Basically, unless you all tell me
2 otherwise that somebody doesn't need to be excused, or
3 you need them for later, or they're still under
4 subpoena, I'm going to assume that you all consent to
5 letting them being excused.

6 MR. LOY: Thank you, Your Honor.

7 MR. GIESE: Thank you, Your Honor.

8 MR. VAN JACKSON,
9 after having first been duly sworn to state the truth,
10 the whole truth and nothing but the truth, testified on
11 his oath as follows:

12 DIRECT EXAMINATION

13 BY MR. GIESE:

14 Q Captain Jackson, where are you employed?

15 A I work for the Lee County Sheriff's Office
16 located in Alabama.

17 Q And how long have you worked there?

18 A For 22 years.

19 Q And you are a captain there?

20 A Yes, sir, I am.

21 Q And tell me what your duties are there?

22 A I am in charge of the investigative division,
23 I'm titled chief investigator. Basically with that
24 office I'm over 15 people. We investigate all of
25 felony cases that's reported to our office.

1 of course the jurisdiction that we cover has
2 approximately 70,000 people, so a lot of crimes. It
3 would be anything consistent of murders, thefts,
4 burglaries, robberies, rapes, et cetera. On each day
5 we go through those cases. I assign them to
6 investigators.

7 We try to find the evidence to prove who is
8 responsible for committing those crimes, as well as how
9 we are going to try to find the evidence to support
10 they did commit it and prosecute those that created
11 those situations and committed the crime.

12 Q Now, Captain, I want to bring you back to
13 October 31st of 2010. Were you duty or in charge at
14 that time?

15 A Yes, sir, I was.

16 Q And I want you to tell the jury, did you have an
17 opportunity to respond to a call during that day?

18 A I didn't officially respond to a call, but I did
19 have a phone conversation when it initially happened.

20 As part of being the captain over the
21 investigative division, most of the decisions on how
22 the operations are run in the investigation is made by
23 myself.

24 Q All right. And did you actually go at some
25 point to Summerville Road to a convenience store?

1 A No, sir, I didn't go to that location.

2 Q Did you have an opportunity at some point to
3 come in contact with this case?

4 A Yes, sir, I did.

5 Q And that was the phone call?

6 A Yes, sir.

7 Q Now after that phone call, what did you do?

8 A After receiving the phone call I basically made
9 some decisions because the information that I had
10 received was a possible suspect involved in a homicide
11 in South Carolina was being detained at a business, I
12 guess 5407 Lee Road, 248, which was in Smith Station,
13 it's a BP gas station.

14 We had a couple of deputies that responded to
15 that location to assist the Phoenix City authorities.
16 To make it somewhat clear to you, basically we have a
17 portion of Lee County that is within the Phoenix City
18 Police Department police jurisdiction, but we are
19 responsible for that area as far as prosecuting those
20 cases because it's in our jurisdiction.

21 So the officer from Phoenix City are closure in
22 location than we are, so they actually respond and
23 secure. And then our officers arrived at the scene.

24 Q And Mr. Benton was turned over to you, your
25 division I guess or your sheriff's department?

1 A Yes, sir, he was.

2 Q Along with a truck?

3 A Yes, sir.

4 Q What kind of truck was that?

5 A The truck itself was a 1998 chevy pickup 1500.

6 I think it was kind of a blue/gray color that full-size
7 pickup. Tag number on it was CVT-912.

8 Q I hand you what has been marked State's Exhibit
9 14. Can you identify that?

10 A Yes, sir. State's Exhibit No. 14 is photograph
11 of the pickup truck. The location where this
12 photograph was taken is in our sally port, which is a
13 covered area. Also has drop down chains so that it can
14 be secured which is a gate, chain gate. And it's at
15 the sheriff's office.

16 Q Does that fairly and accurately depiction what
17 the truck looked like that day?

18 A Yes, sir, it does.

19 Q When you came in contact with it?

20 A Yes, sir.

21 MR. GIESE: Your Honor, we'd like to offer it at
22 this time.

23 MR. LOY: No objection, Your Honor.

24 THE COURT: Thank you. State's 14 is admitted
25 without objection.

1 (Whereupon, State's Exhibit No. 14 is admitted
2 into evidence.)

3 Q (By Mr. Giese) And that's the truck that you saw
4 that day with that license tag?

5 A Yes, sir, it is.

6 Q Why did you have that truck in that sally port?

7 A After the original conversations, what I had
8 instructed the officers, the deputies there at the
9 scene to do was, one, to secure Mr. Benton in the back
10 of the patrol car. And to also -- we had asked a truck
11 by City Towing to respond to that location as well.

12 But I wanted to have that vehicle towed to our
13 office. And I also wanted to try to secure somewhat of
14 a visual, I guess, chain over the car, the truck
15 itself. So I asked them to follow it into our office
16 and then we secured it into that sally port area.

17 Q And why did you do that?

18 A In mostly homicide investigations that I have
19 been involved with, I feel like it's very important if
20 law enforcement can keep an eye contact with the
21 vehicle to make sure that there are no changes or
22 anything that is tampered with or damaged. And the
23 courts require that we do that. So I wanted to make
24 sure that was done.

25 Q Now at some point did you have an opportunity to

1 obtain a search warrant for that vehicle?

2 A Yes, sir, I did.

3 Q I guess you get a search warrant from a
4 magistrate or a city judge?

5 A Yes. We have, in Lee County we have judges,
6 circuit court judges. On this particular day, which
7 was October 31, 2010, I drafted a search warrant and I
8 went to Judge Jacob Walker and provided him with a
9 printout copy of the search warrant which he reviewed
10 and did feel that there was probable cause to sign the
11 search warrant and he did sign the search warrant.

12 Q At that time after the search warrant was
13 signed, did you execute the search warrant on that
14 truck?

15 A Yes, sir, I did. When I went to the judge,
16 because the judge's office is close to our office, in
17 fact it's on the same piece of property, I was able to
18 walk to his office with the warrant to be signed. I
19 think it was 4:22 when the judge actually signed it,
20 p.m., the same day of the 31st.

21 And also once he did that, from going back to my
22 office and getting the equipment to go out to actually
23 conduct the search, I started the search at
24 approximately five o'clock.

25 Q Five o'clock on the 31st?

1 A Yes, sir, that would be correct.

2 Q I'm going to hand you four photographs. I'd
3 like to ask you what they are. But if you could just
4 -- State's 26, 16, 15 and 17, and ask you if you can
5 identify those?

6 A Yes, sir. State's Exhibit No. 17 is actually a
7 photograph of a pistol that was found, a .9 millimeter
8 pistol, Smith and Wesson if I remember correctly, that
9 was on the floorboard partially covered by the seat.
10 But it was on the driver's side of the floorboard.

11 Q Does that fairly and accurately depict how you
12 saw it that day?

13 A It does.

14 MR. GIESE: We'll offer it at this time, Your
15 Honor.

16 MR. LOY: Obviously, I have no objection, Your
17 Honor.

18 THE COURT: Thank you. 17 is admitted without
19 objection.

20 (Whereupon, State's Exhibit No. 17 is admitted
21 into evidence.)

22 A Looking at the photograph which is State's
23 Exhibit No. 15. It's another photograph. It's from
24 the driver's side. This depiction right here is just
25 another angle with the door open so that you would be

1 able to see exactly where the end of gun was sticking
2 out on the floorboard.

3 Q (By Mr. Giese) And does that fairly and
4 accurately depict how you saw it that day?

5 A Yes, sir, it does.

6 MR. GIESE: Would offer it also, Your Honor.

7 MR. LOY: I have no objection to any of these
8 four photographs.

9 MR. GIESE: We offer all four of them at this
10 time.

11 THE COURT: That would be 26, 15, 17 and --

12 MR. GIESE: 26 and 16 are the other two that are
13 left. But other ones were 15 and 17.

14 THE COURT: Thank you. 15, 16, 17 and 26 are
15 admitted without objection.

16 (Whereupon, State's Exhibit Nos. 15, 16, 17 and
17 26 are admitted into evidence.)

18 MR. GIESE: Thank you.

19 Q (By Mr. Giese) I'm showing you State's Exhibit
20 No. 15. What is that a picture of?

21 A This is a photograph that I just talked about,
22 state's Exhibit No. 15. And again this is standing
23 outside with the driver's side door opened. Also you
24 can see the weapon right there on the floorboard in the
25 position that it was when we first started conducting

1 the search.

2 Q So you are saying that that right underneath the
3 seat, can you get up and point to it?

4 A Yes, sir. This would be driver's seat. The end
5 of the weapon can be seen at this location.

6 Q State's Exhibit No. 16 is just another angle
7 shot of it. And could you point to it again, please?

8 A States Exhibit 16, this would be it right here.

9 Q Why don't you stay standing up for the last two,
10 please.

11 State's Exhibit No. 17?

12 A Yes, sir. In this photograph right here, if you
13 were to put your head somewhere inside the vehicle with
14 your camera, this is kind of shot downward under the
15 seat. But it shows you a more complete picture of the
16 weapon that was located underneath the seat.

17 Q That's how you saw it that day and found it?

18 A Yes, sir, it is.

19 Q And what did you do with that weapon after you
20 photographed it? What if anything did you do?

21 A After the weapon was photographed, I continued
22 doing photographs. One of the things that I like for
23 investigators to do, as well as myself, is to take a
24 flow process of photographs, which is in a series. So
25 even though I might identify what is potential

1 evidence, it's not collected immediately at that point.

2 What I do is I go ahead and complete
3 photographing, then I do the phase which I call
4 collecting of the evidence. So I took additional
5 photographs after I took this photograph, and went back
6 and collected the evidence later.

7 Q One last picture as you are standing now.

8 A Yes, sir.

9 Q State's Exhibit No. 26. What is that a
10 photograph of?

11 A State's 26.

12 Q Yes?

13 A This photograph right here -- this is actually
14 the passenger seat. And in the passenger seat of this
15 particular vehicle this was a large knife.

16 Of course it gives you some perception of how
17 large it was because it went almost all the way across
18 the seat. It was a wooden handle, an older, large
19 blade.

20 Q Thank you, you can sit down.

21 A Yes, sir.

22 Q Since we're on that blade, I hand you what has
23 been marked State's Exhibit No. 35 and ask if you can
24 take a look at it. Take it out of there if you need
25 to.

1 A This is State's Exhibit No. 35, which is the
2 knife that was recovered from the passenger seat of the
3 vehicle.

4 Q What did you do with that knife after you
5 recovered it?

6 A Secured it inside of this bag, and sealed it,
7 put my initials on it. Placed into the care of our
8 evidence technician.

9 We have a vault that we store evidence in, and
10 all the evidence was placed there and later turned over
11 to South Carolina authorities.

12 Q And you said you put your initials on that?

13 A Yes, sir, I did.

14 Q Is that in substantially the same condition as
15 it was the day you found it?

16 A Yes, it is.

17 MR. GIESE: Offer it at this time.

18 MR. LOY: Without objection, Your Honor.

19 THE COURT: Thank you. State's 35 is admitted
20 without objection.

21 (Whereupon, State's Exhibit No. 35 is admitted
22 into evidence.)

23 Q (By Mr. Giese) I'm going to hand you what has
24 been marked State's Exhibit No. 32. Take a look in
25 there, take a look and tell me if you can identify

1 that?

2 A Yes, sir, I can.

3 Q What is that?

4 A State's Exhibit No. 32 is the actual weapon that
5 was recovered that you saw in the photographs. It's
6 safe. But this is the weapon that was recovered from
7 the vehicle.

8 Q And how do you know that?

9 A Because once I received it I also sealed it, as
10 well as the magazine that was with the weapon, and at
11 that point it was secured, sealed and I put my initials
12 on it and placed it in evidence until it was turned
13 over to South Carolina authorities.

14 Q Is it in substantially the same condition as you
15 saw it except for it being opened?

16 A Yes, sir, that's correct. It is.

17 MR. GIESE: I'd like to offer it at this time,
18 Your Honor.

19 MR. LOY: No objection, Your Honor.

20 THE COURT: Thank you. State's 32 is admitted
21 without objection.

22 (Whereupon, State's Exhibit No. 32 is admitted
23 into evidence.)

24 Q (By Mr. Giese) And State's Exhibit Nos. 35 and
25 32 you say were turned over to the Summerville Police

1 Department?

2 A Yes, sir. Actually it was Sgt. Cassandra
3 Williams that works for Summerville Police Department
4 that I actually turned those items over to.

5 Q And the defendant that was in your all's
6 custody, Mr. Benton, was he turned over to the South
7 Carolina authorities also at some point?

8 A Yes, he was.

9 MR. GIESE: Beg the Court's indulgence.

10 Q (By Mr. Giese) To go back to State's Exhibit No.
11 35 which was the knife that you found?

12 A Yes, sir.

13 Q Was in the front passenger seat?

14 A Yes, sir.

15 MR. GIESE: Thank you, that's all I have.

16 THE COURT: Thank you. Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. LOY:

19 Q Just a couple questions, Captain.

20 A Yes, sir.

21 Q How long have you been in law enforcement,
22 Captain?

23 A I have been working in law enforcement for 22
24 years.

25 Q So I'm sure you're proficient with firearms and

1 pretty well know your handguns and have some experience
2 with them; is that right?

3 A Well I do have to carry a weapon as part of my
4 responsibilities and duties. I do not consider myself
5 an expert with weapons, but simply one of the tools of
6 the job.

7 Also I have other people that work within our
8 office that are experts with weapons. But the general
9 operations, and being able to fire one efficient with
10 that, yes, sir.

11 Q Just general knowledge. I'm not attempting to
12 qualify you as an expert. Would it be fair for me to
13 assume you know the difference between a semiautomatic
14 pistol and a revolver?

15 A That is correct, I do.

16 Q And the pistol you recovered from this truck is
17 a?

18 A It's a semiautomatic.

19 Q And the distinction if you would?

20 A Sure. A semiautomatic, it refers to how fast a
21 gun can fire. If it would take longer, also the --
22 like most of your semiautomatics are fed by a magazine,
23 which is the magazine that I showed to you earlier, and
24 the action itself is caused by movement of the gun.

25 Most of the revolvers rotate, some clockwise,

1 some counterclockwise. But where the ammunition is put
2 into those and the trigger has to be pulled back on
3 most of those to fire those. It's a single action,
4 most of them.

5 Q So a gun such as this you state is a
6 semiautomatic; is that correct?

7 A Yes, sir, that is correct.

8 Q And you state one of the distinctions is the
9 rapidity, or how fast it can be fired; is that right?

10 A Yes, sir.

11 Q And a gun such as this, because of the recoil
12 action and stay cocked position, can be fired very
13 quickly?

14 A Yes, sir, it can.

15 MR. LOY: Thank you. I have no more questions.

16 THE COURT: Yes, sir.

17 MR. GIESE: I have one follow up.

18 REDIRECT EXAMINATION

19 BY MR. GIESE:

20 Q Captain, the semiautomatic that you've
21 identified that Mr. Loy was talking to you about that
22 can be fired rapidly. Do you still have to pull the
23 trigger each time?

24 A Yes, sir, you do.

25 Q So if you shoot it eight times, you have to pull

1 it eight times?

2 A Yes, sir, you have to pull it. Yes, sir.

3 MR. GIESE: Thank you, that's all I have.

4 THE COURT: Thank you.

5 MR. LOY: Nothing, Your Honor, thank you.

6 THE COURT: Sir, you may step down. You may be
7 excused.

8 MR. HILTON: May we approach, Your Honor?

9 THE COURT: You may.

10 (Whereupon, a discussion was held at the bench
11 off the record.)

12 THE COURT: Ladies and gentlemen, we have some
13 matters of law that I need to take up with the
14 attorneys. So I am going to -- we will break a little
15 bit early for our morning break, and it may be a little
16 longer of a break than normal.

17 But as soon as we deal with those issues of law,
18 we will bring you back. Go ahead and take your morning
19 break. And please don't discuss the case yet. Thank
20 you.

21 (Whereupon, the jurors exit the courtroom.)

22 THE COURT: Okay. Yes, sir.

23 MR. HILTON: If we could be at ease for ten
24 minutes or so and then come back and do the proffer.

25 THE COURT: Sure. Take a ten minute break.

1 (Whereupon, a recess was taken.)

2 THE COURT: Mr. Loy, did you want to put a
3 hearsay objection on the record? I know you objected
4 and I ruled on it. Anne wanted to make sure.

5 MR. LOY: I don't need to argue it, Your Honor.

6 THE COURT: Great, thank you.

7 All right. Then whenever you all are ready to
8 do the proffer.

9 MR. HILTON: We are, Your Honor.

10 MR. LOY: We are, Your Honor.

11 THE COURT: Okay.

12 MR. HILTON: State would call Kathy Bryant.

13 THE COURT: If you would, ma'am, come forward to
14 be sworn. Thank you.

15 MS. KATHY BRYANT,
16 after having first been duly sworn to state the truth,
17 the whole truth and nothing but the truth, testified on
18 her oath as follows, outside the presence of the jury:

19 MR. HILTON: May it please the Court, Your Honor.

20 THE COURT: Yes, sir.

21 DIRECT EXAMINATION

22 BY MR. HILTON:

23 Q Ms. Bryant, where do you live?

24 A Lenexa, Kansas.

25 Q And what do you do for work?

1 A I work for the Department of Social Services in
2 Missouri.

3 Q And did you know the victim in this case, Ms.
4 Treva Benton?

5 A Yes.

6 Q How did you know her?

7 A We were childhood friends.

8 Q How often did you talk with her?

9 A Daily.

10 Q About how long on a daily basis?

11 A Hours and hours.

12 Q Okay. Would you say she was one of your best
13 friends?

14 A Absolutely.

15 Q Now without saying what was said between the two
16 of you all, did you ever develop -- did you all ever
17 talk about safety, personal safety?

18 A Yes.

19 Q And did you ever develop a so-called safety plan
20 for Treva?

21 A Yes.

22 Q Was that something that you did through your
23 work?

24 A Yes.

25 Q What was the purpose of that plan?

1 A In any case where she would feel threatened or
2 fearful, a plan for her to use in those cases.

3 Q And what was the plan that you developed in
4 Treva's case?

5 A For her to go to Perkins Restaurant.

6 Q Why Perkins?

7 A It's very public. There is always people there.
8 It was across the street from the fire department.

9 Q Did it have anything to do with the location
10 from her house?

11 A Very close to her house.

12 MR. HILTON: That would be all the questions
13 that we would propose, Your Honor.

14 THE COURT: Thank you.

15 MS. SUGGS: Court's indulgence.

16 May it please the Court, Judge.

17 THE COURT: Yes, ma'am.

18 MS. SUGGS: I have no questions for Ms. Bryant,
19 but we would be objecting to her testimony being
20 admitted at this point. I think that's why the
21 solicitor is offering it as a proffer.

22 We are objecting on two reasons. One is because
23 it's all based on hearsay testimony. It's all based on
24 hearsay testimony from the victim.

25 And while they didn't ever put in that this is

1 what she said to me or this is what she told me, it
2 certainly is based on information that was received
3 through hearsay information.

4 In addition to that, it's based on Lyle.
5 Obviously the safety plan was in place because of
6 incidences that Ms. Benton went through in her life.
7 And while again it was artfully done, it is testimony
8 that is going to backdoor the inference of prior bad
9 acts between Ms. Benton and Mr. Benton.

10 So based on that, we would be objecting to this
11 testimony.

12 THE COURT: Okay. Yes, sir.

13 MR. HILTON: Your Honor, the testimony was
14 carefully outlined for a reason. And those reasons
15 were so that we didn't bring up any prior bad acts.
16 And in fact, if they ask her she will say, as far as I
17 know he never beat her or anything like that. And they
18 can ask that question if they wanted to. I wasn't
19 going to go there.

20 But we took great strides to leave out any prior
21 bad acts, any mention of Randal Benton. There was no
22 mention of Randal Benton. As far as the hearsay goes,
23 this is her plan that she developed for Ms. Benton, so
24 I don't think it will be hearsay.

25 THE COURT: Let me ask you this question. It

1 begs the question, at least for me, as to why Ms.
2 Benton needed a safety plan in the first place. I mean
3 I know that's what you all want them to wonder as well.

4 You know, I guess arguably it could have been
5 based on information regarding her mental and emotional
6 and physical state, but that just seems too wide open
7 to me. You've got to narrow it down a little for that
8 subsection to apply.

9 My biggest concern though is the 403 problem. I
10 think that because of what it asks the jury to infer,
11 without actually saying it, the relevance of it is
12 vastly outweighed by the prejudicial inference that it
13 asks the jury to draw so.

14 MR. HILTON: We can include the questions and we
15 can ask those now if you like. Do the question, was
16 she scared of Randal Benton? I think the answer would
17 be no.

18 But I just want to point out to the court that
19 it's highly probative and relevant in that in our
20 investigation of the case, we were trying to figure out
21 why did she go to Perkins? Why did she even go there?

22 And this explains why she went there. So, you
23 know, her mind set, why she pulled into that parking
24 lot like she did, why they sat there and argued instead
25 of someone else, that answers questions that the jury

1 is going to have, just like we had when we were putting
2 together this case of why she went there. So I do
3 think it's relevant in that regard.

4 THE COURT: Thank you for your argument, and
5 it's certainly protected. And I think that is
6 interesting if the question were asked, if it were a
7 proper question, was she scared of Randal Benton and
8 then the answer is no, then I think we have got a
9 relevance problem under 402.

10 So I'm going to -- I don't think this question
11 -- I don't think this testimony helps the jury solve an
12 issue in the case in any way that would make it more
13 relevant than unduly prejudicial. So I rule 403. I
14 appreciate your argument too, Ms. Suggs, but I think it
15 comes down to a 403 analysis at the end.

16 Thank you. Thank you, ma'am.

17 MS. SUGGS: Thank you, Judge.

18 MR. HILTON: We would ask she be allowed to stay
19 in the courtroom at this point.

20 THE COURT: You all don't have an objection to
21 her staying in the courtroom, do you?

22 MS. SUGGS: No objection, Judge.

23 THE COURT: Yes, ma'am, you may.

24 You all ready for the jury?

25 MR. LOY: Yes, ma'am.

1 MR. HILTON: Actually maybe not. Well with this
2 witness not being here, our pathologist was coming from
3 the airport, she will be here shortly. I know it's a
4 little bit earlier, if we could break for lunch now we
5 will have all your witnesses here when we get back and
6 we can move forward.

7 THE COURT: That's fine with me. I think they
8 certainly would rather come back when it's time. What
9 time, 12:30? Do you think everybody will be there? Do
10 we need to wait until 1:00?

11 How many more witnesses do you think you have
12 today?

13 MR. HILTON: About four or five. I don't think
14 there is any question we will finish today with the
15 exception of Ms. Betty Butler. So one o'clock would be
16 good.

17 THE COURT: All right, one o'clock.

18 MR. LOY: We are at the Court's disposal, Your
19 Honor. One o'clock is fine.

20 THE COURT: If there is nobody to put up,
21 there's no reason for me to leave them in their jury
22 room, nor do I want to make them eat super early. So
23 one o'clock sounds good.

24 You all let them know they're free for lunch
25 until one o'clock.

1 THE BAILIFF: Yes, ma'am.

2 THE COURT: Thank you. They're going to go
3 ahead and take lunch. Please remind them not to
4 discuss the case. Thank you.

5 THE BAILIFF: Yes, ma'am.

6 THE COURT: Okay. We will be at ease until one
7 o'clock.

8 (Whereupon, a recess was taken.)

9 (Whereupon, the jurors enter the courtroom.)

10 THE COURT: Thank you, ladies and gentlemen, I
11 hope you all had a nice lunch. I think we are ready to
12 proceed.

13 MR. GIESE: May it please the Court, Your Honor.
14 The State calls Dr. Kelly Rose.

15 THE COURT: Dr. Rose, if you would come forward
16 and be sworn, please.

17 DR. KELLY LYNN ROSE,
18 after having first been duly sworn to state the truth,
19 the whole truth and nothing but the truth, testified on
20 her oath as follows:

21 DIRECT EXAMINATION

22 BY MR. GIESE:

23 Q Dr. Rose, you are a medical doctor?

24 A I am.

25 Q And do you have a specialized field in that

1 area?

2 A I specialize in pathology. And within
3 pathology, forensic pathology.

4 Q What kind of training and background do you have
5 to become a medical doctor first, then a pathologist
6 and then a forensic pathologist?

7 A I got my medical degree from the Medical
8 University of South Carolina. I got my pathology
9 residence degree at Emory. Then I did an extra year at
10 Emory in forensics.

11 Q And explain to the jury what pathology is first,
12 and then what the subset forensic pathology is if you
13 would?

14 A Pathology is technically means the study of
15 disease. So if you were to ever have anything removed
16 off your body by a surgeon or a general doctor, they
17 would send it to a pathologist.

18 And we would look at it under a microscope and
19 say whether it's malignant or not malignant, cancer or
20 not cancer, for all age ranges and all diseases.
21 That's what a pathologist does. And then of course we
22 do autopsies.

23 And then a forensic pathologist does medical,
24 legal autopsies. Which are autopsies that normally
25 should not have occurred. And there could be a

1 potential for a legal issue.

2 Q And how many autopsies have you done in your
3 career?

4 A A thousand. Right around a thousand.

5 Q And have you been qualified as an expert in the
6 field of forensic pathology before?

7 A Yes.

8 Q In how many states?

9 A Two, South Carolina and Georgia.

10 MR. GIESE: We'd offer at this time, Your Honor.

11 MR. LOY: Your Honor, I have no objection to her
12 status as an expert.

13 THE COURT: Dr. Rose is so qualified as an
14 expert in forensic pathology.

15 Q (By Mr. Giese) Now did you perform an autopsy on
16 the body of Treva Benton on November 1st, 2010?

17 A Yes.

18 Q Where did that take place?

19 A The New Berry County Memorial Hospital morgue.

20 Q Tell the jury just generally first what you do
21 in an autopsy such as this, and what you did in this
22 case?

23 A Okay. In a case such as this we take
24 photographs as the body is received before we open the
25 body bag. Then you take photographs of the body

1 clothed. Then we undress the body and take
2 photographs.

3 Then we identify wounds and measure them, and
4 then photograph that as well. That is all done
5 externally.

6 After that, we do an internal examination where
7 you open the body and look at the organs and brain.

8 Q And what are you trying to find in situations
9 like that?

10 A We are trying to find bullets, if there were any
11 bullets remaining. We also x-ray, you can see some
12 bullets on x-ray. Sometimes they can hide, so you
13 really want to check.

14 And we are looking for natural diseases and
15 actually in a case like this trajectory or, okay this
16 entrance wound made a path here. And it helps us
17 figure out more about the case.

18 Q Do you also collect evidence from the body?

19 A We do, specifically bullets. The clothes we
20 transfer also.

21 Q Now the one that you did, the autopsy that you
22 did on Treva Benton on November 1st, 2010, you said it
23 was at New Berry?

24 A Yes, sir.

25 Q Tell the jury what you did and what you found,

1 just basically. Generally first, and then we will go
2 into specifics.

3 A I performed an autopsy similar to the one I just
4 described and found a total of eight gunshots; meaning
5 that the gun was fired eight times. And found some
6 four bullets and -- anything else?

7 Q Yeah. We'll get to that in a minute,
8 specifically.

9 A Okay.

10 Q Now when you do something like this, do you do a
11 report?

12 A Yes, of course.

13 Q And you do a report. Do you determine the cause
14 of death?

15 A We do, yes.

16 Q And do you also sometimes make diagrams?

17 A Yes.

18 Q I hand you State's Exhibit No. 18 and No. 19.
19 Can you identify those?

20 A Yes, sir. These are the body diagrams that I
21 did on this case.

22 MR. GIESE: Your Honor, we offer them at this
23 time.

24 MR. LOY: No objection, Your Honor.

25 THE COURT: Thank you. State's 18 and State's

1 19 are admitted without objection.

2 (Whereupon, State's Exhibit Nos. 18 and 19 are
3 admitted into evidence.)

4 Q (By Mr. Giese) Would it aid you to show the
5 jury where these bullets are?

6 A I think so. I think it would help.

7 MR. GIESE: Your Honor, may she, and you need to
8 speak up, can she stand up?

9 THE COURT: Yes. As you need to, you may step
10 down.

11 THE WITNESS: Okay. And I'll speak up. Can you
12 hear me?

13 Q (By Mr. Giese) Now if we could, I'd like to go
14 over your report.

15 A Okay.

16 Q I guess wound by wound.

17 A Okay.

18 Q If we could. Now one that you've marked on your
19 report as wound one.

20 A Uh-hum, okay.

21 Q Where is that? And what is it?

22 A That is right here. This is a gunshot wound to
23 the right eye.

24 Q Now when you say it's a gunshot wound to the
25 right eye, can you be specific as to distance? How

1 does all that work?

2 A This was a nonspecific range of fire or
3 distance. And all that means we can't tell anything
4 else about it. We don't see that it's close range, we
5 would see soot. We can't tell if it's intermediate,
6 because you would see gunpowder stippling that also
7 comes out of the bullet.

8 We don't call it distant, however, because her
9 hand could have been a certain way. You can never
10 really tell the full story, so it's safer to say
11 nonspecific.

12 Q All right. Now so that first one, you've
13 numbered it number one?

14 A Uh-hum.

15 Q You just numbered it number one?

16 A Yeah, these numbers could be symbols or letters.
17 I just use it in my diagram when a case is this
18 extensive to help me keep track of paths. It doesn't
19 mean any one occurred in that order.

20 Q Okay. And now if you could tell us whatever you
21 can tell us about that first wound.

22 A Okay. This wound was, as I said, a nonspecific.
23 When it went through her eye it traveled then through
24 the front of her brain on the right side. It crossed
25 the midline, went through the brain, the mid part of

1 the left brain up here and mostly came out.

2 So it had caused an exit wound, but it was kind
3 of hanging still there. And then when we were looking
4 for an exit wound, the bullet actually fell out.

5 Q And you collected that bullet?

6 A Yes. I collected the bullet, I labeled it,
7 photographed it, sealed it, and transferred that as
8 evidence.

9 Q What would be the effect of a bullet wound such
10 as that on a person?

11 A Usually a wound like that is considered instant
12 death. A few cases maybe seconds. But usually that
13 will do it.

14 Q Is that from the damage to the brain or what?

15 A Yeah. And not just the damage to the brain by
16 the bullet going through, but there is no much pressure
17 that a cavity is formed. And so there is additional
18 damage distance away from the wound track because all
19 the pressure is just pushing on the brain.

20 Q Okay. All right, that's wound number one?

21 A Yes.

22 Q Now the one that you've labeled wound number
23 two, which is that?

24 A That I labeled?

25 Q Number two on your report.

1 A On my report, okay. That is this wound here.

2 Q Which one?

3 A This wound here.

4 Q Okay. Right up here?

5 A Right about here.

6 Q Okay. Tell us about that wound, what can you
7 tell on that one?

8 A This was an entrance wound and it was
9 intermediate range of fire. So you have contact, the
10 closest. Close is slightly further out. Intermediate
11 is between 8 to 36 inches.

12 And each gun is a little different and it
13 depends on the type of ammunition you use. So we can
14 only generalize by saying 8 to 36 inches.

15 Q So what you are saying there is that the muzzle
16 of the gun that was used is 8 to 36 inches away from
17 her body when it's shot, when she's shot?

18 A Yes. Not necessarily whoever is shooting the
19 gun, but the gun distance to the body.

20 Q 8 to 36 inches?

21 A Uh-hum.

22 Q Tell us about the path and what else you can
23 tell us about that.

24 A Okay. This path goes -- started here, went
25 down. It caught a lung, it caught a heart, went

1 further down and went through the liver and was
2 recovered down in the abdominal cavity.

3 Q So the path of that bullet was that way?

4 A Uh-hum.

5 Q And you recovered that bullet also and turned
6 that over?

7 A Yes.

8 Q Now as to the lethal effect or nonlethal effect
9 of that wound, what can you tell the jury?

10 A Usually if the bullet goes through your heart
11 you die quickly. However, not as quickly as you
12 typically die with a gunshot wound to the brain.

13 People have been known to get shot through the
14 heart and there is enough blood in their circulation
15 and adrenaline sets in that they're able to run a
16 couple feet and then collapse. But it would have been
17 rapid too.

18 Q And it would have been a lethal wound?

19 A Definitely would be lethal.

20 Q Now your third wound that you talk about is
21 which one?

22 A The third wound is this one.

23 Q All right. What is the -- go ahead.

24 A So this is also an entrance wound. It's also
25 intermediate range of fire. And it travels -- refer to

1 my chart here.

2 Number three travels from here to the back. It
3 goes through a rib on the front, and then it goes
4 through the lung, then it goes through a posterior rib
5 on the back and out.

6 So the direction is back, slightly down, it came
7 out a little lower, and slightly to the right. So if
8 it was here, ended up here, or I can show it on him.

9 Q Yeah, please do.

10 A Okay. So if it went in here and it went down
11 and back and a little bit this way. So it would have
12 been coming like this.

13 Q Now the effect of that wound, is that a lethal
14 wound?

15 A You definitely can die from a gunshot wound
16 through your lung, but that usually takes longer.
17 There are separate mechanisms that have to develop.

18 Q And specifically on that wound, and that's your
19 wound number three, what was the distance on that?

20 A The distance was intermediate range again. And
21 as we said before, 8 to 36 inches depending on the gun
22 and the ammunition.

23 Q Now did you recover a bullet in that one? Or
24 was it through and through?

25 A It was through and through.

1 Q Now when you say through and through, what does
2 that mean?

3 A It means it went in, it came out and we didn't
4 find the bullet in the body. When it penetrates, then
5 it goes in and doesn't come out and we can find the
6 bullet.

7 Q Now as to your fourth wound, please show the
8 jury on State's Exhibit 18 where that is.

9 A This is my fourth. This is also an entrance.
10 This time it's on the left upper back. It's a
11 nonspecific range of fire because on the body I didn't
12 see any soot or stippling, any gunpowder residue. And
13 it traveled -- okay.

14 It went in here. It went through the left
15 shoulder blade and came out right here. So it missed
16 some of the more vital structures. It just came in,
17 went through the shoulder blade, and then out. So it
18 was headed forward, slightly to the left and upward.

19 Q There again that was a through and through also?

20 A Yes.

21 Q And it was back to front?

22 A Yes.

23 Q From the back to the front?

24 A Back to the front.

25 Q Okay. As to that wound, the lethal effect of

1 that wound?

2 A No. I would have to say that would be a
3 nonfatal wound.

4 Q Now your number five.

5 A Yes.

6 Q What wound is that?

7 A Number five is this one here.

8 Q Okay. Tell the jury about that one.

9 A This is also an entrance wound. I didn't see
10 any gunpowder, so it's nonspecific. And let's see,
11 it's also a through and through.

12 It goes from the back, forward and upward. So
13 it starts a little lower in the back, and comes out a
14 little higher in the front. And it doesn't really go
15 left or right, so it just kind of goes like that.

16 Q And there again that's a through and through or
17 did you recover a bullet?

18 A Yes, that is a through and through.

19 Q Now as to what it hit when it went through, what
20 was the path of that? Did it hit anything?

21 A It hit some large bowel, making sure I got my
22 notes in order. Yes, it hit a little bit of the liver,
23 your liver is big and it can kind of extend.

24 And if your diaphragm is perforated, if anything
25 is not right it can not always stay here. So it

1 knicked a little bit of the liver and it got the bowel,
2 the large intestine, your colon.

3 Q Is that a wound that would immediately
4 incapacitate you or make you go unconscious or anything
5 like that?

6 A You shouldn't go unconscious from that, you
7 would be luckily if you did because you would be in a
8 lot of pain. But it could be lethal if you don't get
9 treatment.

10 Q There again you said -- that five was?

11 A That was five.

12 Q That was a through and through also?

13 A Yes.

14 Q All right. Now as to your wound number six?

15 A Yes.

16 Q Where is that on the chart?

17 A This is wound number six. It's on -- we do all
18 our diagrams with the person in standard anatomic
19 position, which is not at all how you or I walk around
20 but it's like this.

21 So this wound entered the posterior but lateral,
22 so the back and the far right side of the arm, went
23 superficially through this muscle, didn't get the
24 bones, and then came out.

25 And it's a through and through.

1 Q So no vital organs hit in that one?

2 A No. That's nonlethal.

3 Q As to number seven. Nonspecific range of fire
4 gunshot wound of right side. Tell the jury about that.
5 Show them on the chart where that is.

6 A Absolutely. Okay. On the chart, seven, okay.
7 It's right here. This was a nonspecific range of fire.
8 It went in, went towards the back and went through the
9 large bone in the right leg and was recovered in the
10 back of the thigh. So it didn't go through and
11 through, it just penetrated the leg and had not come
12 out.

13 And we recovered it, photographed it, labeled it
14 and transferred it as evidence.

15 Q Now as to the final wound, number eight. What
16 is that one -- by the way, the distance on that is
17 what?

18 A Nonspecific, we couldn't tell.

19 Q As to number eight?

20 A Number eight final is this one. And it was a
21 wound on the back of the right calf. And it went
22 through. You have two bones in your leg down here. It
23 broke both of them, and it traveled from the back to
24 the front, slightly downward and to the right.

25 And it was recovered. And I photographed it,

1 labeled it and transferred it as evidence.

2 Q So that's four projectiles that you actually
3 recovered; is that right?

4 A Yes.

5 Q And there again that -- other than breaking the
6 two bones, that's not lethal clearly?

7 A No, uh-uh.

8 Q All right. Thanks. You can have a seat.

9 A Thank you.

10 MR. GIESE: Beg the Court's indulgence.

11 Q (By Mr. Giese) I hand you State's Exhibit No.
12 23.

13 A Okay.

14 Q Take a look at that. Can you identify that?

15 A Yes. That is the descendant, Ms. Benton. And
16 it's showing a gunshot wound to her left upper back
17 which is labeled number four, which is our number four.
18 It's that one.

19 Q If you could stand up and show the jury?

20 A Sure.

21 MR. GIESE: First off, Your Honor, we'd like to
22 offer it.

23 MR. LOY: You ruled earlier, Your Honor.

24 MR. GIESE: We'd like to offer it first, then
25 let her testify from it.

1 THE COURT: State's 23 is admitted over the
2 defendant's objection, and those arguments are
3 incorporated into the record.

4 MR. LOY: Thank you, Your Honor.

5 (Whereupon, State's Exhibit No. 23 is admitted
6 into evidence.)

7 A So this is actually a photograph of the decedent
8 at the scene. It's hard to tell from here. There is a
9 bullet wound on her shirt that would correspond to this
10 bullet wound here.

11 Q And that's specifically in the back.

12 A Yes. And she is twisted like this, so that's
13 the problem with gunshot wounds. Someone could be
14 doing a cartwheel and it's very hard to know what
15 position they were in, so.

16 Just because she was shot a certain way does not
17 mean that's how it happened. But in this picture she's
18 on the ground with her arm like that, showing this
19 wound.

20 Q All right. And like you said before, you can't
21 tell -- you've numbered these one through eight, but
22 you can't tell us which one was fired first, second,
23 third or fourth?

24 A No.

25 Q Okay. Also, just to clear things up, these

1 other numbers on here, like five times four, and all
2 that, what are those?

3 A My measurements. Like the entrance wound will
4 measure a -- have a certain dimension. It's kind of
5 shorthand.

6 And then a line and this would mean it's 17
7 inches from the top of the head, and 6 inches right or
8 left of midline. It's shorthand.

9 Q So that you can then come in at some later date
10 and say what you've said today?

11 A Yes. And check it with my report, et cetera.

12 Q Thank you, you can sit back down.

13 And I hand you State's Exhibit No. 29 for
14 identification I think at this time. You've seen those
15 bullets before, haven't you?

16 A Yes, I have.

17 Q What are they?

18 A These are the bullets recovered from the body,
19 from the decedent's body by me, photographed, labeled,
20 et cetera.

21 Q And given to?

22 A The -- I have his name somewhere on here. The
23 investigating officer that was there.

24 Q And that's in your report?

25 A Yes, it's in my report.

1 Q Olsen?

2 A Yes, Olsen. Sorry about that. I'm not great
3 with names.

4 Q But he's with Summerville.

5 So it's your testimony, Dr. Rose, that there
6 were six nonspecific range shots, and two intermediate
7 shots?

8 A Yes.

9 Q And specifically, if you could for the record,
10 can you testify to a reasonable degree a medical
11 certainty as to what the cause of death of Treva Benton
12 was?

13 A Cause of death in this case would be cerebral
14 perforation, which means brain was perforated, and
15 exsanguination is she had her heart perforated too, due
16 to gunshot wounds of the head and torso.

17 Q Specifically gunshot wounds?

18 A Gunshot wounds. Where I trained in Atlanta we
19 would just have said gunshot wounds of head and torso
20 is the cause of death.

21 MR. GIESE: Thank you, that's all I have.

22 THE COURT: Mr. Loy.

23 MR. LOY: Nothing, Doctor. Thank you for
24 coming.

25 THE COURT: Thank you.

1 Ma'am, you may step down and be excused.

2 MR. HILTON: State would call Salina Kinard.

3 THE COURT: Please come forward to be sworn.

4 MS. SALINA KINARD,

5 after having first been duly sworn to state the truth,
6 the whole truth and nothing but the truth, testified on
7 her oath as follows:

8 DIRECT EXAMINATION

9 BY MR. HILTON:

10 Q Thank you, Ms. Kinard. Where are you employed?

11 A I'm employed with the South Carolina Law
12 Enforcement Division, also known as SLED.

13 Q How long have you been there?

14 A I have been there for four and a half years.

15 Q What job do you hold at SLED?

16 A I'm a forensic technician within the evidence
17 control department.

18 Q And as a forensic technician, is part of your
19 responsibility to take in evidence as it is received by
20 SLED?

21 A Yes, it is. That is correct.

22 Q And in fact, is that what you did in this case?
23 Received some evidence?

24 A Yes, I did.

25 Q And I know you've got several items, but I'm

1 going to ask you about some in specific. Let me hand
2 you what has been marked as State's Exhibit 32, State's
3 Exhibit 28, State's Exhibit 29, and State's Exhibit 27.
4 And just ask if you recognize those items as items that
5 you received?

6 A I do recognize State's Exhibit 32, listed as --
7 I recognize it by the yellow label that is affixed to
8 the box on this end. It has our lab number and the
9 item number, which is item number eight.

10 Q And you said the yellow label. Is that common
11 with all those items?

12 A I do not see one affixed to State's Exhibit 28.
13 However, 29 and 27 do have the yellow labels affixed to
14 them.

15 Q And with regard to item number 28, does it have
16 a SLED lab number written on there?

17 A Yes, it does.

18 Q Would that be indicative of the lab number in
19 this case?

20 A Yes, it is.

21 Q Is that L10-12315?

22 A Yes, that's correct.

23 Q What item number is that?

24 A This looks like item 7, and also 19 through 25.

25 Q And collectively, what are those items?

1 A Item 7, if I may refer to the chain.

2 Q Sure.

3 A Is listed as a cartridge case described as spent
4 casing from the scene. And items 19 through 25, those
5 are listed as cartridge cases described as spent
6 casings from the scene as well.

7 Q Are those the same items?

8 A Same description, multiple items. So I actually
9 have seven items within this one pouch, if I'm counting
10 right.

11 Item 7 and then 19 through 25. So they're all
12 listed as casings from the scene.

13 Q Okay. Then let me also show you State's Exhibit
14 30 and ask if you recognize that packaging?

15 A Yes, I do. I recognize it has the officer that
16 actually brought in the evidence to SLED, has his
17 signature and the date that he brought it in. As well
18 as his initials and date on the seal where I heat
19 sealed it. And also has the label affixed to it.

20 It's labeled as L10-12315 number 10, item number
21 10.

22 Q Was that the baseball cap?

23 A Let me refer back to my chain if I may.

24 Yes, that is correct.

25 Q And what do you do with items when you receive

1 them?

2 A Basically the officer, I will use this as an
3 example. This piece of evidence was brought in in a
4 paper bag. I actually take the item and put it into
5 this heat sealed.

6 I seal it -- this was opened by the analyst at
7 the time of the analysis -- but I have the officer date
8 and sign. And then I initial and date across the seal
9 where it is heat sealed. Then I store it within our
10 evidence room.

11 Q And what is the purpose of all this heat sealing
12 and that sort of thing?

13 A Each department has their own packaging that
14 they prefer. So as far as DNA or evidence processing
15 which would have gotten this piece evidence first, we
16 package it according to each department's guidelines
17 and how they prefer to have it packaged.

18 And the purpose to show that Officer Olsen
19 brought it in, and he actually signed and dated that
20 particular package.

21 Q Does it also indicate whether anybody has
22 tampered with it?

23 A Yes, it does. When I would have originally
24 received it in, obviously this would have been closed,
25 there would be have been a cut on this side. And here

1 is a heat seal where I use a heat sealer to seal it,
2 seal the evidence in.

3 And the officer is required to initial and date
4 it. If it's not initialed and dated, or if it's not
5 signed and dated, then it will not go to the next
6 department or to the department for analysis.

7 Q And do you alter or tamper with this evidence in
8 any fashion?

9 A No, I do not.

10 Q Do any processing of it?

11 A No, I do not.

12 Q And I think you've mentioned it, but did you
13 receive all the evidence from Detective Olsen?

14 A Yes, I did.

15 Q And then once you got this evidence, what did
16 you do with it?

17 A Once I received the evidence and properly
18 packaged it, I would have -- actually the computer
19 system generates this lab number. So I affixed all the
20 labels to the proper evidence, proper item numbers.

21 And we store it in various places within our
22 evidence room. Firearms evidence would have been
23 firearms intake. This would have been DNA intake and
24 so on.

25 Q All right.

1 MR. HILTON: Please answer any questions Mr. Loy
2 may have for you.

3 MR. LOY: I don't have any questions. Thank
4 you.

5 THE COURT: Thank you, ma'am. You may step down
6 and be excused.

7 THE WITNESS: Thank you.

8 MR. HILTON: State would call Katie Urka.

9 MS. KATIE URKA,
10 after having first been duly sworn to state the truth,
11 the whole truth and nothing but the truth, testified on
12 her oath as follows:

13 DIRECT EXAMINATION

14 BY MR. HILTON:

15 Q Thank you, Ms. Urka. Where are you employed?

16 A I work in the DNA department at South Carolina
17 Law Enforcement Division.

18 Q And in the DNA department, what do you do there?

19 A I'm a forensic DNA analyst.

20 Q And what do you have to do to become a forensic
21 DNA analyst?

22 A Typically you need to have a four year college
23 degree in a science, such as biology or chemistry.
24 Additionally you'll complete the training program at
25 SLED teaching you how to examine evidence and create

1 reports and DNA profiles.

2 Q And have you gone through that training?

3 A Yes.

4 Q And is that something you do over a weekend, or
5 what?

6 A It's a year-long program.

7 Q And how often do you do DNA comparisons and
8 develop profile and such?

9 A Every day.

10 Q That's your sole task?

11 A That's my job.

12 Q Have you ever been qualified as an expert in
13 court before?

14 A Yes.

15 Q How many times would you say?

16 A About 26.

17 Q And tell the jury what is DNA? What is that
18 about?

19 A DNA stands for Deoxyribonucleic acid. It's a
20 chemical that is found in almost every cell of your
21 body. And it's responsible for passing genetic
22 information from generation to generation.

23 You get half from your mom and half from your
24 dad. No two people will have the same DNA profile
25 except identical twins.

1 Q And is DNA something that you can use to
2 identify a person?

3 A We can use DNA to compare profiles from evidence
4 to standards from individuals, and we can determine if
5 they match.

6 MR. HILTON: Your Honor, at this time we'd offer
7 Katie Urka as an expert in forensic DNA.

8 THE COURT: Thank you.

9 MR. LOY: No objection, Your Honor.

10 THE COURT: The witness is so qualified.

11 Q (By Mr. Hilton) Thank you, Ms. Urka. How do
12 you -- just briefly tell us in layman's terms how you
13 go about developing a DNA profile?

14 A Typically what we get from agencies are swabs
15 from items. We take a small cutting of a swab, put it
16 in a tube and add some chemicals.

17 And then there are several steps to the process
18 where we use several different machines or instruments.
19 And then the final result is a computer-generated
20 profile which is the DNA profile.

21 Q And what does that profile show?

22 A The profile is a string of numbers, kind of like
23 a social security number. We have 15 locations we are
24 looking at on your DNA. And at each location you are
25 going to have either one or two numbers.

1 So the sets of all the numbers is your DNA
2 profile.

3 Q Is it possible to take two samples and compare
4 those two to see if they came from the same
5 contributor?

6 A What we do is we compare the profile we get from
7 an evidence item and compare it to a profile from a
8 standard and look and see if they match.

9 Q Is that what you did in this case?

10 A Yes.

11 Q Do you recall receiving some items in evidence
12 with regard to this case?

13 A Yes.

14 Q Let me show you what has been marked as State's
15 Exhibit 36 and State's Exhibit 27.

16 Starting with No. 27, do you recognize that
17 item?

18 A Yes.

19 Q What is that?

20 A That is SLED item number 15 which is buccal
21 swabs from Randal Benton.

22 Q Is that what is called a known sample?

23 A Yes, that's a known standard.

24 Q What does that mean?

25 A Known standards are samples taken directly from

1 individuals such as swabbing the inside of your mouth,
2 or taking a blood tube from your arm.

3 Q All right. And were you able to -- let me ask
4 you first, when you received that item did it look like
5 it had been messed with or tampered with in any way?

6 A No.

7 Q Do you remember where you got that item from?

8 A I got that item from a secure DNA storage area
9 within our department.

10 Q All right. Were you able to take that item and
11 develop a profile from it?

12 A Yes.

13 Q And the other one, I think is it State's Exhibit
14 36?

15 A Yes.

16 Q What is that item?

17 A I think it is the swab from the cap.

18 MR. LOY: Your Honor, for purpose of our record
19 I do have an objection to the testimony as to the cap.
20 There has been no -- or the swab from the cap. There
21 has certainly been no testimony or foundation laid to
22 support any results of any tests she has done on that
23 at this point.

24 THE COURT: Mr. Hilton.

25 MR. HILTON: May we approach the side bar?

1 THE COURT: You may.

2 (Whereupon, a discussion was held at the bench
3 off the record.)

4 THE COURT: Thank you. Ladies and gentlemen,
5 as I have indicated earlier today, we have one witness
6 that is being taken out of order because she is under
7 subpoena for Dorchester County but also York County and
8 cannot get here in time for court.

9 So some of the information that the State will
10 be obtaining from this witness is objectionable because
11 it needs to be based on foundation laid first by the
12 witness who is now in York County. So we are going to
13 go through that and take this witness out of order.

14 And then Mr. Hilton and Mr. Giese will need to
15 tie that up tomorrow when that witness comes. That's a
16 proper objection.

17 And I'm going to go ahead, and if you want to
18 object whenever you need to, but I'm going to note that
19 continuing objection subject to it being tied up when
20 that other witness is here.

21 MR. LOY: Thank you, Your Honor. I believe we
22 are protected. Thank you.

23 THE COURT: Thank you.

24 Q (By Mr. Hilton) Thank you, Ms. Urka. We were
25 referring to State's Exhibit 36 and I think you were

1 telling us what that was. What is that?

2 A It's a swab from the cap.

3 Q Okay. And how was that developed? How was that
4 swab taken?

5 A Betty Butler swabbed the cap.

6 Q Who is Betty Butler?

7 A She is a technician in the DNA department.

8 Q Do you know her?

9 A Yes.

10 Q Do you work with her?

11 A Yes.

12 Q How would she go about developing a swab from
13 the cap like this?

14 A The technicians in the evidence processing
15 department generally will examine our larger items such
16 as hats, clothing, bed sheets. They would get the
17 items from the log-in department, make those swabs or
18 cuttings from the items, and then those smaller
19 cuttings or swabs would be sent to a DNA analyst.

20 Q And is the cutting or the swab what was sent to
21 you in this case?

22 A Yes.

23 Q With regards to State's Exhibit 36?

24 A Yes.

25 Q Okay. And other than doing the swab or taking

1 the cutting, does the forensic technician do they do
2 any of the analysis?

3 A They sometimes perform serological testing.

4 Q Was that done on this particular item of
5 evidence that you know of?

6 A I don't believe so, but you'd have to ask her.

7 Q Okay, and we will. All right. When you
8 received State's Exhibit 36, did it appear, other than
9 the processing by Ms. Butler, did it appear that it had
10 been altered with or tampered in any fashion?

11 A No.

12 Q And how do you know that?

13 A All of our items are packaged in heat sealed
14 pouches which are sealed and initial and dated by the
15 person who closed the item.

16 Q And like the other item, State's Exhibit 27,
17 were you able to develop a profile on State's Exhibit
18 36?

19 A Yes.

20 Q And in your opinion as an expert, were you able
21 to make a determination as to whether those items were
22 consistent with each other regarding the DNA
23 contributor?

24 A The DNA profile developed from the swab from the
25 cap matches the DNA profile of Randal Benton.

1 Q Now when you develop a profile, are there like
2 different -- and maybe I'm use the wrong term and
3 correct me if I'm wrong -- but are there different
4 qualities of profile?

5 A We can get several types of profiles. Sometimes
6 we get mixtures, which is more than one contributor to
7 a profile. And sometimes we get single source profiles
8 which it appears to be from a single source or one
9 person.

10 Q And in this particular case?

11 A It was single source.

12 Q Single source. And I guess the question I'm
13 asking is, I know you are able to develop certain
14 signals at certain loci on the DNA stand. Is it
15 sometimes that you aren't able to develop a full
16 profile?

17 A Right. Sometimes we can get partial profiles
18 where there is information missing at one or more
19 locations.

20 Q Are you still, even on a partial profile, able
21 to develop what is called a match?

22 A Sometimes, yes.

23 Q Now in this case, did you have a partial profile
24 or a full profile?

25 A It was a full profile.

1 Q And is that true on both the buccal swab and on
2 the cutting from the hat?

3 A Yes.

4 Q Okay. And based on the fact that you had two
5 full profiles, does it really get any better?

6 A It's a very strong match since both were full
7 profiles and I could compare the information at each
8 location.

9 Q Okay. And are you able to develop kind of a
10 number of probability as the chance of this profile
11 repeating itself in the population?

12 A Whenever we make a match statement like this, we
13 generate a statistic to determine how rare that profile
14 is within the population. In this case the probability
15 of randomly selecting an unrelated individual having a
16 DNA profile matching this item is approximately 1 in 17
17 quadrillion.

18 Q And quadrillion, that's a 17 with how many zeros
19 behind it?

20 A 15.

21 Q So I write out 17 and 15 zeros and that's 17
22 quadrillion?

23 A Correct.

24 MR. HILTON: Your Honor, at this time we would
25 conditionally offer State's Exhibit 27 and 36 into

1 evidence.

2 THE COURT: Okay.

3 MR. LOY: Your Honor, only renew my earlier
4 objection.

5 THE COURT: They will be admitted subject to Ms.
6 Butler arriving tomorrow. The buccal swabs are
7 admitted I believe, over objection.

8 MR. HILTON: Please answer any questions Mr. Loy
9 may have for you.

10 MR. LOY: I don't have any questions for you,
11 thank you.

12 THE COURT: Thank you.

13 Ma'am, you may step down and be excused.

14 MR. HILTON: State would call Agent Suzanne
15 Cromer.

16 MS. SUZANNE CROMER,
17 after having first been duly sworn to state the truth,
18 the whole truth and nothing but the truth, testified on
19 her oath as follows:

20 DIRECT EXAMINATION

21 BY MR. HILTON:

22 Q Thank you, Ms. Cromer, where do you work now?

23 A I'm employed by the South Carolina Law
24 Enforcement Division, commonly referred to as SLED.

25 Q What capacity do you work there?

1 A I'm a firearm and tool mark examiner.

2 Q What education do you have to go through to
3 become a firearm and tool mark examiner?

4 A You have to have a bachelor's degree. I earned
5 my bachelor's degree from Clemson University. I did
6 some graduate work at the University of South Carolina.
7 While there I did an internship in the SLED firearms
8 department.

9 Once hired on at SLED I completed their in-house
10 training program. It is a 3 to 5 year intense study
11 program, more like an apprenticeship if you will, where
12 I studied under five court-qualified firearms
13 examiners. We take written tests, oral tests,
14 practical exercises. And upon completion of all those
15 tests, we are rewarded by getting our own case work.

16 I have taken classes through the Association of
17 Firearm and Tool Mark Examiners. I have attended
18 numerous of their annual conferences. Plus taken
19 courses such as ethics and barrel making.

20 I have attended classes with the South Carolina
21 chapter of the International Association of
22 Identification on -- sorry -- on shooting scene
23 reconstruction and bullet pathology, bullet wound
24 pathology. I have also taken class with the Alcohol
25 Tobacco and Firearms, or ATF, on serial number

1 restoration and the Interrogated Ballistics
2 Identification System.

3 Q All right. And how many firearms would you say
4 you've examined over the course of your career?

5 A Thousands.

6 Q And I don't know if you said, but how long have
7 you been employed at SLED?

8 A 13 years and just under 2 months.

9 Q So over that 13 years you've examined thousands
10 of firearms?

11 A Yes, sir.

12 Q And have you ever been qualified to testify as
13 an expert before?

14 A Yes, sir, I have.

15 Q About how many times would you say?

16 A Approximately 55.

17 Q Is that here in state court?

18 A State, federal and family courts.

19 Q What can you tell from looking at a gun or
20 looking at shell casings or recovered projectiles?
21 What can you tell by looking at all that stuff as a
22 firearms and tool mark expert?

23 A What I'm looking to tell is whether I can say a
24 piece of ammunition or an ammunition component, such as
25 a bullet, or a cartridge case, or a shot shell, or a

1 wadding, have been fired by or loaded into and
2 extracted out of a specific firearm.

3 Q How do you go about doing that?

4 A What we are looking at is the unique,
5 individual, identifying characteristics. During the
6 manufacturing process of a firearm, there are
7 individual imperfections that are left in that firearm
8 that can be imparted on that ammunition, such as a
9 cartridge case.

10 It comes in contact with the breach face of the
11 firearm, which can be milled or scribed or during that
12 manufacturing process which leaves little scratches.
13 That can be imprinted on the cartridge case during the
14 firing process.

15 The firing pin itself can leave individual
16 marks. The extractor, which is what holds the
17 cartridge case in place during firing and bring it back
18 if it's a semiautomatic for the ejection process, that
19 can also leave markings. The ejector itself, which is
20 what the cartridge case hits to be kicked out of the
21 firearm, that can leave individuals markings, as well
22 as the barrel.

23 When a gun barrel is made, the manufacturer puts
24 rifling inside the gun barrel. And what rifling is is
25 a series of lands and grooves, raised and depressed

1 areas, that are put there to put rotary motion on the
2 bullet.

3 Very similar to a quarterback throwing a
4 football, they want it to go into a tight spiral so it
5 will go more accurately towards its target. Well when
6 they made that rifling inside the gun barrel, there are
7 individual scratches, that look like scratches
8 microscopically, they are individual imperfections that
9 are unique to that barrel.

10 Q And you say they're unique to the barrel. Can
11 you tell if a specific bullet is fired from a specific
12 gun and shell casing from a specific gun and so forth?

13 A Yes, sir, we can.

14 MR. HILTON: Your Honor, at this time we would
15 offer Ms. Cromer as an expert in firearms and tool mark
16 identification.

17 MR. LOY: I believe she's an expert, Your Honor.

18 THE COURT: Thank you. She is so qualified.

19 Q (By Mr. Hilton) Let me show you three items of
20 evidence, State's Exhibit 28, State's Exhibit 29 and
21 State's Exhibit 32 and ask you recognize these items?

22 A First off, State's Exhibit 32. This box
23 contains my lab number, my item number and my initials.
24 What I'm doing, I engrave a firearm in three different
25 parts when I receive it. I engrave it on the barrel,

1 the back of the slide in the magazine well. And what
2 I'm doing is looking for my markings.

3 Q And do you see your marking on there?

4 A Yes, sir. I see my lab number, my item number
5 and my initials in all three places, as well as on the
6 magazine.

7 Q Is the lab number consistent with the lab number
8 for all these other items?

9 A Yes, sir, it is.

10 Q Go ahead to the next one.

11 A State's Exhibit 28 is a sealed container, again
12 with my initials and my seal date. That contained my
13 items 7, and then 19 through 25.

14 Q And how many shell casings was that?

15 A There were eight fired .9-millimeter Luger
16 caliber cartridge cases.

17 Q And then the final item?

18 A State's Exhibit 29, which is also my item number
19 6, and then 16 through 18. Again still in the heat
20 sealed pouch with my initials and my seal date.
21 These were four fired projectiles or bullets that I
22 received.

23 Q And again, what is the purpose of all this heat
24 sealing and putting initials and stuff on there?

25 A Heat sealing them, we do this and I put them in

1 the nice little clear bags so that way when I come to
2 court it's easier for me to see what I had. And then
3 also keep the integrity of the evidence.

4 Q When you say integrity of evidence, does that
5 mean just to make sure nobody has messed with it?

6 A Yes, sir.

7 Q And let's talk about the gun for a minute, I
8 think that's State's Exhibit 30 -- 32. State's Exhibit
9 32.

10 If you could just tell us a little bit about
11 that gun?

12 A This is a Smith and Wesson sigma series, model
13 SW9VE, semiautomatic pistol. And .9-millimeter Luger
14 caliber, serial number PDY2106.

15 Q And earlier in the trial there was some
16 discussion about semiautomatic versus a revolver, and
17 you can even add in a fully automatic pistol. Tell us
18 the difference between those?

19 A Well this is what we call a semiautomatic
20 pistol. Semiautomatic means one pull of the trigger,
21 it fires one cartridge. Automatic would be you pull
22 the trigger and it will fire until it runs out of ammo.

23 A revolver would be kind of like what you'd see
24 in a cowboy or western movie where it has that round
25 cylinder that moves around one firing mechanism.

1 Q And you may have touched on it, but if I pull
2 the trigger one time on that gun, how many shots do I
3 get?

4 A One.

5 Q I pull the trigger eight times on that gun, how
6 much shots do I get?

7 A Eight, as long as there are eight cartridges in
8 the magazine.

9 Q And how about that, how many bullets will that
10 magazine hold?

11 A Let me check my notes. This magazine will hold
12 16 unfired cartridges. So when the magazine is placed
13 in the gun, this would hold 17. Because you can have
14 one in the chamber, and then a fully loaded magazine.

15 Q And when you received the gun, was it fully
16 operational?

17 A Yes, sir.

18 Q In fact did you test fire the gun?

19 A Yes, sir, I did.

20 Q What's the purpose of that?

21 A We test fire the firearm first to make sure that
22 it's in working order. But what we do is we take those
23 test fires, we actually shoot into a two-story tank of
24 water, and then we pull those bullets up.

25 And then we look at them that we knowingly

1 fired from this gun to see how this firearm marks the
2 ammunition. So that way when I get to my comparison
3 microscope to look at my evidence, that's what I
4 compare, my test fires to the fired evidence that I
5 have.

6 Q All right. And bear with me just one second,
7 okay?

8 A Sure.

9 Q And with regard to a semi-auto pistol, which is
10 that what this is?

11 A Yes, sir.

12 Q With regard to a semiautomatic pistol, when I
13 pull the trigger and the gun fires, what happens to the
14 shell casing?

15 A On this firearm when you pull the trigger the
16 gun fires, you are going to have gas pressure buildup
17 in that cartridge case from the burning of the
18 gunpowder. So that gas pressure is not only going to
19 push the bullet down the barrel, it's going to push
20 the slide rearward, like it is now.

21 When it does that, that extractor that I talked
22 about, the little claw, which is hooked into the rim of
23 the cartridge case, is going to come back. Then you
24 can kind of see it here, that cartridge case will hit
25 this ejector and turn it out of the ejection port.

1 So it will in essence kick that round out, that
2 fired cartridge case out. Then once it's all the way
3 at its rearrest point, then under spring tension it
4 will fly back forward, picking up another round from
5 the magazine and pushing it into the chamber.

6 Q All right. Now and we used some terminology,
7 you said shell casing, bullet, projectile. Give us the
8 difference in all those.

9 A Okay. A cartridge is an unfired piece of
10 ammunition that contains the cartridge case, gunpowder,
11 the bullet. When it's fired, you have naturally two
12 pieces; you have a cartridge case, and then you'll have
13 the bullet or projectile itself.

14 Q And the cartridge casings, is that what is
15 normally ejected out of the side of the gun?

16 A Yes, sir.

17 Q And the projectiles, which would be the other
18 item of evidence, which number is that?

19 A State's Exhibit 29.

20 Q Is that what comes out the barrel of the gun?

21 A Yes, sir.

22 Q Now with regard to those three items of
23 evidence, when you received them were you able to make
24 a comparison on those items?

25 A Yes, sir, I did.

1 Q And you mentioned you test fired the gun and you
2 recovered the test fire. With that test fired
3 projectile and casings, how do you go about the
4 comparison?

5 A Like I said, I go back and I look at my test
6 fires that I knowingly fired from this firearm on
7 what's called a comparison microscope. It looks kind
8 of like you are looking through binoculars, but you
9 have two stages where you can look at two things side
10 by side.

11 So that just gives me an idea of how this
12 firearm works. So once I look at all my test fires,
13 and happy with how they marked, see how consistent they
14 mark, then I move to my evidence.

15 And I use my test fires first and I will put a
16 test fire on one stage, and my evidence on the other.
17 And then I look and see if they match up. And I phase
18 is what I call it. This firearm has what we call five
19 right rifling. That means five lands and five grooves
20 inside the barrel.

21 So after I phase mark my bullets to each other,
22 I look at my evidence, I will phase mark that, I look
23 at my cartridge cases, I will also phase mark them. I
24 make my conclusions. I write them down.

25 Then as part of our policy at SLED, we cannot

1 issue a conclusion unless two examiners agree on it.
2 So then I have to go get another examiner, let them
3 look at the evidence themselves, make their own
4 conclusion. As long as we agree, then I can issue a
5 report.

6 Q And were you able to make a conclusion in this
7 case?

8 A Yes, sir, I was.

9 Q And let me -- with regard to State's Exhibit 29,
10 the projectile recovered from the victim in this case.
11 Were you able to determine, within a reasonable degree
12 of scientific certainty, whether these projectiles were
13 fired from that gun?

14 A Yes, sir, I was.

15 Q And what was that determination?

16 A My conclusion was that based on the individual
17 identifying characteristics, in my opinion all four of
18 those bullets were fired by this firearm.

19 Q And with regard to the shell casings that were
20 recovered from the parking lot of the Perkins
21 Restaurant, were you able to make a determination, to a
22 reasonable degree of scientific certainty, as to
23 whether these eight shell casings were fired from that
24 gun?

25 A Yes, sir. Again I did find enough individual

1 matching characteristics to lead me to believe that in
2 my opinion all eight of those cartridge cases were
3 fired by this firearm.

4 MR. HILTON: Your Honor, in the case that none
5 of these items are actually in evidence, we would move
6 them into evidence at this time.

7 MR. LOY: Without objection, Your Honor.

8 THE COURT: Thank you.

9 Mr. Hilton, would you just give us the numbers
10 one more time?

11 MR. HILTON: Absolutely. That would be Item 28
12 would be the shell casings, Item 29 would be the
13 projectiles, and Item 32 would be the pistol.

14 THE COURT: Okay. Items 28, 29 and 32 are
15 admitted without objection.

16 (Whereupon, State's Exhibit Nos. 28, 29 and 32
17 are admitted into evidence.)

18 Q (By Mr. Hilton) Just for clarification, Ms.
19 Cromer, you talked about the rifling of the barrel
20 leaving the lands and grooves on the projectile. How
21 can you identify the casing with the gun?

22 A The casings are marked in five different areas.
23 Like I talked about before, the breach face of the
24 firing pin is what actually holds -- or the breach face
25 of the firearm is what holds the head of the cartridge

1 during firing. And the firing pin comes out of that
2 breach face and strikes the primer.

3 So any imperfections left on the breach face of
4 the firearm can be imparted on the head of that
5 cartridge case. Also, if there's any imperfections in
6 the firing pin itself, when it hits that primer it
7 causes an indention, what we call a firing pin
8 impression, there can be markings there.

9 There is also markings left from the extractor,
10 that little claw that I talked about that holds it and
11 brings it back. And the ejector that hits the
12 cartridge case and turns it to kick it out of the
13 firearm. There can also be markings left by the
14 chamber of the firearm itself.

15 Q And Like these markings from the barrel, the
16 rifling, are those markings unique to any particular
17 gun?

18 A Yes, sir, they are.

19 MR. HILTON: Please answer any questions Mr. Loy
20 may have.

21 THE COURT: Thank you. Mr. Loy.

22 MR. LOY: Thank you, Your Honor, just a couple.

23 CROSS-EXAMINATION

24 BY MR. LOY:

25 Q So I am clear, this part -- that's not got an

1 individual sticker -- but this would be the magazine
2 that you referred to; is that right?

3 A That's correct.

4 Q And to load a gun such as this, make it
5 operational for firing, is it correct that you
6 basically put bullets in the magazine and then insert
7 the magazine into the gun?

8 A That's one way you can load it. You can also
9 introduce a cartridge straight into the chamber of the
10 firearm and pull the slide back.

11 Q If I wanted to have more than one, if I wanted
12 to be ready to go, I would typically load the magazine,
13 and then insert it in the bottom of the handle here,
14 pull the slide back and I would be ready to go. Is
15 that right?

16 A That's correct.

17 Q And you said that this magazine would hold I
18 believe 16 rounds?

19 A Let me check my notes one more time.

20 Yes, sir, it holds 16.

21 Q And the way it works is essentially there is a
22 spring in the bottom. As we put in bullets, the spring
23 goes down. And as the cartridges are ejected, the
24 spring pushes a new bullet back up into the chamber.
25 Is that essentially correct?

1 A Essentially. You load the unfired cartridge
2 into the magazine.

3 Q And there is a spring.

4 A Yes, sir.

5 Q That then pushes them up into the gun, into the
6 chamber as it's fired?

7 A Right.

8 Q And you said that this would hold 16 rounds, but
9 would I need to put 16 rounds in this clip to be able
10 to shoot this gun?

11 A No, sir, you would not.

12 Q Could I put three bullets in it and then pull
13 the chamber back and have it operational with just
14 three shots?

15 A You could put three cartridges in it, yes.

16 Q Or four or even one?

17 A That's correct.

18 Q And you can't say, can you, if this -- did it
19 have any bullets in it when it came to you?

20 A I received no unfired ammunition with it.

21 Q Okay. So then there were no bullets in the clip
22 when it came to you?

23 A That's correct.

24 Q And nobody indicated to you that unfired
25 ammunition had been taken out of the clip?

1 A I did not receive any information like that.

2 Q And you can't say whether or not this particular
3 magazine has ever had five rounds in it, eight rounds
4 in it, other than what you put in it; is that right?

5 A That's correct.

6 Q Okay, thank you.

7 THE COURT: Thank you. Redirect?

8 MR. HILTON: No redirect, Your Honor.

9 THE COURT: Thank you, ma'am, you may step down.

10 MR. HILTON: May we approach, Your Honor?

11 THE COURT: You may.

12 (Whereupon, a discussion was held at the bench
13 off the record.)

14 THE COURT: Ladies and gentlemen, we have kind
15 of a good news/bad new scenario. The good news is the
16 State has one witness left. The bad news is she is the
17 lady travelling from York County to get here.

18 We are going to let you go early today. There
19 are several issues of law that we can deal with now
20 that will make things more efficient between the
21 State's case and any case that the defense may choose
22 to put up. And that will save us time tomorrow so that
23 we will be able to move either directly into that or
24 charge on the law.

25 So I'm going to let you all go. Hope you enjoy

1 your afternoon, have a good evening. Tomorrow morning,
2 I know we have one juror that had a very early morning
3 scheduling conflict. I think we can probably get
4 started around 9:45 or 10:00, it just depends on how
5 traffic is. I know it was a nightmare this morning
6 from what I heard.

7 So why don't you all plan on being here tomorrow
8 at 9:45. Then just as soon as everybody is here we
9 will be ready to go. But we will be ready in here to
10 get going. And, you know, maybe we will be able to get
11 the case to you fairly reasonably tomorrow. It just
12 depends on the last couple of witnesses.

13 Thank you. Again don't discuss the case yet
14 until we release it to you for deliberations. We'll
15 see you at 9:45 in the morning. Thank you.

16 (Whereupon, the jurors exit the courtroom.)

17 THE COURT: Okay. What have we got?

18 MR. HILTON: There was one juror who had an
19 appointment in the morning.

20 THE COURT: It's at eight o'clock in Mount
21 Pleasant. She says it won't take very long. I think
22 it's just tests being run. Ideally she gets on the
23 road by 8:30, we can get rolling about 10:00.

24 We will have see. Assuming there is no traffic
25 mess like this morning.

1 MR. HILTON: Then as we discussed at side bar,
2 if the Court wants to go ahead and examine the
3 defendant about whether he is going to testify at this
4 point we can --

5 THE COURT: I can do that.

6 MR. LOY: Would you prefer us to come forward?

7 THE COURT: Whatever you all prefer, it's fine.
8 Thank you.

9 MR. LOY: Yes, ma'am.

10 THE COURT: Mr. Benton, I know your attorneys
11 have explained all of this to you, you have excellent
12 representation in this case. But I need to also make
13 sure that you understand that you have the absolute
14 right to testify or not to testify in your defense.

15 In fact, as I told the jury earlier, and I will
16 explain to them again, the defense does not have to put
17 up any case at all. You are absolutely presumed
18 innocent throughout the entire proceeding and into
19 their deliberations, and the burden of proof rests
20 solely with the State.

21 The Fifth Amendment of the United States
22 constitution protects your right to remain silent. The
23 jury cannot use it against you if you choose to remain
24 silent and not testify. Nor can they even discuss
25 that. That can't even be a factor that they consider

1 or discuss in their deliberations.

2 On the other hand, if you should choose to
3 testify, you will be subject to cross-examination. And
4 that's a strategy decision that you really make with
5 your attorneys pursuant to the exercise of your
6 constitutional rights.

7 Do you understand that and have any questions
8 for me?

9 THE DEFENDANT: Yes, ma'am, and no, ma'am.

10 THE COURT: Okay. So that will be a decision
11 that you all will make or may have already made. I
12 strongly advise you to follow the advice and counsel of
13 your attorneys on that. Some people do and some people
14 don't. Usually the lawyers are right.

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Anything else? Anything more
17 specific you want me to go into, Mr. Loy?

18 MR. LOY: No, Your Honor, thank you.

19 THE COURT: Great. Thank you, sir.

20 THE DEFENDANT: Thank you, Your Honor.

21 MR. HILTON: Just one moment, Your Honor.

22 THE COURT: No problem.

23 MR. HILTON: Your Honor, I think we have got any
24 issue we discussed at side bar, I think we've got that
25 resolved. At least for the time being anyway.

1 THE COURT: okay. Great.

2 MR. HILTON: So as far as the State's concerned,
3 no other motions for this afternoon.

4 THE COURT: I have a draft verdict form and just
5 the draft skeleton basic jury charges. Do you all want
6 me to email those to you? I can send them now.

7 MR. LOY: Yes, ma'am.

8 THE COURT: okay. You all want to write down
9 your email for me, that will be great.

10 Then anything else you all want me to add we can
11 put in. I'm not sure what kind of arguments we might
12 get on a lesser included offense or anything like that,
13 but I can certainly add those subsequent to where we go
14 on that.

15 Then I will, depending on whether or not Mr.
16 Benton chooses to testify or not, I will certainly put
17 in the section on choosing not to testify. And we will
18 just wait and see.

19 MR. HILTON: And, Your Honor, you asked earlier
20 about specific charges, one that has come to mind for
21 us is voluntary intoxication not being a defense.

22 THE COURT: okay.

23 MR. HILTON: That would be one of them. Flight
24 would be one of them. And I think there are pretty
25 standard instructions on those.

1 THE COURT: There are. Before I email those to
2 you I will go back in and add those for you all to
3 review. Then we can discuss that at the appropriate
4 time.

5 You want to wait and look at it first and then
6 see what you might want to add?

7 MR. LOY: Yes, ma'am, I would. And I think the
8 solicitor is probably going to be entitled to an
9 instruction since he requested.

10 And also, I don't think it's a surprise to the
11 State or the Court, but I will just make everybody
12 aware for planning purposes that it's our intention at
13 this point that Mr. Benton would testify. And I do
14 anticipate that he will.

15 THE COURT: Okay. Thank you.

16 I thought he might and so I did take out the
17 part about if the defendants doesn't testify. But if
18 for some reason that changes, we will put it back in.

19 You all have a good afternoon. I know you all
20 are tired, you've done a great job. It's actually kind
21 of nice sometimes, I used to like it when we got a
22 break. But we will be at ease.

23 Then I will shoot you all an email shortly and
24 we will go from there. Like I said, we will shoot for
25 9:45. I doubt she can get here from Mount Pleasant

1 that fast, but on the strange chance that she does, we
2 will be ready to roll when she does get here.

3 So if you will have Betty Butler ready, as soon
4 as she gets here we will put her up and be ready to go.

5 Thank you all.

6 MR. HILTON: Thank you, Your Honor.

7 MR. LOY: Thank you, Your Honor.

8 (Whereupon, the proceedings in this matter
9 before the court were adjourned for the evening.)

10 * * * * *

1 THE COURT: Anything we need to take up before
2 we continue with the testimony?

3 MR. HILTON: Nothing from the State.

4 MR. LOY: No, Your Honor.

5 THE COURT: Wonderful. Whenever they're ready
6 you can bring in the jury.

7 (Whereupon, the jurors enter the courtroom.)

8 THE COURT: Good morning, ladies and gentlemen,
9 thank you. We are ready to continue with the trial.

10 If you'll call your next witness.

11 MR. HILTON: Thank you, Your Honor. The State
12 would call Ms. Betty Butler.

13 THE COURT: Ms. Butler, if you would come
14 forward to be sworn of the.

15 MS. BETTY WALKER BUTLER,
16 after having first been duly sworn to state the truth,
17 the whole truth and nothing but the truth, testified on
18 her oath as follows:

19 MR. HILTON: May it please the Court, Your
20 Honor.

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION

23 BY MR. HILTON:

24 Q Thank you, Ms. Butler. Where are you employed?

25 A I'm employed with the South Carolina Law

1 Enforcement Division, also known as SLED.

2 Q And what do you do with SLED?

3 A I'm a forensic technician.

4 Q And what does that mean for the jury?

5 A A forensic technician in the DNA department in
6 evidence processing is when we take in evidence where
7 we look for possible blood, semen, hair, fibers,
8 sometimes sweat, skin cells, biological fluids, or
9 anything that would be of value to a particular case.

10 Q And let me ask you, did you receive a baseball
11 cap with regard to SLED's number L10-12315?

12 A Yes, I did.

13 Q And the suspect in that case was Randal Benton I
14 believe?

15 A Yes.

16 Q And let me show you what has been entered into
17 evidence as State's Exhibit 30 and just ask if this is
18 the baseball cap that you received.

19 And I will ask, have you had the opportunity to
20 actually open that up and look at it?

21 A Yes, I did. And this is the baseball cap.
22 You'll see it has the item number which is for
23 tracking, my initials, and also the lab number for
24 tracking.

25 Q And is that written on the actual cap itself?

1 A It's written on the cap, yes.

2 Q And when you received that hat, what was your
3 task?

4 A When I received this particular heat sealed
5 pouch, it was closed. Because before we do anything
6 you have to make sure it is completely sealed.

7 I have to open it on the sides. And the request
8 was for ownership. We were looking for -- I was
9 looking for some type of skin cells.

10 I took it out. Put it on a white paper, which
11 was clean, and I had to use a scraper, like a knife
12 type thing, where we do the inside of the band and the
13 brim of the hat.

14 We collect the skin cells on a clean swab. We
15 have to let swab dry. Then we put it into an envelope
16 where we put our initials and the lab number on the
17 envelope.

18 Q Now these cells and stuff, is that something you
19 could see with the naked eye?

20 A No, you cannot see it. You are swabbing in the
21 blind.

22 Q All right. So essentially, if I understand, you
23 scrape the hat and the cells fall off and then you swab
24 those up?

25 A That is correct.

1 Q And is that what you did with that hat?

2 A Yes.

3 Q And let me show you what has been conditionally
4 admitted as State's 36 and just ask if you recognize
5 this item?

6 A Yes, I do. It has the lab number, my initials,
7 the date I sealed it, and it has the two envelopes that
8 I placed on the inside.

9 Q And what is that item?

10 A This is item 10.1 and item 10.2. The swab, the
11 scrapings from inside the band and brim, and 10.2 is
12 the possible hair collected from the hat.

13 Q All right. And with regard to the DNA sample
14 from the hat. Is that the sample that you collected
15 from that hat?

16 A That's correct.

17 Q Okay. And when you got finish with that, what
18 did you do with it?

19 A After I collect the samples, as I said before, I
20 had to let it dry. Then I put it into the envelope.
21 After I sealed it, we have a place where we call the
22 DNA storage area where we have to have a passkey to get
23 in. And I put it into like a drawer and came out of
24 the room and locked the door back.

25 Q And from that point it was transferred to the

1 analyst at some point?

2 A And at that point when the case is assigned to
3 the analyst, they go into this particular room, because
4 they have to use their key to get into that room and
5 retrieve the evidence.

6 Q And the analyst was Ms. Katie Urka; is that
7 correct?

8 A That's correct.

9 MR. HILTON: Please answer any questions Mr. Loy
10 may have for you.

11 MR. LOY: I have no questions for this witness.

12 THE COURT: Yes, sir, thank you.

13 Ma'am, you may step down and be excused. Thank
14 you.

15 MR. HILTON: Your Honor, to any condition that
16 applied to State's Exhibit 36, we'd ask that condition
17 is satisfied by the testimony of Ms. Butler.

18 MR. LOY: I don't need to be heard on that
19 point, Your Honor.

20 THE COURT: Thank you, sir. It will be
21 admitted, State's 36, over the early objection that was
22 preserved. Thank you.

23 MR. LOY: Thank you, Your Honor.

24 (Whereupon, State's Exhibit No. 36 is admitted
25 into evidence.)

1 THE COURT: Yes, sir.

2 MR. HILTON: Your Honor, at this time the State
3 would rest in its case in chief.

4 THE COURT: Thank you.

5 okay, ladies and gentlemen, I have a matter of
6 law that I need to take up with the attorneys, it will
7 not take long. So I'm going to ask you to return to
8 your jury room. We're going to have you back in just a
9 minute.

10 You've only heard part of the evidence in the
11 case, so please do not discuss the case yet in your
12 jury room. Thank you.

13 (Whereupon, the jurors exit the courtroom.)

14 THE COURT: Okay. Anything from the defense?

15 MR. LOY: Thank you, Your Honor. At this time
16 the defense would make a motion for directed verdict on
17 the grounds that the evidence that has been presented
18 by the State could not possibly convince an unbiased
19 trier of the fact with the guilt of the defendant
20 beyond a reasonable doubt, and that he is entitled to
21 an acquittal as a matter of law.

22 THE COURT: Thank you, sir. I appreciate your
23 argument and respectfully deny your motion for a
24 directed verdict.

25 MR. LOY: Thank you, Your Honor. We are

1 prepared.

2 THE COURT: Anything else?

3 MR. HILTON: State is ready, Your Honor.

4 THE COURT: Okay. Ready for them to come back
5 in?

6 MR. LOY: Yes, ma'am.

7 THE COURT: They can come on back. Thank you.

8 (Whereupon, the jurors enter the courtroom.)

9 THE COURT: Thank you, ladies and gentlemen. I
10 believe we discussed yesterday you all choosing your
11 foreperson. Did you all get that taken care of.

12 A JUROR: Yes.

13 THE COURT: And who is your foreperson?

14 If I could get you to come sit in this chair
15 right up here, I'd appreciate it. Thank you, ma'am.

16 Okay, Mr. Loy.

17 MR. LOY: Thank you, Your Honor. Randal Benton.

18 THE COURT: Sir, if you would please come
19 forward and be sworn.

20 MR. RANDAL WILLIAM BENTON,
21 after having first been duly sworn to state the truth,
22 the whole truth and nothing but the truth, testified on
23 his oath as follows.

24 THE COURT: Yes, sir.

25 MR. LOY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. LOY:

Q You are Randal Benton?

A Yes, sir.

Q Mr. Benton, how old are you, sir?

A I'm 48.

Q I want you to speak up loud. You have been waiting a long time, we want to hear what you say.

How old are you, sir?

A I'm 48 years old.

Q Where is your home, sir?

A Ladson.

Q And where are you from? Are you from this area?

A Yes, sir.

Q And have you lived in South Carolina most of your life?

A All of my life.

Q Mr. Benton, how far did you go in school?

A To the eighth grade. I finished eighth grade.

Q Where did you do that?

A Alice Birney.

Q I'm sorry?

A Alice Birney in North Charleston.

Q And what sort of work do you do, sir?

A Landscaper.

1 Q How long have you been employed as a landscaper?

2 A Not with any particular company, I have done
3 landscaping for about 20 years.

4 Q For 20 years?

5 A Yes, sir.

6 Q Did you say you've done that with a couple of
7 different companies or various places?

8 A Yes, sir.

9 Q Are you married? Or have you been married?

10 A Yes, sir.

11 Q And you were in fact married to the victim in
12 this case, Treva?

13 A Yes, sir.

14 Q Was she your first wife?

15 A No, sir.

16 Q Do you have children?

17 A Yes, sir.

18 Q How many children do you have?

19 A I have two.

20 Q And are those children by Treva or by previous
21 marriages?

22 A Previous marriage.

23 Q How old are your children?

24 A One will be 28, and one is 24.

25 Q Okay. And back on the time that we are talking

1 about, back in October when your wife was killed, were
2 you employed at that point in time?

3 A Yes, sir.

4 Q Where were you working?

5 A Over in Mount Pleasant. I believe it was Lawn
6 Green.

7 Q How long had you been with them?

8 A Two and a half years.

9 Q For two and a half years?

10 A Yes, sir.

11 Q And you and Treva, you were still married at
12 that point; is that right?

13 A Yes, sir.

14 Q Were you all staying together?

15 A No, sir.

16 Q Where were you staying?

17 A In Ladson at our old residence.

18 Q And Treva, where was she staying if you know?

19 A Yes, sir. When we were at a residence where we
20 were previously when we were together, at the condo.

21 Q And she was staying in the place where you all
22 had stayed in the past?

23 A Correct.

24 Q How long had it been since you all had stayed
25 together as husband and wife?

1 A I would estimate probably about six months.

2 Q And when you all -- you all were technically
3 separated at that point?

4 A I mean we didn't go through papers or nothing,
5 sir, but we were separated.

6 Q So you all were staying separate and apart, but
7 you had not filed an action for divorce or legal
8 separation?

9 A No, sir.

10 Q And she had not either?

11 A No, sir.

12 Q So there wasn't anything pending in family court
13 as far as the dissolution of your marriage on a formal
14 basis?

15 A No, sir.

16 Q Had you all retained any level of a relationship
17 by which I mean were you all still in communication
18 with each other after you all set up separate
19 residences?

20 A Yes, sir.

21 Q So did you all communicate? How often would you
22 say you all communicated?

23 A Almost every day.

24 Q Had you formed any -- moved on, had you formed
25 any new romantic relationships with anyone at that

1 point?

2 A No, sir.

3 Q Were you and your wife still involved as husband
4 and wife? By which I mean, were you all still engaging
5 in sexual relations?

6 A Yes, sir.

7 Q Was there ever a time up until the time of her
8 death that that just curtailed completely?

9 A No, sir.

10 Q Do you understand what I mean by curtailed?
11 Stopped? Did that ever just stop?

12 A Right. No, sir.

13 Q On this particular day that we have been talking
14 about in here, do you recall roughly when you got up
15 that day?

16 A Yes, sir.

17 Q When was that?

18 A Approximately around 8:30. I would say 8:30,
19 8:45 in the morning.

20 Q Okay. And did you have plans for the day?

21 A Yes, sir, I did.

22 Q And what were your plans for the day?

23 A I was going to go up to the gun range and do a
24 little shooting.

25 Q Is that something that you do periodically?

1 A Every -- I mean I had the gun for a while and I
2 didn't do much shooting with it. And then when I had
3 an opportunity, I would take advantage of it.

4 Q Did you take any other equipment with you when
5 you go to the range? Any earplugs?

6 A Yes, sir, earplugs. I didn't have anything
7 else. The range usually carried other items that I
8 needed to perform.

9 Q Did you take earplugs with you that day?

10 A Yes, sir, I did.

11 Q And later on when you were arrested or
12 apprehended in Alabama, were those earplugs still in
13 your truck?

14 A Yes, sir.

15 Q At any rate, your plan was to go by to the
16 range; is that right?

17 A Yes, sir.

18 Q Did you do that?

19 A No, sir.

20 Q But did you take the equipment that you needed
21 to do that?

22 A Yes, sir.

23 Q And if you didn't do that, why did you not do
24 that?

25 A Because I made contact with my wife. She was in

1 the process of moving.

2 Q And we heard testimony earlier that you helped
3 that day. Did you help that day?

4 A Yes, sir, I did.

5 Q Can you tell us what you did?

6 A Sure. Basically when we got there she was
7 packing some other items, and stuff like that. They
8 were still in the process of getting things loaded,
9 what she could in the SUV.

10 When I got there I talked to basically everyone
11 who was there, and started loading things.

12 Q And what kind of vehicle were you driving?

13 A A truck.

14 Q And was that something that was helpful to you
15 in what you were doing that day there with Treva?

16 A Yes, sir.

17 Q What did you all do? I mean, what did you do?

18 A Well I mean I helped them pack what we could in
19 the SUV. And then we moved it, the SUV out of the way
20 so I could get the truck in there, we backed it in
21 there. My truck was used to move the larger items
22 furniture and so on.

23 Q And where did you move those items?

24 A To a storage bin that she had purchased.

25 Q Okay. Was there any conflict or friction

1 between anybody who was there that day?

2 A No, sir.

3 Q Do you recall the people who were there that day
4 as far as helping with the move? Or just who were
5 there?

6 A Yes, sir. Jeremy, Michael, Michael's
7 girlfriend, me, at that time that was it.

8 Q Treva?

9 A Pardon me, yes, sir.

10 Q Now you were helping them move even though you
11 all -- helping her move even though you had been
12 separated for six months or so. Was the separation
13 something that you wanted to take place?

14 A No, sir.

15 Q Did you want your marriage to end?

16 A No, sir.

17 Q Were you hoping to reconcile or reunite as a
18 couple?

19 A Yes, sir.

20 Q And on this day after you were done helping her
21 move, did there come a time when you basically all were
22 done for the day?

23 A Yes, sir.

24 Q About how long would you say you were there
25 working?

1 A I'm sorry?

2 Q About how long would you say you all were there
3 moving items back and forth, however many trips you
4 made?

5 A I would estimate three, four hours.

6 Q So about what time was it you would say that you
7 left?

8 A Approximately 1:00 or 1:30.

9 Q And what did you do then, sir?

10 A I actually went out and had to run some errands.

11 Q Personal stuff?

12 A Yes, sir.

13 Q Did you take care of those errands?

14 A Yes, sir, I did.

15 Q And sometime later did you go back out that
16 evening?

17 A Yes, sir, I did.

18 Q And about what time do you think you went back
19 out?

20 A Approximately about 6:30, 7:00.

21 Q At that point you stated that you had taken your
22 gun, your earplugs, stuff you would take if you went to
23 the range. Did you still have that stuff with you?

24 A Yes, sir, I did.

25 Q Is that something -- where was that?

1 A In my vehicle.

2 Q Is that something that just as a matter of
3 routine you always carry a gun in your vehicle?

4 A Oh, no, sir. No, sir.

5 Q But on this particular day you did have that
6 gun; is that right?

7 A Correct.

8 Q And when you went out, where did you go?

9 A Just actually just drove around a little bit.
10 And then ended up at a bowling alley, a pub in a
11 bowling alley.

12 Q And where was that? What bowling alley was
13 that?

14 A Right down on Dorchester Road, between Ladson
15 and Dorchester.

16 Q Right there at Ladson and Dorchester?

17 A Yes, sir.

18 Q Do you recall the name of that?

19 A No, sir, I don't.

20 Q Are you a bowler?

21 A No. Not good at it. I mean I have done it
22 occasionally.

23 Q Were you there to go bowling that night?

24 A No, sir, I wasn't.

25 Q What did you do?

1 A I wanted to go just relax, have a couple of
2 drinks.

3 Q Is that what you did?

4 A Yes, sir, I did.

5 Q And I think you told me, but just again, about
6 what time was it you think you got there, sir?

7 A At that time it was probably I would guess
8 somewhere around 8:30 or 9:00.

9 Q And were you -- had you made arrangements to
10 meet other people? Were there friends that you were
11 there to see or anybody in particular you were looking
12 for?

13 A No, sir.

14 Q How far would you say this bowling alley is from
15 the home that you were living in at that point in time?

16 A About I would say 10, 12 miles.

17 Q And you were in your vehicle; is that right?

18 A Correct.

19 Q Other than proximity, that is it's fairly close
20 to your home, was there any other reason you went
21 there?

22 A No, sir, no in particular reason. I have been
23 there before, so.

24 Q And what did you do when you got there?

25 A Walked around. They had quite a few people

1 there. And every once in a while they would have a
2 band in there.

3 They had college students, they had some kind of
4 college student party I believe it was.

5 Q This was October 30th?

6 A Yes.

7 Q So they had a costume party or event going on?

8 A Yes, sir.

9 Q Tell me about what you did while you were there.

10 A Had a conversation with a couple people who was
11 at the bar. Had a couple drinks. Basically kept to
12 myself not really having -- just talking to whoever
13 would be next to me or whatever.

14 Q Anything extraordinary about your time there in
15 the bowling alley? Anything we need to talk about in
16 particular?

17 A No, sir. It was just a time to just go in and
18 relax is all it was.

19 Q Okay. And about how long do you think you were
20 there, sir?

21 A I mean I really didn't have any track of time.
22 I wasn't paying -- I had no plans to do anything, so I
23 wasn't.

24 Q You were there for while, more than 15 or 20
25 minutes?

1 A Yes, sir.

2 Q And before you left, I assume obviously there
3 came a time you left, before you left how many drinks
4 do you think you had?

5 A I would say, estimate five or six.

6 Q Five or six drinks?

7 A Yes, sir.

8 Q Are you big drinker, Mr. Benton?

9 A No, sir, I'm not.

10 Q Five of six drinks, is that a good bit for you?

11 A I would -- to be honest with you, I don't know.
12 I mean I wouldn't think so. I mean I was functioning.

13 Q So would you say you were intoxicated at that
14 point in time?

15 A I felt like I had a buzz, yes, sir.

16 Q And when you were going to leave the bowling
17 alley, when you left the bowling alley, did you have a
18 specific plan or a place in mind that you were going
19 to?

20 A Yeah, actually I was, a place called Shooters.

21 Q And what kind of a place is that?

22 A It's another bar.

23 Q Okay. And how far is that from the bowling
24 alley do you think?

25 A Estimate half a mile.

1 Q Say about half a mile?

2 A Yes, sir.

3 Q Fair to say right around the corner?

4 A Correct.

5 Q Why were you going there?

6 A Friends of mine, co-workers usually we would go
7 every once in a while we would go in there just to
8 shoot pool and have maybe a beer or two. And it wasn't
9 often.

10 Q And did you in fact go to Shooters when you
11 left?

12 A Yes, sir, I did.

13 Q Did anything happen between you leaving the
14 bowling alley? Or did you just uneventfully get out
15 and ride on over to Shooters?

16 A No, sir, actually something did happen prior to
17 going to Shooters.

18 Q Can you tell us about that, sir.

19 A Yes, sir. While I was leaving I went out into
20 the parking lot and there was a young lady out there
21 standing as I approached going toward my vehicle. She
22 asked me, hi, how are you doing? And I said fine. And
23 she said, are you from here? And I said, yeah.

24 Q At that point had you stopped? I mean you all
25 were?

1 A Yes, sir. She was asking me, she was wanting to
2 make conversation.

3 Q okay. So what happened?

4 A I asked her -- she asked me, are you from here?
5 I said, yes, I'm born and raised. And I said, you?
6 And she said no. And she said, walking, it's kind of a
7 nice night tonight. And I said, yeah, it's a little
8 chilly for me. And I said, where are you from? And I
9 think her reply was Missouri.

10 Q okay.

11 A And we just -- it was just small talk.
12 she asked me what I was up to, and I said
13 partying. I said, how about you? And she said, we are
14 doing the same thing.

15 she had a drink in her hand. I asked her, I
16 said looks like you got a drink, what are you drinking?
17 What are you drinking? She said it's like punch. She
18 said -- she offered me a drink and, you know, and she
19 said, just taste it, you know, try it.

20 so I took a drink and it was good. And she
21 offered if I wanted any. And I said, sure, I will take
22 a little. And she said, okay, and went and approached
23 a vehicle and poured from what I could tell when I got
24 it was about half a cup.

25 Q was it just you and she there?

1 A No, sir.

2 Q Who else was there?

3 A There was two other guys behind her
4 approximately I would say 6 or 7 feet.

5 Q Did they appear to be part of the same party? I
6 mean did it look to you like they were together?

7 A Yes, sir.

8 Q And why would you say that?

9 A Because while we were talking she asked me if I
10 was with anyone and I said no. And she said, and I
11 replied to her I said, are you? And she said no, I'm
12 with my brother. My brother is here.

13 Q Okay.

14 A Excuse me.

15 Q And what happened next, Mr. Benton?

16 A Well we got to talking and then she asked me,
17 you know, I made a comment to her, you know, if she was
18 alone. And I asked her if I was alone. She asked me
19 if I was involved, and I said well kind of. And she
20 said kind of? I said, yeah, I'm married but I'm
21 separated. I said, you know, I'm trying to work things
22 out with my wife. And she said, well, I hope the best
23 for you. And I said thank you.

24 Q Then what happened next?

25 A Well after I made that comment, the fellow that

1 she pointed at in basically the direction that was her
2 brother came up to me and made a remark to me and said,
3 you're married and you're hitting on my sister?

4 Q And can you describe his tone or demeanor?

5 A Yes, sir. He was very belligerent like he was,
6 excuse the expression, P'd off.

7 Q Angry with you?

8 A Yes, sir.

9 Q All right. So what happened next?

10 A Well I looked at both him and her and I said,
11 look, I don't want any trouble. I'm just going to
12 leave. And I turned to walk away from between the two
13 vehicles we were standing at, around the vehicle and
14 approaching -- heading toward my vehicle.

15 Q And what happened next?

16 A As I was walking off I heard one of the --
17 appeared to me to be from him, from the direction, he
18 said, hey. And as I turned to look back, I was struck
19 in the head with something.

20 Q Were you within arm's reach of the people you
21 had been talking to at that point in time?

22 A No. When I got hit it was probably the distance
23 between the width of a car. I was on the other side of
24 the car, they were on the other side.

25 Q So there was actually a car between you and the

1 group of people you had been talking to?

2 A Correct.

3 Q When you say you were hit, describe for the
4 ladies and gentlemen of the jury what you are talking
5 about. What do you mean?

6 A I believe that someone had thrown a bottle or
7 something, some item or I'm not too sure what it was.
8 But it had made an impact on me, and it had knocked me
9 basically into a stupor.

10 Q What did you -- did it knock you down?

11 A Well it didn't knock me down, I went down on one
12 knee.

13 Q What did you do?

14 A I sat there for a couple -- what seemed like a
15 couple minutes trying to get my head clear. When I got
16 up, I wanted to get to my vehicle as quick as I could.

17 Q Is that what you did?

18 A Yes, sir, I did.

19 Q How far was your vehicle from the place where
20 you were struck?

21 A I would say approximately 15 or 20 feet.

22 Q 15 or 20 feet away?

23 A Yes, sir.

24 Q Did you hurry to your vehicle?

25 A As quick as I could.

1 Q When you got to your vehicle, what did you do,
2 sir?

3 A When I got to the vehicle, I opened the door and
4 reached into the console to grab my knife that I kept
5 in the console.

6 Q What kind of knife is that?

7 A It's a lock-blade knife I usually carry.

8 Q Like a pocket knife?

9 A Yes, sir.

10 Q Not -- this thing is not going to fit in your
11 console, right?

12 A Oh, no, sir. No, sir, that's not. No.

13 Q What is this?

14 A It is a type of machete. It's just a different
15 knife that I purchased. It's really heavier than a
16 machete. I guess it's like an old Marine knife. It
17 has the U.S. Marine Corp symbol on it.

18 Q What do you personally do with something like
19 this?

20 A For landscaping. Trimming limbs off of trees,
21 and removing bushes out of the ground.

22 Q Just sort of a heavier machete?

23 A Yes, sir.

24 Q Is that a tool that you use in your work?

25 A Yes, sir.

1 Q So you reached in and you say you were looking
2 for a pocket knife; is that right?

3 A Yes, sir.

4 Q Why is that?

5 A Because I felt like that what had just occurred
6 is that these guys were going to attack me.

7 Q And when you opened your console, was there a
8 pocket knife there?

9 A Actually I found the gun.

10 Q Okay. And had you been thinking about going to
11 get a gun at that point?

12 A No, sir, not at that time. No, sir. I don't
13 think when I get out to the car the gun was even in my
14 console.

15 Q So what did you?

16 A Well I reached in, like I said, to grab my
17 knife, there was my gun so I grabbed it. And I turned
18 to see if anyone was approaching me.

19 Q Was anyone approaching you?

20 A No, sir.

21 Q So what did you do?

22 A At that time I stopped, put the gun in the back
23 of my pants and got into the truck.

24 Q Okay. And where did you go?

25 A Well when I left, as I was pulling out to leave

1 I felt very strange, like something was wrong. And I
2 went -- I knew I had a buzz, but this was, it felt
3 different, like something -- I mean, I don't know how
4 to explain it. I wasn't myself.

5 At that time I felt like I needed to get to
6 someone or where I knew I could be safe or get some
7 type of help.

8 Q So what did you do?

9 A I decided to head to Shooters where I thought,
10 like I said before, friends of mine would occasionally
11 meet there and we'd shoot pool and have a couple beers.
12 I made that attempt to reach them.

13 Q I think you said earlier this was a half mile or
14 right around the corner?

15 A Correct, it was close. Yes, sir.

16 Q And did you go there, sir?

17 A Yes, sir, I did.

18 Q And did you drive there?

19 A Yes, sir, I did.

20 Q You were able to safely operate your vehicle
21 there, you made it there?

22 A Yes, sir, I did.

23 Q When you got there, what did you find of what
24 did you do?

25 A When I got in the parking lot I drove -- there's

1 two entrances into Shooters. I went through the
2 farthest side to drive back around and pull in and see
3 if maybe I could recognize some of the vehicles that my
4 friends drove.

5 Q And did you?

6 A No, sir, I didn't.

7 Q Did you get out at the bar? Did you get out of
8 your vehicle at Shooters?

9 A No, sir, I didn't.

10 Q You didn't know anyone there so you didn't
11 think so and is that why you didn't stop?

12 A Correct. I felt like there was no reason for me
13 to get out of the vehicle since there was no one there
14 to help me.

15 Q So what did you do instead?

16 A Well I pulled up to the -- to leave the parking
17 lot out of Shooters, I felt very, very strange. It was
18 like whatever had took place with me was getting worse.

19 So I decided to go ahead and leave. I said,
20 well, I need to get home. I will make an attempt to go
21 home. For some reason, I don't why, I went to the old
22 address where me and my wife first got back together
23 and pulled up to go to that, what I considered home.

24 Q You say when you and your wife first got back
25 together, was that subsequent to an earlier separation

1 that you and she had gone through?

2 A Yes, sir.

3 Q So you went to this place where you had resided
4 in the past; is that right?

5 A Yes, sir.

6 Q And where was that?

7 A It was probably approximately a block and a half
8 away from Shooters.

9 Q And Shooters is roughly next door or adjacent to
10 the Perkins that we have talked about?

11 A Yes, sir, it is.

12 Q And this is roughly a block and a half where you
13 and your wife used to reside?

14 A Yes, sir.

15 Q What did you do -- is this an apartment, or a
16 stick-built house?

17 A It's a townhouse.

18 Q It's a townhouse?

19 A Yes, sir.

20 Q Tell me about what happened when you got there?

21 A Okay. Once I pulled in, I parked on the side of
22 the road, which is basically directly across from our
23 townhouse, because there was quite a few cars there.

24 When I pulled in I realized that -- excuse me --
25 that my boat that I own wasn't there. And that my

1 wife's SUV wasn't there.

2 Q So you say you realized those vehicles were not
3 there. Was it your intention when you pulled up there,
4 or your belief that you were going to your home?

5 A Yes, sir, it was.

6 Q The place where you were residing at that point
7 in time?

8 A Yes, sir.

9 Q And you said the vehicles, or the boat, et
10 cetera was not there. And is that's when you realized,
11 I'm at the wrong place?

12 A Correct.

13 MR. LOY: Just one moment if I could.

14 Thank you, Your Honor.

15 Q (By Mr. Loy) So what did you do once you
16 realized you were at the wrong place?

17 A Well I knew something was wrong. And at that
18 moment I felt like I needed to get my head clear. So I
19 stood outside for what I would estimate about five, ten
20 minutes.

21 Q Yes, sir.

22 A And then I realized, or basically it came back
23 to me that this was our old residence, and that I
24 needed to go ahead and go to my wife's place and see if
25 I can get a ride from her and get home.

1 Q And why was it -- is that because of the way you
2 were feeling? You felt it would be unsafe for you to
3 drive?

4 A Correct.

5 Q So what did you do?

6 A Well I mean at that time I was really anxious.
7 I was feeling weird, I was upset, scared, even nervous
8 at times.

9 So that's why I, maybe I wanted to get to my
10 wife's house to try to get a ride home.

11 Q So what did you do?

12 A I left went and walked to my wife's house. I
13 didn't want to make any attempts to drive anymore.

14 Q And did you take anything with you?

15 A Yes, sir.

16 Q What did you take with you?

17 A My gun.

18 Q Why did you take your gun with you?

19 A Because like I said at the time, I was paranoid,
20 I felt like I was paranoid, I was scared, I was
21 nervous, like something was going on. I was going to
22 go through the same incident that I went through at the
23 bowling alley.

24 Q Okay. Did anything happen while you walked to
25 Treva's house?

1 A No, sir, it didn't.

2 Q And how far would you say it was from your old
3 place, the place where your vehicle was now parked, to
4 Treva's place?

5 A About a block.

6 Q A block or so?

7 A Yes, sir.

8 Q And you made it there unscathed?

9 A Yes, sir.

10 Q What happened when you got there?

11 A When I got there I noticed that my wife's
12 vehicle wasn't there. I still thought it be best for me
13 in the condition I was just to go ahead and sit on the
14 back porch. She had -- we had a screened-in back
15 porch, table, chairs, and all that stuff. And usually
16 the light was left on. To go ahead and just go back
17 there and sit down at the table and wait until she got
18 there.

19 Q Okay. And is that what you did?

20 A Yes, sir, it is.

21 Q And can you tell the ladies and gentlemen of the
22 jury what happened next?

23 A As I got -- approached the back of the house to
24 the go inside of the porch, when I opened the screen
25 door porch my stepson stepped out of the back door.

1 And then I realized someone was home.

2 Q Okay. And what did you all do?

3 A Well I walked in and just basically just had a
4 general conversation. And I asked him if his mom, you
5 know, where was his mom. And he just told me she
6 wasn't there, she was out.

7 Q Okay. And how long did -- eventually she
8 arrived?

9 A Yes, sir.

10 Q How long would you say you were there before she
11 arrived?

12 A Mr. Loy, to be honest with you I have no idea.
13 Like I said, I have no recollection of the time or
14 nothing.

15 Q Anything dramatic or extraordinary take place
16 between you and the people who were there prior to
17 Treva's arrival?

18 A No, sir.

19 Q When she came home, can you tell us what
20 happened next?

21 A Yes, sir. I believe Michael had walked inside
22 and --

23 Q You said Michael, who is Michael?

24 A I'm sorry, Michael is my stepson. He is my
25 oldest stepson. And that's when he left the backdoor

1 opened and I noticed that they were -- my wife was
2 home.

3 Q Okay. And what happened?

4 A I walked in, into the apartment. And Michael
5 went upstairs at the time I guess to let my wife know
6 that I was there.

7 Q Okay. And did you and Treva have a conversation
8 in the house that evening?

9 A No, sir.

10 Q Did you talk to her at all in the house that
11 evening?

12 A I wouldn't say talked, we didn't have a
13 conversation or nothing.

14 Q Well, did you?

15 A When I seen her I said hey, she said hi, you
16 know. Just come on with me, I will go ahead and take
17 you home.

18 Q Did you all then leave?

19 A Yes, sir.

20 Q Did you coerce her or force her or do anything
21 to make her do that?

22 A No, sir. No, sir.

23 Q Did you have intentions of hurting or harming
24 her at that time?

25 A Oh, no, sir.

1 Q Can you tell us what happened?

2 A Sure.

3 Q And just so I'm clear in my mind. Your vehicle
4 was parked roughly a block from Treva's house; is that
5 what you said?

6 A Yes, sir.

7 Q And Treva's house was roughly how far from
8 Shooters and Perkins?

9 A About a block, block and a half.

10 Q About a block, block and a half. And that's
11 right across from Shooters?

12 A Correct.

13 Q And a half mile or so from the bowling alley?

14 A Yes, sir.

15 Q Okay. Tell us what happened when you all left.
16 whose vehicle did you get in?

17 A Well it was our vehicle, she drove it.

18 Q It was the vehicle that she used?

19 A Yes, sir.

20 Q So you all got in the vehicle. And I take it
21 she took the wheel?

22 A Oh, yes, sir. Actually I was being kind of a
23 jokester about it. When we walked out of the house I
24 stood in front of the SUV and I said, give me keys I
25 will drive. And she laughed and said, get in the seat.

1 Q okay. And did you do that?

2 A Yes, sir, I did.

3 Q At that point it sounds -- I mean, how would you
4 describe the mood between the two of you?

5 A It was fine.

6 Q And what happened?

7 A Well we both got in the vehicle and got ready to
8 leave.

9 Q okay.

10 A And I guess being a jokester I made a comment
11 again, sure you don't want me to drive? And she
12 laughed.

13 Q But you all did pull out of the driveway and
14 head in the direction of your home; is that right?

15 A Yes, sir. This was -- and this was when I made
16 that comment again we were in the process of leaving.

17 Q okay. And how did the conversation proceed from
18 there?

19 A Well I mean basically we just were talking
20 about, you know, what I was doing tonight, that night.
21 She said, well I can tell you've had fun. And I said,
22 well no not really.

23 And she said that it looked like to her I was.
24 I said no. I just was out doing some running around.
25 And I said -- made the comment to her, I said, I

1 thought we were supposed to get back together.

2 Q Did you mean get back together as a couple, or
3 get back together that day?

4 A No, sir that day as far as getting everything
5 packed up and moved. She had actually asked me to pick
6 up prior before I got --

7 Q I understand. So what happened next?

8 A We get -- I was under the assumption that she
9 was taking me home. And as we were driving off, like I
10 said, I made the comment to her, I said, I thought we
11 were going to get back together to get the things
12 moved.

13 And she said, well I just -- I had to run out.
14 And I said, run out? She said, yeah. I said, is
15 something wrong? And she said, no, no. She said, I
16 just run out to see some friends. And I said, friends.
17 I said, was Mark one of these friends?

18 Q And who is Mark?

19 A From what I understand when I got -- it was a
20 guy that she had just met not too long. And upon an
21 estimation under the understanding that they were just
22 friends.

23 Q Okay. But you were suspicious of that fact?

24 A Yes, sir, I was.

25 Q Tell me how the conversation went?

1 A Well basically I asked her, you know, I said,
2 was Mark one of these friends? And she said, yeah,
3 why? I said, well I'm beginning to get the impression
4 that Mark is more than just friends, just a friend.

5 Q And?

6 A And she said, whatever. And comment went on and
7 I said, well, are you all -- I said, let me ask you
8 this, are you all having sex?

9 Q And what was her reply?

10 A Her reply to me was it was none of my business
11 if they were having sex or not.

12 Q Okay. So just go ahead and walk me through the
13 rest of that conversation.

14 A Okay. When I asked her that, I said, well, you
15 know, are you all having sex? And she said, well it's
16 none of your business. I said, do what? She said,
17 it's none of your business who I'm having sex with.

18 I said, look, are you fuck -- excuse me -- are
19 you fucking this guy or what?

20 Q And where were you all at that point?

21 A Almost in the parking lot.

22 Q Did she pull into the Perkins parking lot?

23 A Yes, sir.

24 Q And what happened then?

25 A It basically escalated.

1 Q Tell me what you mean.

2 A Well I asked her and I told her again, I said,
3 you sitting hear telling me --

4 Q You can spare us the profanity, got that part,
5 okay. If you just F me, that will be fine. If that's
6 what was said.

7 A I'm sorry. I apologize.

8 Q That's all right. Go ahead.

9 A When I got in there and I said, you know, you
10 mean to tell me you are F'ing this guy and it's none of
11 my business? I'm your husband. We are still having
12 sexual encounters. And you are going to sit here and
13 tell me it's none of my business?

14 Q And what happened next?

15 A Well basically we were in the vehicle inside the
16 parking lot the vehicle was stopped. And I told her
17 when I made the comment. She said, that's right, no,
18 it's none of your business.

19 And -- and I was upset, I was angry, frustrated.
20 And I said, so in other words then you are F'ing this
21 guy. And she got out of the vehicle.

22 Q Did you get out of the vehicle?

23 A Yes, sir, I did.

24 Q Was it your intention to attack her or something
25 at that point?

1 A No, sir.

2 Q Did you attack her or something at that point?

3 A No, sir.

4 Q What did you do?

5 A What I did was I went around the vehicle where
6 she was and I approached her. And I basically -- at
7 that time I was -- I was angry, I was really upset. I
8 mean I was hurt also.

9 And I told her I said, why? why? I'm your
10 husband. And her reply to me was, I don't know.

11 And I approached her and I said, I'm your
12 husband. And she slaps me in my head. I mean she
13 slapped me hard in my head.

14 Q And what happened next?

15 A At that time, Mr. Loy, I was so -- I was so mad.
16 I was so hurt. I felt like I was going to explode.

17 I felt like my head was -- I mean I didn't know
18 what to do. My hands were shaking. I grabbed my hands
19 and I thought I was going to die. I don't remember
20 anything after that.

21 Q Mr. Benton, you've heard all the evidence in
22 this case. You've sat in here and listened to it and
23 you've heard it ahead of time.

24 You don't deny that you shot your wife, do you?

25 A No, sir.

1 Q Did you shoot her?

2 A It appears so, Mr. Loy.

3 MR. LOY: Thank you. Just one moment.

4 Mr. Benton, please answer any questions the
5 solicitor may have for you.

6 THE COURT: Thank you, sir.

7 Yes, sir.

8 MR. HILTON: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. HILTON:

11 Q Thank you, Mr. Benton. I want to back up a
12 little bit. Earlier that day you were helping her
13 move, right?

14 A Yes, sir.

15 Q And everything was going fine there?

16 A Yes, sir.

17 Q All right. No arguments or anything during that
18 time?

19 A No, sir.

20 Q All right. And at that time did you know about
21 Mark Fike?

22 A I've heard the name. She mentioned to me that
23 they were friends.

24 Q And you knew that they were a little more than
25 just friends, you knew they were going out and having

1 somewhat of a relationship going on, right?

2 A No, sir.

3 Q Do you remember having a discussion with your
4 niece about that? Who is Angel Bolling?

5 A That's my niece.

6 Q And is that the girl you were living with at
7 that time?

8 A Correct. She was living at the residence that I
9 owned.

10 Q And was that on Frankie Lane?

11 A Yes, sir.

12 Q Now do you remember having a discussion with her
13 about Mark and Treva, and that Treva was moving on with
14 her life and you were happy for her and you were glad
15 that you all could just be friends?

16 A Well the conversation was, sir, was that it was
17 hypothetically if that's what was going on, then, yes,
18 sir.

19 Q Then you were happy for Treva, and that you were
20 glad that you all could remain friends; is that
21 correct?

22 A Yes, sir.

23 Q So you did know about Mark Fike and their
24 relationship?

25 A Correct, as being friends, sir.

1 Q And in fact there was another occasion prior to
2 this, early in October, where you actually came up on
3 Mark and the victim Treva together at her house, right?
4 At the Walden Ridge Way house?

5 A No, sir.

6 Q You don't remember coming to the back porch and
7 they were in there watching a movie at that time?

8 A No, sir.

9 Q Who is Amanda Jett?

10 A I believe that is my wife's cousin.

11 Q I think she might go by Mandy, Mandy Jett?

12 A Oh, okay. Yes.

13 Q That's your wife's cousin?

14 A I believe so.

15 Q So she is making that up?

16 MR. LOY: Objection, Your Honor.

17 THE COURT: Sustained.

18 Q (By Mr. Hilton) All right. And then later that
19 day on October 30th, 2010, around the -- I guess it was
20 about eight o'clock or so, do you remember going over
21 to Scott Herbert's house? Treva's neighbor?

22 A I didn't go to his house, no, sir.

23 Q You didn't go over there earlier that day?

24 A No, sir.

25 Q You don't remember going and asking where Treva

1 was?

2 A No, sir. When I went by there to see if she was
3 home, as I left they were standing outside smoking
4 cigarettes. And I made the comment, as I was going
5 back to my vehicle, I think he or I believe it was he
6 that made the comment, you just missed her. And I
7 said, yep. And I got in the vehicle and I left.

8 Q okay, but the question was did you go over there
9 earlier that day?

10 A oh, yes, sir.

11 Q so you did talk to Scott Herbert that day?

12 A I made a comment as I was passing, yes, sir.

13 Q And after you talked to Scott Herbert, you ended
14 up leaving Walden Ridge?

15 A Yes, sir.

16 Q was that before or after Shooters, or the
17 bowling alley or what?

18 A This was before any time that I went out.

19 Q okay. So according to you, then, you weren't
20 angry around eight o'clock when you talked to Scott
21 Herbert?

22 A No, sir.

23 Q It had nothing to do with the boyfriend or
24 anything like that?

25 A No, sir.

1 Q All right. So you help her move. And then you
2 said you rode around a little while. Where did you
3 ride?

4 A Nowhere in particular. I just drove around,
5 basically deciding if I was going to grab something to
6 eat. And, you know, if I was going to go to shooters
7 or somewhere else.

8 Q What vehicle were you in, Mr. Benton?

9 A My pickup truck.

10 Q Let me show you State's Exhibit 14. Is that
11 your pickup truck?

12 A Yes, sir, it is.

13 Q So you rode around that day. At some point in
14 time you went to Scott Herbert's house, right?

15 A Yes, sir.

16 Q All right. Then you left there and you said you
17 went to the bowling alley.

18 Now at what point in time during the day did you
19 put the gun in your truck?

20 A That morning.

21 Q And showing you what has been marked as State's
22 Exhibit 32, is this your gun?

23 A Yes, sir.

24 Q What kind of gun is it?

25 A It's a .9 millimeter.

1 Q What brand?

2 A Smith and Wesson.

3 Q And it's a pretty nice gun I will say. Where
4 did you buy it from?

5 A The pawn shop.

6 Q Do you remember which one?

7 A Yes, sir, the one in Goose Creek.

8 Q Do you remember how long you had the gun?

9 A No, sir, not actually. I would say estimated
10 three or four years.

11 Q So a couple years before October 30th?

12 A Yes, sir. Actually my wife was with me when I
13 purchased it.

14 Q Now do you remember what day that was when you
15 all moved? Friday? Saturday? Sunday?

16 A Saturday.

17 Q It was a Saturday?

18 A Yes, sir.

19 Q So you weren't going to work at the landscaping
20 place the next day, were you?

21 A No, sir.

22 Q You all don't work on Sunday?

23 A Not normally, but we do.

24 Q But you didn't work on that Sunday?

25 A No, sir.

1 Q And this knife that's in evidence as State's
2 Exhibit 35, this is your knife, your machete, right?

3 A Yes, sir.

4 Q And you had put that in your truck to go cut
5 limbs, if I understood right, right?

6 A Correct. Actually it had been in my truck for
7 about a week.

8 Q When did you move it to the passenger seat?

9 A Actually, I have no recollection of putting it
10 in the passenger seat.

11 Q So you have been in here, you heard Captain Van
12 Jackson say he took that knife off your passenger seat
13 and you have no clue how it got there?

14 A No, sir, I don't.

15 Q All right. So you go to this bowling alley, is
16 it Oakbrook Lanes? That's the one at Dorchester and
17 Ladson.

18 A I believe so, yes, sir.

19 Q All right. So you go to the bowling alley at
20 Oakbrook Lanes and you said you didn't know anybody
21 there, right?

22 A No, sir.

23 Q And after leaving Treva from the move, had you
24 seen her up until that point?

25 A No, sir.

1 Q When you riding around you didn't encounter her
2 anywhere?

3 A No, sir.

4 Q Did you try to call her or text her or anything?

5 A Excuse me?

6 Q Did you try to call her on the telephone or try
7 to text her?

8 A Yes, sir.

9 Q And what were those conversations about?

10 A I didn't reach her.

11 Q What were the text conversations about?

12 A What text conversation?

13 Q When you texted her, what were you texting her?

14 A I asked her where she was, what she was doing.

15 Q Did she respond?

16 A No, sir.

17 Q Do you remember --

18 MR. HILTON: Bear with me just a second, Your
19 Honor.

20 Q (By Mr. Hilton) Do you remember talking to your
21 mother that day?

22 A Prior?

23 Q Around, I don't know, four or five o'clock,
24 somewhere in there?

25 A Yes, sir.

- 1 Q And do you remember what you said to her?
- 2 A That I loved her.
- 3 Q Okay. And do you remember calling your sister?
- 4 A Yes, sir.
- 5 Q And who is that?
- 6 A My sister?
- 7 Q Yes. What's her name?
- 8 A Vicky.
- 9 Q Vicky?
- 10 A Yes, sir.
- 11 Q And what did you tell her?
- 12 A That I loved her.
- 13 Q And how often did you talk to vicky?
- 14 A Occasionally. I mean I would say about once or
- 15 twice in a week.
- 16 Q Okay. Were you a little upset when you called
- 17 your mom and Vicky?
- 18 A No, sir.
- 19 Q All right. So did you call your son?
- 20 A Yes, sir.
- 21 Q Where does he live?
- 22 A Albuquerque, New Mexico.
- 23 Q New Mexico.
- 24 A Yes, sir.
- 25 Q And were you able to get in touch with him?

1 A Yes, sir, I was.

2 Q And what did you tell him?

3 A I just asked him what he was up to. He told me
4 he was getting ready to go to work. And I replied to
5 him, I said, okay, well I won't keep you, son. I said
6 I hadn't talked to you in about two weeks so if you
7 would, give me a call when you get a moment. I said, I
8 need to talk to you. And he said okay.

9 Q And when you called both your mom and your
10 sister, were you upset when you called them?

11 A No, sir.

12 Q Weren't upset at all?

13 A No, sir.

14 Q Was that before or after the bar, going to the
15 bar?

16 A This was before.

17 Q Before that. Now what time did you all finish
18 moving?

19 A I would say approximately about 1:00.

20 Q About 1:00. I thought that's what I wrote down.
21 And what range did you normally go to?

22 A I think it's called B&E on Ladson.

23 Q So you were right there in Ladson if you were at
24 the bowling lane prior to that. Why didn't you --

25 A I mean excuse me, not Ladson, it's College Park.

1 I believe it's College Park and 17A.

2 Q All right. So that's over almost to Carnes
3 Crossroads I guess, right?

4 A About two miles, two or three miles before that,
5 yes, sir.

6 Q Okay. At one o'clock you didn't feel like you
7 had enough time to go to the range then?

8 A Well my plans had already changed then, I was
9 out running errands then.

10 Q What errands did you have to do?

11 A Just pick up stuff for the house, cleaning
12 supplies, stuff like that. Actually went to go and
13 look at maybe getting some new shirts. And just
14 running errands, picking up things.

15 Q Did you get any of that stuff?

16 A No -- well some, I did pick up some things.

17 Actually that's when I made the comment to my
18 wife, because me and my wife had spoke prior to that
19 evening about picking up some totes for her for the
20 move.

21 Q The totes. And in fact in your text
22 conversations I think you mentioned something about the
23 totes, right? If she wanted those totes back. Do you
24 recall that?

25 A I believe so, yes, sir.

1 Q And she didn't respond to any of these texts,
2 right?

3 A No, sir.

4 Q And in fact the text after that was -- and I can
5 pull it up if I need to, but I think I can remember it
6 good enough.

7 And I think the text after that was, this is how
8 you are going to treat me after I've helped you move
9 all day. Do you recall texting her that?

10 A Yes, sir.

11 Q And then what was your conversation with her as
12 far as essentially a one-way text. What did you tell
13 her after that?

14 A I don't recall.

15 Q Do you remember telling her that you ran into
16 some money?

17 A Oh, yes, sir. I remember making that comment to
18 her.

19 Q Where did that money come from?

20 A I didn't have no money, sir.

21 Q You didn't?

22 A No, sir. It was an attempt to get her to
23 contact me. That's all it was.

24 Q Oh, okay. And so the money that you showed
25 Michael, where did that money come from?

1 A That was from my paycheck, sir.

2 Q Paycheck. Do you remember telling him that you
3 had ran into some money? Somebody died and left you
4 some money?

5 A Yes, sir. It was a poor attempt of trying to
6 pull a prank on my stepson.

7 Q For what purpose?

8 A No purpose, sir.

9 Q So you get to the bowling alley, and you are
10 there for a little while. Everything is fine at
11 oakbrook Lanes, right?

12 or, no, that's actually where the incident
13 happened where you said you got hit with the bottle; is
14 that right?

15 A Yes, sir.

16 Q And did you know those people that did any of
17 that?

18 A No, sir.

19 Q Did you feel threatened?

20 A Yes, sir. When I was hit in head, yes, sir, I
21 did feel threatened.

22 Q And you had a cell phone, right?

23 A At that time I didn't know where it was at.

24 Q Well you were texting Treva all that time. I
25 mean, you don't remember where your cell phone was?

1 A No, sir. I mean, it wasn't with me. I don't
2 know. I wasn't even thinking about a cell phone at
3 that time.

4 Q There's a phone at the bar, right?

5 A Yes, sir, there's a phone in the bar.

6 Q And I have been out there, there's all kinds of
7 business, there is a Waffle House, I think there's a
8 grocery store, there's a Big Lots, McDonald's all that
9 right there together, right?

10 A Yes, sir.

11 Q You didn't feel it important to call the police
12 if somebody had just struck you in the head with a
13 bottle?

14 A No, sir.

15 Q That wasn't important?

16 A Sir, I was scared. I just wanted to get away
17 from the situation I was in.

18 Q I understand. And so that's when you got in
19 your truck and you left. And you said you went to
20 shooters at that point, right?

21 A Yes, sir.

22 Q Did you go into shooters?

23 A No, sir.

24 Q Never went inside there?

25 A No, sir.

1 Q Do you have a membership at Shooter?

2 A No, sir.

3 Q How were you going to get in?

4 A They didn't require a membership when I went in
5 there.

6 Q okay. And were your friends there in the
7 parking lot?

8 A No, sir.

9 Q All right. And then you said you left Shooter,
10 right?

11 A Yes, sir.

12 Q Driving this truck?

13 A Yes, sir.

14 Q And at that time you had this gun?

15 A Yes, sir.

16 Q And where was the gun at this time?

17 A In the back of my pants.

18 Q Like stuck down like that?

19 A Yes, sir.

20 Q Where was this knife at the time?

21 A In my truck.

22 Q You don't know where in the truck?

23 A No, sir.

24 Q And you went, you said you went towards Walden
25 Ridge Way over there, and that's where Treva lived on

1 the culdesac, right?

2 A Correct.

3 Q And where did you exactly park?

4 A At our old residence.

5 Q You pulled up in the driveway?

6 A No, sir. There was too many cars in the
7 driveway.

8 Q How long a street is Walden Ridge Way, the
9 culdesac?

10 A I wasn't in the -- I wasn't near Walden -- it
11 was our prior residence from Walden Ridge Way. Before
12 we moved to Walden Ridge Way.

13 Q Help me understand now. So you got, what was
14 it, Walden Ridge Way is where Treva was living?

15 A Correct.

16 Q What residence are you talking about?

17 A The townhouse that when me and my wife initially
18 got back together after we separated the first time.

19 Q Where was that?

20 A I don't remember the address. It's right on
21 that same main road there. If you are coming off of
22 old Trolley, and as you make that turn to go down that
23 main road.

24 Q Is it by Perkins?

25 A No, sir. I can't remember the name.

1 Q Travelers?

2 A I believe that's it. I believe it's -- if you
3 pull down and you go to Walden Ridge Way, that main
4 road there before you turn into go there, there is
5 another apartment or townhouse complex on the left-hand
6 side as you are going in the main road by Arby's.

7 Q All right. Now at this time I think you
8 testified earlier, you didn't really know what was
9 going on. You had been hit in the head with the
10 bottle, maybe had something out of this girl's drink,
11 not really sure about that?

12 A Yes, sir.

13 Q And you don't even know why you went over there.
14 This is an old residence, this wasn't even Treva
15 residence, this was some old residence, right?

16 A That we both lived at, yes, sir.

17 Q But it wasn't the residence that she had just
18 moved out of earlier that day?

19 A No, sir. No, sir.

20 Q That's what I'm trying to figure out. So you
21 went to some previous place that you all lived at?

22 A Correct.

23 Q And then you parked your truck there, right?

24 A Yes, sir.

25 Q And at what point in time did you realize where

1 you were?

2 A About 10 -- I would say about 5 or 10 minutes as
3 I was there. I realized that my boat wasn't there,
4 the SUV wasn't there.

5 Q Did you go knock on the door or anything?

6 A No, sir.

7 Q All right.

8 A That's when it came to me that.

9 Q So you ended up making it over to Walden
10 Ridge Way, correct?

11 A Yes, sir.

12 Q And that's Treva current, or was her current
13 address?

14 A Yes, sir.

15 Q The one she had just moved out of that day, or
16 was moving her stuff out of?

17 A Yes, sir.

18 Q At what point in time did you get your thoughts
19 together where you could say to yourself, oh, I know
20 where I am now, I will walk to Treva's house.

21 A About 5 minutes after -- about 5 or 10 minutes
22 after I realize that my boat and the SUV wasn't there,
23 that I no longer lived there.

24 Q And why didn't you just drive around the corner
25 to Treva's house?

1 A Because of the state that I was in. The way I
2 was thinking. The way I was reacting. I felt it
3 wasn't safe for me to drive.

4 Q But now by this time you had gotten your head
5 together, right?

6 A Apparently so. Yes, sir.

7 Q So you made it from the bowling alley to
8 shooters, from shooters to the old address. Sat there
9 for a couple minutes, you got your head together?

10 A Yes, sir.

11 Q And then it was at that time, right, that you
12 walked over to Treva's house?

13 A Yes, sir.

14 Q Gun still in the back of your pants?

15 A Yes, sir.

16 Q And you'd admit, it's pretty difficult to sit in
17 a truck with a gun jammed in the back of your pants,
18 right?

19 A I wouldn't know, sir. I mean it ain't like I
20 did it -- something I did all the time. I wouldn't
21 know.

22 Q But you didn't have any problems doing it that
23 night, right?

24 A No, sir.

25 Q What point in time did you move the gun to your

1 pocket?

2 A I never moved my gun to the pocket.

3 Q And, all right, so you get your thoughts
4 together, you walk over Treva's house and you said you
5 were just going to sit on the back porch?

6 A Correct.

7 Q Did you know whether she was home or not?

8 A No. When I got there, no, sir. I didn't think
9 she was home. The SUV wasn't there.

10 Q So you saw that her car wasn't home?

11 A Correct.

12 Q Did you try to call her at that point?

13 A I didn't have my phone, sir.

14 Q Now when you walk on the back porch, you said
15 Michael came up to you, right?

16 A Correct. Well as I was coming in he was coming
17 out.

18 Q And that's what he testified to. You heard him
19 testify?

20 A Yes, sir.

21 Q So when you walked up to Michael, did you tell
22 him, man, I just got hit in the head by a bottle, I
23 don't know what is going on, I don't know where I am?

24 A No, sir.

25 Q What did you tell him?

1 A I didn't tell him nothing about the incident.

2 Q How did he know that your truck was broke down
3 at shooters?

4 MR. LOY: Objection, Your Honor. Calls for
5 speculation on his part. How would he know this?

6 THE COURT: Sustained.

7 MR. HILTON: I'll move on.

8 Q (By Mr. Hilton) You didn't tell him anything
9 about your car being broke down at shooters?

10 A No, sir.

11 Q Did you tell him anything about your car being
12 broken down?

13 A No, sir.

14 Q Did he even know why you were there?

15 A No, sir.

16 Q Did you tell him why you were there?

17 A I just told him I couldn't drive.

18 Q And you were just going to hang out on the back
19 porch, of what?

20 A I was going to see if his mom, if my wife would
21 give me a ride home.

22 Q And you said you remember showing the money to
23 Michael, you testified to that a minute ago, right?

24 A Yes, sir.

25 Q You said somebody died and left you that, right?

1 A Yes, sir.

2 Q But that was untrue?

3 A Correct.

4 Q When did you cash your paycheck?

5 A Friday.

6 Q Friday?

7 A Yes, sir.

8 Q Do you normally have a bank account, do you
9 normally deal in cash or what?

10 A I have a bank account, yes, sir.

11 Q Do you normally just cash your check?

12 A Sometimes.

13 Q So after that Treva comes home, right?

14 A Yes, sir.

15 Q And were you able to talk to her at the
16 residence?

17 A I mean there was no real conversation. She was
18 upstairs and I was downstairs.

19 Q Did you ever go upstairs?

20 A Yes, sir. Well I made an attempt to go
21 upstairs.

22 Q What happened there?

23 A Well Michael was coming down so I just turned
24 around and came back because my wife was behind him
25 coming down the steps.

1 Q And did you ever ask Treva to take you home or
2 take you to your car or what?

3 A No, sir. She just said, come on, I will take
4 you home.

5 Q She already knew?

6 A I would assume so, yes, sir. I assume that
7 Michael had mentioned something to her about it.

8 Q Okay. Now you lived on Frankie Lane with your
9 niece, right, Angel Bolling, right?

10 A Correct.

11 Q And if Treva was to take you home, which way
12 would she go?

13 A Sir, I don't know.

14 Q Well how would you get to your house from Walden
15 Ridge Way?

16 A I mean we come out of Walden Ridge, you go out
17 to where to main road is and make a left. Or you can
18 make a right and go up toward Perkins on that main road
19 that run down the side of Perkins.

20 Q Which way did she go?

21 A She went down towards Perkins.

22 Q Okay. When was it that you were joking around
23 with her? You said, when Mr. Loy was questioning you,
24 you said that you all were getting in the car and you
25 were joking around with her.

1 Tell us a little bit about that.

2 A That was during the time as we were leaving out
3 of the apartment at her residence to get into the
4 vehicle.

5 Q Okay. And everything was fine at that point?

6 A Yes, sir.

7 Q You had a clear head?

8 A I mean I wasn't clear head, I mean I still felt
9 strange.

10 Q All right, but enough to be joking around,
11 right?

12 A Yes, sir, I guess so.

13 Q Did you ever tell Treva that, you know, somebody
14 had attacked you at the bar, that maybe we should call
15 the police, anything like that?

16 A No, sir.

17 Q You were just going to let that go?

18 A I just wanted to go home, sir.

19 Q Meanwhile your truck is still parked at your old
20 residence, right?

21 A Yes, sir.

22 Q Did you ever tell Michael or Treva that you had
23 the gun on you?

24 A No, sir.

25 Q And at what point in time did you all start

1 arguing?

2 A Prior, just before we got to Perkins.

3 Q You say just before. I mean help us figure it
4 out because Walden Ridge Way is really just before you
5 get to Perkins if you were traveling a couple miles and
6 so where were you exactly?

7 A If I was to estimate, halfway.

8 Q About halfway?

9 A Yes, sir.

10 Q Say about where you turned off onto Cross Creek
11 and that's the road besides Perkins?

12 A Maybe just before it or right during the time.

13 Q Okay. And so you are coming up that road by
14 Perkins. And did you tell her to pull into Perkins?

15 A No, sir.

16 Q She just pulls into Perkins?

17 A Yes, sir.

18 Q Why does she do that?

19 A I don't know.

20 MR. LOY: Objection, Your Honor, calls
21 speculation.

22 THE COURT: Sustained.

23 Q (By Mr. Hilton) Were you all going to get
24 coffee?

25 A No, sir.

1 Q Were you going to eat a muffin?

2 A No, sir.

3 Q How long did you all argue in the parking lot
4 there?

5 A Sir, I have no idea.

6 Q Couple seconds, couple minutes, couple hours?

7 A Sir, I don't know I wasn't timing it. I don't
8 know. If you want me to speculate, I can.

9 Q I don't want you to speculate. How long was it
10 do you think before she got out of the car?

11 A Sir, I don't know.

12 Q Did she tell you why she was getting out of the
13 car?

14 A No, sir.

15 Q Did you ask her to get out of the car?

16 A No, sir.

17 Q And then you got out of the car, right?

18 A Yes, sir, because she did.

19 Q And where is your gun at this time?

20 A It's still in the back of my pant.

21 Q Still in the back of your pants? Back here?

22 A Yes, sir.

23 Q What were you wearing?

24 A A coat, black coat, jeans, tennis shoes.

25 Q Do you remember wearing this hat?

1 A Yes, sir.

2 Q That's your hat?

3 A Yes, sir.

4 Q And do you remember what you all saying? what

5 she was saying? what you were saying?

6 A Yes, sir.

7 Q What were you all saying?

8 A What time?

9 Q When you got out of the car?

10 A When I got out of the car and went around I

11 asked her why? Why?

12 Q Why what?

13 A This stuff was happening between her and Mark.

14 Q Okay. And then you said she came up and slapped

15 you or something, right?

16 A Yes, sir.

17 Q Was she crying?

18 A No, sir.

19 Q She wasn't crying?

20 A No, sir.

21 Q Were you crying?

22 A I wouldn't say crying.

23 Q But you were upset about the situation?

24 A Yes, sir.

25 Q Was she upset about the situation?

1 A Not that I could tell.

2 Q And then do you remember the gun coming out?

3 A No, sir.

4 Q So after she came up on you, you don't remember
5 anything after that?

6 A No, sir. I don't have no recollection at all
7 what happened after that.

8 Q You did shoot Treva, right?

9 A Apparently so, yes, sir.

10 Q This is the gun you shot her with?

11 A It's my gun, yes, sir.

12 Q Now do you remember after the shooting, do you
13 remember the girls coming out of the Perkins parking
14 lot, standing right here on the corner?

15 A No, sir.

16 Q You don't remember any of that?

17 A No, sir.

18 Q Do you remember firing the first couple of
19 shots?

20 A No, sir.

21 Q Do you remember hearing one of the girls say,
22 oh, my gosh?

23 A No, sir.

24 Q Do you remember turning the gun on them?

25 A No, sir.

1 Q Telling them to get back inside or your next?

2 A No, sir.

3 Q You don't remember any of that?

4 A No, sir.

5 Q Do you remember turning back around and cranking
6 a couple rounds back into Treva, into Treva's back
7 after that?

8 A No, sir.

9 Q You don't remember that either?

10 A No, sir.

11 Q Would you say you blacked out at that point?

12 A Sir, I don't know.

13 Q You don't even remember if you blacked out?

14 A If that's what you call it I guess so, yes, sir.

15 Q How did you know where your truck was?

16 A Sir, I don't know. I can't give you an answer
17 to something I don't know, sir.

18 Q Now you found your cell phone at some point in
19 time after that, right?

20 A Sir, I don't know.

21 Q Do you remember calling your Mama and saying,
22 Mama, Mama, and the phone cutting out on you?

23 A No, sir.

24 Q Do you deny that that happened?

25 A No, sir, I can't deny it.

1 Q Do you remember traveling towards Alabama?

2 A No, sir.

3 Q Do you remember what route you took?

4 A No, sir.

5 Q Do you remember getting gas?

6 A No, sir.

7 Q Do you remember your cell phone ringing?

8 A No, sir.

9 Q Do you remember calling your voice-mail back and
10 talking to your voice-mail, or at least listening to
11 your voice-mail for over two minutes?

12 A No, sir.

13 Q You don't remember that either?

14 A No, sir.

15 Q What's the next thing you remember?

16 A Being at the BP gas station in Alabama, sir.

17 Q You remember that?

18 A Yes, sir.

19 Q Do you remember Captain Van Jackson finding the
20 murder weapon in your car?

21 MR. LOY: Objection, Your Honor, as to
22 characterization. That's an issue at trial whether
23 this gun as opposed to the murder weapon.

24 THE COURT: Sustained.

25 Q (By Mr. Hilton) Do you remember Captain Van

1 Jackson finding this gun in your car?

2 A Sir, I don't know who found what, sir.

3 Q After you all get out of the car and you say
4 Treva came at you, you don't remember anything after
5 that; is that right?

6 A Correct.

7 Q The room that you lived in at Angel Bolling's
8 trailer -- actually I think it was your trailer, right?

9 A Correct.

10 Q And she was living there, right?

11 A Correct.

12 Q But you were living with her?

13 A Correct.

14 Q Do you remember what the layout of that room
15 was?

16 A Of what room?

17 Q The bedroom you were staying in.

18 A It's my master bedroom.

19 Q Yeah. What was the layout?

20 A The large bedroom, walk-in closet and a bath,
21 full bath.

22 Q When was the last time you went in that room?

23 A Last time I went in that room?

24 Q Uh-hum.

25 A That day.

1 Q Was it before or after you went to the bars?

2 A Before.

3 Q It was before?

4 A Yes.

5 Q So the picture of you and Treva that was on your
6 night stand that was smashed, when did that happen?

7 A There was no picture of my wife and me on the
8 night stand, sir.

9 Q You deny that? Or you don't remember, right?

10 A No, sir.

11 MR. LOY: Objection, Your Honor. He is not
12 allowing him to finish his answer.

13 THE COURT: Sustained.

14 Q (By Mr. Hilton) Let me let you finish your
15 answer. You deny that?

16 A No, sir. I did have a picture of me and my
17 wife, but it wasn't on the night stand, sir.

18 Q Do you remember the picture being broken?

19 A Yes, sir, it was broken.

20 Q And since the last time you were in your room
21 was before you went to the bar, that picture was broken
22 before you went to the bar, right?

23 A Yes, sir. Four days that picture was broken,
24 sir.

25 MR. HILTON: Just one moment, Your Honor.

1 THE COURT: Certainly.

2 Q (By Mr. Hilton) Do you remember at some point in
3 time taking this gun and putting it up under the seat
4 of your truck?

5 A No, sir.

6 MR. HILTON: Thank you, Your Honor. No further
7 questions.

8 THE COURT: Thank you.

9 Redirect?

10 MR. LOY: Nothing, Your Honor. Thank you.

11 THE COURT: Sir, you can step down back to the
12 table.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Thank you.

15 Mr. Loy.

16 MR. LOY: Defense rests, Your Honor.

17 THE COURT: Thank you, sir.

18 Ladies and gentlemen, we are going to take about
19 a ten minute break now so that I can take up some
20 issues with the attorneys as the defense has rested.

21 If you'll please return to the jury room. Again
22 please do not discuss the case yet. Thank you.

23 (Whereupon, the jurors exit the courtroom.)

24 THE COURT: Yes, sir.

25 MR. LOY: Your Honor, at this time I just renew

1 my earlier motion for directed verdict, as well as all
2 of our earlier pretrial, as well as mid-trial if you
3 will motions. All our earlier motions.

4 THE COURT: Thank you, sir. With respect to the
5 directed verdict motion, again I will deny that. I
6 will leave the other motions as they are unless you
7 need a more specific ruling on something.

8 MR. LOY: I do not, Your Honor. Thank you.

9 THE COURT: Thank you.
10 Do you all have any reply testimony or?

11 MR. GIESE: Beg indulgence.

12 THE COURT: Sure. And if you all need a quick
13 break too, that would be fine.

14 MR. GIESE: That would be good, Your Honor.

15 THE COURT: All right. Let's take about a ten
16 minute break and see what you all have left. I'd love
17 to go ahead and talk about jury charges. I anticipate
18 he has one to add to what I gave you all last night.

19 MR. LOY: I do, Your Honor.

20 THE COURT: I would love to go ahead and work
21 through lunch and get it to them, but I'm not going to
22 force you all to do that if you don't want to. What
23 would you all like to do?

24 MR. LOY: You would like to order lunch, argue
25 and charge?

1 THE COURT: It's not going to take us long to --
2 I mean, I'm going to give you voluntary. I'm going to
3 let you all put everything on the record, but I think
4 you put in enough to get it.

5 If we could get the charges worked out, we can
6 argue and charge and let them eat lunch here. But if
7 you all need a break, we can break early for lunch too.
8 It doesn't matter to me.

9 MR. LOY: If I can have 20 minutes or so
10 downtime between our conference and actual argument, I
11 can be ready in 20 minutes.

12 THE COURT: You all want to do that?

13 MR. HILTON: That would be good.

14 THE COURT: You all have been pretty efficient,
15 which I think is very effective. But how long do you
16 all think?

17 MR. LOY: Everything takes longer than I think
18 it will, Your Honor. And I don't think I'd argue more
19 than 15, 20 minutes.

20 THE COURT: I say we let them stay, but what do
21 you all want to do? It doesn't matter to me.

22 MR. HILTON: That's fine. A few minutes before,
23 come back argue, charge and let them eat lunch and
24 deliberate.

25 THE COURT: Let's take a break for 10 minutes so

1 you all can have a break. We'll come and argue the
2 rest of the stuff on the record then while they have
3 their break after we have the charge conference. Can
4 we get them menus to order lunch.

5 THE CLERK: Yes, ma'am.

6 THE COURT: Okay, great. We will be at ease for
7 10 minutes.

8 (Whereupon, a recess was taken.)

9 THE COURT: All right, you all got any reply
10 testimony?

11 MR. HILTON: We will not have any reply, Your
12 Honor.

13 THE COURT: Okay, appreciate that.

14 Do we want to talk about the jury charges or the
15 verdict form, please.

16 MR. HILTON: Well obviously if you are going to
17 include voluntary, the verdict form needs to be
18 changed.

19 THE COURT: Right.

20 MR. HILTON: There was a couple things on the
21 charges that you sent us. And I know it didn't include
22 voluntary yet.

23 THE COURT: No, it didn't. And I just hadn't
24 heard anything at that point that would include it, but
25 now I think we have. And I'm happy to hear from you on

1 that.

2 MR. HILTON: I'm trying to pull up the note I
3 made last night. If I remember correctly, the charge
4 on direct and circumstantial evidence, it kind of said
5 what they were, but it never said anything about them
6 being of equal value.

7 THE COURT: Because basic under law that was
8 argued to me last week in Charleston, they are not of
9 equal value any longer. That's no longer good law in
10 South Carolina.

11 MR. HILTON: Just for the record, the State
12 respectfully asks that the Court file the State versus
13 Grippon charge that was recommended by the Supreme
14 Court and it talks about as long as there is
15 substantial circumstantial evidence, that they're
16 treated the same, and that comes right out of that
17 case.

18 THE COURT: What year is Grippon.

19 MR. HILTON: I want to say 1990s.

20 THE COURT: Let me find the case from last week.
21 I'm happy to hear from you on the next one.

22 MR. HILTON: Just one second.

23 THE COURT: Sure, no problem. I'm looking for
24 this right now anyway.

25 MR. HILTON: Are you reading the 2011 case? The

1 December case?

2 THE COURT: No, I have it but I don't think
3 that's in the same context. We had a murder trial last
4 week in which I did not give a voluntary manslaughter
5 charge. But under the facts of that case, which was
6 also a shooting, the direct and circumstantial evidence
7 charge was not proper.

8 And the Supreme Court had held that that type of
9 charge in that type of case was error, but they found
10 it harmless error. And that's what I am looking for
11 right now.

12 We will find it before you all finish arguing.
13 And if that doesn't fit the circumstances here, you're
14 right. But for those two -- I think it was three cases
15 he cited to me -- that is what we have in our charge
16 book.

17 But I'm happy to hear from you on the next thing
18 because I've already ruled on it now.

19 MR. HILTON: Well if you've already ruled, I
20 won't put anything --

21 THE COURT: I've already ruled subject to me
22 finding that case. But I want to hear the other stuff
23 now because I can look for that and hear from you at
24 the same time.

25 MR. HILTON: The other stuff is the charge on

1 malice. The charge that you provided for us talks
2 about malice and talks about express malice, but it
3 never says anything about inferred malice or implied
4 malice.

5 And the state would ask that you charge that
6 malice can be inferred from conduct which is so
7 reckless and wanton as to indicate a depravity of mind
8 and general disregard for human life. It comes
9 from State versus Muzan (phonetic) and in re Tracy B.
10 I have the citations.

11 THE COURT: What about State versus Belcher?

12 MR. HILTON: Belcher dealt with the use of a
13 deadly weapon charge, and malice being inferred from
14 the use of a deadly weapon.

15 THE COURT: And you are not asking for that?

16 MR. HILTON: I'm not asking for that even though
17 I think it probably -- I don't think Belcher prohibits
18 that instruction in this case because there is no
19 allegation of self defense.

20 THE COURT: What is the case that you said in re
21 Tracy B?

22 MR. HILTON: Yes, Your Honor, that's 704 S.E.2d
23 71. That's a 2010 case from the Court of Appeals.

24 THE COURT: All right, Mr. Loy, I'm happy to
25 hear from you on that if you have any objection. If

1 you don't, I think that is good law.

2 MR. LOY: I'm sorry, Your Honor?

3 THE COURT: If you repeat that for us, Mr.
4 Hilton, I appreciate it. Or if you want to show him.

5 MR. LOY: Your Honor, I don't have any objection
6 to the inclusion of that language.

7 THE COURT: Okay. All right, I'm getting that
8 language from in re Tracy B. Okay, got it.

9 You want malice can be inferred from conduct
10 which is so reckless and wanton as to indicate a
11 depravity of mind and general disregard for human life.
12 In the context of murder, malice does not require ill
13 will toward the individual injured, but rather
14 signifies a general malignant recklessness of the lives
15 and safety of others, or a condition of the mind which
16 shows a heart regardless of social -- and fatally bent
17 on mischief. Is that the one you want?

18 MR. HILTON: Yes, Your Honor.

19 THE COURT: Okay. Thank you.

20 MR. LOY: I don't take a position.

21 THE COURT: Exactly. I don't think you like it
22 but you concede that it's -- got you. Okay, thank you.
23 okay. I will add that. What's next?

24 MR. HILTON: Your Honor, please don't accuse me
25 of arguing with the Court, but I'm going from memory.

1 And there was a case that I read last night, and I want
2 to say the name of it was State versus Odoms. It was
3 so new it didn't even have a book citation yet.

4 And it also talked about the Grippon charge.
5 And so if I could just have a second to pull that up.

6 THE COURT: Okay. Yes, go ahead and pull that
7 up. That is very new, it doesn't even have a book.

8 Although one thing I will note, you all can
9 agree or disagree, I think the evidence is pretty
10 direct in this case. So we may be fighting over
11 something that's a little bit academic.

12 MR. LOY: I think it's direct, Your Honor.

13 THE COURT: I do too.

14 MR. HILTON: Your Honor, we would agree. I
15 guess there was circumstantial evidence up until the
16 time the defendant took the stand and admitted to being
17 there, admitting that it was his gun, all that kind of
18 stuff. So I think at this point the distinction is
19 minimum.

20 THE COURT: Okay. The case Tom found is State v
21 Cherry. That goes into a long discussion of direct and
22 circumstantial evidence.

23 MR. HILTON: And I guess just for edification at
24 this point, but the Odoms case that I was referring to
25 is by westlaw citation 2011 westlaw 6821530.

1 THE COURT: I've got it, thank you. I
2 appreciate that.

3 Let me hear from you on this. If you have no
4 argument and they have a more recent case.

5 MR. LOY: Your Honor, I'm looking for the case
6 that you referred to at this point. I don't have that.

7 THE COURT: Okay.

8 I'm looking at Odoms. It looks to me like that
9 was a directed verdict case.

10 Okay. Grippon is appropriate when it's just a
11 circumstantial case. I think there is still -- the
12 Edwards charge is still appropriate, but not in a
13 Grippon type situation. Again this is direct evidence
14 case I think. What language do you all want?

15 MR. HILTON: At this point we are okay with the
16 language that you put in the instruction.

17 THE COURT: Okay.

18 MR. LOY: As are we, Your Honor.

19 THE COURT: All right. What is next? Anything
20 else?

21 MR. HILTON: Let me flip through them one more
22 time. I think that was all.

23 THE COURT: Okay.

24 MR. HILTON: That was all as to the charges you
25 sent us. Now if something comes up in the voluntary

1 instruction.

2 THE COURT: Okay. I have the standard voluntary
3 manslaughter charge that we use all the time. But
4 often attorneys submit the language that they would
5 like by email or hard copy.

6 I can read to you what my plan is to use the one
7 Judge Newman uses all the time. Or, I don't know if
8 you all can get email now or not, an email copy to look
9 at.

10 MR. HILTON: I can, we can look at it right
11 here.

12 MR. LOY: We can, Your Honor.

13 THE COURT: All right, great.

14 MR. LOY: Your Honor, may I approach?

15 THE COURT: You may.

16 okay, you all look. I just emailed a revised
17 verdict form and the verdict manslaughter charge.
18 I will try to get hard copies to you, too.

19 MR. LOY: Your Honor, if I'm not moving ahead, I
20 have no additions or exceptions. I do have the email
21 as well as the hard copy of the voluntary charge. We
22 feel it is appropriate and complete.

23 THE COURT: Okay, thank you. I will let them
24 have a chance to look at it and see.

25 And, you all, I'm told that the food is coming

1 about 12:30. Do you want to break until 1:00 to get
2 your thoughts together before you close and I can print
3 hard copies of the charge? What do you all want to do?

4 MR. LOY: I would like the break, Your Honor.

5 MR. HILTON: Yes, Your Honor

6 THE COURT: I just don't want you all to be
7 starving.

8 MR. HILTON: May it please the Court?

9 THE COURT: Yes, sir, what you got?

10 MR. HILTON: You have, and this is near the
11 section, and I'm looking at my computer, I'm not sure
12 which page. But it says: To prove voluntary
13 manslaughter the State must prove beyond a reasonable
14 doubt that the defendant took the life of another in
15 the sudden heat of passion based on sufficient legal
16 provocation.

17 Both heat of passion and sufficient legal
18 provocation must be present at the time of the killing
19 to constitute voluntary manslaughter.

20 We would ask to add right at the end of that
21 that heat of passion alone will not suffice to reduce
22 murder to voluntary manslaughter. And that's pursuant
23 to State versus Norris, State versus Clemmons
24 (phonetic), State versus Kinear (phonetic) and State
25 versus Wood.

1 THE COURT: Okay. Anything on that, Mr. Loy,
2 Ms. Suggs?

3 MR. LOY: Your Honor, I think it's duplicative.
4 I think it's already covered in the Court's charge. It
5 says right above it: To prove voluntary manslaughter
6 the State must prove beyond a reasonable doubt that the
7 defendant took the life of another in the sudden heat
8 of passion based on sufficient legal provocation.

9 And heat of passion as well as sufficient legal
10 provocation must be present at the time of the killing
11 I think which is.

12 THE COURT: Our voluntary manslaughter cases are
13 so -- the posture is so strange, especially in light of
14 Childers, I think our courts have found it significant
15 enough to have that sentence in there for a reason. So
16 I note your objection, but I'm going to add that
17 language for them.

18 MR. LOY: Thank you, Your Honor

19 THE COURT: Thank you, sir.

20 And we will make the charge a Court's Exhibit.
21 Anything else?

22 MR. LOY: Your Honor, merely can I ask
23 specifically what language it is that it's your
24 intention to include?

25 THE COURT: Mr. Hilton, if you'll hand that up

1 so I can make sure and do it exactly out of the case
2 that you've shown to counsel.

3 MR. HILTON: Your Honor, I will pass this up.

4 THE COURT: That will be perfect. And I will
5 give it right back. I want to make sure I get the
6 right thing.

7 Okay. And thanks, you all.

8 All right, why don't you all take a break for
9 lunch, unless there is anything else we need to put on
10 the record before we argue and charge. And I will get
11 hard copies of this printed for you so that you can
12 follow along.

13 MR. LOY: Your Honor, I would, at this point, I
14 understand the history as well as the current status of
15 what we used to refer to as a King charge, that is any
16 reasonable doubt between the greater and lesser offense
17 would be resolved in favor of the conviction for a
18 lesser offense.

19 For various reasons, I have been instructed to
20 request a King charge, and I would request a King
21 charge in this case.

22 THE COURT: Okay.

23 MR. HILTON: I don't have the case on the top of
24 my head but I think the King charge was done away with
25 when the court gives the instruction that they find

1 beyond a reasonable doubt all the elements of any
2 particular offense, that covers what King intended to
3 cover.

4 THE COURT: I tend to agree, but I'm going to
5 look at that while you all eat lunch.

6 MR. LOY: May we approach, Your Honor.

7 THE COURT: We don't have a jury in here.

8 MR. LOY: I know. But this doesn't need to be
9 on the record either.

10 THE COURT: Okay.

11 (Whereupon, a discussion was held at the bench
12 off the record.)

13 THE COURT: Okay. Anything else?

14 Thank you.

15 MR. LOY: Nothing, Your Honor.

16 THE COURT: We will be at ease, you all grab
17 some lunch and we will start back at 1:00 or whenever
18 the jury finishes eating. Thank you all.

19 (Whereupon, a recess was taken.)

20 THE COURT: Before we do that, we put hard
21 copies of the charge. So if there is anything
22 inaccurate or incorrect, you all please let me know.

23 Yes, ma'am, if you could bring in the jury.

24 (Whereupon, the jurors enter the courtroom.)

25 THE COURT: Thank you, ladies and gentlemen,

1 appreciate it. I hope you all had a nice lunch. You
2 have heard the evidence in the case, and we are now at
3 the point where you'll hear the closing arguments of
4 counsel. So I'm going to go ahead and call Mr. Hilton
5 for the State.

6 MR. HILTON: Thank you, Your Honor.

7 Ladies and gentlemen of the jury, first of all I
8 want to thank you all for your service up here this
9 week. You have been up here three days now, going on
10 four days now, and it's important.

11 It's important that you come up here and you
12 exercise your civic duty as jurors for several reasons.
13 One, it's important to the defendant. This system of
14 justice is how we hold people accountable for their
15 actions. This is the way it works, and that's why you
16 are here.

17 And it's important for the defendant. And it's
18 also important for the State. The defendant is
19 entitled to a trial. He is entitled to cross-examine
20 witnesses, testify if he wants to. But likewise, the
21 State is entitled to a conviction when we put up these
22 witnesses and we prove to you beyond a reasonable doubt
23 that the defendant committed the crime that he is
24 charged with.

25 And that's what you took as a juror when you

1 took your oath. You stood up, you raised your hand and
2 you said, I will try a case -- I'm going to leave those
3 down -- I'm going to try the case based on the law that
4 applies, and based on the facts that are before me.

5 And you come up here and you took an oath to set
6 aside all bias, and set aside all prejudice, and set
7 aside anything that you may have preconceived in your
8 mind what is. And as jurors in this case you learn
9 what the law is, you learn what the facts are, because
10 you had no knowledge of what it was before, and that's
11 the reason you were chosen.

12 So that's an important oath that you took that,
13 again to be fair to both the defendant, Mr. Benton, as
14 well as to the state of South Carolina.

15 Now the defendant is charged with the crime of
16 murder. And murder is the most serious crime the State
17 has. There is no real question about that. And being
18 the most serious crime, believe it or not, it has one
19 of the shortest definitions.

20 And murder is defined simply as the unlawful
21 killing of another with malice aforethought. The
22 unlawful killing of another with malice aforethought.
23 And if you look at the slide, I got them broken down.
24 Killing another with malice aforethought. And that's
25 it. There is no more. There is no less.

1 If you notice on the bottom I got, premeditation
2 is not an element. You don't have to have a
3 preconceived plan. It's not an element to murder.
4 And, Likewise, you don't have to have a specific intent
5 to kill. You don't have to have a specific intent to
6 kill. What you have to have is malice aforethought.

7 And so we will go into some detail talking
8 about. And in addition, after all the arguments, the
9 Judge will instruct you on the law. And she will go
10 back over this with you. But I wanted to point out
11 some things as I go through the law for the first time
12 for you.

13 Again, no specific intent to kill and no
14 premeditation. Now that doesn't mean that either one
15 of those don't exist here. But malice aforethought.
16 It's a term of art, they call it, a term of art.

17 We've all heard the word malicious. You've
18 probably all heard the word malice before. But if you
19 haven't, malicious is the same root word, same type of
20 word defined as an intentional act of violence,
21 reckless disregard for the welfare of others. A wicked
22 or depraved heart fatally bent on mischief I think was
23 one of the definitions that Mr. Giese used in the
24 opening. Or it could be simply ill will towards
25 another. Intending somebody harm. That's what malice

1 is.

2 And there are two ways that you can find malice.
3 And that's called implied malice or expressed malice.
4 You might see it referred to as inferred malice.
5 Inferred and implied are the same thing. They are not
6 different types of malice. It's just ways that you
7 determine whether malice exists.

8 Express malice, let's talk about that first.
9 When somebody says, I will kill you, that's express
10 malice. It's coming from their lips. You know what
11 they intend to do. No real question. It's an outward
12 expression of what they intend.

13 But express malice can also come from the
14 defendant's action. When there is a plan, a
15 preparation to do an act which was later consummated,
16 that's also express malice. Lying in wait or a plan of
17 how things are going to occur and that plan gets
18 complete, gets completed.

19 On the other hand, implied malice or inferred
20 malice, it comes from the facts and circumstances
21 surrounding the case. It can be implied from just
22 extreme recklessness or extreme disregard for the
23 safety of others. Says depravity of mind, a general
24 disregard for the safety of human life. Malice can be
25 inferred in those ways as well.

1 Now, you know, malice is one of those things, I
2 went to law school, Mr. Giese went to law school, he
3 has been practicing a few years longer than me, but
4 malice is a difficult concept to grasp. I cannot draw
5 you a picture of it. I cannot give you a succinct
6 definition. The law doesn't have any other definition
7 other than what I put up there that are more succinct.

8 But if I had to give you a picture, I'd say that
9 State's Exhibit 31 comes pretty close. And that's the
10 eyeglass lens with the bullet hole right in the middle
11 of it. State's Exhibit 23 comes pretty close to
12 malice. And likewise, and you'll have all this stuff
13 in your jury room, States Exhibit 18, the pathologist's
14 chart showing not one, two, three, four, five, not six,
15 seven, but eight gunshot wounds to the victim's body.
16 That's what malice is about. That's a picture of
17 malice.

18 It's a murder. Let's go over the elements.
19 Unlawful killing of another one, there is no question
20 about that one. Treva Benton dead in the parking lot
21 of Perkins. Not even an issue. So what is an issue is
22 malice. Planned; arming himself with a gun and a
23 knife; parking the truck; walking to the victim's
24 house; lying to the victim's son, Michael, about where
25 he'd parked the truck; all a plan to get alone with the

1 victim, get her by herself.

2 And again, if you don't believe there is express
3 malice, or in addition to that you've got extreme
4 recklessness. When you take a pistol and you fire
5 eight rounds into somebody, that's malice.

6 Now I want to talk about voluntary manslaughter.
7 While the defendant is not charged with voluntary
8 manslaughter, that's a charge that you will be able to
9 consider. It's what's called a lesser included charge.
10 And voluntary manslaughter includes some of the same
11 elements, but it has different elements involved in it.

12 The definition of voluntary manslaughter is the
13 unlawful killing of another without malice in the
14 sudden heat of passion upon sufficient legal
15 provocation. So it's a little bit longer definition,
16 but again it's broken down. Killing of another,
17 without malice, in the sudden heat of passion upon
18 sufficient legal provocation.

19 Just as murder has to include all three of those
20 elements that we went over, voluntary manslaughter you
21 have to have all four. It's not any more or any less,
22 it's all four.

23 Heat of passion and sufficient legal
24 provocation, let's talk about that. Both of those,
25 both of those must exist at the time of the killing.

1 And the provocation, and this is important, the
2 provocation must be such as to render the mind of an
3 ordinary person incapable of cool reflection and
4 produce an uncontrollable impulse to do violence.

5 You don't apply that definition just to what the
6 defendant did. You don't just say, oh, that's what he
7 did so it must be voluntary manslaughter. No, no, it's
8 what the ordinary, reasonable person would do. And
9 that's what the Judge will instruct you, and that's
10 what the law is.

11 Voluntary manslaughter in this case fails for a
12 couple of reasons. First of all, the killing of
13 another. You got that one, no question. But here is
14 where it fails, it fails on the malice aspect. In this
15 case you've got a plan, you've got lies, you've got a
16 weapon involved.

17 Heat of passion, maybe. All right, he was
18 angry. The people at Perkins say he was angry. I
19 don't think there is any question that he was angry.
20 He probably was angry. He was angry when she told him
21 that she was having a relationship, she wanted to leave
22 and move on and he got angry.

23 Now sufficient legal provocation, this is where
24 it fails. A reasonable person in the defendant's
25 situation confronted by his spouse, maybe for the first

1 time -- although there was plenty of evidence to
2 indicate that he already knew that they had a
3 relationship -- would a reasonable person gun somebody
4 down with eight shots in the parking lot of a
5 restaurant when he finds out about that?

6 Now the other thing that I have on there is a
7 slap. If somebody slaps you, do you gun them down? In
8 fact, he testified that he got hit with a beer bottle
9 in the bar an hour or so prior to all this, yet he
10 didn't even call the police for that. However when he
11 gets slapped in the face, he think it's reasonable to
12 gun somebody down. And his wife at that.

13 So killing of another, he's got that one.
14 without malice, doesn't have that one. Heat of
15 passion, he might have heat of passion. But heat of
16 passion fails because there is no sufficient legal
17 provocation. Again there must be all four, not just
18 one of those.

19 Now I said something earlier about cool
20 reflection. Again he already knew she had a boyfriend
21 prior to the Perkins parking lot. There is plenty of
22 evidence that he had the discussion with his niece
23 prior to all this happening. He knew that she wanted
24 to move on.

25 And he went to Scott Herbert's house two or

1 three hours prior saying something about the boyfriend.
2 She is probably with that doggone boyfriend, you heard
3 Scott Herbert testify. And so he had that information
4 ahead of time.

5 Let's assume for a minute that there was heat of
6 passion, all right. Again he was anger earlier that
7 day at Scott Herbert's, and that anger built. He went
8 home at some point in time and he broke that picture.
9 He said the picture had been broken four days, I'll let
10 you be the judge of when that picture was broken.

11 But suffice it to say he went home and broke
12 that picture, he armed himself with the gun, this big
13 machete, went and drank at the bar, thought of his
14 plan, parked his truck, lied to Michael about the money
15 and the truck, and he fled to Alabama. That's all a
16 plan.

17 Keep in mind, folks, you can't have a planned
18 voluntary manslaughter. It doesn't work out that way.
19 Whenever you have a plan, that's malice, that's murder.

20 Any other ordinary person would have had time to
21 cool off. And all that time an ordinary person would
22 have been cooling off and thinking about, maybe
23 thinking about they wanted to do, but they wouldn't
24 have done it. He started stewing, and he started doing
25 all that stuff that I just went over, all that breaking

1 the picture, all that arming himself. He has an
2 uncontrollable impulse in that definition was simply
3 that, a calculated plan.

4 So voluntary manslaughter does not apply in this
5 case because he fails on those couple of elements. The
6 main one being malice. And keep in mind that malice
7 element makes it murder.

8 Now I want to talk to you about witnesses for a
9 second. You as the jury, you are the judges of the
10 facts in the case. I think the Judge may mention that
11 to you at the outset. But you are the judge of the
12 facts. She's the judge of the law.

13 So it is your job as juror to use your common
14 sense, listen to the testimony as it came from the
15 witness stand, and judge those witnesses. What did
16 they have to say? What was their motive to lie? What
17 were they saying? Did it make sense? Did it have
18 internal coherence? Was the testimony consistent with
19 each other?

20 And you heard those witnesses from Perkins. It
21 was all consistent. And what was their motive to lie?
22 Nobody wants to be involved in a murder case. And they
23 came up here and told you what happened in their words
24 based on what they saw that night with no motive to
25 lie.

1 The defendant has absolutely no duty to testify
2 whatsoever. But when he gets up on the witness stand
3 and he holds up his hand, swear to tell the truth, and
4 he starts telling his story, he is held to the exact
5 same standard that you would hold any other witness in
6 this case. Or any other witness in any other crime.

7 He is held to the exact same standard. So you
8 judge him the exact same way. What does he have to
9 lose? He is the only person that said she slapped him.
10 And keep in mind, that's the only thing that makes it
11 voluntary manslaughter. That's the only reason you are
12 even considering this charge of voluntary manslaughter
13 is because he said she slapped him.

14 So when you go back in your jury room and start
15 discussing the case after the Judge instructs you to do
16 so, think about that, keep that in mind. You know,
17 what does the defendant have to gain from all this by
18 getting up on the stand and making up these stories?
19 Does the story that he made up, does it make sense?
20 Does it make sense that he would get hit in the head
21 with a beer bottle and not even want to call the police
22 about that. Not even mention it to anybody. Yet when
23 she slaps him in the face, he thinks it's reasonable to
24 gun her down eight times in the parking lot.

25 And the last thing I want to talk to you about

1 is the burden of proof. Like malice, burden of proof
2 is one of those things that we can talk about it, but
3 it's hard to take a picture of it.

4 There are a couple of definitions. One of the
5 definitions is, after you've considered all of the
6 evidence, you go back in your jury room and you talk
7 about everything, if upon doing that you still hesitate
8 to act, then you've got to find the defendant not
9 guilty.

10 But let me tell you about that hesitate to act
11 definition. It's that whole definition I gave you,
12 it's not just if you hesitate to act. Because I
13 encourage you to hesitate to act. When you go back in
14 there you should talk about it, you should consider all
15 of the evidence.

16 We hesitate to act when we pull out from a stop
17 sign, when we buy a house, when we pick out a paint
18 color for our bedroom. There are plenty of things that
19 we hesitate to act, but that doesn't mean that we are
20 not going to do them, or we haven't made an informed
21 decision.

22 The better definition is, when you've considered
23 all the evidence, if you are firmly convinced that the
24 defendant on October 30th, 2010, Randal Benton killed
25 his wife Treva in the parking lot of Perkins, if you

1 are firmly convinced of that, and you are firmly
2 convinced that there was malice in his heart, then
3 you've got to find him guilty.

4 The burden of proof is a heavy burden, but it's
5 not an impossible burden. A lot of times defense
6 attorneys likes to get up and say, you got to get way
7 down here. It's not beyond a shadow of a doubt. It's
8 not beyond all possible doubt. It's beyond a
9 reasonable doubt. If it were such an impossible
10 burden, we would never convict anybody.

11 Now, again, I want to thank you for your time
12 this week. Mr. Loy or Ms. Suggs may get up here and
13 make an argument to you. Afterwards, Mr. Giese will
14 get up and argue the facts a little more. I talked
15 about the law, he is going to talk about the facts.

16 Again, the trial is important, and so we do
17 appreciate your attention. Thank you.

18 THE COURT: Thank you, sir.

19 Mr. Loy.

20 MR. LOY: Thank you, Your Honor, may it please
21 the Court.

22 Good afternoon, ladies and gentlemen. One thing
23 I'd like to clear up right at the outset is I'm sitting
24 at my table and I'm listening to Mr. Hilton's close and
25 I marked at least three times that he said, oh, he

1 think it's reasonable then to shoot her eight times.
2 or she got slapped so then he thinks it's reasonable
3 then for him to do what he did. Or he was in a bad
4 situation so then he thinks it's reasonable to shoot
5 her wife in the parking lot.

6 Allow me to clear that up for you. You all had
7 the opportunity to observe Mr. Benton, to observe his
8 demeanor, the manner in which he testified, the things
9 that he said, and to judge the credibility or the
10 sincerity that he may have presented to you. I can
11 assure you he does not believe it's reasonable to
12 conduct himself as he did on that day because it's not.

13 I told you at the outset that a terrible tragedy
14 took place on that particular day. That one life had
15 been lost, and another had been ruined. And that's
16 still the case.

17 Shortly Her Honor will instruct you on the law.
18 And everything that she says to you, each word as a
19 matter of fact, is of critical importance. And I'd
20 ask, please, listen to everything that she says and I
21 know that you will.

22 She is going to talk to you about the
23 presumption of innocence. And I will touch on it
24 briefly because she will cover it on great detail. But
25 it basically says what we've told you at the outset.

1 Any person accused of a crime is presumed innocent.
2 That the presumption of innocence follows him through,
3 even to this moment in the courtroom. And up until
4 such time as she gives you the case and says, now
5 return to your jury room and begin to deliberate.

6 She will tell you that the presumption of
7 innocence places the burden of proof on this State to
8 prove every element of the offense charged. And in
9 this case the offense that the State has chosen to
10 charge is murder.

11 The elements are simply the sentences or phrases
12 that Mr. Hilton had a moment ago on the board. Those
13 are elements which make up the crime.

14 She will further tell you that the burden of
15 proof is proof beyond a reasonable doubt. And beyond a
16 reasonable doubt or a reasonable doubt is the kind of
17 doubt that would cause a person to hesitate to act in
18 the course of their most important affairs.

19 I would submit to you, and I hope most of you
20 would concede, that sitting in judgment in a case such
21 as this is, and should be, one of the most important
22 affairs you'll ever find yourself involved in.

23 Now Her Honor will further tell you that when
24 you begin your deliberations you have three possible
25 verdicts, all of which are supported by the evidence

1 here, could be supported by the evidence here,
2 depending upon how you, the 12 who end deliberating,
3 view that evidence.

4 She will tell you that one verdict is guilty of
5 murder. She will tell you that another verdict is
6 guilty of voluntary manslaughter. She will tell you
7 that another verdict is not guilty.

8 The last I will tell you is more or less
9 housekeeping. Because not guilty is clearly not a
10 verdict that is before you all in my opinion. In my
11 opinion at the very least. Mr. Benton got on the
12 witness stand and he said, I'm sure I did it. I was
13 there, by the evidence, it's my gun, people said I did
14 it, I'm sure that I did it, I shot my wife and it's a
15 terrible crime.

16 In this circumstance what it is is voluntary
17 manslaughter. And it's as bad as it sounds.
18 Manslaughter. Sounds bad and it is real bad.

19 Murder, for the State to prevail on murder they
20 would have to prove a killing and they have done that.
21 It wasn't disputed. I told you at the outset that an
22 awful lot of the evidence in this case would not be
23 disputed. And it wasn't disputed. They have proved
24 that Treva died at the hands of Mr. Benton.

25 They have to prove malice, malice existed at the

1 time that the killing took place. At that moment a
2 killing was accomplished with malice aforethought.
3 Malice is described in the law as hatred, ill will, a
4 heart fatally bent upon mischief if you will. An
5 intent to do wrong or evil.

6 Instinctively it's easy to look at the picture
7 that Mr. Hilton wants you to look at or to consider,
8 well a person has been shot, more than once, been shot
9 several times. How much more malicious could you be?
10 And in the rest of the world, that's probably the case.
11 In the common legal. But as Mr. Hilton told you and
12 the Judge will tell you, malice is a term of art.

13 Mr. Hilton wants to tell you that any time a
14 person is shot with a gun that must be murder, because
15 how much more malicious could you be. And if that were
16 the case, we wouldn't have a crime of voluntary
17 manslaughter and we do. Voluntary manslaughter is
18 defined as killing another person, without adequate
19 legal provocation, without justification, on sudden
20 heat of passion with adequate legal provocation. What
21 it does is it takes into consideration that not every
22 homicide, not every time a person illegally takes the
23 life of another person, is it exactly as bad or are the
24 crimes exactly equivalent.

25 We know that if a person kidnaps and rapes a

1 child, kills that child, that's murder. We know that
2 if a person goes to the jewelry store and executes the
3 people who work there and leaves with the money and the
4 jewelry, that's murder. Those are malicious
5 circumstances. A man breaks into the home and shoots
6 the people who are there while he commits burglary.
7 Set out to do it, did it, it's murder.

8 The law takes into consideration, however, that
9 sometimes some people find themselves in circumstances
10 that are so bad, that are so provocative, it causes
11 them to blow up, to essentially lose control, and to
12 act. Just to act, just to do it. Something they would
13 never do if they had the time or the ability for calm
14 or cool reflection, but just to act on impulse.

15 You can't do it for just any reason at all for
16 voluntary manslaughter. It has to be provocation such
17 as might cause an ordinary, reasonable person to blow
18 up and respond as the defendant did.

19 The Judge will tell you that in considering what
20 happened at Perkins parking lot you are allowed to
21 consider the characteristics of the defendant as well
22 as the victim; their prior relationship; the current
23 status of their relationship; and everything else that
24 surrounds what took place out there on that particular
25 evening.

1 Now essentially what the law says is that a
2 person who was so provoked, in the manner that I
3 described, who reacts, who just acts, is unable in that
4 moment to form malice. Doesn't justify what they do.
5 It doesn't exonerate the person. It doesn't mean that
6 it's okay. It just means that in that circumstance,
7 with what that person faced, somebody might, somebody
8 might blow up and respond as they did.

9 In this case you met Mr. Benton. He came in and
10 testified. You had an opportunity to observe him. The
11 Judge will tell you you judge the witnesses -- excuse
12 me, the Judge will tell that as jurors you are required
13 to judge the credibility of witnesses. That is the
14 believability.

15 She will tell you that to do that there is no
16 formula. You don't count how many witnesses say one
17 thing and how many say something else. You don't look
18 at how they dress, et cetera. You judge them by what
19 they say, their demeanor, their believability. Because
20 in your heart, every day in your life you deal with
21 people. Sometimes people talk to you and you listen to
22 them. You kind of nod your head, okay, I see where you
23 are going with that. I can see that, that's credible
24 that's believable. Sometime people talk to you and you
25 just say, no, I'm not buying this.

1 Mr. Benton came in and he told you a story and
2 most of it is undisputed. He was in a marriage, a
3 long-term marriage. Been married 10 years or more he
4 said. Considered himself in a family. Referred to the
5 young man who came in, as well as the boys who he
6 talked to that night as my stepson. My stepson
7 so-and-so was there. My wife, over and over, my wife
8 was there.

9 He didn't want his marriage to end. He loved
10 his wife then. Ironical as it sounds, I'm not chagrined
11 at all to tell you, he loves her to this day. He was
12 trying to do the best thing that he could under all the
13 circumstances that he faced. They were splitting up.
14 He said, okay, they were in different houses. She
15 wasn't avoiding him, she wasn't running from him.

16 According to the testimony, and it's undisputed,
17 nobody said anything different, they were still
18 involved in a sexual relationship. Certainly they were
19 still involved talking on the phone. Certainly he was
20 trying to help.

21 She said, will you help me move. It's a
22 Saturday. He works as a landscaper, does a hard job.
23 Saturday, on the weekend, he still goes over there.
24 Her kids, her, him, girlfriend of one of the boys,
25 spends a piece of his afternoon, his time, lifting the

1 furniture, going back and forth to the storage
2 facility, et cetera, and trying to do what he could to
3 make it as good as he could. He loved his wife then,
4 tragically for everybody, including Mr. Benton, he
5 loves her to this day. He tried to do what was right
6 by her on that day and help her.

7 Later on he had some drinks, he had some alcohol
8 and he ended up back at her house. She wasn't afraid
9 of him when it came time to move her furniture, to move
10 out of her home. She had known him for ten years and
11 lived with him for most of that time. Would open the
12 door and said, come in, help me move these things, help
13 me out, and he did those things. And when he showed up
14 at the house, she said, come on, I will take you home.

15 There was some testimony from the young man who
16 said, well she said call the police. And indicated,
17 no, I didn't put that in my written statement. I
18 didn't put that in. As a matter of fact, I don't know
19 if I told anybody until today. But regardless, she
20 doesn't call him a cab. She didn't ask anyone else to
21 go with her. She said, come on, Randal, I'll take you
22 home.

23 And he described the beginning of that trip
24 walking out there. And he said he was joking around,
25 come on, give me the keys, I will drive, et cetera.

1 she didn't want him to do that, he got in, and they
2 left.

3 And as they left he, as her husband -- it's
4 important to him, and to an ordinary reasonable person
5 in his circumstance it might well still be important,
6 his marriage wasn't over in his eyes -- and as they
7 left he started to ask, what about this guy Mark. You
8 say you were friends, was it him? Because I'm getting
9 a bad feeling.

10 And quickly that conversation escalated. And it
11 became apparent when she says, yes, that's who I went
12 to today. Yes, I called you. Yes, thank you for the
13 truck. Yes, thank you for carrying the furniture.
14 Yes, thank you for helping me move. And when you were
15 done with that I left you there, my husband, and I went
16 to my boyfriend. And that's where I have been.

17 And he did become angry. And a lot of people in
18 that circumstance might become angry. And he began to
19 ask her about that as she pulled into the Perkins
20 parking lot. And he got out and approached her. And
21 there is no doubt that he approached her and that he
22 said why? Why? Why are you doing this? And her
23 response was, I don't know, or something to that
24 effect.

25 And that as he approached her -- and nobody said

1 he wrestled, grabbed, jerked, hit, smacked anything
2 else -- but as he approached her, she struck him.
3 That's what happened. One of the witnesses said, I saw
4 the hat flying off of his head. Another witness said,
5 I just saw the hat over there. One said, I saw her
6 knock it off.

7 This is what happened. She has told him, yes,
8 I'm engaged in a sexual relationship with another
9 person despite the fact that we were still within the
10 coventry of our marriage if you will. That, yes, you
11 are and I are involved to that extent, but I have left
12 that behind and when you were done helping me today
13 that's who I went to. And when he approached her she
14 struck him. You heard it.

15 There is not a lot more I can say. You watched
16 him and you heard him. He said, Mr. Loy, I felt like I
17 was going to blow up after that. I'm her husband. And
18 I don't know what anybody else's experience is, and I
19 don't need to, but I will tell you the average,
20 ordinary, reasonable person in this circumstance might
21 already find themselves close to a breaking point.

22 And then to be smacked like that, assaulted, may
23 not sound like much but it put him over the top and his
24 reaction was, I thought my head was going to explode.
25 This is my wife. This is my wife who's doing this with

1 someone else. And what happened happened. You all
2 know what happened or at least the gist of it. And he
3 doesn't deny it and he accepts responsibility for it.

4 But I told you at the outset that on that
5 particular day Mr. Benton didn't wake up a murderer.
6 And he is not one here today. He is a person who has
7 done a terrible thing. And he is going to be held
8 accountable and responsible for the terrible thing that
9 he has done. And his wife is dead. And he has to live
10 with that. And I submit again, he is a ruined person.

11 But when you all go back in your jury room and
12 deliberate please consider these things. Consider the
13 circumstances he was in. And when the Judge talks to
14 you, she's going to tell you that as far as the
15 provocation, what it takes to go to negate the ability
16 to form malice and so create a situation for voluntary
17 manslaughter, that you may consider -- she will tell
18 you this, listen -- you may consider the nature of the
19 provocation, if any; the defendant's mental and
20 physical state at that moment; and the circumstances
21 and the relationships between the parties.

22 Having said that, ladies and gentlemen, thank
23 you very much for your attention. Please give Her
24 Honor all the attention that you can, and deliver a
25 true verdict at the close of jury deliberation. Thank

1 you.

2 THE COURT: Thank you, sir.

3 Mr. Giese.

4 MR. GIESE: May it please the Court.

5 Madam Forelady, ladies and gentlemen of the
6 jury, I too want to thank you for your time and your
7 concern in this case. It's not an easy thing to be a
8 juror and to judge a fellow person. I appreciate it,
9 I know the Court appreciates it, and of course your
10 fellow citizens appreciate that.

11 You know, it's rare that I stand here in front
12 of you and can agree with something that a defense
13 attorney has said. But in this case I do. I agree
14 with some of the things that Mr. Loy has talked to you
15 about and has said to you.

16 The first is that his client shot and killed
17 Treva Benton, and that he is guilty. We totally agree
18 on that. He sits there and his own lawyer has said it,
19 guilty. The question becomes of what. So we agree
20 that he is guilty.

21 Something else I agree with him on, and that is
22 this is a terrible tragedy. He said it numerous times
23 in his opening statement. He said it at least once or
24 twice in his closing argument, and I agree. The State
25 agrees with Mr. Loy. It is a terrible tragedy.

1 But we disagree about who it's a tragedy for.
2 It's a tragedy for that victim's family, for Treva
3 Benton's family. It's a tragedy that he pulled that
4 gun on her and shot her eight times. That's the
5 tragedy. That's the tragic part of this. He took her
6 from them. Yeah, it's a tragedy. She is not here
7 today, it is a tragedy. And she is not here today
8 because of him.

9 It's not a tragedy, the State submits, to that
10 man. How can it be a tragedy to the man who pulled
11 that trigger eight times? It's not a tragedy. He got
12 exactly what he wanted. He wanted to possess Treva
13 Benton. And if he couldn't possess her, no one was.

14 And, ladies and gentlemen, the State submits
15 that's why, that's why he armed himself. That's why he
16 left his truck somewhere and walked to Treva's house.
17 That's why he lied about his truck being broken.
18 That's why he got into that car with Treva, got her to
19 take him somewhere. And that's why in that parking lot
20 of Perkins restaurant he took that weapon and shot her
21 eight times.

22 She wanted to leave the relationship. He did
23 not want her to. It's as simple as that. It's as
24 simple as that.

25 You know, when I was sitting there listening to

1 the testimony, and if I say anything that you disagree
2 with, that maybe I didn't hear the same thing you did,
3 whatever you heard take it and run with it. But as I
4 watched some of the testimony it kind of stunned me,
5 it kind of surprised me. Especially after the
6 testimony today of the defendant, his story that we
7 heard.

8 Somebody in this case has sworn an oath to tell
9 the truth and has not. Somebody did. Because you
10 can't have what happened at Perkins restaurant have
11 happened the way he said it, or the way the
12 eyewitnesses at the scene said it happened.

13 All of the witnesses of Perkins, the three
14 ladies that testified, I'm going to go over that in a
15 minute what they said and what they saw. But they all,
16 all of them, would have to be lying about who the
17 aggressor was and about who was crying, who was
18 distraught, who was calm.

19 Because, ladies and gentlemen, their stories are
20 totally different from his, totally different as to
21 what happened at the scene. I ask you, and Mr. Hilton
22 mentioned it, you talk about credibility and
23 believability. I'm just going to mention it for a
24 minute.

25 who in this case has a reason to lie? Who in

1 this case has a reason to swear an oath and not tell
2 the truth? Were it the three ladies but for this
3 happening in the Perkins parking lot during their shift
4 would not be witnesses? Did they have something to
5 lose in this? The state submits they do not. Or is it
6 the defendant who has something to lose? State submits
7 it is.

8 So think about it. Who in this case didn't tell
9 the truth? You saw his testimony today. And I'm going
10 to go over that real briefly because we saw it just
11 recently and we can remember it.

12 What did he testify to today? Well he was
13 there. He thinks he pulled the trigger, he is not
14 sure. And then he doesn't remember. Then all of the
15 sudden after she slaps him this man who can talk about
16 how many drinks he had that night, where he had been,
17 who he had talked to, he went into an intricate
18 conversation about somebody he had had a conversation
19 with at another bar, he has every detail in line. How
20 he got his gun, why he parked his car where he parked
21 it, that he had been drugged or drank too much -- I'm
22 still not sure about that -- how he got hit in the
23 head. He had all those things he remembers. Yet the
24 moment that he claims he pulls his gun out, he doesn't
25 remember a thing.

1 Is that believable to you? Does that make sense
2 to you? He can remember, have a phenomenal memory, and
3 yet when it comes time to, well did you pull the
4 trigger? I don't know. Well did you run away? I
5 don't know. Well how did you get to your truck? I
6 don't know.

7 Is that believable? Can you believe that? The
8 state submits you cannot. You cannot.

9 The next thing I remember is I am in Alabama,
10 Phoenix City, Alabama, 382 miles away. Did you stop
11 for gas? I don't remember. Did you check your voice
12 mail? I don't remember. Did you have your phone? I
13 don't remember. I don't remember anything after I
14 pulled that gun?

15 How does he get to his truck? How does he get
16 down to Alabama? He is caught the next morning in
17 Phoenix City, Alabama. I will say this, he is caught
18 with the murder weapon in his truck. Yet he has no
19 idea how the gun got in his truck, how he got in his
20 truck or how he got to Alabama.

21 The state submits, ladies and gentlemen, it is
22 unbelievable. Therefore, how can you believe anything,
23 anything that this man said?

24 In fact, he is talking about riding around or
25 being drugged, hit in the head. Of course there is no

1 evidence of that, there is no incident report. No one
2 has testified they saw him with any wound to his head
3 or to his body. Yet he said he had it, and that's why
4 he was kind of floating.

5 And he is joking. He even claims he is joking
6 with the victim about wanting to drive. He remembers
7 all that. He is in a good mood he says.

8 No, ladies and gentlemen, it is unbelievable
9 testimony, the State submits, as to what he has said.
10 And he is telling you that story to try to get you, the
11 jury, to believe that he is only guilty of voluntary
12 manslaughter. That's why the story was testified to
13 today.

14 No one in this case, until this morning, has
15 ever said anything about the victim slapping the
16 defendant.

17 The facts very briefly. We won't burden you
18 with them, but they're important. 8 o'clock, 8 o'clock
19 that night the defendant drives his truck, drives his
20 truck to the victim's house. The people that live in
21 the duplex with the victim, Scott Herbert. Remember
22 Scott Herbert? Scott Herbert is standing outside
23 smoking a cigarette with his wife and he asks, is Treva
24 there? Herbert says, no, she has already left. At
25 which point the defendant says, well, she is probably

1 with her damn boyfriend.

2 Now the defendant in his testimony this morning
3 said, I never said that. So, ladies and gentlemen,
4 someone is not telling the truth. Either Scott Herbert
5 came in here and made that up, or the defendant did.
6 And I ask you again, who has a reason to lie? Scott
7 Herbert? He is just minding his own business. Do you
8 think he wanted to be in here yesterday? He leaves at
9 8 o'clock, he leaves angry, and in the truck.

10 Two hours later he is at the back door without
11 his truck and comes in the house and confronts Michael
12 Palmer at that point. So this is two hours later. And
13 the state submits during those two hours, during those
14 two hours this man's anger, this man's malice, this
15 man's hatred, this man's ill will is boiling. It's
16 boiling.

17 He knows she has got a boyfriend. He knows
18 she's with her -- he's with at that time. He's
19 seething. He parks his truck somewhere else, pretends
20 it's broken down. Tells Michael Palmer, my truck is
21 broken down, I need a ride, I want Treva to give me a
22 ride. Treva finally comes home. He asks for a ride.
23 she says, I will give you a ride. I will give you a
24 ride.

25 They hop into the Trailblazer, they drive off.

1 Remember this, what is the one thing that the victim
2 said prior to getting into the car with her -- with
3 him? If I am not back in 20 minutes, call the police.
4 Isn't that amazing? Think about it. Because 15
5 minutes later she is dead. 15 minutes later she has
6 got eight holes in her. Eight shots.

7 So all this time the defendant, the malice is
8 building in him, the malice is building. He has armed
9 himself. He just so happens to have a gun either in
10 his hoodie or in his waistband. Just coincidently he
11 has got the gun. They get in the car, they drive away,
12 they pull into Perkins parking lot, there is an
13 argument.

14 And here's where it's important. This is what
15 the state submits is important. You have three
16 independent eyewitnesses to what happened. Three. I
17 ask you when you go back to the jury room please, state
18 submits, talk about each one. All three of them have
19 something very important to say in this case.

20 Erica Hill was the first. She was the manager.
21 She sees the car drive up. She is worried, oh my Lord,
22 I hope it's not another customer. So they watch the
23 truck. They watch the Trailblazer. And they watch as
24 they argue some. The lady keeps putting hands on her
25 head, shaking her head. At some point the driver, we

1 know it's Treva, gets out of the car to walk away. The
2 defendant gets out and confronts her.

3 Now Erica Hill says at that point they walk
4 outside of Perkins to make sure that nothing happens.
5 She says the defendant is cool, calm, the defendant, is
6 cool, calm. The victim is crying and upset, which is
7 the opposite of what he said this morning.

8 The victim says, and I quote, why can't you
9 leave me alone. It's the victim saying that. Why
10 can't you leave me alone. At which point the defendant
11 says, oh, you just want to leave? Fine. You want to
12 leave. And at that point he pulls out the gun and
13 shoots her several times.

14 He then, this man who doesn't remember anything
15 at this point under his testimony, takes the gun and
16 points it at these ladies who had come out to try and
17 help. Get back inside or this will happen to you.

18 Now this is a man who in his own testimony says,
19 I don't remember anything after that point. Yet this
20 man who has got the gun, who has had this malice well
21 up in him, is able to point the gun at these ladies who
22 have come out to try to help, and chase them back
23 inside. That's Erica Hill.

24 The second independent witness, Jessica Russell.
25 Jessica also worked there. She said specifically, the

1 defendant was the aggressor. The defendant, the man
2 was the aggressor. He shoots. The victim goes down.
3 At which point he points the gun at them, tells them to
4 get back inside. She is the third in line, second or
5 third in line. She turns around as soon as she sees
6 the shots, she runs back in.

7 Here's something very important. She goes back
8 inside. When she is back inside, what does she hear?
9 More gunshots. A pause between the first set of shots
10 and the second set of shots.

11 Now, ladies and gentlemen, if that -- if you can
12 shoot somebody, think about it, then shoot them again
13 and that's not malicious, the State submits, what could
14 be? Because that was corroborated by the third
15 independent witness who totally contradicts what the
16 defendant says, Veronica Collins.

17 She doesn't work at Perkins. She was sitting
18 waiting on someone to come out of Perkins. So she is
19 watch this whole episode, this whole incident, she is
20 watching it. And very importantly she says, the
21 defendant was the aggressor. The defendant gets out of
22 the car, the victim gets out. Shoots, this is
23 important again, shoots several times, the victim drops
24 to the ground.

25 The ladies who had come out get this gun pointed

1 at them again, or the first time, just like everyone
2 has said, points at them, he threatens them, they run
3 back inside, she is still sitting in her car.

4 And what does she say happens? She said that
5 man right over there, after chasing them back inside,
6 walked back to the body where she is laying and fired
7 more shots into her.

8 This is what he did. Take a look at it when you
9 get back there. It's not clean. It's not sterile.
10 Courtrooms are sterile. Courtrooms are clean. This is
11 anything but clean.

12 And, ladies and gentlemen, you heard the
13 testimony of the pathologist yesterday. You have this,
14 where she got shot in the eye. But you heard her
15 testimony yesterday. This is not some long shot, 8 to
16 36 inches is how far away he was, the barrel of the gun
17 was, when he shot some of those shots.

18 This is not sterile. This is up close, this is
19 personal, this is, I can't possess you, you are dead.
20 You are dead.

21 Oh, but I don't remember that, the defendant
22 says. No, ladies and gentlemen, the State submits this
23 is not that complicated a case. It's just not.

24 Yeah, I agree with Mr. Loy he shot him. I agree
25 he is guilty. But, ladies and gentlemen, if you can

1 take a gun and shoot someone eight times, shots, break
2 as you point a gun at some other people, more shots on
3 someone laying defenseless on the ground, ladies and
4 gentlemen, if that's not malice, the state questions
5 can there ever be malice? It's as malicious as it can
6 be.

7 Before I sit down I want to say one last thing.
8 You know, I have been doing this for a long time, 30
9 years. And every time I get to this point of a trial I
10 always am in amazement and wonderment I guess of just
11 how much power a jury has. A jury of citizens of our
12 state.

13 You have the power over this case. You have the
14 power over the verdict in this case. And that's a
15 huge, that's a huge burden, it's a huge duty.

16 But, you know, the power you don't have, the
17 power you don't have is to bring her back. And to give
18 her back --

19 MR. LOY: Your Honor, objection. This is just
20 improper argument, it's just inflammatory.

21 THE COURT: Sustained.

22 MR. GIESE: You all took an oath. You all took
23 an oath. The oath was to do the best you can. Take
24 the facts, take the law as Her Honor gives it to you,
25 she is in just a minute, go back in your jury room, and

1 the State submits, give the State justice in this case.

2 Justice in this case is nothing less than a
3 verdict of guilty of murder. Because that's exactly
4 what happened in this case and exactly what that man
5 over there is. He is a murderer, the State submits.
6 Thank you.

7 THE COURT: Thank you, sir.

8 Ladies and gentlemen of the jury, you have heard
9 the testimony, evidence and arguments of the State and
10 the defendant. I will now explain to you the law that
11 applies to this case.

12 Under the constitution and laws of South
13 Carolina, you are the finders of the facts in the case.
14 I do not have the right to pass upon the facts, or even
15 to express any opinion I might have as to them. This
16 is a matter solely for you the jury to determine.

17 As jurors then it is your duty to determine the
18 effect, value, weight, and the truth of the evidence
19 presented during this trial.

20 As the trial Judge it is my responsibility to
21 preside over the trial of the case, and to rule upon or
22 pass upon the admissability of the evidence offered
23 during the trial. You are to consider only the
24 evidence which has been presented from the witness
25 stand, together with any exhibits which have been made

1 a part of the record.

2 I have the additional duty to charge you on the
3 law applicable to this case. And as the presiding
4 Judge, I'm the sole judge of the law in the case. It
5 is your duty as jurors to accept and apply the law as I
6 now state it to you, and then reach a verdict.

7 I charge you in this regard that you should not
8 be concerned with what you think the law ought to be,
9 but what I charge you the law is. You are also the
10 judges and the sole judges of the credibility, that is
11 the believability, of the witnesses who have testified
12 and the evidence in the case.

13 In passing upon credibility you may take into
14 consideration many things such as the demeanor or
15 manner of testifying; whether the witness had reason to
16 be biased or prejudice; or whether a witness's
17 testimony was contradicted on the one hand, or
18 supported and corroborated on the other hand.

19 You may believe a small portion of a witness's
20 testimony and disregard the later, or vice versa,
21 disregard the larger or vice versa. You may believe
22 one witness against many, or many against one. All of
23 these things you will consider bearing in mind that you
24 should give the defendant the benefit of any reasonable
25 doubt.

1 It becomes your duty as juror to analyze and
2 evaluate the evidence and determine that evidence which
3 convinces of you its truth.

4 The rules of evidence do not permit witnesses to
5 testify to opinions or conclusions. An exception to
6 this rule exists for witnesses we call expert
7 witnesses. A witness who by education and experience
8 has become expert in some art, science, profession or
9 calling may state an opinion as to relevant and
10 materials and matters in the areas in which that
11 witness has been qualified as an expert. Such a
12 witness may also state the reasons for any such
13 opinion.

14 You should consider any expert opinion received
15 in evidence in the case like any other evidence and
16 give it the weight you think it deserves. If you
17 decide that the opinion of an expert witness is not
18 based on sufficient education and experience, or if you
19 conclude that the reasons given in support of the
20 opinion are not sound, or that the opinion is
21 outweighed by other evidence, you may disregard the
22 opinion entirely.

23 An expert witness's testimony is to be given no
24 greater weight than that of other witnesses simply
25 because the witness is an expert. Further, you are not

1 required to accept an expert's opinion even though it
2 is not contradicted.

3 There are two types of evidence which are
4 generally presented during a trial, direct evidence and
5 circumstantial evidence. Direct evidence is the
6 testimony of a person who claims to have actual
7 knowledge, such as an eyewitness. This is evidence
8 which immediately establishes the main fact to be
9 proved.

10 Circumstantial evidence is proof of a chain of
11 facts and circumstances indicating the existence of a
12 fact. It is evidence which immediately establishes
13 collateral facts from which the main fact may be
14 inferred. Circumstantial evidence is based on
15 inference and not on personal knowledge or observation.

16 The fact that the defendant was arrested,
17 charged and indicted is not evidence in this case and
18 cannot be considered by you as any evidence of guilt in
19 this case. Nor does it create any presumption or
20 inference of guilt. The indictment is simply the
21 formal written instrument which contains the charge
22 made against the defendant. It is the formal document
23 by which the case is brought into this court.

24 The indictment in this case alleges one count of
25 murder. The defendant has pled not guilty to the

1 charge in this indictment. And that plea puts the
2 burden on the state to prove the defendant guilty. A
3 person charged with committing a criminal offense in
4 South Carolina is never required to prove himself
5 innocent.

6 I charge you that it is an important rule of the
7 law that the defendant in a criminal trial, no matter
8 what the seriousness of the charge may be, will always
9 be presumed to be not guilty of the crime for which the
10 indictment was issued, unless you find that the guilt
11 has been proven by evidence satisfying you of guilt
12 beyond a reasonable doubt.

13 This presumption of innocence does not end when
14 you begin your deliberations. It accompanies the
15 defendant throughout the trial until you reach a
16 verdict of guilt based on evidence satisfying you of
17 guilt beyond a reasonable doubt.

18 The presumption of innocence is like a robe of
19 righteousness placed around the shoulders of the
20 defendant which remains until the defendant -- until it
21 has been stripped from the defendant by evidence
22 satisfying you the jury of the defendant's guilt beyond
23 a reasonable doubt.

24 The presumption of innocence is not a mere legal
25 theory. It is not just a legal phrase. It is a

1 substantial right to which every defendant is entitled
2 unless you the jury are satisfied from the evidence of
3 the defendant's guilt beyond a reasonable doubt.

4 The State must prove the defendant guilty beyond
5 a reasonable doubt. So what is a reasonable doubt in
6 the law? A reasonable doubt is a doubt which makes an
7 honest, sincere, conscientious juror in search of
8 truth in the case hesitate to act. Proof beyond a
9 reasonable doubt must therefore be proof of such a
10 convincing character that a reasonable person would not
11 hesitate to rely and act upon it in the most important
12 of his or her own affairs.

13 Proof beyond a reasonable doubt can also be
14 described as proof that leaves you firmly convinced of
15 the defendant's guilt. Now there are very few things
16 in the world that we know with absolute certainty. And
17 in criminal cases the law does not require proof that
18 overcomes every possible doubt.

19 If based on your consideration of the evidence
20 you are firmly convinced that the defendant is guilty
21 of the crime charged, you must find him guilty. If, on
22 the other hand, you think there is a real possibility
23 that he is not guilty, you must give him the benefit of
24 the doubt and find him not guilty, or guilty of the
25 lesser included offense.

1 The defendant is charged with murder. The State
2 must prove beyond a reasonable doubt that the defendant
3 killed another person with malice aforethought. Malice
4 is hatred, ill will or hostility towards another
5 person. It is intentional doing of a wrongful act
6 without just cause or excuse, and with an intent to
7 inflict an injury or under circumstances such that the
8 law will infer an evil intent.

9 Malice aforethought does not require that malice
10 exist for any particular time before the act is
11 committed. But malice must exist in the mind of the
12 defendant just before and at the time the act is
13 committed. Therefore, there must be a combination of
14 the previous evil intent and the act.

15 Malice aforethought may be expressed or
16 inferred. These terms, expressed and inferred, do not
17 mean different kinds of malice, but merely the manner
18 in which the malice may be shown to exist either by
19 direct evidence or by inference from the facts and
20 circumstances which are proved.

21 Express malice is shown when a person speaks
22 words which express hatred or ill will for another, or
23 when the person prepared beforehand to do the act which
24 was later accomplished. For example, lying in wait for
25 a person, or any other act of preparation going to show

1 that the deed was within the defendant's mind would be
2 express malice.

3 Malice can be inferred from conduct which is so
4 reckless and wanton as to indicate a depravity of mind
5 and general disregard for human life. In the context
6 of murder, malice does not require ill will toward the
7 individual injured, but rather it signifies a general
8 malignant recklessness of the lives and safety of
9 others, or a condition of the mind which shows a heart
10 regardless of social duty and fatally bent on mischief.

11 In order to establish criminal liability,
12 criminal intent is required. For example, the mental
13 state required to be proven by the State for a
14 particular crime might be purpose, intent, knowledge,
15 recklessness, or criminal negligence.

16 Criminal intent must be proven by the State
17 beyond a reasonable doubt. Criminal intent is always a
18 matter that must be determined by the jury from the
19 circumstances surrounding the situation.

20 There is no way to prove intent to a
21 mathematical certainty. There is no way medical
22 science can dissect a person's brain and determine what
23 the person had in mind. So the law says that criminal
24 intent may be inferred from the circumstances shown to
25 have existed. This is how you make a determination of

1 whether or not the element requiring intent was
2 present.

3 It is not necessary to establish intent by
4 direct and positive evidence. But intent may be
5 established by inference in the same way as any other
6 fact, by taking into consideration the acts of the
7 parties and all of the facts and circumstances in the
8 case.

9 Criminal intent is a mental state of conscious
10 wrongdoing. It is up to you to determine what the
11 defendant intended to do based on the circumstances
12 shown to have existed. Criminal intent can arise from
13 action or a failure to act. It may arise from
14 negligence, recklessness or an indifference to duty or
15 to consequences that is considered by the law to be the
16 equivalent of criminal intent.

17 Insanity caused by the use of drugs or alcohol
18 may be a defense if the insanity is permanent, and
19 destroys a defendant's ability to know right from
20 wrong. However, when voluntary intoxication has not
21 produced permanent insanity, it is not a defense to a
22 crime.

23 A person who voluntarily becomes intoxicated is
24 just as responsible for the acts committed while
25 intoxicated as when the person is not intoxicated.

1 If you find that the State has failed to prove
2 beyond a reasonable doubt that the defendant committed
3 murder, you may consider whether the State has proved
4 beyond a reasonable doubt that the defendant committed
5 voluntary manslaughter.

6 To prove voluntary manslaughter the State must
7 prove beyond a reasonable doubt the defendant took the
8 life of another, in the sudden heat of passion, based
9 on sufficient legal provocation. Both heat of passion
10 and sufficient legal provocation must be present at the
11 time of the killing to constitute voluntary
12 manslaughter.

13 Heat of passion alone will not suffice to reduce
14 murder to voluntary manslaughter. Sudden heat of
15 passion may, for a time, affect a person's self control
16 and temporarily disturb a person's reason. The sudden
17 heat of passion must be the type that would make an
18 ordinary person unable to coolly reflect on his
19 actions, and would produce an uncontrollable impulse to
20 do violence.

21 Sufficient legal provocation must be the type
22 that would make a person of ordinary reason and caution
23 become enraged and to loose control temporarily. The
24 provocation needed for voluntary manslaughter must come
25 from some act of or related to the victim. Words

1 alone, however vulgar or insulting, are not enough to
2 be legal provocation.

3 Where death is caused by the use of a deadly
4 weapon, the words must be accompanied by some overt,
5 threatening act which could have produced the heat of
6 passion. The exercise of a legal right, no matter how
7 offensive it is to another, is never sufficient legal
8 provocation for voluntary manslaughter.

9 If the heat of passion had cooled, or if there
10 was enough time between the provocation, if any, and
11 the killing for the passion of a reasonable person to
12 cool, the killing would not be voluntary manslaughter.

13 In deciding whether a reasonable person would
14 have had enough time to cool off, you should consider
15 all the circumstances surrounding the killing. You may
16 consider the nature of the provocation, if any; the
17 defendant's mental and physical state; and the
18 circumstances and relationships between the parties.

19 Ladies and gentlemen, you have been selected by
20 both the State and the defendant to be fair and
21 impartial jurors. It is your duty, then, in your
22 deliberations to determine the truth in this case,
23 giving the defendant the benefit of every reasonable
24 doubt on each and every issue. And from the facts
25 which you determine to be true, you take and apply the

1 law which I have just given to you, and arrive at a
2 verdict which speaks the truth in this case.

3 You must consider these instructions as a whole
4 and not follow some and ignore others. You have heard
5 the evidence and now you have heard the law. Whatever
6 your verdict, your foreperson will indicate it on this
7 verdict form by checking not guilty, guilty of the
8 lesser included offense of voluntary manslaughter, or
9 guilty. The foreperson will then sign and date the
10 verdict form.

11 Please remember that although the foreperson is
12 the only juror who writes the verdict, it is not hers
13 alone. The verdict must be a unanimous verdict. Your
14 foreperson is not authorized to write the verdict until
15 all of you have agreed as to what that verdict should
16 be.

17 Ladies and gentlemen, I'm now going to send you
18 to your jury room. But do not begin to discuss the
19 case until you have received the verdict form and the
20 exhibits. We're going to go through those right now to
21 make sure they're in order.

22 Once you receive these items, that will be your
23 signal to begin deliberations. Once you begin those
24 deliberations, you will deliberate until you have
25 reached a verdict. Your foreperson will fill out the

1 verdict form. At which time you will knock on the door
2 and advise the bailiff and we will bring you out to
3 receive your verdict.

4 Thank you, ladies and gentlemen, for your kind
5 attention. I have noticed how much attention you've
6 paid and I can tell you that everyone in the courtroom
7 appreciates it. I'm going to get you to return to the
8 jury room.

9 Please hold the two alternates with me. I need
10 to take up one matters with the lawyers, but I will
11 bring them back in.

12 Thank you, ladies and gentlemen.

13 (Whereupon, the jurors exit the courtroom.)

14 THE COURT: Okay. Any objection to the charge
15 or anything that we need to put on the record before
16 you all coordinate on the exhibits and we send the
17 verdict form and the exhibits back?

18 MR. HILTON: No objection from the State as to
19 the charge.

20 THE COURT: Okay.

21 MR. LOY: Your Honor, I have no objection. I
22 don't recall a ruling on my request for a King.
23 Obviously that was denied.

24 THE COURT: I did deny the request for a King
25 charge, I'm sorry I didn't put that on the record, we

1 had that at the bench conference. That's not an
2 appropriate charge any longer under South Carolina law
3 since 1999.

4 MR. LOY: Thank you. It's a long time, Your
5 Honor, thank you.

6 MR. HILTON: And the State would make a motion
7 to retain the alternates for at least an hour. I don't
8 anticipate a lengthy deliberation. But I think an hour
9 would be sufficient to at least make sure everything is
10 underway so we don't run into any problems like Your
11 Honor had last week.

12 THE COURT: I think that once -- there is a
13 separate of authority on whether you are allowed to
14 retain alternates at all. It's different in the civil
15 and criminal context. I don't anticipate a problem
16 like we had last week.

17 It had never happened before, Julie Armstrong
18 said, in 20 years. So that was a bizarre scenario. We
19 had the foreperson of the jury put a notebook in her
20 bag and not give it to me.

21 I think I have to let them go. They are welcome
22 to stay, but they can't be a part of the deliberations.
23 And if they're not a part of the deliberations, then
24 they can't go back there afterwards anyway.

25 MR. HILTON: Again I may be wrong, but I believe

1 the authority is that they can be retained for some
2 period of time. And then if for some reason there is a
3 problem and a juror needs to be excused, the alternate
4 can then be seated as long as the jury is instructed to
5 begin their deliberations anew.

6 THE COURT: Okay.

7 MR. LOY: Which I think is a practical
8 impossibility.

9 THE COURT: I agree, I think that would be very
10 prejudicial. I'm going to let them go. And in a
11 minute I will pull up a memo that one of the judge's
12 law clerks did on that.

13 I think you are right. It's different in the
14 criminal and civil context. I'm going to keep letting
15 alternates go. And if I have another issue come up
16 that prejudices anybody in any way it will be a
17 mistrial. I don't think we will have that here.

18 Anything else we need to put on the record?

19 MR. HILTON: Nothing from the State.

20 MR. LOY: No, Your Honor.

21 THE COURT: Appreciate it. Bring me the
22 alternates. I appreciate it.

23 (Whereupon, the alternate jurors enter the
24 courtroom.)

25 THE COURT: Thank you so much for your kind

1 attention to this case. I really appreciate it. You
2 all are vital to our system of justice. I don't know
3 if you happened to see the newspaper last week, I had
4 to declare a mistrial in the case last week because
5 there was a problem with a juror. Had we known in time
6 to put one of the alternates in, that would have saved
7 the day.

8 And truly in most of the cases I have tried,
9 either as a lawyer or a judge of any length, almost
10 always you have to have an alternate put in for some
11 reason or another. So I hope you don't feel that your
12 week has been an exercise in futility. We could not
13 operate our system without you.

14 I'm required by statute to release you at this
15 point. I've often had alternates ask if they can stay
16 in the courtroom and wait and watch, and that's
17 certainly fine, just like any citizen can. Our courts
18 are open. But you can't interact with the jury in any
19 way, but they cannot interact with anybody anyway at
20 all either.

21 I want to thank you for your time. You are free
22 to go. We are not calling any more trials this week.
23 Thank you so much.

24 A JUROR: Thank you.

25 A JUROR: Thank you.

1 (Whereupon, the alternate jurors exit the
2 courtroom.)

3 THE COURT: Okay. Just out of pure curiosity I
4 will read the memo that Judge John's law clerk was kind
5 enough to prepare because everybody was doing it
6 differently.

7 Under Rule 47 of the South Carolina rules of
8 civil procedure, and South Carolina code annotated
9 14-713-40, South Carolina law requires that alternate
10 jurors be excused prior to deliberations in civil and
11 criminal courts. There is not a corresponding rule to
12 rule 47 in the rules of criminal procedure, but the
13 statute says, alternate jurors shall be discharged upon
14 the final submission of the case to the jury.

15 Now in a case from I think 1999, State v
16 Grovenstein, the court did not find that it was
17 reversible error when a trial judge failed to excuse
18 the alternate until 30 minutes into deliberations.
19 It's not really helpful because it didn't say what
20 would be or what final submission to the jury of the
21 case is. But they have consistently held that shall is
22 mandatory language and not within the discretion of the
23 trial court.

24 So even though several judges whom I look to as
25 mentors responded to the memo saying, well I'm still

1 going to do it this way anyway, if a statute tells me
2 shall, I'm going to say shall.

3 Maybe they need to rewrite it in situations
4 where you have people accidentally forget to give the
5 judge notes. If you have me up here anymore, I'm
6 always going to let them go. Thank you so much.

7 You all get the exhibits in order, and we can
8 get that back to them. I've got the verdict form right
9 here.

10 Was there anything else?

11 MR. HILTON: That was the only thing we saw.

12 THE COURT: All right.

13 Would you all look at that one more time out of
14 an abundance of caution?

15 MR. HILTON: All right.

16 THE COURT: Thank you all.

17 (Whereupon, a recess was taken.)

18 THE COURT: Thank you. I have got two notes
19 from the jury. The first one says, could we get the
20 definitions for murder with malice of aforethought, and
21 the involuntary manslaughter. And the answer to that
22 will be no, but they can have the definitions of murder
23 and voluntary manslaughter.

24 What I generally do is bring them out and
25 recharge them. Unless you all want to give them a copy

1 of the full written charge. It's error for me to give
2 part of it, but I could give the whole copy if you all
3 want to do that. But what I usually do is recharge
4 them.

5 Happy to hear from you all about how you want
6 that, just the murder and voluntary manslaughter.

7 MR. LOY: On that point, Your Honor, that is
8 what I would ask you to do. Bring them back and
9 recharge the offenses they've inquired about.

10 THE COURT: Okay.

11 MR. HILTON: No objection.

12 THE COURT: Okay. And then the next, and I have
13 to say that Mr. Hilton you were right, you were very --
14 you must have ESP. I have a letter from the forelady
15 who says, I need to leave before 5:00, please, Juror
16 28.

17 And so, you know, if she has got to leave, I
18 don't want her back there distracted, worried about
19 this. So I will find out, we will let her go at 10 to
20 5:00, everybody, bring them back, instruct them not to
21 watch any news media or anything on that, and then get
22 going back again. I'm going to be up here anyway, so I
23 will be back up here at 9:30 if we don't have something
24 from them by then.

25 I don't want tip our hand that way one way or

1 another because I want them to spend as much time as
2 they need.

3 Anybody got an objection to that?

4 MR. HILTON: No objection.

5 MR. LOY: I think that's within the province of
6 the Court, Your Honor.

7 THE COURT: Thank you.

8 All ready for the jury? Got anything else to
9 put on the record?

10 MR. LOY: No, ma'am.

11 THE COURT: We will bring them back. Thank you.

12 MS. SUGGS: Judge, may I approach?

13 THE COURT: You may.

14 (Whereupon, a discussion was held at the bench
15 off the record.)

16 (Whereupon, the jurors enter the courtroom.)

17 THE COURT: Thank you. I have got two notes,
18 you are fine there.

19 okay, the first note: could we get the
20 definitions for murder with malice aforethought and
21 involuntary manslaughter? The answer to that is no,
22 but you can be recharged and given the law again on
23 murder and voluntary manslaughter. Involuntary
24 manslaughter is not an issue in this case.

25 A JUROR: Sorry. I misread that.

1 THE COURT: That's okay, I just want to make
2 sure. And so what we do generally is bring you back
3 and go through the law on just that part. I won't
4 recharge that whole thing. But we will start with
5 murder and the elements and go through that, and
6 discuss voluntary manslaughter as well.

7 So the defendant is charged with murder. The
8 state must prove beyond a reasonable doubt that the
9 defendant killed another person with malice
10 aforethought. Malice is hatred, ill will or hostility
11 towards another person. It is the intentional doing of
12 a wrongful act without just cause or excuse, and with
13 an intent to inflict an injury, or under circumstances
14 such that the law will infer an evil intent.

15 Malice aforethought does not require that malice
16 exist for any particular time before the act is
17 committed, but malice must exist in the mind of the
18 defendant just before and at the time the act is
19 committed. Therefore, there must be a combination of
20 the previous evil intent and the act.

21 Malice aforethought may be expressed or
22 inferred. These terms, express and inferred, do not
23 mean different kinds of malice, but merely the manner
24 in which malice may be shown to exist either by direct
25 evidence or by inference from the facts and

1 circumstances which are proved.

2 Express malice is shown when a person speaks
3 words which express hatred or ill will for another, or
4 when the person prepared beforehand to do the act which
5 was later accomplished. For example, lying in wait for
6 a person, or any other act of preparation going to show
7 that the deed was within the defendant's mind would be
8 expressed malice.

9 Malice can be inferred from conduct which is so
10 reckless and wanton as to indicate a depravity of mind
11 and general disregard for human life. In the context
12 of murder, malice does not require ill will toward the
13 individual injured, but rather it signifies a general
14 malignant recklessness of the lives and safety of
15 others. Or a condition of the mind which shows a heart
16 regardless of social duty and fatally bent on mischief.

17 In order to establish criminal liability,
18 criminal intent is required. For example the mental
19 state required to be proven by the State for a
20 particular crime might be purpose, intent, knowledge,
21 recklessness or criminal negligence.

22 Criminal intent must be proven by the State
23 beyond a reasonable doubt. Criminal intent is always a
24 matter that must be determined by the jury from the
25 circumstances surrounding the situation.

1 There is no way to prove intent to a
2 mathematical certainty. There is no way medical
3 science can dissect a person's brain and determine what
4 the person had in mind. So the law says that criminal
5 intent may be inferred from the circumstances shown to
6 have existed.

7 This is how you make a determination of whether
8 or not the element requiring intent was present. It is
9 not necessary to establish intent by direct and
10 positive evidence. But intent may be established by
11 inference in the same way as any other fact by taking
12 into consideration the acts of the parties and all of
13 the facts and circumstances of the case.

14 Criminal intent is a mental state, a conscious
15 wrongdoing. It is up to you to determine what the
16 defendant's intended to do based on the circumstances
17 shown to have existed.

18 Criminal intent can arise from action or a
19 failure to act. It may arise from negligence,
20 recklessness or an indifference to duty or to
21 consequences that is considered by the law to be the
22 equivalent of criminal intent.

23 Insanity caused by the use of drug or alcohol
24 may be a defense if the insanity is permanent and
25 destroys the defendant's ability to know right from

1 wrong. However, when voluntary intoxication has not
2 produced permanent insanity, it is not a defense to a
3 crime.

4 A person who voluntarily becomes intoxicated is
5 just as responsible for the acts committed while
6 intoxicated as when the person is not intoxicated.

7 If you find that the State has failed to prove
8 beyond a reasonable doubt that the defendant committed
9 murder, you may consider whether the State has proved
10 beyond a reasonable doubt that the defendant committed
11 voluntary manslaughter.

12 To prove voluntary manslaughter the State must
13 prove beyond a reasonable doubt that the defendant took
14 the life of another in the sudden heat of passion,
15 based on sufficient legal provocation. Both heat of
16 passion and sufficient legal provocation must be
17 present at the time of the killing to constitute
18 voluntary manslaughter.

19 Heat of passion alone will not suffice to reduce
20 murder to voluntary manslaughter. Sudden heat of
21 passion may, for a time, affect a person's self control
22 and temporarily disturb a person's reason. The sudden
23 heat of passion must be the type that would make an
24 ordinary person unable to coolly reflect on his
25 actions, and would produce an uncontrollable impulse to

1 do violence.

2 sufficient legal provocation must be the type
3 that would make a person of ordinary reason and caution
4 become enraged and loose control temporarily. The
5 provocation needed for voluntary manslaughter must come
6 from some act or related to the victim. Words alone,
7 however vulgar or insulting, are not enough to be legal
8 provocation.

9 Where death is caused by the use of a deadly
10 weapon, the words must be accompanied by some overt
11 threatening act which could have produced the heat of
12 passion. The exercise of a legal right, no matter how
13 offensive it is to another, is never sufficient legal
14 provocation for voluntary manslaughter.

15 If the heat of passion had cooled, or if there
16 was enough time between the provocation, if any, and
17 the killing for the passion of a reasonable person to
18 cool, the killing would not be voluntary manslaughter.

19 In deciding whether a reasonable person would
20 have had enough time to cool off, you should consider
21 all the circumstances surrounding the killing. You may
22 consider the nature of the provocation, if any; the
23 defendant's mental and physical state; and the
24 circumstances and relationships between the parties.

25 And that is the pertinent section of the charge.

1 Does that address your question?

2 A JUROR: Yes.

3 THE COURT: Okay. The other note I have
4 indicates I have a juror who has to leave before 5
5 o'clock. You all still have time to deliberate, but I
6 want you to take as much time as you possibly need.

7 We'll adjourn at which point -- whenever that
8 juror needs to leave because I don't know how long
9 before 5 o'clock, I'm assuming right at 5:00. And we
10 will come back tomorrow at 9:30 to keep deliberating.
11 And you all will deliberate until we reach a verdict.

12 I'll send you back to your jury room. If you
13 need to get in touch with me, just send me a note.

14 Thank you, ladies and gentlemen.

15 (Whereupon, the jurors exit the courtroom.)

16 THE COURT: Anything from the State?

17 MR. HILTON: Nothing from the State.

18 THE COURT: Anything from the defense?

19 MR. LOY: No, Your Honor.

20 THE COURT: We will let you know if I get
21 another note or we hear something.

22 (Whereupon, a recess was taken.)

23 THE COURT: Okay, folks, I'm told we have a
24 verdict. We are getting additional court personnel,
25 then we will bring the defendant in, then we will bring

1 the jury back.

2 (Whereupon, the jurors enter the courtroom.)

3 THE COURT: Thank you. I am told the jury has
4 reached a verdict. Okay. Madam Clerk.

5 THE CLERK: In the matter of State of South
6 Carolina versus Randal Benton, indictment number
7 2010-GS-18-1875, County of Dorchester, on the matter of
8 murder, we the jury unanimously find the defendant,
9 Randal William Benton, guilty. Dated February 9, 2012.
10 signed by Victoria Mizell, foreperson.

11 THE COURT: Thank you, ma'am.

12 Okay, I'm happy to hear from you all.

13 MR. LOY: Your Honor, we are requesting the jury
14 be polled.

15 THE COURT: Okay. Clerk, poll the jury for me.

16 THE CLERK: Juror Number 60, Calvin Howard.
17 Please stand.

18 Was this your verdict in the jury room?

19 A JUROR: Yes, ma'am.

20 THE CLERK: Is this still your verdict?

21 A JUROR: Yes, ma'am.

22 THE CLERK: Thank you.

23 Juror 41, Shelley Forest. Was this your verdict
24 in the jury room?

25 A JUROR: Yes, ma'am.

1 THE CLERK: Is this still your verdict?

2 A JUROR: Yes, it is.

3 THE CLERK: Thank you.

4 Juror Number 87, Victoria Mizell. Was this your
5 verdict in the jury room?

6 A JUROR: Yes, ma'am.

7 THE CLERK: Is it still your verdict?

8 A JUROR: Yes, ma'am.

9 THE CLERK: Thank you.

10 Juror 77, Steven Mann. Was this your verdict in
11 the jury room?

12 A JUROR: Yes, ma'am.

13 THE CLERK: Is this still your verdict?

14 A JUROR: Yes, it is.

15 THE CLERK: Thank you.

16 Juror Number 28, Cindy Cooper. Was this your
17 verdict in the jury room?

18 A JUROR: Yes, ma'am.

19 THE CLERK: Is this still your verdict?

20 A JUROR: Yes, ma'am.

21 THE CLERK: Thank you.

22 Juror Number 136 Aliza Tortosa. Was this your
23 verdict in the jury room?

24 A JUROR: Yes, ma'am.

25 THE CLERK: Is this still your verdict?

1 A JUROR: It is.

2 THE CLERK: Thank you.

3 Juror Number 91, Eleanor Morrow. Was this your
4 verdict in the jury room?

5 A JUROR: Yes, ma'am.

6 THE CLERK: Is this still your verdict?

7 A JUROR: Yes, ma'am.

8 THE CLERK: Thank you.

9 Juror Number 23, Ralph Carter. Was this your
10 verdict in the jury room?

11 A JUROR: Yes, ma'am.

12 THE CLERK: Is this still your verdict?

13 A JUROR: Yes, ma'am.

14 THE CLERK: Thank you.

15 Juror Number 9, Martyna Beasley. Was this your
16 verdict in the jury room?

17 A JUROR: Yes, ma'am.

18 THE CLERK: Is this still your verdict?

19 A JUROR: Yes.

20 THE CLERK: Thank you.

21 Juror Number 95, David Ockerman. Was this your
22 verdict in the jury room?

23 A JUROR: Yes, ma'am.

24 THE CLERK: Is this still your verdict?

25 A JUROR: Yes, ma'am.

1 THE CLERK: Thank you.

2 Juror Number 25, Lisa Cobbs. Was this your
3 verdict in the jury room?

4 A JUROR: Yes, ma'am.

5 THE CLERK: Is this still your verdict?

6 A JUROR: Yes, ma'am.

7 THE CLERK: Thank you.

8 Juror Number 29, Ann Corley. Was this your
9 verdict in the jury room?

10 A JUROR: Yes, ma'am.

11 THE CLERK: Is this still your verdict?

12 A JUROR: Yes, ma'am.

13 THE CLERK: Thank you.

14 THE COURT: Thank you, ladies and gentlemen.
15 Anything further?

16 MR. LOY: Nothing more, Your Honor.

17 THE COURT: Okay. Happy to hear from you all on
18 sentencing.

19 MR. HILTON: Your Honor, I think there are some
20 individuals who want to speak on behalf of the family,
21 and ask if they could come forward.

22 THE COURT: Certainly.

23 Sir, come forward and give us your name. Then
24 I'm happy to hear from you.

25 MR. PALMER: My name is Scott Palmer. I'm the

1 children's dad of Treva Benton. And with your
2 permission, I'd like to put her picture up. I know
3 you've seen her at her worst, but I'd like you to see
4 her at her best please.

5 THE COURT: Okay, thank you. You can take it
6 down. I'm happy to hear from you.

7 MR. PALMER: Thank you. Your Honor, my kids
8 have been more or less the whole problem in their
9 marriage. Mr. Benton did not like our kids. And if he
10 would do this to my ex-wife, then he is sure going to
11 do it to my kids. And I would ask you to please give
12 him life without the possibility of parole. Thank you
13 very much.

14 THE COURT: Thank you, sir.

15 MS. JETT: I'd like to speak on behalf of my
16 nephews, Michael and Jeremy Palmer.

17 THE COURT: Okay. If you will give me your
18 name, please.

19 MS. JETT: My name is Amanda Jett. She was my
20 ex-sister-in-law. We also worked together.

21 My nephew Jeremy is autistic and he depended
22 solely on her. Now he has to depend solely on his
23 father. Michael, who is now 19 years old, will not be
24 able to be with his mom anymore. He has a child
25 himself that she has never got to meet. And I would

1 just like that you please give him life.

2 THE COURT: Thank you, ma'am.

3 Yes, ma'am, if you could come forward and tell
4 us your name, please.

5 MS. WEDGE: My name is Michelle Wedge, I am her
6 sister. I knew that a hearing would be forthcoming,
7 but when we received a call and it became real, I was
8 overwhelmed with grief and then sadness. It has taken
9 me hours to write this because it is too emotional and
10 difficult to see through the tears that began to fall.

11 We knew him as Randy, and I will refer to him as
12 such in this letter. I cannot believe that a person
13 who has the capacity to commit such a horrific crime
14 can ever be set free. There is no such thing for those
15 that murder.

16 Randy killed my sister. On the night of October
17 30th, 2010, I got a phone call that changed my life
18 forever. It was 1:00 a.m. and my boyfriend was on the
19 phone telling me that my mother had called and my
20 sister died. Randy had shot her.

21 My whole world came crashing down around me. I
22 could not comprehend what he had just told me. Treva
23 and I had just text earlier that day. She couldn't be
24 dead. Randy shot my sister while she pleaded with him
25 to let her go home to her babies. He shot her and

1 watched her suffer and made sure she had taken her last
2 breath.

3 He ran away like a coward. Now you want to act
4 like you can't remember a thing. This is the
5 calculated actions of a very sick man that feels
6 nothing. One who obviously does not know right from
7 wrong.

8 Randy never seemed to shed an ounce of remorse.
9 This -- Randy Benton does not deserve a second chance.
10 Treva does not get a second change of life. I will
11 never get to see my sister again. I will never get to
12 talk to her again. She will never be with her family
13 again; not to be there for her sons who truly need her
14 so much.

15 She has missed the birth of her grandson and
16 seeing her kids grow up and being there for them. She
17 loved her sons so much, she did everything for them,
18 and they were her world.

19 My children miss her so much. Jasmine is
20 totally torn to pieces and struggles with nightmares
21 daily. Chris was a baby, but she is missing seeing him
22 growing up.

23 She isn't there to share in our lives anymore.
24 I can't stop crying as I write this. It would simply
25 be unjust to allow the things that Randy denied to my

1 sister Treva. He took her away from us. It is so
2 unfair.

3 Randy's family can visit him, write to him, hear
4 his voice. I will never get those opportunities with
5 my sister never again.

6 I am asking for life. That's what he deserves.

7 THE COURT: Thank you, ma'am.

8 MR. HILTON: I'm passing the sentencing sheet
9 up, Your Honor.

10 THE COURT: Yes, sir.

11 MR. HILTON: Your Honor, I'd just state, Your
12 Honor, there are other members of the family in the
13 audience, as well as the victim mother's, Ms. Mynda
14 Poff, is here on the Court's right. I guess she
15 doesn't wish to address the Court, but I know that she
16 has spoken with me in the past and joins in with what
17 the other family has said.

18 She is also supported by her other friends and
19 so forth, one of which is Ms. Kathy Bryant, which was
20 her best friend from Kansas.

21 THE COURT: Okay. I appreciate that, sir, thank
22 you.

23 Mr. Loy.

24 MR. LOY: Thank you, Your Honor. First I would
25 note that Mr. Benton has been supported in court today

1 by friends and family. I know that his mom has stood
2 with him in court before, and I think she would like to
3 today. I wouldn't ask the whole family to come down,
4 but if his mom would stand with him, I'd appreciate it.

5 THE COURT: I am happy to hear from his mother,
6 or for her to stand with him.

7 MR. LOY: Your Honor, supported in court today
8 by friends and family, as well as an ex-wife, is Mr.
9 Benton. You've heard the evidence in this case. One
10 thing that you haven't heard, I don't believe, is any
11 evidence of a prior criminal history or anything to
12 indicate that in the past, prior to this night, that
13 Mr. Benton was a threat to -- am I doing that?

14 THE COURT: Can we turn that off? I'm getting
15 feedback from something. Thank you.

16 MR. LOY: Nothing to indicate that Mr. Benton is
17 an ongoing threat to the rest of the world, and I don't
18 believe that he is. I assume in a few moments if you
19 ask, the solicitor will tell that he either has no
20 criminal history that is relevant for the court, or if
21 he does it dates back 25 years and it was a couple of
22 30-day offenses that he's dealt with, and that's been
23 the sum total of it.

24 He did spend 45 years on the right side of the
25 law. He has been a productive person in the past. He

1 has always worked. He has paid taxes. He has been
2 married before. He has had children. He maintains
3 relationships with his children. He maintains a
4 relationship again with his mom and his friends and his
5 family who are here in support of him today.

6 Again I don't believe that there is anything in
7 the world to indicate that he is an ongoing threat to
8 anyone, and I really don't think that he is. I don't
9 think the evidence would support a finding of that.

10 He has accepted responsibility for this
11 situation. He didn't come in here in denial. He came
12 in here and spoke as to what was in his heart. He, at
13 the time that this killing took place, again he
14 accepted responsibility for it. He had an opportunity
15 to tell his side of the story.

16 He wanted a trial, he told it, it was rejected.
17 I don't argue with the jury's verdict at all, but I
18 will tell you that in my dealings with him he has been
19 candid, he has been straightforward, he has not been
20 one who has been refusing to accept responsibility for
21 what he knows was a terrible wrong on his part all
22 along.

23 Again, Your Honor, I don't believe he is a
24 threat to others. His crime was not motivated by
25 profit. His crime was motivated, by, if anything,

1 passion. He lost control on that particular night.
2 Justified, unjustified or not, that is in fact what
3 happened.

4 And I would ask you to consider both his lack of
5 a serious prior criminal history, as well as what I
6 believe has been a remorseful attitude since his
7 apprehension.

8 I don't know if his mom or anyone else care to
9 speak on his behalf. May I inquire?

10 THE COURT: Yes, you may.

11 MR. LOY: Is there anything you would like to
12 say.

13 THE COURT: Ma'am, if you will give us your
14 name, first.

15 MS. STEAD: Margarite Stead. I'm his mother.
16 And you all have done a wonderful job. I've never had
17 to go through anything like this before. I pray to God
18 I never will again. But no one in here, nobody knows
19 him. I had him 48 years and 10 month ago. He is my
20 son. He came out of my body. He is not a murderer.
21 He did kill someone -- I can't say that?

22 MR. LOY: You're fine. Go ahead.

23 MS. STEAD: But he has been a good boy all his
24 life. He has had a very hard life, as we all have had
25 at times.

1 THE COURT: It okay.

2 MS. STEAD: I am sorry for your loss, Michael.
3 You know I love you and I'm sorry. But please
4 understand and have mercy on him. He is a good son.

5 THE COURT: Ma'am, I'm sorry for your loss. And
6 I appreciate you being here.

7 MS. STEAD: It is, I lost two. I lost Treva and
8 in essence I have lost him too.

9 MR. LOY: Your Honor, we would ask you to take
10 these things into consideration also in your sentencing
11 today.

12 THE COURT: Okay. Anything further?

13 MR. LOY: Mr. Benton, is there anything you'd
14 like to say? You don't have to if you don't want to.

15 THE DEFENDANT: Your Honor, everyday, everyday I
16 suffer because of what has happened. There is not a
17 day of my life that I won't. If I'm more sorry, I
18 would give my life right now if it would bring my wife
19 back, but it won't. There is nothing I can do. But
20 everyday I will pay for this no matter where I am at or
21 what I am doing. And I'm truly sorry.

22 THE COURT: Okay.

23 MR. LOY: Thank you, Your Honor.

24 THE DEFENDANT: You all, I am truly sorry for
25 your loss.

1 MR. LOY: Thank you, Your Honor.

2 THE COURT: Thank you. Anything further?

3 MR. LOY: There is not.

4 THE COURT: Okay. Yes, sir.

5 MR. HILTON: Just to remind the Court, he is not
6 being punished for what he was in the past or what he
7 could possibly be, he is being punished for what he did
8 on October 30th, 2010

9 THE COURT: Any information on prior record or
10 anything you want to?

11 MR. HILTON: Mr. Loy is correct. He had a prior
12 charge of carrying a concealed weapon. I believe that
13 was in the '80s. And he had the contributing to the
14 delinquency of a minor sometime around that time as
15 well.

16 THE COURT: Okay.

17 MR. LOY: And both of those were dealt with on a
18 30-day.

19 THE COURT: And you are correct. And honestly
20 I'm not even figuring that into my consideration today.
21 I am just taking the evidence that I heard come into
22 the courtroom, and the verdict that this jury as the
23 finders of fact today, and I appreciate your zealous
24 advocacy.

25 I hope you know that you have had excellent

1 attorneys who have done everything they can on your
2 behalf. To me this is extremely serious to this
3 family, to your family. And I again appreciate your
4 zealous advocacy.

5 What I heard from the witness stand did not
6 demonstrate much remorse to me. I think this was a
7 tragic event for everybody, but it was also a brutal
8 event. And the sentence, Mr. Benton, is that you be
9 incarcerated in the South Carolina Department of
10 Correction for life.

11 MR. LOY: Thank you very much, Your Honor.

12 THE COURT: And I wish you all good luck. Thank
13 you.

14 MR. HILTON: Thank you, Your Honor.

15 THE COURT: Thank you.

16 Ladies and gentlemen, thank you. This was not
17 an easy case. I know this. I know that you all will
18 be thinking about this long after you leave here today.
19 But I do appreciate how seriously you all took it. I
20 know you were paying attention. And I know these
21 lawyers and these parties and these families appreciate
22 it as well.

23 I'm going to let you all go now. You may
24 discuss the case now with others. And if the attorneys
25 wanted to contact you or talk to you, I'm going to

1 allow them to do that. You don't have to talk to them.
2 You don't have to talk to anybody you don't want to and
3 they know that.

4 But sometimes it is helpful for them to know
5 what folks thought as they move forward because they
6 have lived with this case for quite awhile too.

7 So thank you again. I hope that the rest of
8 your week will be more pleasant than this part has
9 been. We do appreciate your service. Thank you.

10 (Whereupon, the jurors exit the courtroom.).

11 THE COURT: Anything further?

12 MR. LOY: Your Honor, I renew my earlier
13 motions, my earlier requests. Nothing else.

14 THE COURT: I appreciate that. I respectfully
15 deny them and I think your record is protected.

16 MR. LOY: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 Anything from the State?

19 MR. HILTON: Nothing from the State, Your Honor.

20 THE COURT: We will be at ease. You all did a
21 great job. As much as something like this can be nice
22 to be here with you all, but everybody was very
23 professional. I was very impressed. Thank you.

24 MR. LOY: Thank you, Your Honor.

25 MR. HILTON: Thank you, Your Honor.)

1 (Whereupon, the proceedings in this matter
2 before the court were adjourned.)

3 * * * * *

4
5 C E R T I F I C A T E
6 -----
7

8
9 I, the undersigned, ANNE BOULEY MEYER,
10 Official Court Reporter for the State of South
11 Carolina, do hereby certify that the foregoing is a
12 true, accurate, and complete transcript of record,
13 and of all the proceedings had and evidence
14 introduced in the above captioned case, relative to
15 appeal, in the 18th Circuit for South Carolina, on
16 the indicated date.

17 I do further certify that I am neither
18 of kin, counsel, nor interest to any party hereto.

19
20 -----*Anne Bouley Meyer*-----

21 Anne Bouley Meyer, RPR
22 Circuit Court Reporter
23
24
25

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Stephanie P. McDonald, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RANDAL WILLIAM BENTON,

APPELLANT

Appellate Case No. 2012-208508

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court reversibly erred by admitting a hearsay statement of the decedent through the witness under Rules 803(1) and 803(3), SCRE?

STATEMENT OF THE CASE

Appellant Randal William Benton was indicted by the Dorchester County grand jury on January 27, 2011 for the alleged murder of his wife, Treva Benton (Wife). R. 26, line 22—R. 27, line 8; R. 459—R. 460. Appellant's case proceeded to trial on February 9, 2012, before the Honorable Stephanie P. McDonald and a jury. John Loy and Michelle Suggs (collectively, "Counsel") represented Appellant, while Russell Hilton and Barney Giese represented the State. R. 1. The jury found Appellant guilty as charged, in the trial court imposed a sentence of life imprisonment. R. 443, lines 5-10; R. 456, lines 8-10; R. 461.

STATEMENT OF THE FACTS

Appellant's and Wife were married for approximately 5 years; however, by October 30, 2010, the two had lived separately for approximately six months. Although separated, Appellant and Wife still spoke regularly, and they remained romantically involved. R. 193, lines 13—R. 194, line 3; R. 302, line 11—R. 304, line 12.

Earlier in the day on October 30, 2010, Wife moved her belongings from her home in Ladson to a storage unit, and planed on temporarily living with another family member. Several family members and friends helped Wife move her belongings, including Appellant and Wife's son, Michael Palmer, IV (Palmer). R. 193, lines 13—R. 194, line 3; R. 302, line 11—R. 304, line 12. After helping Wife move her belongings, Appellant left at approximately 1:00 to 1:30 pm. R. 308, lines 6-8.

After running several errands in the afternoon, Appellant later visited a bar in Summerville between 8:30 to 9:00 PM that was about 10 to 12 miles from his home. While there, Appellant had approximately five to six drinks. R. 308, line 18—R. 312, line 6. Furthermore, Appellant accepted an unknown drink from an unknown woman from Missouri when he was walking in the parking lot to leave. An altercation subsequently ensued between the woman's brother and Appellant; while walking away from an altercation in the parking lot of the bar, Appellant was struck in the head by what he believed was a thrown bottle. Although disoriented, Appellant entered his truck and drove to another nearby bar, "Shooters." R. 313, line 13—R. 320, line 22. Yet, Appellant merely drove through that parking lot; he did not stay because he did not see the vehicles of any of his friends. R. 320, line 25—R. 321, line 19.

Appellant's disorientation continued to progress, and he decided he needed to go home. However, rather than arriving at his own residence, Appellant ended up driving to a former address where he and Wife once lived together; this was approximately one and one-half blocks away from the parking lot of "Shooters." R. 321, line 16—R. 322, line 8.

Wife's son, Palmer, still lived at the residence where Appellant arrived. When Appellant entered the back screen porch of the condominium sometime between 9:45 and 10:00 PM, Palmer came out of the back door of the building and greeted him. Palmer called Wife because Appellant indicated he came to ask Wife for a ride home, and the 2 remained on the screen porch until Wife arrived at the condominium approximately 10:00 to 10:30 PM. R. 197, line 6—R. 199, line 4; R. 325, line 23—R. 326, line 6.

When Wife arrived, she went upstairs to change. Palmer also walked up the stairs to see if anything was wrong, and defendant walked up the stairs as well. R. 200, line 6—R. 201, line 7.

As Palmer testified at trial, the three eventually went back downstairs, and Appellant walked out the front door. However, when Palmer began to reiterate a statement by Wife made to him as she was exiting the front door, Counsel immediately objected on the basis of hearsay. After overruling Counsel's objection on the basis of rules 803 (1) and 803 (3), the trial court permitted the State to elicit the following testimony from Palmer:

Q. Michael, you said your mom was walking out the door. She had turned to you and said what?

A. *My cell phone is on. If I'm not back in 20 minutes, call me. If I don't answer, call the police.*

R. 201, lines 18-22.

Appellant testified at his trial that Wife drove him in her SUV, ostensibly to take him home. However, an argument ensued inside the SUV between the two, and Wife pulled the vehicle over into the parking lot of a nearby Perkins restaurant. Appellant indicated that the argument escalated, and wife struck him; he blacked out in anger, and apparently shot Wife. The next thing Appellant stated that he remembered was being at a BP gas station in Alabama where he was arrested the following morning at approximately 9:00 AM by local authorities. R. 208, line 16—R. 210, line 9; R. 329, line 7—R. 334, line 2; R. 357, line 25—R. 363, line 18.

During closing arguments, the State reminded the jury of Wife's statement to Palmer as she exited the door. Specifically, the State argued to the jury the following:

Remember this, what is the one thing that the victim said prior to getting into the car with her--with him? If I'm not back in 20 minutes, call the police. Isn't that amazing? Think about it. Because 15 minutes later she is dead. 15 minutes later she has got eight holes in her. Eight shots.

R. 412, lines 1-6. The jury found Appellant guilty as charged, and the trial court sentenced him to life imprisonment. R. 443, lines 5-10; R. 456, lines 8-10; R. 461.

This appeal follows.

ARGUMENT

The trial court reversibly erred by admitting a hearsay statement of the decedent through the witness under Rules 803(1) and 803(3), SCRE.

Appellant asserts the trial court reversibly erred by admitting impermissible hearsay statements of Wife through Palmer because they do not fall within either exception listed by the court in support of its ruling. First, the statements made by Wife are not “Present Sense Impressions,” because they were not explaining an event or condition made while perceiving the event of the shooting. Second, the words are not statements describing a “Then Existing Mental, Emotional, or Physical Condition” because they arguably reveal the declarant’s reason for her state of mind. Further, Appellant was prejudiced by the trial court’s erroneous admission of this hearsay evidence. The State specifically pointed to the statements in its closing argument to the jury in order to convict Appellant of the offense. Accordingly, Appellant requests reversal of his conviction, and remand for a new trial.

“‘Hearsay’ is a statement, other than one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. Generally, hearsay is inadmissible unless it falls within an enumerated exception. Rules 802 and 803, SCRE. In the present case, the statements made by Wife to which Palmer testified were unquestionably hearsay. They were statements declared by Wife, who did not testify, and offered to the jury through Palmer to prove the truth of what Wife declared.

Appellant further asserts that the trial court erred by admitting the hearsay statements under two exceptions: Rule 803(1), and Rule 803(3) of the South Carolina Rules of Evidence.

First, Rule 803(1) permits hearsay statements when they are “Present Sense Impressions.” Specifically, the rule provides as follows:

A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

Rule 803(1), SCRE. Here, Wife was not describing or explaining anything, let alone while she was perceiving an event or condition. Simply stated, the statement was not made while the offense was being committed—it was not made while Appellant shot at anyone. Moreover, it was not made while she was calling anyone on her cell phone or while anyone was calling her. Accordingly, the trial court erroneously applied this “Present Sense Impression” exception when admitting the hearsay statement. See, e.g., State v. Griffin, 339 S.C. 74, 78 n.3, 528 S.E.2d 668, 670 n.3 (2000); State v. Garcia, 334 S.C. 71, 77 n.4, 512 S.E.2d 507, 510 n.4 (1999).

Second, Rule 803(3) permits hearsay statements when they are “Then Existing Mental, Emotional, or Physical Condition.” In particular, the rule applies under the following conditions:

A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

Rule 803(3), SCRE. As interpreted by the South Carolina Supreme Court, “Rule 803(3), SCRE, does not permit a statement of memory or belief to prove the fact remembered, unless relating to the declarant’s will.” Garcia, 334 S.C. at 76, 512 S.E.2d at 509 (internal quotations omitted). “Consequently, while the present state of the declarant’s mind is admissible as an exception to hearsay, the reason for the declarant’s state of mind is not.”

Id.

In the case at bar, Appellant asserts that the statement made by Wife went beyond mere presentation of the declarant's state of mind; rather, it arguably indicates the reason for the declarant's state of mind. Specifically, Wife was in the process of walking out the door with her husband, Appellant, and she told Palmer: "My cell phone is on. If I'm not back in 20 minutes, call me. If I don't answer, call the police." R. 201, lines 18-22. Under the specific circumstances of the case, the words of the Wife indicate not only a concern for her safety, but also that the reason or cause for her concern was Appellant: it was Appellant and only Appellant whom Wife had left that night and who was riding in the SUV when they left to take Appellant home. Accordingly, the trial court erred in admitting Wife's hearsay statements through Palmer. Garcia, 334 S.C. at 76, 512 S.E.2d at 509.

Additionally, the State's reliance upon Wife's statement through Palmer to prove its case is made abundantly clear by its closing argument:

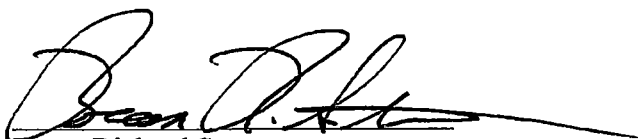
Remember this, what is the one thing that the victim said prior to getting into the car with her--with him? If I'm not back in 20 minutes, call the police. Isn't that amazing? Think about it. Because 15 minutes later she is dead. 15 minutes later she has got eight holes in her. Eight shots.

R. 412, lines 1-6 (emphasis added). This evidence and argument both tend to refute the defense regarding a lack of intent to shoot, especially prior to Appellant being struck by Wife. Thus, the trial court's error permitting the Wife's hearsay statement was not harmless as it reasonably could have affected the outcome of the trial. See, e.g., State v. Davis, 371 S.C. 170, 181-82, 638 S.E.2d 57, 63 (2006) ("Error is only harmless 'when it could not reasonably have affected the result of the trial.'") (quoting State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985)). Appellant therefore requests reversal of his conviction, and a new trial granted.

CONCLUSION

For the foregoing reasons, Appellant Randal Benton respectfully requests reversal of his conviction, and remand for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Breen Richard Stevens", with a long horizontal flourish extending to the right.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of February, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Stephanie P. McDonald, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RANDAL WILLIAM BENTON,

APPELLANT

Appellate Case No. 2012-208508

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Randal William Benton states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Stephanie P. McDonald, which was held on February 9, 2012, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Randal William Benton.

Respectfully submitted,



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of February, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Stephanie P. McDonald, Circuit Court Judge

THE STATE,

RESPONDENT,

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RANDAL WILLIAM BENTON,

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Appellate Case No. 2012-208508

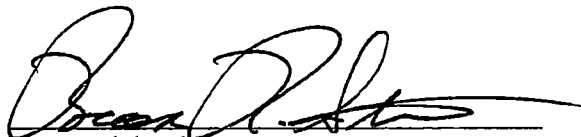
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment;
- (2) Trial transcript, pp. 1-457;
- (3) Sentence sheet.

I certify that this designation contains no matter which is irrelevant to this appeal.

February 6th, 2013



Breen Richard Stevens
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Stephanie P. McDonald, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

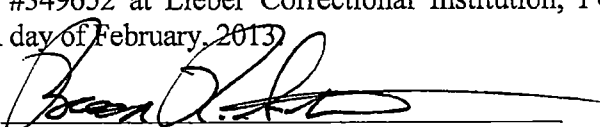
RANDAL WILLIAM BENTON,

APPELLANT

Appellate Case No. 2012-208508

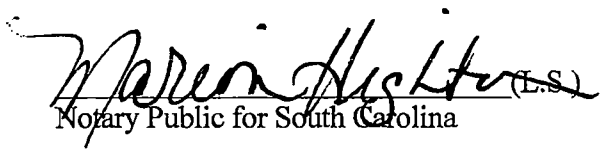
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter, and Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at P.O. Box 50666, Columbia, SC; and on Mr. Randal William Benton, #349652 at Lieber Correctional Institution, PO Box 205 Ridgeville, SC 29472 this 6th day of February, 2013.


Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of February, 2013.


Notary Public for South CarolinaMy Commission Expires: October 30, 2022.