

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Berkeley County
William H. Seals, Circuit Court Judge

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S.C. SUPREME COURT

TITO HARRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000047

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF BERKELEY	)	COURT OF GENERAL SESSIONS
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 10-GS-08-0091
	)	
Tito Harris,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within Jury Trial was held in the above-captioned action on March 14-17, 2011, before The Honorable Deadra L. Jefferson in Courtroom E of the Berkeley County Courthouse, 300 California Street, Moncks Corner, South Carolina; attended by Counsel, as follows:

APPEARANCES:

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1 MARCH 14, 2011. 2:30 P.M.

2

3 THE COURT: There are no members of
4 the panel in here or potential witness, correct?

5 THE CLERK: No members of the jury
6 panel in here.

7 THE COURT: Bring the defendant out.
8 I would assume y'all can agree to sequester
9 witnesses. And Mr. Vitetta, all of your motions
10 -- you'll need to make sure they got filed. So
11 if you don't file them, they won't get in the
12 file.

13 MR. VITETTA: I'll make sure of that.

14 THE COURT: Okay. I cleared the
15 courtroom because it was my understanding the
16 defendant was going to be brought in in shackles
17 and I didn't want him prejudiced in any way by
18 the jury panel seeing that.

19 (DEFENDANT ENTERS COURTROOM)

20 THE COURT: Are we ready to proceed
21 with jury selection from the State?

22 SOLICITOR WILLIAMS: Yes, Your Honor.

23 THE COURT: From the defense?

24 MR. VITETTA: Your Honor, before we
25 proceed, Mr. Harris would like me to move to

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1 continue this matter so that he can retain new
2 counsel to represent him.

3 THE COURT: Are you prepared to go
4 forward?

5 MR. VITETTA: I am, Your Honor.

6 THE COURT: Are you prepared for
7 trial?

8 MR. VITETTA: Yes, but Mr. Harris is
9 not.

10 THE COURT: Is not in what way?

11 MR. VITETTA: You may want to address
12 him directly, Your Honor.

13 THE COURT: Because I'm not inclined
14 to grant a continuance, if you're ready to go
15 forward, for him to retain new counsel. He
16 should have done that long before now.

17 MR. VITETTA: I understand, Your Honor.
18 But he feels it would be in his best interests
19 to retain new counsel and continue this matter
20 and attempt to work out a resolution at a later
21 date.

22 THE COURT: Attempt to work out -- I
23 think the best resolution the State's offering
24 is a minimum of thirty (30) years, which is the
25 minimum under the statute. Is there any

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1 inclination by the State to work out anything
2 better than that?

3 SOLICITOR WILLIAMS: No, Your Honor,
4 there is not.

5 THE COURT: So that's a problem.

6 MR. VITETTA: Well, he feels that
7 another attorney may be able to ---

8 THE COURT: Is another attorney going
9 to make a difference in the State's position?

10 SOLICITOR WILLIAMS: It would make no
11 difference, Your Honor.

12 MR. VITETTA: He also feels that his
13 family as well as the victim's families would
14 have some influence.

15 THE COURT: The State doesn't
16 represent any one particular person. They
17 represent the State, which means even if her
18 family came in and asked for something, they
19 don't have to do that. If the family came and
20 asked for something less, would the State be
21 inclined to do something less?

22 SOLICITOR WILLIAMS: No, Your Honor.

23 THE COURT: So that's of no import
24 either. It's not of no import, but it's not
25 going to come to any resolution of these

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1 troubles.

2 MR. VITETTA: He just wanted me to make
3 the Court aware that he's not happy with present
4 counsel and feels that he could be represented
5 better.

6 THE COURT: Sir, is there anything
7 you want to state for the record on your own
8 behalf?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Yes, sir.

11 THE DEFENDANT: At the present time
12 I retained Mr. Vitetta in December of '09. And
13 I just feel for the magnitude of this case,
14 which my life's on the line -- as you say,
15 thirty years of my life versus the -- thirty
16 years of my life versus the rest of my life in
17 prison, I just don't feel that he has the proper
18 information. Like you said, he might be ready.
19 But just like right now, the things I've asked
20 him as far as my life is concerned, I don't feel
21 that he's really passionately concerned about
22 me. I don't think he understands he works for
23 me.

24 THE COURT: He does work for you, but
25 he's not required to discard his common sense

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1 and his superior knowledge as a lawyer. A
2 lawyer is required to discuss strategy with
3 their client, but they don't have to adopt their
4 client's opinion. If you could represent
5 yourself, you wouldn't need him. A lawyer has
6 to be objective, which means a lots of time they
7 have to give their clients a bitter pill to
8 swallow, which is something you may not want to
9 hear. But they're required to tell you or it's
10 malpractice.

11 A lawyer's job is not to tell you what
12 you what to hear. A lawyer's job is to assess
13 the situation and tell you what you need to
14 hear. And sometimes that's not what you want to
15 hear. But nonetheless, that's what they're
16 required to tell you. And so while a lawyer is
17 required to listen to what you may want to be
18 done, if, in their legal assessment, that is not
19 in your best interest, they are not required to
20 do it.

21 I think sometimes the public has a
22 misnomer that a lawyer's job is 'to do what I
23 tell you.' But if you had the knowledge that
24 the lawyer had, you wouldn't need them. It's
25 their job to do what they think is in your best

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1 interests, not what you tell them to do.

2 THE DEFENDANT: Yes, ma'am. But one
3 thing I do know is it's in my best interest of
4 my future -- what I'm saying, like you're
5 saying, as a lawyer -- it's been a year. It's
6 like you're asking what your strategy, what's
7 your position as a lawyer? What I'm saying is
8 what I paid for his position and strategy as a
9 lawyer. At this point he hasn't explained to me
10 no position, no strategy.

11 THE COURT: He might not be able to
12 have one based on the facts. I mean, a lawyer's
13 bound by the facts as they are presented.
14 Again, there's no spin on the facts. They are
15 what they are.

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: I think sometimes people
18 watch too much TV, and they think that, you
19 know, you can sort of -- that there are all
20 these machinations with the system. And there
21 aren't. You know, the State will present their
22 case. If there are any defenses that you can
23 present, he'll present them for you. But, you
24 know, he's kind of left with the facts as they
25 are created. And lawyers will -- you'll often

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1 hear lawyers say that: "I didn't create the
2 facts. I can only do the best I can with the
3 facts, but I didn't create them. They are as
4 they are."

5 THE DEFENDANT: Yes, ma'am. There's
6 both sides, though. You can tell them that one
7 side of the facts is one thing, and one side of
8 the facts is different. The facts are the
9 facts, correct?

10 THE COURT: The facts are the facts.
11 But it depends on what witnesses you have. He
12 can't, you know, create something that isn't
13 there.

14 THE DEFENDANT: That's what I'm
15 saying, Your Honor. At this present moment,
16 I have the facts and I see things that are
17 necessary to go forward with this trial to go
18 forward as far as my well being, as me, as my
19 life is on the line. I'm going to speak up.

20 THE COURT: You should. But he
21 doesn't have to accept what you say. He can
22 tell you what he thinks is in your best
23 interests. For example, if there's a witness
24 you want to call but that witness has what you
25 think are positive things to say about you,

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1 let's say he has five positive things he has to
2 say about you. But the State can cross examine
3 him or bring out twenty negative things. I
4 wouldn't call that witness whether you wanted me
5 to call him or not, because that's not in your
6 best interests. Your lawyer has to be
7 objective, which means, you know, they have to
8 see what you can't see. They have to see your
9 blind side. And so what you may think is a
10 positive thing for you, in the totality of the
11 circumstance may not be a positive thing for
12 you. So that's why I'm saying that a lawyer has
13 to assess what the situation is and then develop
14 your defense based on that. He's required to
15 listen to what you say. But he doesn't have to
16 do what you tell him to, so to speak, if it's
17 not in your best interest.

18 THE DEFENDANT: Is my defense not?

19 THE COURT: I don't know what your
20 defense is, sir. I don't know what the facts
21 are, and I don't know that you -- you know, not
22 every case has a defense.

23 THE DEFENDANT: So the best thing is
24 to hire an attorney to represent you ---

25 THE COURT: No, you hire an attorney

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1 to minimize the consequences to you. Not
2 everybody that comes into Court is innocent.
3 And sometimes you hire an attorney to minimize
4 your consequences, in other words -- and to
5 present mitigation on your behalf. So if I --
6 and let's use a different example.

7 Burglary first, the minimum is fifteen
8 years. The maximum is life. If I knew I
9 committed a burglary first, I would hire a
10 lawyer to try to make sure I got the low range
11 of the penalty instead of the maximum. You hire
12 a lawyer to mitigate. You don't hire a lawyer.
13 -- for example, if I committed a burglary first
14 and there was an eyewitness, there is no defense
15 to that, unless you have somebody that can say
16 you were someplace else at the time that's
17 credible. That's a tactical situation, because
18 the jury's not going to question their
19 credibility and their motive. So if I have no
20 defense to that, then I hire a lawyer to make
21 sure I get the low end of that penalty and that
22 I keep the State in a posture where they don't
23 want to give me the maximum penalty. So in that
24 circumstance, you hire a lawyer to mitigate your
25 consequences.

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1 THE DEFENDANT: Well, I still feel
2 that asking me as a client to take a plea of
3 thirty years has limited my chances.

4 THE COURT: What else -- what other
5 penalties -- if that's the minimum penalty, he
6 has to tell you if they've offered it.

7 THE DEFENDANT: No, it isn't him
8 telling me that they offered it. See,
9 everything you're saying is what client's
10 attorney privileges are, correct? Everything
11 you're stating to me is ---

12 THE COURT: It depends. That's a
13 very -- the tarnish you present, I can't answer
14 that question. Him telling you what the State
15 has offered is not a privilege. He's required
16 under the ethics to tell you if they've extended
17 an offer to you. Because that's what happens
18 when people go to trial and then something
19 happens and they get a really severe penalty.
20 And then they file a PCR and said my lawyer
21 never told me the State offered me this. If
22 they'd told me, I would have taken it. So he is
23 required to tell you when the State makes an
24 offer to you. And he's required to tell you if
25 he thinks it's in your best interest. And he's

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1 required to tell you if he thinks you should
2 take it. That doesn't mean he's against you.
3 It just means he's telling you what he thinks
4 his best assessment of it is, so that later on
5 if it goes differently than you expect it to go,
6 you can never say he didn't tell you. He's got
7 to tell you the worst-case scenario.

8 THE DEFENDANT: And it's also ---

9 THE COURT: I never told a client
10 what they wanted to hear.

11 THE DEFENDANT: Okay, but it's also
12 my lawyer's job to defend you to the best.

13 THE COURT: Absolutely. Within the
14 rules.

15 THE DEFENDANT: Within the rules.
16 So after a year of being retained, to have any
17 -- how do you want to say any documents or any
18 paper or anything on my behalf?

19 THE COURT: I don't know. I would
20 imagine he's gone over the discovery with you.
21 I don't know much about this case, but it's my
22 understanding that they have eyewitnesses to
23 this. Is that correct?

24 SOLICITOR WILLIAMS: Yes, Your Honor.

25 THE COURT: So there ain't much that

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1 would come to exculpate you.

2 THE DEFENDANT: They have eye-
3 witnesses?

4 THE COURT: Yes, they do. As I
5 understand it, they're your children, correct?

6 SOLICITOR WILLIAMS: That is correct,
7 Your Honor. One of his children did witness the
8 murder.

9 THE COURT: How old is that child?

10 SOLICITOR WILLIAMS: The child right
11 now is twelve or thirteen. He was eleven at the
12 time.

13 THE COURT: What are the facts as
14 alleged, because I really don't know. I know
15 nothing about this case except what's in the
16 indictment.

17 SOLICITOR WILLIAMS: The facts as
18 alleged are the defendant, Mr. Harris, and his
19 wife were separated. She was planning to
20 finally get out of the marriage. He was in
21 North Carolina for the most part, started
22 calling her obsessively two days before the
23 murder. He was convinced that she was having an
24 affair with his uncle. He drove down ultimately
25 from North Carolina, probably left there about

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1 2:00 in the morning, arrived at the home that
2 his wife and two sons were in, along with her
3 sister and her four children. He went into the
4 home, went into the bedroom where she was asleep
5 with the 11-year-old because he had been in
6 trouble earlier in the evening and he had to
7 sleep in his mother's room, pulled out a weapon
8 and started yelling at her, started beating her,
9 pushed her off the bed. The child got in her
10 lap. She pushed the child out when she saw the
11 weapon. And he shot her in the head.

12 THE COURT: That's the child's --
13 witness?

14 MS. WILLIAMS: Yes, Your Honor.
15 After he left the room he just said "there's
16 nothing I can do about it", laughed and walked
17 out the door.

18 THE COURT: And that's what the
19 twelve-year-old son testifies to?

20 SOLICITOR WILLIAMS: Yes, Your Honor.
21 And then two blocks away he was found with the
22 weapon. The bullet that was retrieved from the
23 victim's head does match the gun that the
24 defendant had in his possession.

25 THE COURT: Mr. Vitetta, you've gone

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1 through the discovery with your client?

2 MR. VITETTA: Yes. It's sad.

3 THE COURT: Tragic. I would imagine
4 the State offered you the lower end of the
5 penalty, sir, so that -- to spare your child
6 from testifying against you, just the mental and
7 emotional stress that would cause the child.

8 MR. VITETTA: We have requested from
9 day one straight up to do voluntary manslaughter
10 with the Solicitor's Office.

11 THE COURT: The facts don't support
12 it.

13 MR. VITETTA: They denied it.

14 THE COURT: Yes, I would imagine they
15 would. Yeah, voluntary manslaughter is heat of
16 passion. What I heard is premeditation. I
17 can't imagine under those facts that they would
18 offer that, especially with the child being
19 present. I just can't imagine they would. But,
20 of course, that's within their prerogative.
21 They're the charging authority, and I have no
22 discretion with that at all. So whatever they
23 decide they want to charge the defendant with,
24 that's within their prerogative. The
25 Solicitor's a Constitutional officer.

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1 So, sir, now that you know what the
2 facts are and Mr. Vitetta has told me that he's
3 gone over the discovery with you, I have no
4 reason to believe he has not, I guess I've not
5 heard anything from you that there's something
6 that he hasn't done to prepare for trial that
7 you would have required him to do.

8 THE DEFENDANT: It's just like the
9 Solicitor stated right there, ma'am. It did not
10 happen like that.

11 THE COURT: Well, then he can present
12 testimony that it didn't. He'll cross examine
13 the child and otherwise, there isn't much else
14 he can do other than that.

15 THE DEFENDANT: Exactly. But yet
16 he's telling me that if I get convicted of heat
17 of passion and voluntary manslaughter, that
18 you're going to sentence me to twenty-five years
19 anyway.

20 THE COURT: Well, here's the bottom
21 line. There's no guarantee on the charge of
22 voluntary manslaughter. I'm going to have to
23 look at the facts of the case. I may not charge
24 that, which means I may charge murder. If there
25 are no facts to support a charge of voluntary

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1 manslaughter, I'm not going to instruct it to
2 the jury. So I'll have to hear the whole case
3 and then we'll have a charge conference and I'll
4 decide what to instruct the jury. So he has to
5 tell you every scenario. And he's right to
6 advise you of the worst-case scenario. With
7 those kind of facts, with the child being an eye
8 witness, yeah, you might well get the maximum
9 penalty. I don't know, but I think he needs to
10 tell you that. I can't imagine a lawyer not
11 telling you that.

12 THE DEFENDANT: I've heard all that,
13 ma'am. But just like now, the Solicitor -- what
14 she just said. That's her ---

15 THE COURT: That's her version.

16 THE DEFENDANT: That's her version.

17 THE COURT: She's entitled to her
18 version.

19 THE DEFENDANT: Exactly. So I have
20 a version too.

21 THE COURT: Um-humm.

22 THE DEFENDANT: That's what I'm
23 saying.

24 THE COURT: Well, you can testify and
25 tell your version, if you desire to. It's up to

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25

1 you.

2 THE DEFENDANT: I have no problem
3 with that.

4 MR. VITETTA: That would be against my
5 advice.

6 THE COURT: Yes, and I'll put it on
7 the record and make sure PCR proof on it if he
8 decides to testify. I'll cover those bases. Is
9 there anything further, sir, that you would like
10 to state for the record?

11 THE DEFENDANT: I wish I knew the
12 proper words to say. If I knew the proper words
13 to say, I would say them.

14 THE COURT: Mr. Vitetta, is there
15 anything you'd like to state for the record?

16 MR. VITETTA: No, Your Honor.

17 THE COURT: You all can take your
18 seats. The Court is denying any motion for
19 continuance. It is clear that Mr. Vitetta is
20 prepared for trial and ready to go forward. The
21 defendant has not articulated to the Court any
22 basis to discharge his counsel. The things that
23 he's indicated that he would want his counsel to
24 do for him, they would all come of naught, at
25 least based on my inquiry of the State. They

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1 would not be inclined to reduce the charge or
2 reduce the offer that has been presented to the
3 defendant in this case. In addition, again, the
4 defendant has not articulated to the Court
5 anything to support continuing the matter based
6 on anything he perceives his attorney has not
7 done on his behalf. It's the Court's perception
8 that any request for continuance is dilatory in
9 nature and designed to prevent the case from
10 going forward in a timely manner. And therefore
11 the motion is denied.

12 Are you ready to go forward with the State?

13 SOLICITOR WILLIAMS: The State's
14 ready, Your Honor.

15 THE COURT: Defense ready to go
16 forward?

17 MR. VITETTA: Yes, Your Honor.

18 THE COURT: Please bring in the jury
19 pool.

20 (JURY PANEL ENTERS @ 4:24 P.M.)

21 THE COURT: Ladies and gentlemen,
22 we're going to select a jury for the State of
23 South Carolina versus Tito Fernando Harris,
24 2010-GS-08-0091. It's an indictment for murder.
25 That indictment alleges as follows. That Tito

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1 Fernando Harris did, in Berkeley County, on or
2 about August 19, 2009, willfully, feloniously
3 and intentionally kill the victim Shantay Harris
4 with malice aforethought, either express or
5 implied, by means of shooting the victim in the
6 head with a gun, and the victim did die as a
7 proximate result thereof on August 19, 2009 in
8 Moncks Corner, South Carolina, alleging a
9 violation of Code Section 16-3-0010 of the Code
10 of Laws, as amended, and alleging such actions
11 to be against the peace and dignity of this
12 State.

13 We're going to go through a process
14 that is called *voir dire*, which is simply a very
15 legalistic way of saying that I'm going to ask
16 you some questions so that the attorneys can
17 more effectively exercise their peremptory
18 challenges during jury selection.

19 If a question applies to you, please
20 stand and in a loud and clear voice give us your
21 name and your juror number, and an answer to the
22 question as applicable and remain standing until
23 the Court has completed questioning you.

24 We appreciate your patience as we
25 handle and dispose of those matters of law. We

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1 do not take your time for granted.

2 If counsel for the State would stand
3 and introduce themselves and the members of
4 their office. And if counsel for the defense
5 would provide the same information as well as
6 introducing your client to the panel. You may
7 proceed.

8 SOLICITOR WILLIAMS: Thank you, Your
9 Honor.

10 THE COURT: You're welcome.

11 SOLICITOR WILLIAMS: My name is Anne
12 Williams. I'm an assistant solicitor here in
13 Berkeley County. Seated with me is Bryan
14 Alfaro. He's the deputy solicitor for Berkeley
15 County. We both work for the Ninth Judicial
16 Circuit which is -- we work for Scarlett Wilson,
17 the Solicitor for that Circuit. We also have
18 John O. Williams who is seated at the table,
19 Michael Roach who is a Lieutenant with the
20 Moncks Corner Police Department, Anita Brown who
21 is our paralegal, and Adrian Dejeu who is an
22 intern with our office.

23 THE COURT: Mr. Vitetta?

24 MR. VITETTA: Thank you. My name is
25 Guy Vitetta. I'm an attorney in Charleston. I

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1 represent Tito Harris.

2 THE COURT: Sir, if you would stand
3 and face the panel.

4 THE DEFENDANT: (Complies)

5 THE COURT: Thank you. You may take
6 your seat. If there any member of the panel
7 related by blood or marriage to Shantay Harris
8 or Tito Fernando Harris? If so, please stand at
9 this time. (No response).

10 Does any member of the panel have a
11 close personal or social relationship with Tito
12 Fernando Harris or the family of Shantay Harris?
13 If so, please stand at this time.

14 Yes, ma'am. Tell me your name and your
15 juror number.

16 JUROR: Gikita L. Rhames. I'm number
17 128.

18 THE COURT: Yes, ma'am.

19 JUROR: I know the family.

20 THE COURT: Ma'am, as a result of
21 this interaction, do you feel that you can
22 remain fair and impartial and render a fair and
23 impartial decision in this case based solely on
24 the evidence as it will be presented and on the
25 law as the Court will instruct?

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1 JUROR: Yes, ma'am.

2 THE COURT: You may take your seat.

3 The following are a list of potential witnesses.

4 I would ask that you listen very carefully:

5 Tonia Watkins,

6 E.H. ,

7 T.H. ,

8 D.W. ,

9 J.W. ,

10 April Strain,

11 Dennis Strain, and

12 Lisa Liles, all of Monroe, North

13 Carolina.

14 Patrolman Jamie Taylor,

15 Patrolman Chris Scarborough, both

16 of the Moncks Corner Police Department.

17 Therissa Miller, Berkeley County

18 Emergency Medical Services.

19 Rob Hazleton and James Brophy,

20 Moncks Corner Fire Department.

21 Corporal Tony Edwards,

22 Sergeant Bradley Norvell,

23 Corporal Thelma Lewis,

24 Sergeant Rick Crouse, all of the

25 Moncks Corner Police Department.

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1 Lieutenant Dean Kokinda, Berkeley
2 County Sheriff's Department.

3 Officer R. Timmons,
4 Captain Mark Murray, and
5 Lieutenant Mike Roach, all of the
6 Moncks Corner Police Department.

7 John Roberts, South Carolina Law
8 Enforcement, as well as Suzanne Cromer.

9 Eowyn Corcrain, Medical University of
10 South Carolina.

11 Dr. Cynthia Schandl, Medical University
12 of South Carolina.

13 Ernie Mixon who is an attorney here in
14 Moncks Corner.

15 Teresa Barnett, Berkeley County 9-1-1.

16 Is there any member of the panel
17 related by blood or marriage to any of the
18 people that I've just listed, or does anyone
19 have a close personal social or business
20 relationship with any of these individuals? If
21 so, please stand at this time.

22 I'll start on this side and work my way
23 over. And please remember to remain standing.
24 Name and juror number.

25 JUROR: Charles Jones, 79.

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1 THE COURT: And who is it that you
2 have a relationship with?

3 JUROR: Mike Roach. It's through
4 business with our company, the Bi-Lo in Moncks
5 Corner.

6 THE COURT: Sir, in the front row?

7 JUROR: Earl K. Johnson. Teresa
8 Barnett, first cousin.

9 THE COURT: Tell me your juror
10 number, sir.

11 JUROR: 76.

12 THE COURT: And, yes, sir, in the
13 blue shirt?

14 JUROR: 43.

15 THE COURT: And your name, sir?

16 JUROR: Thomas Edens.

17 THE COURT: And who is that you have
18 a relationship with?

19 JUROR: Mark Murray.

20 THE COURT: I need y'all to remain
21 standing for me. Yes, ma'am, in the black?

22 JUROR: 33, Wanda Crownover.

23 THE COURT: AS a result of these
24 experiences, do you all feel that you can remain
25 fair and impartial and render a fair and

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1 impartial decision in this case based solely on
2 the evidence as it will be presented and on the
3 law that the Court will instruct? If your
4 answer is yes, please take your seats. Let the
5 record reflect that all answered yes.

6 Has any member of the panel ever been
7 represented by any of the attorneys involved or
8 anyone with whom they practice law? If so,
9 please stand at this time. (No response).

10 Is there any member of the panel
11 related by blood or marriage to or have close
12 personal or social relationships with any of the
13 attorneys involved or anyone with whom they
14 practice law? If so, please stand at this time.
15 (No response).

16 Has any member of the panel formed or
17 expressed an opinion -- I'm sorry, sir.

18 JUROR: 64, Joshua Guerry. I know Mr.
19 Guy Williams.

20 THE COURT: Is that a witness or is
21 that an attorney?

22 SOLICITOR WILLIAMS: He's an attorney
23 on the next case.

24 THE COURT: Sir, that's not involved
25 in this.

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1 Has any member of the panel formed or
2 expressed an opinion about any issue or matter
3 involved in this case? If so, please stand.
4 (No response).

5 Is there any member of the panel aware
6 of any bias or prejudice toward either the State
7 or the defense in this case? If so, please
8 stand. (No response).

9 Is there any member of the panel which
10 was a member of the Berkeley County Grand Jury
11 which issued the indictment in this case? If
12 so, please stand. (No response).

13 Is there any member of the panel who's
14 a member of or contributor to any group which
15 has as its primary concern the promotion of law
16 enforcement or victim's rights? These would
17 include but are not limited to Mothers Against
18 Drunk Driving, Students Against Drunk Driving,
19 Citizens Against Violent Crime, People Against
20 Rape, Citizens Advocating the Return of Decency
21 and Parents With Power? Is so, please stand at
22 this time. (No response).

23 Is there any member of the panel who is
24 a former member of law enforcement? If so,
25 please stand at this time. (No response).

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1 Is there any member of the panel who
2 has a family member who is employed with law
3 enforcement? If so, please stand. Yes, sir?

4 JUROR: Juror 120, Les Phillips. My
5 first cousin is a highway patrolman. I didn't
6 know if it had to do with the State.

7 THE COURT: That's the category. And
8 yes, ma'am? And just remain standing, sir.

9 JUROR: Number 35.

10 THE COURT: Yes, ma'am.

11 JUROR: My brother-in-law is an
12 officer in Orangeburg.

13 THE COURT: In where?

14 JUROR: Orangeburg.

15 THE COURT: Remain standing. And
16 you, sir, in the blue?

17 JUROR: My name is Thomas Edens. I
18 have a brother-in-law who is a U.S. Marshal.

19 THE COURT: Yes, ma'am?

20 JUROR: I'm number 37. My nephew is a
21 police officer in Charleston County.

22 THE COURT: Yes, ma'am, in the back?

23 JUROR: Yes, ma'am. I have a brother,
24 Leroy Dingle who is Captain Dingle. He used to
25 work for the Berkeley County Sheriff's

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1 Department.

2 THE COURT: And your name and number,
3 ma'am?

4 JUROR: My name and number, Naomi
5 Dingle, Juror Number 41.

6 THE COURT: As a result of these
7 experiences to you all feel that you can remain
8 fair and impartial and render a fair and
9 impartial decision in this case based only on
10 the evidence as it will be presented and on the
11 law that the Court will instruct? If your is
12 yes, just take your seats. Let the record
13 reflect that all answered yes.

14 Is there any member of the panel or any
15 family members of yours live near [REDACTED] Golden
16 Way, Moncks Corner, South Carolina? If so,
17 please stand at this time. (No response).

18 Is there any member of the panel who's
19 been the victim of a violent crime? If so,
20 please stand at this time. Yes, sir.

21 JUROR: I was robbed.

22 THE COURT: If you would tell me your
23 name and your juror number.

24 JUROR: 112, Mark Orvin.

25 THE COURT: Sir, as a result of this

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1 experience, do you feel that you can remain fair
2 and impartial and render a fair and impartial
3 decision in this case based solely on the
4 evidence as it will be presented and on the law
5 that the Court will instruct?

6 JUROR: No, ma'am.

7 THE COURT: Okay. Sir, I'll excuse
8 you from the trial of this case. Thank you.
9 You can take your seat.

10 (JUROR NUMBER 112 EXCUSED)

11 THE COURT: Is there any member of
12 the panel who has read, watched or listened to
13 any media accounts about this case which
14 includes allegations that stem from an incident
15 that occurred on August 19th, 2009 at [REDACTED] Golden
16 Way, Moncks Corner, South Carolina? If so,
17 please stand at this time. That includes
18 anything -- it could be watched on the
19 television, heard on the radio, read on the
20 internet or in the newspaper. (No response).

21 Does any member of the panel know of
22 any reason whatsoever why he or she should not
23 serve as a juror in this case, with particular
24 emphasis being placed on your ability to be fair
25 and impartial to both the State and the

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1 defendant? (No response).

2 Are there any additional questions from
3 the State?

4 SOLICITOR WILLIAMS: None from the
5 State, Your Honor.

6 THE COURT: From the defendant?

7 MR. VITETTA: No, ma'am.

8 THE COURT: Strikes are ten and five.
9 Who's going to demonstrate for them?

10 Ladies and gentlemen, if your name is
11 called, please come forward straight up the
12 aisle and stand exactly where the bailiff is
13 standing, turning back toward the panel. Bring
14 all of your personal belonging with you. Thanks
15 for your patience.

16 You can proceed when you're ready.
17 Ladies and gentlemen, please give the clerk your
18 attention.

19 THE CLERK: Ladies and gentlemen of
20 the jury, as I call your name please come
21 forward and bring your personal belonging with
22 you. If I say "seat the juror," please have a
23 seat in the jury box. If I say "excuse the
24 juror," please return to your original seating.

25 Juror 125, Mark Pye.

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1 (JUROR BEFORE COUNSEL)

2 CLERK: What says the State?

3 SOLICITOR WILLIAMS: Please seat the
4 juror.

5 THE CLERK: What say the defense?

6 MR. VITETTA: Please excuse the juror.

7 THE CLERK: Excuse the juror.

8 (JUROR NUMBER 125 EXCUSED)

9 CLERK: Juror 85, Barry Linville.

10 (JUROR BEFORE COUNSEL)

11 CLERK: What say the State?

12 SOLICITOR WILLIAMS: Please seat the
13 juror.

14 THE CLERK: What say the defense?

15 MR. VITETTA: Please seat the juror.

16 THE CLERK: Seat the juror.

17 (JUROR NUMBER 85 SEATED)

18 CLERK: Juror 110, Bonnie Nickerson-
19 Nichols.

20 (JUROR BEFORE COUNSEL)

21 CLERK: What say the State?

22 SOLICITOR WILLIAMS: Please seat the
23 juror.

24 THE CLERK: What say the defense?

25 MR. VITETTA: Please seat the juror.

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1 THE CLERK: Seat the juror.
2 (JUROR NUMBER 110 SEATED)
3 CLERK: Juror 49, Elizabeth Felkel.
4 (JUROR BEFORE COUNSEL)
5 CLERK: What say the State?
6 SOLICITOR WILLIAMS: Please seat the
7 juror.
8 THE CLERK: What say the defense?
9 MR. VITETTA: Please excuse this juror.
10 THE CLERK: Excuse the juror.
11 (JUROR NUMBER 49 EXCUSED)
12 CLERK: Juror 59, Carlos Gonzalez.
13 (JUROR BEFORE COUNSEL)
14 CLERK: What say the State?
15 SOLICITOR WILLIAMS: Please seat the
16 juror.
17 THE CLERK: What say the defense?
18 MR. VITETTA: Please excuse.
19 THE CLERK: Excuse the juror.
20 (JUROR NUMBER 59 EXCUSED)
21 CLERK: Juror 67, Alisha Hanna.
22 (JUROR BEFORE COUNSEL)
23 CLERK: What say the State?
24 SOLICITOR WILLIAMS: Please seat the
25 juror.

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1 THE CLERK: What say the defense?
2 MR. VITETTA: Please swear the juror.
3 THE CLERK: Seat the juror.
4 (JUROR NUMBER 67 SEATED)
5 CLERK: Juror 114, Alene Packer.
6 (JUROR BEFORE COUNSEL)
7 CLERK: What say the State?
8 SOLICITOR WILLIAMS: Please seat the
9 juror.
10 THE CLERK: What say the defense?
11 MR. VITETTA: Please excuse.
12 THE CLERK: Excuse the juror.
13 (JUROR NUMBER 114 EXCUSED)
14 CLERK: Juror 139, Delores Sellers.
15 (JUROR BEFORE COUNSEL)
16 CLERK: What say the State?
17 SOLICITOR WILLIAMS: Please seat the
18 juror.
19 THE CLERK: What say the defense?
20 MR. VITETTA: Please swear the juror.
21 THE CLERK: Seat the juror.
22 (JUROR NUMBER 139 SEATED)
23 CLERK: Juror 20, Thelma Brown.
24 (JUROR BEFORE COUNSEL)
25 CLERK: What say the State?

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1 SOLICITOR WILLIAMS: Please seat the
2 juror.
3 THE CLERK: What say the defense?
4 MR. VITETTA: Please swear the juror.
5 THE CLERK: Seat the juror.
6 (JUROR 20 SEATED)
7 CLERK: Juror 136, Kristi Salvo.
8 (JUROR BEFORE COUNSEL)
9 CLERK: What say the State?
10 SOLICITOR WILLIAMS: Please seat the
11 juror.
12 MR. VITETTA: Please excuse this juror.
13 THE CLERK: Excuse the juror.
14 (JUROR NUMBER 136 EXCUSED)
15 CLERK: Juror 82, Joann Knight.
16 (JUROR BEFORE COUNSEL)
17 CLERK: What say the State?
18 SOLICITOR WILLIAMS: Please seat the
19 juror.
20 THE CLERK: What say the defense.
21 MR. VITETTA: Please excuse this juror.
22 THE CLERK: Excuse the juror.
23 (JUROR NUMBER 82 EXCUSED)
24 CLERK: Juror 35, Latosha Daniels.
25 (JUROR BEFORE COUNSEL)

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1 CLERK: What say the State?

2 SOLICITOR WILLIAMS: The Court's
3 indulgence for just a moment. Please excuse the
4 juror.

5 THE CLERK: Excuse the juror.

6 (JUROR NUMBER 35 EXCUSED)

7 CLERK: Juror 118, Kesha Peace.

8 (JUROR BEFORE COUNSEL)

9 CLERK: What say the State?

10 SOLICITOR WILLIAMS: Please seat the
11 juror.

12 THE CLERK: What say the defense?

13 MR. VITETTA: Please swear the juror.

14 THE CLERK: Seat the juror.

15 (JUROR NUMBER 118 SEATED)

16 CLERK: Juror 107, Kenneth Needham.

17 (JUROR BEFORE COUNSEL)

18 CLERK: What say the State?

19 SOLICITOR WILLIAMS: Please seat the
20 juror.

21 THE CLERK: What say the defense?

22 MR. VITETTA: Please swear the juror.

23 THE CLERK: Seat the juror.

24 (JUROR NUMBER 107 SEATED)

25 CLERK: Juror 101, Carmelita Montes.

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1 (JUROR BEFORE COUNSEL)
2 CLERK: What say the State?
3 SOLICITOR WILLIAMS: The Court's
4 indulgence. Please excuse the juror.
5 THE CLERK: Excuse the juror.
6 (JUROR NUMBER 101 EXCUSED)
7 CLERK: Juror 71, Douglas Holloman.
8 (JUROR BEFORE COUNSEL)
9 CLERK: What say the State?
10 SOLICITOR WILLIAMS: Please seat the
11 juror.
12 THE CLERK: What say the defense?
13 MR. VITETTA: Please excuse the juror.
14 THE CLERK: Excuse the juror.
15 (JUROR NUMBER 71 EXCUSED)
16 CLERK: Juror 92, Tanisha Mazyck.
17 (JUROR BEFORE COUNSEL)
18 CLERK: What say the State?
19 SOLICITOR WILLIAMS: Please seat the
20 juror.
21 THE CLERK: What say the defense?
22 MR. VITETTA: Please swear the juror.
23 THE CLERK: Seat the juror.
24 (JUROR NUMBER 92 SEATED)
25 CLERK: Juror 102, Demetria

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1 Montgomery.

2 (JUROR BEFORE COUNSEL)

3 CLERK: What say the State?

4 SOLICITOR WILLIAMS: Please seat the
5 juror.

6 THE CLERK: What say the defense?

7 MR. VITETTA: Please swear the juror.

8 THE CLERK: Seat the juror.

9 (JUROR NUMBER 102 SEATED)

10 CLERK: Juror 23, Timothy Bunce.

11 (JUROR BEFORE COUNSEL)

12 CLERK: What say the State?

13 SOLICITOR WILLIAMS: Court's
14 indulgence. Please excuse the juror.

15 THE CLERK: Excuse the juror.

16 (JUROR NUMBER 23 EXCUSED)

17 CLERK: Juror 154, Phillip Thomas, Sr.

18 (JUROR BEFORE COUNSEL)

19 CLERK: What say the State?

20 SOLICITOR WILLIAMS: Please seat the
21 juror.

22 THE CLERK: What say the defense?

23 MR. VITETTA: Please excuse the juror.

24 THE CLERK: Excuse the juror.

25 (JUROR NUMBER 154 EXCUSED)

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1 CLERK: Juror 128, Gikita Rhames.
2 (JUROR BEFORE COUNSEL)
3 CLERK: What say the State?
4 SOLICITOR WILLIAMS: Please excuse
5 the juror.
6 THE CLERK: Excuse the juror.
7 (JUROR NUMBER 128 EXCUSED)
8 CLERK: Juror 100, Jan Moisa.
9 (JUROR BEFORE COUNSEL)
10 CLERK: What say the State?
11 SOLICITOR WILLIAMS: Please seat the
12 juror.
13 THE CLERK: What say the defense?
14 MR. VITETTA: Please swear the juror.
15 THE CLERK: Seat the juror.
16 (JUROR NUMBER 100 SEATED)
17 CLERK: Juror 76, Earl Johnson.
18 (JUROR BEFORE COUNSEL)
19 CLERK: What say the State?
20 SOLICITOR WILLIAMS: The Court's
21 indulgence. Excuse the juror.
22 THE CLERK: Excuse the juror.
23 (JUROR NUMBER 76 EXCUSED)
24 CLERK: Juror 9, Jamie Bishop.
25 (JUROR BEFORE COUNSEL)

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1 CLERK: Any cause to challenge from
2 the State?

3 SOLICITOR WILLIAMS: None.

4 THE CLERK: What say the defense?

5 MR. VITETTA: Please excuse the juror.

6 THE CLERK: Excuse the juror.

7 (JUROR NUMBER 9 EXCUSED)

8 CLERK: Juror 79, Charles Jones.

9 (JUROR BEFORE COUNSEL)

10 CLERK: Any cause to challenge from
11 the State?

12 SOLICITOR WILLIAMS: No.

13 THE CLERK: What say the defense?

14 MR. VITETTA: Excuse the juror.

15 THE CLERK: Excuse the juror.

16 (JUROR NUMBER 79 EXCUSED)

17 CLERK: Juror 120, Leslie Phillips,
18 Jr.

19 (JUROR BEFORE COUNSEL)

20 CLERK: Any cause to challenge from
21 the State?

22 SOLICITOR WILLIAMS: None from the
23 State.

24 THE CLERK: Any cause to challenge
25 from the defense?

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1 MR. VITTETA: No.

2 THE CLERK: Seat the juror.

3 (JUROR NUMBER 120 SEATED)

4 CLERK: Juror 33, Wanda Crownover.

5 (JUROR BEFORE COUNSEL)

6 CLERK: Any cause to challenge from
7 the State?

8 SOLICITOR WILLIAMS: Not from the
9 State.

10 THE CLERK: Any cause to challenge
11 from the defense?

12 MR. VITETTA: No.

13 THE CLERK: Seat the juror.

14 (JUROR NUMBER 33 SEATED)

15 THE COURT: Two alternates. Strikes
16 will be one and two.

17 THE CLERK: First alternate, juror
18 11, Michael Blackman.

19 (JUROR BEFORE COUNSEL)

20 CLERK: What say the State?

21 SOLICITOR WILLIAMS: Seat the juror.

22 THE CLERK: What say the defense?

23 MR. VITETTA: Please swear the juror.

24 THE CLERK: Seat the juror.

25 (JUROR NUMBER 11 SEATED)

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1 CLERK: Juror 28, Thomas Christian.

2 (JUROR BEFORE COUNSEL)

3 CLERK: What say the State?

4 SOLICITOR WILLIAMS: Please seat the

5 juror.

6 THE CLERK: What say the defense?

7 MR. VITETTA: Please excuse the juror.

8 THE CLERK: Excuse the juror.

9 (JUROR NUMBER 28 EXCUSED)

10 CLERK: Juror 34, Kenneth Daniels.

11 (JUROR BEFORE COUNSEL)

12 CLERK: What say the State?

13 SOLICITOR WILLIAMS: Please seat the

14 juror.

15 THE CLERK: What say the defense?

16 MR. VITETTA: Please swear the juror.

17 THE CLERK: Seat the juror.

18 (JUROR NUMBER 34 SEATED)

19 THE COURT: Are there any motions

20 from the State?

21 SOLICITOR WILLIAMS: None from the

22 State, Your Honor.

23 THE COURT: From the defense?

24 MR. VITETTA: None.

25 THE COURT: To the balance of the

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1 panel, you're excused with the Court's profound
2 thanks. Please call the jury information line
3 after six o'clock this evening for further
4 instructions. Have a great afternoon.

5 (PANEL EXCUSED @ 4:58 P.M.)

6 THE CLERK: Ladies and gentlemen,
7 stand for me and raise your right hands to be
8 sworn.

9 (JURY SWORN @ 4:59 P.M.)

10 THE COURT: Ladies and gentlemen, I
11 anticipate that we will begin this trial in this
12 morning so we can start fresh. We've all had a
13 long afternoon. We're used to this pace, but
14 you all really are not. So it is my inclination
15 to start in the morning. However, if you would
16 go with the bailiff for me, please, for a moment
17 while I confirm that. In the meantime, please
18 do not speculate about what you think the case
19 may or could be about. And again, go with the
20 bailiff, and we should be out very shortly.

21 (JURY OUT @ 5:00 P.M.)

22 THE COURT: I would assume that you
23 all can agree to sequester the witnesses.

24 MR. VITETTA: Yes, Your Honor.

25 THE COURT: Is there any record that

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1 the State is going to be seeking to introduce to
2 impeach the defendant's credibility?

3 SOLICITOR WILLIAMS: Your Honor, I
4 don't think -- we are just checking on two of
5 these from out of state.

6 THE COURT: So you're telling me
7 there's none, correct?

8 SOLICITOR WILLIAMS: That's correct,
9 Your Honor.

10 THE COURT: Are there any statements
11 that the State is going to be seeking to
12 introduce against the defendant?

13 SOLICITOR WILLIAMS: Yes, Your Honor.

14 THE COURT: So we'll need a *Jackson*
15 *vs. Denno* hearing.

16 SOLICITOR WILLIAMS: Yes, Your Honor.

17 THE COURT: How long is that going to
18 take?

19 SOLICITOR WILLIAMS: There are two
20 witnesses. We would expect it to last about an
21 hour and a half.

22 THE COURT: An hour and a half for
23 two statements?

24 SOLICITOR WILLIAMS: There are two
25 taped statements and then one other statement.

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1 THE COURT: How long are the taped
2 statements?

3 MR. ALFARO: Your Honor, one videotape
4 is about thirty minutes. The audio tape is
5 about an hour and a half.

6 THE COURT: Do you have those so that
7 I can listen to those this evening? I assume
8 you have them already, Mr. Vitetta?

9 MR. VITETTA: We do.

10 THE COURT: If you all could get them
11 to me I'll listen to them tonight.

12 MR. ALFARO: Yes, ma'am.

13 THE COURT: Without those how much
14 time do you need?

15 MR. ALFARO: Without those it take
16 probably thirty minutes.

17 THE COURT: Now, my next question is
18 are there any portions of those statements that,
19 if they come in, that you're going to be seeking
20 to redact?

21 MR. VITETTA: No, Your Honor.

22 THE COURT: Okay. And are you just
23 doing this pro forma or are you really waiving
24 the issue of the voluntariness, or are you
25 alleging he was not Mirandized in some way?

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1 All the statements were made after he was
2 Mirandized?

3 MR. VITETTA: Yes, Your Honor.

4 Mr. Harris asserts that he was under duress at
5 the time he made the statements. So I would
6 explore that.

7 THE COURT: That helps me focus on
8 what the arguments may be.

9 MR. ALFARO: Your Honor, there's a
10 one-minute segment of the audiotape where the
11 interrogating officer references incidents from
12 North Carolina.

13 THE COURT: Okay, you can redact
14 that.

15 MR. ALFARO: We can redact that.

16 THE COURT: But you're going to have
17 to redact it anyway so the jury can take it back
18 with them. So you might as well go ahead -- you
19 can do that for purposes of the -- I don't know
20 when in the witness lineup you want to play it,
21 but you probably need to go ahead and redact it.
22 Is it one of those tapes that's going to require
23 a software player, or is just ---

24 MR. ALFARO: The light box that we set
25 up to show things on the screen has the

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1 capability to play it.

2 THE COURT: Will the jury be able to
3 take that back with them?

4 1 MR. ALFARO: Usually they just bring
5 them out and have them listen to it if there's a
6 section they want to listen to. The audiotape
7 actually ---

8 THE COURT: Is it just a regular
9 audiotape?

10 MR. ALFARO: The audiotape's a micro
11 cassette which it makes it difficult to dub from
12 one micro to another. But we can make a copy of
13 that. I think we actually have a regular
14 cassette tape that we can make a copy of it. So
15 we'll make arrangements for that.

16 THE COURT: If y'all could get those
17 to me so I can listen to them and watch them. I
18 assume I'll be able to use my computer to watch
19 and listen to them? Or it does it require some
20 special software?

21 MR. ALFARO: The CD can be played with
22 the Windows player and the video actually, I
23 believe, has the program copy in it.

24 THE COURT: All right. If you'll get
25 those to me I'll be greatly appreciative. Is

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1 there going to be any *Lyle*-type evidence that's
2 going to be presented?

3 SOLICITOR WILLIAMS: Your Honor, I
4 think I've discussed the *Lyle*-type evidence that
5 we're going to introduce. And I think we've
6 come to an agreement.

7 There are several instances of domestic
8 violence that happened before the murder that we
9 are not going to try to introduce because
10 they're too far in time.

11 But we are going to be bringing up the
12 fact that the defendant was not to be around the
13 children and that that was Court ordered.

14 In addition to that, we're going to
15 have an attorney testify that Shantay Harris was
16 seeking to get out of the marriage and that she
17 had told Mr. Harris that. I don't really think
18 that's *Lyle* evidence, but he has articulated
19 that to Mr. ---

20 THE COURT: Mr. Vitetta, is there an
21 exception to that?

22 MR. VITETTA: We would object to
23 Mr. Vincent.

24 THE COURT: Okay, then we'll take
25 that up at the appropriate time. I just wanted

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1 to make a contemporaneous objection.

2 MR. VITETTA: Yes, Your Honor. I would
3 enter into a stipulation if those facts are
4 correct and we can confirm that what the
5 Solicitor has just stated is accurate.

6 THE COURT: Why don't y'all work on a
7 stipulation over the evening and let me know in
8 the morning.

9 MR. VITETTA: Thank you.

10 THE COURT: Then the last was a
11 motion to prevent the introduction of photo-
12 graphs. That's premature. I'd have to look at
13 that one as they seek to introduce the photo-
14 graph. I'd need you to make a contemporaneous
15 objection. But before any photographs are
16 sought to be introduced before the jury, I need
17 to take that up in camera. I don't know what
18 type pictures they are and whether y'all have
19 seen them or whether they're black and white and
20 what the circumstances are. I'd have to look at
21 them.

22 Does the State have any opposition to
23 providing records for their witnesses?

24 SOLICITOR WILLIAMS: Your Honor, we
25 have provided all records to defense counsel.

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1 THE COURT: Is there anything else we
2 need to take up before I send the jury home for
3 the afternoon? From the State?

4 SOLICITOR WILLIAMS: Nothing from the
5 State, Your Honor.

6 THE COURT: Defense?

7 MR. VITETTA: No.

8 THE COURT: Do you think we can
9 finish the *Jackson v. Denno* by 10:00 if we start
10 at 9:30?

11 MR. ALFARO: Yes.

12 THE COURT: Please bring in the jury.

13 (JURY IN @ 5:09 P.M.)

14 THE COURT: Ladies and gentlemen, we
15 appreciate your patience. I'm excusing you for
16 the remainder of the afternoon. I need you to
17 return in the morning at 10:00. You'll go
18 directly to your jury room. There are some
19 matters of the law that the attorneys and I need
20 to deal with prior to us beginning, and I don't
21 you all waiting while we're doing that. So
22 we're going to resume at 10:00 o'clock. If
23 you'd return directly to your jury room and
24 we'll show you how to do that.

25 During this break it is essential that

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1 you do not discuss this case in any manner
2 whatsoever, especially about what you think it
3 may be about. You are strictly prohibited from
4 watching, listening to or reading any media
5 accounts about this case; that is anything that
6 could be on radio, television, newspaper or
7 internet. And you are not to do any independent
8 research of any type on the internet. That
9 includes any type search engine, Google,
10 Ask.com, Bing or otherwise.

11 In addition to that, you are not to
12 discuss your jury service on any social
13 networking sites. That includes LinkedIn, My
14 Space, You Tube. I'm missing one very important
15 one -- Facebook. It is essential that you
16 remain fair and impartial and you have no
17 discussion regarding this matter with anyone.
18 That includes your family members or your
19 friends. I know it might seem innocent to talk
20 about the case or your jury service. Well, you
21 can talk about your jury service in generalized
22 terms -- in other words, that you have jury
23 service. But to go beyond that would be
24 inappropriate.

25 When you return to the courthouse in

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1 the morning please don't have any interaction
2 with anyone you do not recognize to be a fellow
3 juror. Again, I would hate for you to be having
4 an innocent conversation with a witness or a
5 party about the weather or about sports or
6 something and for some third party to observe
7 that conversation and assume the worst. In
8 other words, that you're inappropriately
9 discussing the facts and circumstances of the
10 case.

11 We appreciate your patience. Have a
12 wonderful day. We'll see you in the morning --
13 wonderful evening. We'll see you in the morning
14 at 10:00 o'clock.

15 If you will go with the bailiffs, they
16 will show you how to come back into the court
17 house. They'll meet you at the front door.
18 Thank you very much.

19 (JURY OUT @ 5:11 P.M.)

20 (COURT IN RECESS)

21 (TRANSCRIPT CONTINUED NEXT PAGE)

22

23

24

25

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1 MARCH 15, 2011 9:45 A.M.

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3 (DEFENDANT PRESENT)

4 THE COURT: The State may proceed.

5 SOLICITOR ALFARO: The State calls

6 Bruce Scarborough. Your Honor, for purposes of

7 the record, as far as the stipulation or the

8 sequestration order that was mentioned

9 yesterday, I discussed it with Mr. Vitetta and

10 he has no objection to our lead detective being

11 excluded from that order. Mike Roach will be

12 that person.

13 (WITNESS TAKES STAND)

14 CHRIS SCARBOROUGH, being duly sworn to

15 tell the truth, the whole truth and nothing but

16 the truth, testified, as follows:

17 THE COURT: You may proceed.

18 SOLICITOR ALFARO: Thank you, Your

19 Honor.

20 DIRECT EXAMINATION

21 BY SOLICITOR ALFARO:

22 Q. Would you tell the Court where you

23 currently work?

24 A. Moncks Corner Police Department.

25 Q. And how long have you been with them?

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1 A. Two years.

2 Q. And what is your current rank as well as
3 your duties and responsibilities?

4 A. I'm a Corporal in the Patrol Division. I'm
5 a shift supervisor.

6 Q. And were you working for the Moncks Corner
7 Police Department on August 19, 2009?

8 A. Yes, sir.

9 Q. In what capacity?

10 A. I was a patrol officer.

11 Q. And on the morning of August 19, 2009 did
12 you have the opportunity to respond to or be
13 dispatched to [REDACTED] Golden Aspen Road in Moncks
14 Corner?

15 A. Yes, sir.

16 Q. Is that here in Berkeley County?

17 A. It is.

18 Q. And could you us what type of call you were
19 dispatched to?

20 A. It was a domestic dispute.

21 Q. And were any other officers dispatched
22 along with you?

23 A. Officer Taylor was also.

24 Q. And which one of you got to the location
25 first?

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1 A. I was following behind Officer Taylor and
2 we arrived at the same time.

3 Q. Could you tell us what you saw when you
4 first arrived at the scene?

5 A. As we pulled up to the house there was a
6 black car sitting on the side of the road next
7 to the driveway. As we got closer there was a
8 black male walking behind the car heading up to
9 the driver's side to get in the vehicle.

10 Q. And did you stop or attempt to stop that
11 individual?

12 A. Attempted to. As we pulled up and as I was
13 getting out of the car he was getting into his.
14 And he drove off.

15 Q. And did you and/or Officer Taylor follow
16 that person?

17 A. I did.

18 Q. And were you able to eventually catch up
19 with him to get him stopped?

20 A. Yes, sir.

21 Q. And where did that take place?

22 A. On Maple Leaf Drive.

23 Q. And when you pulled him over what happened
24 after the cars stopped?

25 A. After he stopped and I pulled in behind

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1 him, as I was giving his license tag over the
2 radio, he exited his vehicle and closed the door
3 and started walking toward my patrol car. He
4 held his hands up as he was talking toward my
5 car.

6 Q. And what did you do at that point?

7 A. As he was getting out of his vehicle I went
8 ahead and exited my car. And then as he was
9 walking towards me I told him to put his hands
10 on his car.

11 Q. And did he comply with those requests?

12 A. Yes, sir.

13 Q. And upon -- after doing that, what did you
14 do then?

15 A. I approached him and before I got up to him
16 I asked him if he had any weapons on him.

17 Q. And did he respond?

18 A. He said he did. He said yes.

19 Q. And were you able to -- did you follow up
20 on that?

21 A. Yes, sir, I asked him what type of weapon
22 he had, a knife or whatever, and he said he had
23 a gun. I asked him where at, and he said in his
24 right pocket. And I said front or back, and he
25 said his right front pocket.

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1 Q. And at that point in time did you know what
2 had taken place at the Golden Aspen address that
3 you were dispatched to?

4 A. No, sir.

5 Q. At that point did you know whether any
6 crime had been committed or not?

7 A. No, sir. All I knew is we were dispatched
8 to a possible domestic dispute.

9 Q. And at some point during interaction with
10 him did you eventually take him into custody?

11 A. Yes, sir.

12 Q. At which point was that?

13 A. After he told me that he had the gun in his
14 pocket, I had him put his hands behind his head
15 and I took the gun out of the pocket and secured
16 it in my back pocket. At that time I put him in
17 handcuffs.

18 Q. After that point did you develop any
19 further information as to what actually happened
20 at the address?

21 A. As I was putting the handcuffs on him
22 Officer Taylor come across the radio that
23 someone had been shot in the house and requested
24 EMS and to tell them to use caution.

25 Q. And is that the point at which you put the

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1 defendant into custody and placed him under
2 arrest?

3 A. Yes, sir.

4 Q. And upon placing him under arrest did you
5 give him his *Miranda* rights?

6 A. No, sir.

7 Q. And why is that?

8 A. I don't give *Miranda* unless I'm intending
9 to ask them questions regarding the case.

10 Q. And did you intend in this case to ask him
11 questions?

12 A. No, sir.

13 Q. Did you, in fact, ask him any questions
14 about the crime that had been committed?

15 A. No, sir.

16 Q. Did you ask him any questions at all?

17 A. I did. I asked him where the keys to the
18 car were and the registration so I could
19 complete my tow form.

20 Q. The purpose of those questions was to
21 complete the paperwork for the tow sheet?

22 A. Yes, sir.

23 Q. And after placing him into custody what did
24 you with the defendant?

25 A. I put him in my patrol car, the back seat

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1 of my patrol car.

2 Q. And was anybody else in the back seat with
3 him?

4 A. No, sir.

5 Q. And while he was in your custody did any
6 other law enforcement officers question the
7 defendant?

8 A. Yes, sir.

9 Q. Who was that?

10 A. Lieutenant Roach.

11 Q. And where did he first do that?

12 A. In the back seat of my patrol car.

13 Q. And how long after you placed the defendant
14 in the back seat did Lieutenant Roach arrive?

15 A. Maybe thirty minutes, maybe not hardly.

16 Q. And during that time did you or any other
17 officers at the scene ask the defendant any
18 questions about the crime?

19 A. No, sir.

20 Q. And when Lieutenant Roach arrived did you
21 witness anything pertaining to the *Miranda*
22 rights of the defendant?

23 A. Lieutenant Roach asked for a *Miranda* form,
24 and I had some in the trunk of my car. And the
25 best I remember, I gave him a *Miranda* form, a

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1 form.

2 (COURT'S EXHIBIT 3 MARKED FOR IDENTIFICATION)

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR ALFARO:

5 Q. Officer Scarborough, I'm going to show you
6 what has been marked as Court's Exhibit 3 for
7 purposes of the *Denno* hearing. Do you recognize
8 that exhibit?

9 A. Yes, sir.

10 Q. Could you tell the Court what that is?

11 A. It's an Advisement of *Miranda* Rights waiver
12 form.

13 Q. Is that the form that you provided to
14 Lieutenant Roach at the scene that day?

15 A. Yes, sir.

16 Q. During the course of your interaction with
17 the defendant did you have any camera or audio
18 recording equipment in your vehicle?

19 A. Yes, sir.

20 Q. And were those items operating on that day?

21 A. They were.

22 Q. Are you aware if a copy of the traffic stop
23 as well as Lieutenant Roach's interview was
24 recorded?

25 A. Yes, sir.

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1 Q. And did you have an opportunity to review
2 that recording prior to today?

3 A. Yes, sir.

4 Q. Is that recording a fair and accurate
5 representation of your interaction with the
6 defendant that morning?

7 A. It was.

8 Q. Were there any edits or deletions or
9 changes that you noticed on the recording?

10 A. No, sir.

11 SOLICITOR ALFARO: Your Honor, at this
12 time we would normally enter and publish the in-
13 car video exhibit for this.

14 THE COURT: That's the one you gave
15 me last night?

16 SOLICITOR ALFARO: Yes, Your Honor.

17 THE COURT: I've already had it
18 marked as a Court's Exhibit for purposes of this
19 hearing. Which one is that? I had Vivian mark
20 them both, so you probably need to look and see
21 which number corresponds with it.

22 (COURT'S EXHIBIT 1 MARKED FOR IDENTIFICATION)

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR ALFARO:

25 Q. I'm going to show you what's been marked as

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1 Court's Exhibit 1. Do you recognize that?

2 A. Yes, sir.

3 Q. Could you tell us what that is?

4 A. It's an in-car camera recording.

5 Q. How do you recognize that as being a
6 recording?

7 A. I put my initials on it after I watched it.

8 Q. Thank you.

9 SOLICITOR ALFARO: Your Honor, at this
10 time, if don't need to publish the video for the
11 hearing, this is all we have of this witness.

12 THE COURT: Mr. Vitetta?

13 MR. VITETTA: No questions, Your Honor.

14 THE COURT: You may step down.

15 (WITNESS STEPS DOWN)

16 THE COURT: Call your next witness.

17 SOLICITOR ALFARO: The State calls
18 Lieutenant Michael Roach.

19 (WITNESS TAKES STAND)

20 MICHAEL A. ROACH, being duly sworn to
21 tell the truth, the whole truth and nothing but
22 the truth, testified, as follows:

23 THE COURT: You may proceed.

24 SOLICITOR ALFARO: Thank you, Your
25 Honor.

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1 DIRECT EXAMINATION

2 BY SOLICITOR ALFARO:

3 Q. Lieutenant Roach, could you tell us where
4 you currently work?

5 A. Moncks Corner Police Department.

6 Q. How long have you been with the Moncks
7 Corner Police Department?

8 A. It'll be twenty-two years in August.

9 Q. What are your current duties and
10 responsibilities?

11 A. I'm the Lieutenant over the investigations
12 and SRO Units.

13 Q. And were you working in that capacity on
14 August 19, 2009?

15 A. I was.

16 Q. And did you have the opportunity to assist
17 in a murder investigation at [REDACTED] Golden Aspen
18 Road in Moncks Corner that morning?

19 A. I did.

20 Q. Do you recall approximately what time you
21 were asked to respond?

22 A. 5:30 in the morning.

23 Q. And when you were notified, where did you
24 go initially?

25 A. I was heading to the scene. And while I

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1 was en route I learned that then Patrolman
2 Scarborough had the defendant stopped on Maple
3 Leaf Drive. So I stopped there first.

4 Q. And when you got there was the defendant
5 still at that location?

6 A. He was. He was secured in the back of his
7 patrol vehicle.

8 Q. And was he handcuffed at that time?

9 A. He was.

10 Q. And at that location did you have the
11 opportunity to speak with the defendant?

12 A. I did.

13 Q. Where did that interview take place?

14 A. In the back seat of the patrol car.

15 Q. Did you have any prior knowledge of this
16 defendant prior to this interaction?

17 A. I knew him from working at Johnny's. He
18 used to work in the truck accessory department.

19 Q. And when you first talked to the defendant,
20 did you talk to him in the back seat of the car?

21 A. I did.

22 Q. Did he recognize you when you first
23 approached?

24 A. Yes, he did.

25 Q. Did you at that time ask him if he would be

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1 willing to speak with you?

2 A. I did, and his remarks were, "Yeah, I'll
3 talk to you any time. You know that."

4 Q. At that point did you provide him with his
5 *Miranda* rights?

6 A. I asked him if he knew his rights and then
7 got a form from Patrolman Scarborough and
8 advised him of his rights in the back of the
9 car.

10 Q. I'm going to show you what is marked as
11 Court's Exhibit 3. Could you tell the Court if
12 you recognize that Exhibit?

13 A. I do. It's my handwriting on it. It's an
14 ---

15 Q. And what is that Exhibit?

16 A. It's a *Miranda* waiver form, advising
17 someone of their rights.

18 Q. And is that the form that you used to
19 provide the defendant with his rights on this
20 day?

21 A. It is.

22 Q. And could you tell the Court what rights
23 you advised the defendant of?

24 A. That he had the right to remain to silent.
25 That he had the right to have a lawyer present

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1 with him. During questioning anything he said
2 could be used against him. He had the right to
3 have -- seek advice of an attorney before he
4 answered any question and have him present
5 during any questioning.

6 Q. And did he appear to understand his rights?

7 A. He did.

8 Q. Did he indicate to you any difficulty in
9 understanding what you had told him?

10 A. None, not at all.

11 Q. At that time did you have him sign the
12 form?

13 A. No, I did not. He was handcuffed.

14 Q. Is that the reason for not having him sign
15 it?

16 A. That's correct.

17 Q. And after providing him his *Miranda* rights,
18 did he agree to speak with you about the
19 incident?

20 A. Yes, it was like he was anxious to talk to
21 me.

22 Q. And was he able to provide you with details
23 of the crime that took place at Golden Aspen?

24 A. Yes.

25 Q. And at this time did he appear to be under

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1 the influence of any drugs or alcohol?

2 A. No.

3 Q. Give you any reason to believe that he did
4 not understand what you were telling him?

5 A. Not at all.

6 Q. And did you or any other officer in your
7 presence use any type of force or threats
8 against the defendant?

9 A. No.

10 Q. Was he promised any kind of leniency or
11 anything else in exchange for his cooperation
12 in giving his version of the events?

13 A. No.

14 Q. At any time during your conversation with
15 him at that traffic stop did he ask for a
16 lawyer?

17 A. No.

18 Q. And did he ever indicate that he did not
19 want to speak with you about the case?

20 A. Not at all.

21 Q. What, if anything, did the defendant admit
22 to doing during that interview?

23 A. He admitted to shooting his wife. He
24 basically told me that they had been arguing for
25 several days, and indicated the problem was over

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1 her having an alleged affair with her uncle --
2 with his uncle, excuse me.

3 Q. And are you aware of whether or not this
4 interview was videotaped and/or audio taped?

5 A. I was aware.

6 Q. Was the interview recorded?

7 A. It was.

8 Q. Is there video of your actual interview
9 with him?

10 A. No, at the time it was brand new equipment,
11 and we didn't know that you had to do a special
12 operation to make the camera, in fact, record.

13 Q. But is there an audio recording of that
14 interview?

15 A. There is.

16 Q. And have you had an opportunity to review
17 that recording of that interview?

18 A. I did.

19 Q. I want to show you what has been marked as
20 State's Exhibit 1 for purposes of this hearing.
21 Could you tell me if you recognize that exhibit?

22 A. I do, it has my initials on it.

23 Q. And what do you recognize that exhibit as
24 being?

25 A. This is a DVD copy of the recording of the

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1 in-car interview.

2 Q. You said you had an opportunity to review
3 that?

4 A. Yes.

5 Q. Were there any edits or deletions that were
6 made to the video?

7 A. No.

8 Q. Is it a fair and accurate representation of
9 the interview that you conducted with the
10 defendant during the traffic stop?

11 A. It is.

12 Q. And on that video are there any part of the
13 conversation that cannot be heard?

14 A. There are several parts where the radio
15 traffic and directions of officers bleeds over
16 and I believe it drowns us out.

17 Q. But those -- that radio traffic that drowns
18 out portions, that took place during the
19 interview? That's not added in later?

20 A. That's correct.

21 Q. So including that, it is a fair and
22 accurate representation of the interview that
23 you conducted that day?

24 A. It is.

25 Q. After speaking with the defendant at that

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1 location did you ask him if he would be willing
2 to speak with you again?

3 A. I did.

4 Q. And where did you plan to conduct that
5 interview?

6 A. At my office at the Moncks Corner Police
7 Department.

8 Q. And was the defendant transported to that
9 location?

10 A. He was.

11 Q. How much time would you say passed between
12 leaving the traffic stop and your interview with
13 the defendant at the police station?

14 A. Twenty, thirty minutes. I went to the
15 crime scene, and then from there straight to the
16 station.

17 Q. And you said that the interview took place
18 at your office.

19 A. (Affirmative nod).

20 Q. Could you describe for the Court what your
21 office looks like sizewise and things like that?

22 A. My office is probably maybe eight-by-eight,
23 maybe a little bit bigger than that. I have a
24 desk, a computer stand, a bookcase and a file
25 cabinet.

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1 Q. And was the defendant in handcuffs during
2 this interview?

3 A. He was.

4 Q. And prior to initiating that second
5 interview in your office did you again provide
6 him with his *Miranda* rights?

7 A. I did.

8 Q. And did you do that from the same form that
9 you testified earlier, or did you do that in a
10 different manner?

11 A. I did it in a different manner.

12 Q. And how was that?

13 A. I basically advised him that he still had
14 the rights that I advised him earlier and made
15 sure that he understood them.

16 Q. And at that time did he again indicate to
17 you that he understood the rights that you were
18 reading to him?

19 A. He did.

20 Q. And at any point from the time that you
21 first met with him at the traffic stop up until
22 this point, did he ever ask for a lawyer?

23 A. No.

24 Q. And after reading him his rights the second
25 time, did he ever ask for a lawyer?

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1 A. No.

2 Q. Again, in that time between the traffic
3 stop and the time of your second interview, were
4 any threats or force used against the defendant
5 in order to elicit his cooperation in any
6 fashion?

7 A. No.

8 Q. And were any promises of leniency made to
9 him in order to get the second interview done?

10 A. No.

11 Q. And was the second interview recorded?

12 A. Yes.

13 Q. How was that recorded?

14 A. Micro cassette tape recording.

15 Q. Where was that recorder during the
16 interview?

17 A. In plain view between us, sitting on my
18 computer stand. He was in a chair sitting next
19 to it. We were about a foot and a half apart.

20 Q. And have you had the opportunity to review
21 that recording?

22 A. I have.

23 Q. I'm going to show you what has been marked
24 as Court's Exhibit 2. If you could look at that
25 exhibit and tell me -- tell the Court if you

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1 recognize that?

2 A. Again, it has my initials on it. This is a
3 DVD copy of the micro cassette recording.

4 Q. Have you had an opportunity to review that
5 recording?

6 A. I have.

7 Q. And is that CD recording, is that a fair --
8 would you say that is a fair and accurate
9 representation of the interview you conducted
10 with the defendant at the Moncks Corner Police
11 Department on August 19, 2009?

12 A. Yes.

13 Q. And how long would you say that second
14 interview took or lasted?

15 A. Forty-five, fifty minutes to an hour and
16 ten minute.

17 Q. At any point during that time did he ask
18 for a lawyer?

19 A. No.

20 Q. At any point in time did he ask to stop the
21 interview?

22 A. No.

23 Q. And in that second interview were you able
24 to gather more details as to what happened at
25 the Golden Aspen Road address?

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1 A. Yes.

2 Q. Are those statements accurately depicted on
3 the recording that you have used?

4 A. Yes.

5 SOLICITOR ALFARO: We have no more
6 questions, Your Honor.

7 THE COURT: Questions, Mr. Vitetta?

8 CROSS EXAMINATION

9 BY MR. VITETTA:

10 Q. Lieutenant Roach, the first time you
11 interviewed ---

12 THE COURT: Let me interrupt just one
13 second, Mr. Vitetta. Make sure you identify
14 which numbers you're referring to as you had the
15 officer identify the micro cassette and the DVD.
16 I'm going to make reference to those numbers and
17 what those exhibits are. I apologize. I should
18 have told you at the time -- so that the record
19 can be clear.

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR ALFARO:

22 Q. Lieutenant Roach, I'm going to show you --

23 THE COURT: Just say it.

24 SOLICITOR ALFARO: Just say it.

25 Court's Exhibit 1 is the in-car video that

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1 Corporal Scarborough and Lieutenant Roach
2 testified to. Court's Exhibit 2 is the micro
3 cassette recording of the interview that
4 Lieutenant Roach conducted at the Moncks Corner
5 Police Department.

6 THE COURT: Thank you.

7 CROSS EXAMINATION CONTINUED

8 BY MR. VITETTA:

9 Q. The first interview was on Maple Street in
10 Officer Scarborough's car. Is that correct?

11 A. Yes.

12 Q. And this was at about 5:30 in the morning?

13 A. It was probably closer to 6:00. I mean, it
14 took me awhile to get there and, you know, I
15 believe it actually started a little after 6:00.

16 Q. And were you sitting in the car with Mr.
17 Harris?

18 A. Yes.

19 Q. So you were both sitting in the back seat?

20 A. That's correct.

21 Q. And you were next to each other.

22 A. That's correct.

23 Q. Were the doors open or closed?

24 A. The driver's side rear door was open.

25 Q. And that's where you were sitting?

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- 1 A. Yes, I was sitting in the driver's side
2 rear passenger.
3 Q. And he was in the passenger's side rear?
4 A. Yes.
5 Q. His door was closed?
6 A. That's correct.
7 Q. Did you learn at any time during the
8 interview how he had actually gotten to that
9 point?
10 A. I know that he had been stopped by Officer
11 Scarborough en route and that, you know, he was
12 seen leaving the scene.
13 Q. Did you learn at any point that he had
14 driven from North Carolina that night?
15 A. I did.
16 Q. Did it concern you that he hadn't slept
17 during the night?
18 A. He appeared to be very alert.
19 Q. Did you learn at any point that he had been
20 drinking during his driving?
21 A. No, sir. I was sitting right next to him.
22 I didn't notice any of those signs.
23 Q. At some point in the interview you
24 mentioned to Mr. Harris that you believed -- and
25 I think I can quote you by saying that "we both

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1 know what happened here." Do you remember
2 asking him that or saying that?

3 A. I don't remember those exact words.

4 Q. Something along the lines of the allegation
5 that he shot his wife. You quoted that, that he
6 shot his wife. Do you remember Mr. Harris
7 saying, "I truly don't remember that."

8 A. Oh, I remember him saying that he didn't
9 know anything about it until he was stopped.

10 Q. He didn't know anything about it?

11 A. That he didn't know that she had been hit.

12 Q. That she had been hit. He didn't remember
13 -- didn't remember actually pointing the gun at
14 her or shooting her, though, correct?

15 A. I wouldn't go that far. I clearly remember
16 him telling me that he didn't know that she was
17 hit until after he had been stopped.

18 Q. I guess a better way to phrase the
19 question, Lieutenant, is that he claimed that
20 the gun simply went off in his hand.

21 A. Yes.

22 Q. And then he left not knowing anything else.

23 A. That was one of his assertions, yes.

24 Q. When you got to the police station where
25 was Mr. Harris?

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- 1 A. I believe he was being held in a holding
2 cell until I got there.
- 3 Q. Then you brought him to your office?
- 4 A. I had him brought to the office.
- 5 Q. And was anybody else in the office with
6 you?
- 7 A. No, but there's a lot going on.
- 8 Q. Sure. Was the door open or closed?
- 9 A. I'm sure it was open at some point.
- 10 Q. But all this is recorded anyway?
- 11 A. That's correct.
- 12 Q. My question has more to do with his -- this
13 now is a lot closer to 7:00 o'clock in the
14 morning?
- 15 A. I would say yes.
- 16 Q. Somewhere around then?
- 17 A. Probably.
- 18 Q. 6:30 to 7:00?
- 19 A. Um-humm.
- 20 Q. And you knew at this point that he hadn't
21 slept at all that night.
- 22 A. No, sir, I didn't. All I know is that he
23 left North Carolina about 1:30 in the morning.
- 24 Q. Okay. Did he appear to have slept all
25 night?

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1 A. Again, he was alert and coherent. He
2 wasn't dozing off and wasn't complaining of any
3 of those things.

4 Q. Did it occur to you to ask him whether he
5 needed any rest?

6 A. No, sir.

7 Q. And why was that?

8 A. He didn't appear to, sir.

9 Q. Again, he indicated in this interview -- he
10 again indicates a lack of knowledge of his wife
11 actually being shot with the gun, correct?

12 A. His knowledge -- he says he didn't know she
13 was hit. But during the interview he says it
14 wasn't premeditated. It was the heat of
15 passion, which is kind of conflicting.

16 Q. Yes, sir. I mean, he'd been up all night
17 while he's giving you this statement.

18 A. I have no way of knowing that. He was
19 alert, coherent. He wanted to talk to me.

20 Q. You've interviewed other people who have
21 been suspected of committing homicides.

22 A. Correct.

23 Q. And oftentimes, have you ever interviewed
24 people this close to a homicide before?

25 A. Yes, sir.

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1 Q. And is it your experience that these people
2 are under a great deal of stress and anxiety?

3 A. I would say stress. I'm not qualified
4 about the anxiety.

5 Q. Did Mr. Harris appear to be under stress?

6 A. Sir, he was remarkably calm and collected.

7 Q. Was that unusual?

8 A. I know Tito. You know, even when he was
9 excited about something that was going on with
10 work, you know, he was pretty calm.

11 Q. And how did you get to know him?

12 A. He used to work at Johnny's Truck and Auto.

13 Q. And how did you get to know him? How was
14 that established?

15 A. I've bought several vehicles from there,
16 several accessories. Him and the manager, you
17 know -- I believe in going by businesses in
18 Moncks Corner, and I would see him quite often.

19 Q. Thank you. I have no further questions.

20 THE COURT: Any redirect?

21 SOLICITOR ALFARO: Briefly.

22 REDIRECT EXAMINATION

23 BY SOLICITOR ALFARO:

24 Q. Lieutenant Roach, do you recall the
25 defendant ever asking you if he could take a

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1 break during the course of either interview?

2 A. No.

3 Q. Did he ever indicate to you that he needed
4 some rest or wanted to stop talking for a little
5 while?

6 A. No.

7 Q. Regarding the stress and anxiety question
8 that you were asked on cross, do you recall the
9 defendant's first words to you when you started
10 speaking with him at the police car during the
11 traffic stop?

12 A. "You know I'll talk to you. I have no
13 problem with that at all."

14 SOLICITOR ALFARO: No further
15 questions.

16 THE COURT: You may step down.

17 (WITNESS STEPS DOWN)

18 THE COURT: Any witnesses from the
19 defense?

20 MR. VITETTA: Your Honor, Mr. Harris
21 would like to testify in a limited manner.

22 THE COURT: He can testify at counsel
23 table. Sir, raise your right hand to be sworn.

24 TITO FERNANDO HARRIS, being duly sworn
25 to tell the truth, the whole truth and nothing

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1 but the truth, testified, as follows:

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION

4 BY MR. VITETTA:

5 Q. Mr. Harris, on the night of this incident
6 you remember when your automobile was stopped by
7 Officer Scarborough?

8 A. Yes, sir.

9 Q. And do you remember Lieutenant Roach coming
10 up to the car?

11 A. After Scarborough put me in the back of his
12 car.

13 Q. Do you remember when Lieutenant Roach came
14 to the car?

15 A. Vaguely.

16 Q. And do you remember entering the car and
17 sitting next to you?

18 A. Yes.

19 Q. And do you remember him asking you
20 questions about what happened at your former
21 residence?

22 A. Pretty much everything, as I seen it, he
23 was informing me and letting me know what was
24 going on.

25 Q. And then before you got to that -- before

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1 you got in trouble, where were you later that
2 evening until the next day?
3 A. North Carolina.
4 Q. And how did you get to Charleston?
5 A. Drove.
6 Q. And what time did you leave North Carolina?
7 A. About 1:45 or 1:30 in the morning.
8 Q. And what time did you get to Charleston?
9 A. Approximate time, around 5:00 o'clock.
10 Q. Did you have any sleep at all that night?
11 A. No, sir.
12 Q. Did you consume any alcohol in the late
13 afternoon in North Carolina?
14 A. Yes, sir.
15 Q. And what did you consume?
16 A. I was drinking with my wife's cousin,
17 Darren. I had left him and went to my other
18 friend's house, named Tim Wilson. When I left
19 North Carolina I had stopped at the -- I think
20 the name of Servco in North Carolina, and
21 purchased a beer from there and got that on the
22 way down.
23 Q. What kind of beer?
24 A. It was one of those 40-ounces or 32-ounce
25 Bud Lights.

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1 Q. And did you drink the entire day?

2 A. Yes, sir.

3 Q. And how long did it take you to get to
4 Charleston?

5 A. Probably about two hours and fifteen
6 minutes.

7 Q. From Norwood?

8 A. Yes, sir. Say three hours.

9 Q. What route did you take?

10 A. I took Highway 52 to Interstate 95.

11 Q. When you got to -- when Detective Roach
12 entered this car with you, were you -- I'm
13 sorry, when Lieutenant Roach entered the car
14 with you, were you fully aware of what was going
15 on?

16 A. No, sir.

17 Q. And why was that?

18 A. Because I just wasn't.

19 Q. Do you remember him reading you your
20 rights?

21 A. Not really. The only I remember him saying
22 -- because, like he said, I do know him and know
23 his face. And he came up to me and he said,
24 "Hey, Tito, what's going on? You want to tell
25 me," you know, and all this stuff like that.

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1 That's about what I remember.

2 Q. So why did you talk to him?

3 A. As a familiar face.

4 Q. Were you aware of what you were saying
5 then?

6 A. No, not really.

7 Q. And when you were taken to the office, do
8 you remember being taken to his office at the
9 Moncks Corner Police Department?

10 A. I remember being in a small cell.

11 Q. Do you remember going to his office?

12 A. Yes.

13 Q. And do you remember being interviewed
14 there?

15 A. He took off the handcuffs and he told me,
16 he said something to the extent of, "I'm not
17 worried about you messing with me," or something
18 or, "You don't want to try that. So I'll take
19 the handcuffs off. You give me a chance to help
20 you, and I'll help you -- give me a chance to
21 help you if you cooperate."

22 Q. So you took this to mean that he was
23 promising you something?

24 A. Pretty much, yes.

25 Q. And what did you think he was promising

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1 you?

2 A. That what I was saying would be taken as
3 accountability and what happened, and what I was
4 saying was taken, you know, taken in a better
5 way to have a good outcome.

6 Q. And did he give you some opinion as to what
7 he thought had happened that evening?

8 A. Yeah, he mentioned the phrase "heat of
9 passion" to me. Until now, I didn't even know
10 what the heat of passion was.

11 Q. Why was that important to you?

12 A. Because it sounded like when he said "heat
13 of passion" because -- I mean, no doubt I loved
14 my wife. I know what heat is, and I know what
15 passion is.

16 Q. So do you remember then giving him this
17 full statement for forty-five minutes or an hour
18 and ten minutes?

19 A. No.

20 Q. And why do you think you don't remember
21 this?

22 A. Because I don't.

23 Q. Could it have been because you hadn't slept
24 all night?

25 A. Yes, sir.

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1 Q. Could it have been because you had consumed
2 alcohol?

3 A. Yes, sir.

4 Q. Could it have been because of the stress
5 with the argument and the fight with your wife?

6 A. Yes, sir.

7 Q. Was your statement to Lieutenant Roach that
8 evening in the police department, was that a
9 free and voluntary statement?

10 A. It was made under duress.

11 Q. Was it free and voluntary?

12 A. I don't know.

13 Q. What do you mean it was under duress?

14 A. When he approached me and told me what
15 happened, I had no idea of what had happened,
16 and I had no idea of what was going on. That
17 was the last thing that I ever wanted to think
18 about or even imagine happening.

19 Q. You had no idea of what?

20 A. That my wife had been shot.

21 Q. That your wife had been shot. So, then, so
22 upon learning that you felt pressured to make a
23 statement?

24 A. Yes, sir.

25 Q. And then when you went to the police

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1 station, was that statement also under duress?

2 A. Yes, sir.

3 Q. And why was that?

4 A. Because, I mean, when they told me she was
5 dead ---

6 Q. What happened?

7 A. He told me she was dead.

8 Q. So why was then your statement under duress
9 after that?

10 A. Because my whole mental state.

11 Q. Were you thinking clearly?

12 A. No.

13 Q. Had you had any sleep that night?

14 A. No, sir.

15 Q. Had you consumed alcohol?

16 A. Yes, sir.

17 Q. And the statement you gave then was not a
18 clear statement as to what you thought happened.

19 A. Yes, sir.

20 MR. VITETTA: Thank you, Judge. I have
21 no further questions.

22 THE COURT: Cross, Solicitor?

23 SOLICITOR ALFARO: Yes, Your Honor.

24 CROSS EXAMINATION

25 BY SOLICITOR ALFARO:

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1 Q. Can you remember what you first told
2 Lieutenant Roach when he opened the car door at
3 the traffic stop?

4 A. No, sir.

5 Q. Do you remember telling him that -- do you
6 remember him asking you if you remembered who he
7 was?

8 A. No, sir.

9 Q. You don't recall telling him -- saying,
10 "Roach, how are you doing, buddy?"

11 A. No, sir.

12 Q. Now, at that point you recall you just
13 testified that you became stressed after
14 Lieutenant Roach told you that your wife was
15 dead. Lieutenant Roach told you that at the
16 point when he asked you if you remembered
17 anything and you said no, and it was at that
18 point that he told you that your wife was dead.

19 A. I don't know what come first and what come
20 after.

21 Q. Who told you that your wife was dead?

22 A. Lieutenant Roach.

23 Q. You just said that you don't remember Roach
24 telling you that.

25 A. I said I don't know which one come first.

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1 Q. Was that the first time you talked to
2 Lieutenant Roach that night, when he got in the
3 car with you?

4 A. Yes, sir.

5 Q. So you hadn't talked to Lieutenant Roach
6 before that point where he asked you if you
7 remembered him and you said, "Roach, how are you
8 doing?" You hadn't talked to him.

9 A. Yes, sir.

10 Q. You had or had not?

11 A. I had not.

12 Q. So he had not told you that your wife was
13 dead at that point.

14 A. No, sir.

15 Q. And it was at that point that he gave you
16 your Miranda rights. So at the point you
17 received the Miranda rights you did not know
18 that your wife was dead. Is that fair to say?

19 A. Yes, sir.

20 Q. So when you were advised of your Miranda
21 rights you were not under the stress or the
22 duress of being told that your wife was dead.

23 A. Yes, I was up under the same stress and
24 duress of the alcohol and the drive from North
25 Carolina and being up.

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1 Q. Was the stress from your wife being dead,
2 or the stress because you'd had driven three
3 hours from North Carolina?

4 A. Pretty much the whole situation.

5 Q. At any point did you tell Lieutenant Roach
6 that you had had 32 ounces of Bud Light?

7 A. I don't know.

8 Q. And you testified that you don't remember
9 anything that you told Lieutenant Roach either
10 at the car or at the police station.

11 A. I wouldn't go as far as saying not
12 anything. But I don't have a recollection
13 enough to say word-for-word or knowing the
14 majority of it.

15 Q. So now you don't recollect what you said.
16 Is that correct?

17 A. Yes, sir.

18 Q. But then when you were telling him, those
19 were your words?

20 A. Yes, sir.

21 Q. So the statement that you provided to
22 Lieutenant Roach in the police car as well as at
23 the station was your statement, your words, your
24 version of what happened?

25 A. I don't know whose versions or whose words.

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1 Q. Was he telling you what to say?

2 A. Pretty much, like I said, it was more of a
3 -- not my statement. It was more of a
4 conversation of saying this is what happened,
5 this, that, this, that. This, saying, this is
6 what's this and that's what that. Because like
7 he said, my demeanor was even keel.

8 Q. Your demeanor was an even keel, yet you
9 were under duress?

10 A. Yes, sir.

11 Q. At any point did you ask Lieutenant Roach
12 to stop?

13 A. I don't recall.

14 SOLICITOR ALFARO: No further
15 questions.

16 THE COURT: Redirect.

17 MR. VITETTA: No, Your Honor.

18 THE COURT: Any rebuttal testimony
19 from the State?

20 SOLICITOR ALFARO: No, Your Honor.

21 THE COURT: Are you going to argue?

22 SOLICITOR ALFARO: Your Honor, I
23 believe based on the testimony of Lieutenant
24 Roach as well as Corporal Scarborough, in
25 addition to the in-car video -- Court's

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1 exhibits, the in-car video as well as the micro
2 cassette recording -- 2, I believe -- that it's
3 clear that the defendant was Mirandized by
4 Lieutenant Roach prior to any custodial
5 interrogation. That he, according to Lieutenant
6 Roach's testimony as well as what is contained
7 on the audio and video recordings, the defendant
8 was coherent, alert, acknowledged that he
9 understood the rights that had been provided to
10 him. We believe it's important to note that the
11 initial interaction between Lieutenant Roach and
12 the defendant, Lieutenant Roach asked him if he
13 remembered him and him saying "Roach, hey,
14 buddy, how are you doing?" I believe those
15 video, the defendant's demeanor on the video as
16 well as the recording, show that he was not
17 under any force or coercion or threats on the
18 part of Lieutenant Roach or Corporal Scarborough
19 or any other law enforcement officer. That he
20 gave a statement. Miranda was complied with at
21 the point that he became placed into custody and
22 was interrogated. And under the totality of the
23 circumstances and analysis of the State, it was
24 freely and voluntarily given to Lieutenant Roach
25 as well as the initial statements to Corporal

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1 Scarborough that were not while under custody.

2 THE COURT: Mr. Vitetta?

3 MR. VITETTA: Your Honor, the
4 defendant testified that it was not a freely,
5 knowingly, voluntary statement. He'd been up
6 all night. He'd been drinking alcohol. The
7 defendant was under severe stress causing him
8 to believe it was under duress and gave the
9 statement without being cognizant of what he was
10 saying. It was not knowingly and voluntarily
11 made. Thank you. And that would apply to both
12 statements, Your Honor, both in the patrol car
13 and at the police department.

14 THE COURT: We need to see those
15 Exhibits. I need to see all the Exhibits, and
16 you need to give them back to the court
17 reporter.

18 The State has the burden of proving the
19 voluntariness of the statements by a
20 preponderance of the evidence. Once the Court
21 determines that the statements are voluntary,
22 it's up to the jury to determine whether the
23 State has proven beyond a reasonable doubt, one,
24 that Miranda was given and that the statements
25 -- well, actually, not that Miranda was given.

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1 It's for the Court to determine whether Miranda
2 was given initially by a preponderance of the
3 evidence. And then after that -- and the
4 voluntariness. But after that, if the Court
5 determines that the statements are voluntary,
6 it's up the State to prove beyond a reasonable
7 doubt that the statements were, in fact, given,
8 that they were voluntary and that the defendant
9 was Mirandized.

10 The Court is required to look, when
11 determining the test of voluntariness, is
12 whether the defendant's role was overborne by
13 the circumstances surrounding the giving of the
14 statement. This test takes into consideration
15 the totality of all the surrounding
16 circumstances, both the characteristics of the
17 accused and the details of the interrogation.

18 And I think it goes without saying
19 this, we all know the law provides that any sort
20 of statement cannot be distracted by any sort of
21 threats of violence or obtained by any direct or
22 implied promises, however slight, or by the
23 exertion of improper influence. The Court is
24 required to look at the length of the
25 interrogation, its location, its continuity, the

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1 defendant's maturity, education, physical
2 condition and mental health and whether the
3 police advised the defendant of his right to
4 remain silent, his right to counsel present
5 during custodial interrogation as well as the
6 age, background, appearance and conduct of the
7 accused. Mental deficiency alone is not a
8 reason to require a statement to rise to the
9 level of inadmissibility. Of course, the
10 authorities could misrepresent evidence to the
11 defendant in order to get the statement from him
12 or her. And the Court, at threshold looks at
13 whether the defendant was in custody or whether
14 he was appropriate Mirandized.

15 The record supports by a preponderance
16 of the evidence that the defendant was, in fact,
17 in custody. That at the initial point in time
18 of being placed in custody he was not Mirandized
19 because Officer Scarborough did not intend to
20 ask him any questions such that would require
21 him to inculcate himself.

22 At the time that he was questioned,
23 Lieutenant Roach indicated and testified that he
24 Mirandized the defendant. The Court finds that
25 testimony credible and finds that the State has

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1 met its burden by a preponderance of the
2 evidence that the defendant was appropriate
3 Mirandized.

4 The Court also finds that the defendant
5 at that time understood his rights. There is no
6 indication present in the record by credible
7 testimony that he was coherent, that he was
8 alert. There's no indication that he was sleep
9 deprived. There was no smell of alcohol about
10 his person or any indication that he was
11 impaired. And certainly these officers, prior
12 to commenting on his appearance, as well as the
13 different position that Patrolman Scarborough
14 held at the time, certainly were in a position
15 to determine if the defendant was impaired by
16 objective criteria about his person. And they
17 indicated that at all time -- well, not they --
18 Lieutenant Roach indicated that he was alert at
19 all time, that he did not ask at any time for a
20 break, that he did not indicate to anyone that
21 he was sleep deprived in any way, that he was
22 tired or that he needed a break. At no time did
23 he request counsel. There is no indication in
24 this record that there's any evidence of
25 coercion or duress, at least by a preponderance

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1 of the evidence.

2 There is indication that Lieutenant
3 Roach knew the defendant in the past, had
4 personal knowledge of him and his personality.
5 So, certainly, that gave him a different
6 perspective as to dealing with the defendant and
7 being able to make certain determinations
8 regarding his ability to understand what was
9 being explained to him.

10 There's been some testimony that the
11 defendant had a copious amount of alcohol.
12 Certainly, if he had had such -- the amount
13 that's being portrayed for the record, he would
14 not have been able to drive and certainly would
15 not have made it to South Carolina from North
16 Carolina. It is unlikely from the testimony, in
17 his testimony, that a 32-ounce -- or 32 ounces
18 of Bud Light would have still been sufficiently
19 in his system more than four or five hours later
20 to have impaired his ability to understand where
21 he was, what he was doing, or the ability to
22 make a statement.

23 Now, ultimately, it's for the jury to
24 determine whether the statement is proven beyond
25 a reasonable doubt standard, whether the

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1 statement was voluntarily made, based on the
2 totality of the circumstances and the same
3 criteria that I've already articulated for the
4 record. But certainly the State has proven by a
5 preponderance of the evidence that the
6 statements were freely and voluntarily given,
7 that there was no -- that the defendant was not
8 subject to any duress or coercion and, frankly,
9 the reportings themselves do not support any
10 coercion or duress. They support that he was
11 alert and coherent when he gave the statements.

12 Therefore, the motion to suppress the
13 statements is denied.

14 Are we ready to proceed with opening
15 arguments and opening instructions?

16 SOLICITOR WILLIAMS: The State is,
17 Your Honor.

18 MR. VITETTA: Yes, but I have an
19 objection on the photographs the State intends
20 to introduce.

21 THE COURT: I told that you'll have
22 to make a contemporaneous objection. I told you
23 we can take it up in camera. I'm not going to
24 rule in advance on the photographs. As you all
25 know, the photographs are admissible to prove

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1 malice, which is an element of murder. I want
2 to look at them at the time that they intend to
3 introduce them, but I'm not going to rule in
4 advance on the photographs. I don't know what
5 they look like. I don't know how they fit into
6 the context of the case. But I am instructing
7 the State not to put them in the presence of the
8 jury until we've had an in-camera hearing.

9 SOLICITOR WILLIAMS: Thank you, Your
10 Honor. The only other issue -- and we can do
11 this when the witness testifies, and we have a
12 certificate that we've given Mr. Vitetta about
13 the phone records. And he has stipulated that
14 the keeper of the records would not have to come
15 down for Verizon. So we stipulated that the
16 phone records and a cover sheet for the phone
17 records would be admissible.

18 MR. VITETTA: Yes.

19 THE COURT: Have y'all already had
20 that marked?

21 SOLICITOR WILLIAMS: Yes, Your Honor.
22 They are item number 38 for the phone records.
23 And, Miss Vivian, we will mark the cover sheet
24 38A.

25 COURT REPORTER: What are the

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1 numbers?

2 SOLICITOR WILLIAMS: 38 for the phone
3 records and 38A for the cover sheet.

4 THE COURT: Is that acceptable,
5 Vivian?

6 COURT REPORTER: That's fine, Your
7 Honor.

8 THE COURT: Is that marked and
9 admitted without objection, Mr. Vitetta?

10 MR. VITETTA: Without objection.

11 THE COURT: 38 and 38A are marked and
12 admitted without objection.

13 (EXHIBITS 38 AND 38A ADMITTED)

14 THE COURT: Are there any other
15 exhibits that have been admitted without
16 objection?

17 SOLICITOR WILLIAMS: There's no other
18 that we have a stipulation to or an agreement
19 to, Your Honor.

20 THE COURT: Is the State ready to
21 proceed?

22 SOLICITOR WILLIAMS: The State is
23 ready, Your Honor.

24 THE COURT: Is the defense ready to
25 proceed?

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1 MR. VITETTA: Yes.

2 THE COURT: Does anybody need to go
3 to the bathroom, because I'm not stopping
4 anytime soon. So if you need to, you might want
5 to take advantage of it and go now.

6 SOLICITOR WILLIAMS: Can we take a
7 short break?

8 THE COURT: Yes.

9 (BRIEF RECESS)

10 (DEFENDANT PRESENT)

11 THE COURT: Bring in Juror Number 85
12 last. He's the foreperson.

13 (JURY IN @ 10:57 A.M.)

14 THE COURT: You may be seated.
15 Ladies and gentlemen, we appreciate your
16 patience. The matters of law that we had to
17 take care of this morning took a little longer
18 than we anticipated. Please know that we do not
19 take your time from granted, and we do
20 appreciate your patience as we work through
21 those issues. It helps us to go forward without
22 -- with as little interruption as possible. So,
23 again, we do appreciate your patience and we do
24 not take your time for granted.

25 The case that we're about to try is the

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1 case of The State of South Carolina versus Tito
2 Fernando Harris. This is an indictment for
3 murder. The elements of the indictment I will
4 explain to you at the conclusion of the trial
5 when I give you the instructions on the law.

6 What I would now say is intended to
7 serve as a brief introduction to the trial of
8 this case. These remarks are not a charge on
9 the law, and you will -- as we go through this
10 process you will hear me use the term "charge."
11 That is just a legal term of art that means
12 instructions. So when I use the term "charge"
13 or "instructions," they are interchangeable.

14 As I indicated, these marks are not a
15 charge on the law in this case. I will instruct
16 you on the law after we've looked at the case,
17 at the end of the trial, before you retire to
18 consider your verdict in this case. This is
19 merely an explanation of the procedure that we
20 will follow so that you may better understand
21 what is happening.

22 Now, the bailiffs are going to pass out
23 to you some notepads. Are there stickers on the
24 front of those notepads?

25 BAILIFF: On the first page.

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1 THE COURT: On that very first page
2 why don't you all write your juror number so
3 that you will be able to identify which notebook
4 belongs to you. I will give you some
5 instructions regarding note taking near the
6 conclusion of this instruction.

7 As I've indicated, the defendant is
8 charged by an indictment with the offense of
9 murder. And as I've also indicated I will
10 explain the elements of that offense to you at
11 the conclusion of the trial, before you retire
12 to deliberate.

13 The indictment is simply the charge by
14 which the case is brought into Court, and it is
15 not, in any sense, evidence of any of the
16 allegations it may contain. The defendant has
17 plead not guilty to the indictment. The State,
18 therefore, has the burden of proving each and
19 every element of the indictment beyond a
20 reasonable doubt. And it will be your duty,
21 ladies and gentlemen, to determine whether the
22 State has met that burden or not.

23 Your purpose as jurors is to find and
24 determine the facts. You are the sole judges of
25 the facts. If, at any time, I make any comment

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1 regarding the facts you must disregard it. You
2 are to determine the facts from the testimony
3 you hear and the other evidence introduced in
4 Court. It is up to you to determine inferences
5 which you feel may be properly drawn from the
6 evidence.

7 It is especially important that you
8 perform your duty of determining the facts
9 diligently and conscientiously, because
10 ordinarily there is no way to correct an
11 erroneous determination of facts made by a trial
12 jury.

13 On the other hand, and with equal
14 emphasis, the same law that makes you the judges
15 of the facts makes me the judge of the law. The
16 law as given by this Court is the only law you
17 may consider. You must accept and follow it
18 even though you may disagree with me about it.
19 The Court cannot tell you what the facts are,
20 and you are not allowed to disagree with the
21 Court about what the law is or what the law
22 should be.

23 Your responsibility, ladies and
24 gentlemen, is to take the law as it is
25 instructed and apply it to the facts as you find

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1 them from the testimony of the witnesses and any
2 other evidence that is introduced during the
3 course of this trial. After doing that, ladies
4 and gentlemen, you will render your verdict, a
5 true and just verdict, under the solemn oath
6 that you have taken as jurors in this case.

7 Until I advise you to begin your
8 deliberations, you must not discuss this case
9 with anyone. That includes your fellow jurors,
10 your friends, your family members or anyone
11 involved in the case. After the case is
12 submitted to you, you must discuss it only in
13 the jury room among your fellow jurors.

14 The attorneys and the parties have been
15 instructed not to speak with you at all. So if
16 you should see them about the court house or,
17 you know, in the parking lot or maybe even at a
18 local restaurant during the lunch recess and
19 they don't speak with you, please don't think
20 they're being unfriendly or untoward. They are
21 simply strictly following the Court's
22 instructions. We have learned from very hard-
23 earned experience that a very innocent
24 conversation can be very easily misconstrued and
25 misinterpreted by someone observing that

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1 conversation.

2 During the trial you are not to read,
3 listen to or watch any news report about this
4 case. That includes anything that may be in the
5 newspaper, on the internet, radio or television.
6 You're not to do any independent research of any
7 type on the internet involving any matter or
8 person or other issue involved in this case as
9 well.

10 And, as I've already instructed, you're
11 not to discuss your jury service on any social
12 networking site such as Facebook, LinkedIn or
13 MySpace. And you must not consider anything
14 that you may have read or heard about this case
15 outside the courtroom, whether before or during
16 the course of this trial. It is important and
17 essential that you maintain an open mind and not
18 decide any issue in this case until all of the
19 evidence has been presented, the parties have
20 made their closing arguments and I've instructed
21 you on the law applicable to this case.

22 It is your solemn responsibility to
23 determine the guilt or innocence of the
24 defendant, and your verdict must be based solely
25 on the evidence as it is presented to you in

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1 this trial and on the law as I will instruct you
2 during and at the close of this trial.

3 In just a moment the Solicitor will
4 make what is called an opening statement in
5 which they will explain to you what they believe
6 the issues to be in this case or what they
7 believe the evidence will show in this case.
8 The attorney for the defendant may also make an
9 opening statement, although he is not required
10 to do so. Keep in mind, ladies and gentlemen,
11 that what the attorneys tell you during their
12 opening statements is not evidence in this case.
13 It is only their contention as to what they
14 believe the evidence will show.

15 The evidence in this case will be
16 presented to you by the testimony of sworn
17 witnesses from the witness stand and by exhibits
18 that may be introduced into evidence. From time
19 to time during the trial you may hear one of the
20 attorneys say, "Your Honor, I object." Just as
21 in sports, business or any other structured
22 activity, there are certain rules that we must
23 obey in the presentation of evidence. These
24 rules have a definite purpose. They ensure that
25 you receive the most trustworthy and reliable

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1 evidence available. And objection is the
2 procedure that an attorney uses to call a
3 possible violation of these rules to my
4 attention as the judge of this Court. And for
5 this reason you should never hold an attorney's
6 objection against them, nor should you conclude
7 from the Court overruling or sustaining an
8 objection that I favor one side or the other.

9 Also, from time to time you may hear
10 one of the attorneys say, "Your Honor, we have a
11 matter of law to discuss," or they may ask to
12 approach the Bench or I may ask them to approach
13 the Bench, or it might be necessary for us to
14 exclude you from the courtroom for a short
15 while, while we discuss matters of law. The
16 reason we do this is, as I've explained, you are
17 the finders of the facts. And sometimes when
18 I'm discussing matters of law with the
19 attorneys, it might be necessary for me to make
20 some comment about the facts in connection with
21 ruling whether an evidentiary rule may apply or
22 a statute or a procedural rule. And for this
23 reason, we exclude you from the courtroom so
24 that, in no way, will you be influenced by
25 anything that the Court may say or do in

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1 connection with the facts of this case.

2 In determining what the true facts are,
3 ladies and gentlemen, you must decide whether or
4 not the testimony of a witness or witnesses is
5 believable. It is the Court's responsibility to
6 rule as a matter of law as to whether certain
7 testimony is admissible at all or not. But once
8 it is admitted, whether or not you believe it is
9 solely a matter for you to determine in your
10 fact-finding capacity.

11 In deciding whether to believe a
12 witness you have the right to consider the
13 interest of any witness, the bias of any
14 witness, the prejudice of any witness, the
15 opportunity for the witness to have seen the
16 matters and things about which the witness may
17 testify and the way the way the witness acts on
18 the witness stand, something we commonly refer
19 to as demeanor.

20 You have the right to consider anything
21 that is in the record that will help you
22 evaluate the testimony of the witnesses. That
23 means that it is your duty, ladies and
24 gentlemen, to pay close attention to the
25 witnesses, to observe them, to listen and to pay

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1 close attention to the attorneys and the Court.
2 Although I know it is very difficult sometimes,
3 please guard your thoughts and do not allow them
4 to wander, but give strict attention to the
5 testimony so that at the end of the testimony,
6 after the arguments of counsel and the charge on
7 the law as given by the Court, you will then be
8 in a position to determine what the true facts
9 are and apply the law to those facts and then
10 render a true and just verdict in this case.

11 As I told you, during this trial you
12 will be given the opportunity to take notes.
13 Note-taking is a privilege that you may choose
14 to exercise or choose not to exercise. Please
15 don't feel compelled to take notes. Not
16 everyone finds note-taking helpful to them.
17 For example, I only take notes of what I can't
18 remember. So somebody reading them, probably it
19 would look like total nonsense, because it would
20 only be a few words of what I need to trigger my
21 memory. But everyone has a different note-
22 taking style if it's helpful to you. So, again,
23 please do not feel compelled to take notes.

24 If you should try to take notes, please
25 don't try to report everything that is said.

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1 It's physically impossible. The court reporter
2 can do it because they are trained and --
3 special training to be able to do that. But the
4 average person wouldn't be able to take down
5 verbatim what's being said, because we all speak
6 about 200 words a minute, believe it or not.
7 And that's a person who speaks slow; not even a
8 person who speaks very quickly.

9 And if you were to go back and to --
10 even if you thought you were taking it down
11 verbatim and you were to go back to listen to
12 it, you would often find that you put the end of
13 the sentence at the beginning. You've inverted
14 words. It's funny how the mind translates
15 information.

16 In addition to that, I would not want
17 you to become preoccupied with note-taking when
18 it is so very important that you observe the
19 witnesses, so that you can make the appropriate
20 findings as a fact-finder regarding their
21 believability and their credibility. So it
22 might be helpful to you if you decide to take
23 notes, to keep an outline of the main points and
24 arguments that are being made so that when you
25 retire to deliberate, you can allow those notes

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1 to refresh your memory.

2 During breaks and recesses your notes
3 will be left in your seats. At night we will
4 secure them. Please know that no one will read
5 your notes. We will not intrude into your
6 privacy in that way. But make sure that you
7 leave them in your seats during breaks so that
8 won't be any temptation to discuss the testimony
9 that you may have heard, and to make sure that
10 there's no premature deliberation regarding the
11 case.

12 Again, once you are sent to deliberate,
13 please be reminded that your notes are for your
14 specific and your individual purposes. They're
15 not to be shared with anyone else. They are
16 only to be used to refresh your own memory. And
17 please be reminded that someone else's memory
18 should be considered just as reliable as someone
19 else's notes.

20 Mr. Foreman, it is your added
21 responsibility to fill out the verdict form. I
22 will give you additional instructions regarding
23 that at the conclusion of the case.

24 Ladies and gentlemen, the selection of
25 the foreperson is a completely random process

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1 that the Court engages in. The foreperson is an
2 administrative function. That person fills out
3 the verdict form and they write out any
4 questions that you may have during delibera-
5 tions. That person does not have any greater
6 vote or voice than you do. It, again, is simply
7 administrative. They fill out the verdict form,
8 and it is a completely random process that the
9 Court engages in to make sure a cross section of
10 the community is represented.

11 In order to preserve everyone's rights
12 I will give the parties an opportunity to object
13 to anything that the Court has said by way of
14 opening introduction. Are there any exceptions
15 from the State?

16 SOLICITOR WILLIAMS: None from the
17 State.

18 THE COURT: From the defense?

19 MR. VITTETA: None.

20 THE COURT: Is the State ready to
21 proceed?

22 SOLICITOR WILLIAMS: The State is,
23 Your Honor.

24 THE COURT: Ladies and gentlemen, I
25 would ask that you give counsel your undivided

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1 attention. You may proceed when you're ready.

2 SOLICITOR WILLIAMS: Thank you, Your
3 Honor. May it please the Court?

4 THE COURT: Yes, ma'am.

5 SOLICITOR WILLIAMS: "She's gone."
6 "Can't bring her back to life." "It's her
7 fault, not mine." Witnesses are going to tell
8 you that those are the words that this man spoke
9 after he shot his wife to death in front of
10 their 11-year-old son.

11 This man, Tito Harris, walked into his
12 wife's home a little after 5:00 in the morning,
13 woke her up, yelled at her. Her son woke up.
14 Started slapping her, pushed her off the bed and
15 shot her in the head in front of their son.
16 Those are the facts and evidence that you're
17 going to hear from that witness stand.

18 The evidence is going to show that the
19 witness in this case, Shantay Harris, was
20 married to the defendant for over thirteen
21 years. They had two children together, E.H. ,
22 who was eleven at the time of Shantay Harris's
23 death, and T.H , who was twelve.

24 Shantay Harris was a working mother.
25 She was a nurse. She was trying to get enough

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1 money to move into an apartment that she could
2 afford, to finally get out of the marriage and
3 to move on with her life.

4 Her sister, Tonia Watkins, was also a
5 nurse. Tonia moved down to Moncks Corner three
6 days before the murder with her four children.
7 The two sisters were going to start fresh, help
8 each other with the kids. Tonia had begun
9 looking for a job. This was August, so school
10 was about to start. But until school could
11 start and before Tonia had gotten there, Shantay
12 would often use other relatives to help her with
13 the kids, relatives in Mr. Harris's family and
14 in her own.

15 During the few days before the murder,
16 Mr. Harris, who was living part of the time in
17 North Carolina, began to call Shantay. The
18 calls became more frequent. And you're going to
19 look at phone records and hear testimony about
20 those phone calls. When Tonia came down on the
21 Monday before the murder -- Shantay Harris was
22 murdered on a Wednesday -- she started getting
23 calls, calls which became hateful, angrier, the
24 tone became more and more threatening.

25 You're going to see some phone records

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1 that show the evening before Shantay Harris was
2 killed, the defendant, Tito Harris, at one point
3 called her thirteen times in fifteen minutes
4 between a quarter to 12:00 and about 12:00
5 midnight -- thirteen calls. Most of them she
6 did not pick up.

7 Finally, at about 1:30 in the morning,
8 he just drove down from North Carolina. She
9 wasn't responding to him any more. About 5:00
10 in the morning it was still dark, he entered the
11 home. He walked up the stairs. He went into
12 his wife's bedroom.

13 Now, earlier in the evening, E.H.
14 E.H. , who was eleven years old at the time,
15 had been acting out. He got into a little
16 tussle with his cousin and he was asked to leave
17 the room that he was sleeping in with his cousin
18 and sleep with mama. He got in trouble. So he
19 was asleep in the bed with his mother.

20 In one of the other bedrooms, Tonia
21 Watkins, Shantay's sister, was sleeping with her
22 nine-year-old daughter.

23 There were six children in the home at
24 this time.

25 Tonia heard something, looked out the

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1 window and saw the defendant's car. Tonia knew
2 the defendant was not supposed to be in the
3 home. She immediately called 9-1-1, huddled in
4 a closet, scared to death. At one point she
5 heard her sister scream. She threw the phone
6 and she ran to her sister's room. She saw Tito
7 Harris in the hallway, leaving the bedroom,
8 calm, collected. He said, "She's gone. It's
9 her fault."

10 You're going to hear witnesses describe
11 what happened that evening. Some of them are
12 going to be children. You're going to hear
13 **E.H.** describe what he saw that night in
14 that bedroom. And other children. And they're
15 also going to describe the way that Tito Harris
16 was acting after he shot his wife that night.
17 Each of them describes someone calm, even
18 smirking, as he walked out of that room.

19 Tito Harris walked out of that room.
20 Tonia Watkins went in and tried in vain to
21 perform CPR on her sister while the children
22 watched. And his other son, 12-year-old **T.H.** ,
23 called 9-1-1 and said, "My mother's dead."

24 About two blocks from the house,
25 police, who had already responded, because Tonia

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1 had called them from the closet, came into
2 contact with the defendant, Tito Harris. He had
3 a gun in his pocket. You're going to hear
4 evidence from experts that the bullet that was
5 retrieved from Shantay Harris's head matches the
6 gun that was found in Tito's possession.

7 Now, the State has the burden of proof
8 in this case, and we will meet it. We have to
9 prove that Tito Harris committed murder. Murder
10 is the killing of any person with malice
11 aforethought, either express or implied. Malice
12 -- and the judge is going to give you this
13 definition at the conclusion of all the
14 evidence. Malice is an act committed with no
15 just cause or excuse. It is an act committed
16 with a general malignant recklessness of the
17 lives and safety of others or a condition of the
18 mind which shows a heart without social duty and
19 fatally bent on mischief. It's a wicked heart,
20 a mean heart.

21 Now, as I told you, you're going to
22 hear testimony from this witness stand, some of
23 it from children. You're going to see pictures.
24 You're going to see physical evidence. And some
25 of that evidence is going to be very disturbing.

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1 I apologize for that in advance. But because of
2 the nature of the crime, it is necessary. And
3 it's necessary for you to review all the
4 evidence carefully.

5 Now, there will be some forensic
6 evidence. You will hear from the experts. But
7 this case is not going to be like *CSI* or *NCIS* or
8 *Law and Order*. In those cases there's often
9 very complicated science and geniuses behind big
10 computers that come to conclusions based on tiny
11 pieces of evidence of DNA. Although there will
12 be some forensic evidence, that is not what this
13 case is like. This is a very straightforward
14 case.

15 And, ladies and gentlemen, the most
16 important thing that you bring to this process
17 or this case is common sense. If you use your
18 common sense, listen to the witnesses, look at
19 the evidence, you will come to a true and just
20 verdict. The only verdict that will be
21 supported by the evidence that you see and hear
22 will be guilty of murder.

23 THE COURT: Mr. Vitetta?

24 MR. VITETTA: Thank you, ma'am.

25 THE COURT: You're welcome.

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1 MR. VITETTA: I agree that these
2 facts are disturbing. And I've been struggling
3 this morning to find the words to express this
4 case to you from the defense point of view.

5 It is disturbing. The central facts of
6 what happened leading to the death of Shantay
7 Harris are really not in any dispute. What
8 really is in dispute is Mr. Harris's state of
9 mind.

10 The State wants you to believe with
11 recklessness, malignancy, an evil or wicked
12 heart. What is important for you to understand
13 and what you see as this case unfolds is that
14 that is not how this happened. You're going to
15 see that really what this is is a close attack
16 done in the heat of passion involving a family
17 matter, a marital matter.

18 As the government expressed to you,
19 Shantay and Tito were not living together. She
20 was planning to get her own place. They were
21 having difficult marital struggles. And you
22 will hear evidence that the confrontation in her
23 house the morning of her death was impulsive and
24 it happened spontaneously. It happened in the
25 heat of passion, and it was not with malice.

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1 I believe that's what you're going to find.

2 I want you to try to keep that in mind
3 as the government presents its evidence.
4 Because, again, it is disturbing. It is
5 disturbing to me, disturbing to Mr. Harris, and
6 it's going to be disturbing to you. But I want
7 you to keep in mind that this was impulsive,
8 spontaneous and it was done in the heat of the
9 passion of the moment. Thank you.

10 THE COURT: The State may proceed.

11 SOLICITOR WILLIAMS: Thank you, Your
12 Honor. The State calls Tonia Watkins.

13 (WITNESS TAKES STAND)

14 TONIA RENEE WATKINS, being duly sworn
15 to tell the truth, the whole truth and nothing
16 but the truth, testified, as follows:

17 THE COURT: You may proceed.

18 SOLICITOR WILLIAMS: Thank you, Your
19 Honor.

20 DIRECT EXAMINATION

21 BY SOLICITOR WILLIAMS:

22 Q. Ms. Watkins, who is Shantay Harris to you?

23 A. She's my sister.

24 Q. And how old was your sister when she passed
25 away?

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1 A. She was 33.

2 Q. And where was she living at that time?

3 A. Moncks Corner.

4 THE COURT: Can you pull the
5 microphone a little closer to you? I need you
6 to speak directly into it.

7 THE WITNESS: Okay, (adjust
8 microphone).

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR WILLIAMS:

11 Q. And that is in Berkeley County?

12 A. Yes, ma'am.

13 Q. At some time did you live with her at that
14 address?

15 A. Yes, ma'am.

16 Q. And when you lived with her at that address
17 did you ever have occasion to call the police or
18 9-1-1?

19 A. Yes, ma'am.

20 SOLICITOR WILLIAMS: Your Honor, I'm
21 showing defense counsel what was previously
22 marked as State's 49. May I approach the
23 witness?

24 THE COURT: Is there any objection,
25 Mr. Vitetta?

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1 MR. VITETTA: May I consult with my
2 client?

3 THE COURT: Yes.

4 MR. VITETTA: No objection, Your Honor.

5 THE COURT: Marked in without
6 objection. You may proceed.

7 (SO ENTERED AS STATE'S EXHIBIT 49)

8 SOLICITOR WILLIAMS: May we publish?

9 THE COURT: Approach the witness.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR WILLIAMS:

12 Q. What is this?

13 A. A recording of my 9-1-1 call.

14 Q. And have you ever listened to that before?

15 A. Yes, I have.

16 Q. And is it a true and accurate recording of
17 the call from beginning to end?

18 A. Yes, ma'am.

19 Q. Have there been any deletions, additions,
20 changes?

21 A. No, ma'am.

22 Q. How do you know it's the one that you
23 listened to?

24 A. My initials.

25 SOLICITOR WILLIAMS: At this time,

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1 Your Honor, we would offer State's 49 into
2 evidence.

3 THE COURT: It's already been marked
4 without objection.

5 SOLICITOR WILLIAMS: May we publish?

6 THE COURT: You may.

7 (911 CALL PLAYED FOR JURY)

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR WILLIAMS:

10 Q. Ms. Watkins, do you need a few minutes?

11 A. (Negative gesture).

12 Q. How long had you lived in the home when you
13 made that call?

14 A. One day.

15 Q. One day? And why did you move to Moncks
16 Corner?

17 A. I was trying to start over and help my
18 sister out.

19 Q. And how much of an age difference was there
20 between you and your sister?

21 A. About two years.

22 Q. What was your relationship like?

23 A. Close.

24 Q. And how many children did you have when you
25 moved there?

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1 A. I have four.

2 Q. And how many children did your sister have?

3 A. She's got two.

4 Q. And who is the father of those children?

5 A. Tito Harris.

6 Q. Is that the person that you were calling
7 about that night?

8 A. Yes.

9 Q. Do you see Tito Harris in the courtroom?

10 A. Yes, I do.

11 Q. Can you please point him out for the
12 record? What's he wearing?

13 A. (Indicating defense table), a white shirt.

14 SOLICITOR WILLIAMS: Your Honor,
15 please let the record reflect that the witness
16 has identified the defendant, Tito Harris.

17 THE COURT: Let the record so
18 reflect.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR WILLIAMS:

21 Q. What did your sister do for a living,
22 Tonia?

23 A. She was an L.P.N. in a nursing home.

24 Q. And what was your profession?

25 A. I'm an L.P.N.

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1 Q. And where was she working at the time of
2 her death?

3 A. White Oak Manor in Charleston.

4 Q. And if you know had school started yet when
5 you moved down?

6 A. Yes.

7 Q. And so before you moved down, who was
8 helping her with the children, if you know?

9 A. I'm sorry. Can you repeat the question?

10 Q. Was she working before you got there?

11 A. Yes.

12 Q. And the kids, were they in school yet?

13 A. No, not -- they had one day at school.

14 Q. So did she rely on various family members
15 to help her with the kids till you got there?

16 A. Yes, it was -- they went to camp.

17 Q. They went to camp?

18 A. And family members.

19 Q. And how long had she been married to Tito
20 Harris?

21 A. I would say thirteen years at that time.

22 SOLICITOR WILLIAMS: Your Honor, I'm
23 going to show defense counsel what we've marked
24 as State's 54, State's 1, 2, 3, 4 and 5.

25 (STATE'S EXHIBITS 54, 1, 2, 3, 4, AND 5

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1 MARKED FOR IDENTIFICATION)

2 MR. VITETTA: These are without
3 objection.

4 THE COURT: Marked in without
5 objection.

6 (SO ENTERED AS STATE'S EXHIBIT 1 THRU 5)

7 (SO ENTERED AS STATE'S EXHIBIT 54)

8 SOLICITOR WILLIAMS: May I approach
9 the witness, Your Honor?

10 THE COURT: You may.

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR WILLIAMS:

13 Q. Tonia, if you wouldn't mind just looking
14 at all these pictures and telling me if you
15 recognize what they are.

16 A. (Complies), yes.

17 Q. Are those a fair and accurate depiction of
18 what's portrayed in the pictures?

19 A. Yes, it is.

20 SOLICITOR WILLIAMS: Your Honor, at
21 this time we would ask that 1, 2, 3, 4, 5 and
22 State's 54 be admitted into evidence.

23 THE COURT: They've already been
24 marked and identified.

25 SOLICITOR WILLIAMS: Thank you, Your

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1 Honor.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR WILLIAMS:

4 Q. Tonia, there's a screen behind you. If you
5 wouldn't mind just turning your chair and
6 telling the jury what that is a picture of.

7 A. This is the house.

8 Q. And is that the house that you lived in
9 with Shantay for those few days?

10 A. Yes, it is.

11 Q. And is that the house at [REDACTED] Golden Aspen
12 Road?

13 A. Yes, it is.

14 THE COURT: Make sure you articulate
15 the numbers for the record.

16 SOLICITOR WILLIAMS: That was State's

17 1. Thank you, Your Honor.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR WILLIAMS:

20 Q. And this is State's Exhibit 2.. What is
21 that a picture of?

22 A. My sister's house.

23 Q. What room in the house, if you know?

24 A. It's the dining room.

25 Q. Is that typically how she kept her house?

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- 1 A. Yes.
- 2 Q. State's 3, please? Okay, and what is that
- 3 a picture of?
- 4 A. It's a good shot of the room, her room.
- 5 Q. How many rooms were upstairs?
- 6 A. Four bedrooms.
- 7 Q. And is that where you and the children and
- 8 Shantay and her two boys slept the night that
- 9 she was murdered, in the upstairs area?
- 10 A. Yes, in the upstairs area.
- 11 Q. Can you show State's 4? What is that a
- 12 picture of?
- 13 A. The living room.
- 14 Q. State's 5? And that is a picture of what?
- 15 A. The upstairs bedroom.
- 16 Q. And the condition of the house and how tidy
- 17 it was kept, is that typical of the way your
- 18 sister kept her house?
- 19 A. Yes, it is.
- 20 Q. Are there any pictures of the kitchen that
- 21 you've seen?
- 22 A. No, ma'am.
- 23 Q. Were you aware of there being any weapons
- 24 in the house at any time?
- 25 A. Yes, ma'am.

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- 1 Q. Where -- what kinds of weapons?
- 2 A. A gun.
- 3 Q. Okay, and to your knowledge where was that
- 4 weapon kept?
- 5 A. In the kitchen.
- 6 Q. Where in the kitchen?
- 7 A. Above the cabinets.
- 8 Q. Was it in anything or just on the cabinets?
- 9 A. Behind some baskets or decoration.
- 10 Q. On the morning that your sister was killed
- 11 did you notice or learn of any disruption to
- 12 those baskets?
- 13 A. Yes, ma'am.
- 14 Q. Can you describe that?
- 15 A. There was different positions and different
- 16 ways.
- 17 Q. Now, during the days before your sister was
- 18 murdered did you talk to Mr. Harris at all?
- 19 A. Yes, I did.
- 20 Q. And did you call him or did he call you?
- 21 A. He called me.
- 22 Q. How many times would you say he called you?
- 23 A. Several times.
- 24 Q. And what was the tone of his calls?
- 25 A. Very angry.

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- 1 Q. And what was he angry about?
- 2 A. My sister and where the kids had stayed
- 3 over the weekend.
- 4 Q. And where was that?
- 5 A. At Marcus's house.
- 6 Q. And who was Marcus?
- 7 A. His uncle.
- 8 Q. So he was upset because the kids had stayed
- 9 with Marcus for the weekend.
- 10 A. And my sister.
- 11 Q. And what was your sister doing while the
- 12 kids were at Marcus's?
- 13 A. Working.
- 14 Q. Can you show State's 54? This is State's
- 15 Number 54. And whose room was this?
- 16 A. My sister's room.
- 17 Q. And what was the condition of this room?
- 18 A. She was packing.
- 19 Q. Why was that? Why was that happening?
- 20 A. She was going to move.
- 21 Q. And why were there all the boxes on the
- 22 floor?
- 23 A. Because she was packing up and moving.
- 24 Q. Did Mr. Harris know that your sister was
- 25 planning to move?

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1 A. Yes, he did.

2 Q. And when you spoke to him on the phone all
3 those times did he seem happy about that
4 decision, or what was his reaction to it?

5 A. He was upset.

6 Q. He was upset? Did you ever learn of any
7 plans that your sister had regarding the
8 marriage?

9 A. She wanted out.

10 Q. Had she taken any steps to get out?

11 A. Yes, she has.

12 Q. What had she done?

13 A. She made an appointment to see a lawyer.

14 Q. And how did Mr. Harris react to that news?

15 A. He wasn't happy about it.

16 Q. And were those boxes in the room the night
17 that your sister was killed?

18 A. Yes.

19 SOLICITOR WILLIAMS: Your Honor, I'm
20 going to show defense counsel what's been marked
21 as 38.

22 MR. VITETTA: (Review).

23 SOLICITOR WILLIAMS: May I approach
24 the witness?

25 THE COURT: You may. Is there any

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1 objection?

2 MR. VITETTA: No, Your Honor.

3 THE COURT: Marked and admitted
4 without objection.

5 (SO ENTERED AS STATE'S EXHIBIT 38)

6 THE COURT: Exhibit Number 54? There
7 was a number 54?

8 SOLICITOR WILLIAMS: Yes, Your Honor.

9 THE COURT: Any objection, Mr.
10 Vitetta?

11 MR. VITETTA: I'm sorry?

12 THE COURT: Number 54, which is the
13 bedroom.

14 COURT REPORTER: Your Honor, it was
15 already entered.

16 THE COURT: Number 38 is marked and
17 admitted without objection.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR WILLIAMS:

20 Q. What is this, Tonia?

21 A. This is the phone bill.

22 Q. Who paid the bills?

23 A. My sister.

24 Q. So what numbers are there on this phone
25 bill? If you want to thumb through it, you can

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1 look. What phone numbers were those bills for?

2 A. My sister's cell phone.

3 Q. What was your sister's cell phone?

4 A. [REDACTED]-1656.

5 Q. And was there also another number included
6 in that bill that was under your sister's name?

7 A. Yes, there is.

8 Q. And whose phone number was that?

9 A. Tito Harris.

10 Q. And what number was that?

11 A. [REDACTED]-3936.

12 Q. But she paid the phone bill for both?

13 A. Yes, she did.

14 SOLICITOR WILLIAMS: Your Honor, I'm
15 going to show defense counsel what's been
16 previously marked as State's 50. We're not
17 offering this into evidence. We're just going
18 to show it to her for identification.

19 (STATE'S EXHIBIT 50 MARKED FOR IDENTIFICATION)

20 THE COURT: State's 50 I.D. only.

21 SOLICITOR WILLIAMS: May I approach
22 the witness?

23 THE COURT: You may.

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR WILLIAMS:

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1 Q. Did you make any phone calls the night that
2 your sister was killed?

3 A. Yes, ma'am.

4 Q. What phone did you use, if you remember?

5 A. My sister's phone.

6 Q. Can you look at that item I just gave you
7 and tell me if you recognize it?

8 A. Yes, I do.

9 Q. Can you take a look at it and open it? How
10 do you know that's your sister's phone?

11 A. It's got a picture of her boys on it.

12 Q. And is that the phone that you used that
13 night to make some phone calls?

14 A. Yes, I did.

15 Q. And who did you call?

16 A. I called my sister.

17 Q. What's her name?

18 A. April Strain.

19 Q. And was that after you discovered your
20 sister or before?

21 A. It was after.

22 SOLICITOR WILLIAMS: Your Honor, I
23 show this witness -- I'm showing defense counsel
24 what was previously marked as 38A. And this is
25 a cover sheet to the phone records that we have

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1 stipulated is admissible.

2 (STATE'S EXHIBIT 38A MARKED FOR IDENTIFICATION)

3 SOLICITOR WILLIAMS: May I approach
4 the witness?

5 THE COURT: You may.

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR WILLIAMS:

8 Q. Tonia, this is a cover letter for the phone
9 records. If you could just look through that
10 and go to August 18. Do you recognize the names
11 on that cover sheet?

12 A. Yes, I do.

13 Q. And who is Tiny?

14 A. My sister.

15 Q. Was that a nickname for her?

16 A. Yes.

17 SOLICITOR WILLIAMS: Your Honor, at
18 this time we would move 38 and 38A into evidence
19 and ask to publish 38A.

20 THE COURT: Any objection?

21 MR. VITETTA: No, Your Honor.

22 (SO ENTERED AS STATE'S EXHIBIT 38)

23 (SO ENTERED AS STATE'S EXHIBIT 38-A)

24 THE COURT: You may proceed.

25 DIRECT EXAMINATION CONTINUED

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1 BY SOLICITOR WILLIAMS:

2 Q. Tonia, I've put a laser pointer up there.

3 It might be easier for you to look at both. But
4 if you could turn around and look at the exhibit
5 behind you.

6 SOLICITOR WILLIAMS: The Court's
7 indulgence for just a moment.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR WILLIAMS:

10 Q. Starting with August 18th, if you could just
11 read off the calls starting around 11:00-
12 something that your sister received from Tito
13 and what time that call would be at.

14 A. 11:37.

15 Q. From Tito?

16 A. From Tito.

17 11:37 from Tito.

18 11:39 from Tito.

19 11:44 from Tito.

20 11:45 from Tito.

21 11:45 from Tito.

22 11:45 from Tito.

23 11:46 from Tito.

24 11:47 from Tito.

25 11:47 from Tito.

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1 11:51 from Tito.
2 11:51 from Tito.
3 11:52 from Tito.
4 11:53 from Tito.
5 11:55 from Tito.
6 11:56 from Tito.
7 11:57 from Tito.
8 11:57 from Tito.
9 11:58 from Tito.
10 12:02 from Tito.
11 12:03 from Tito.
12 12:05 from Tito.
13 12:05 from Tito.
14 12:06 from Tito and
15 12:03 from Tito.
16 Q. And how many of those calls are missed? Or
17 did she take any of those calls?
18 A. No. All calls missed.
19 Q. When did the calls stop?
20 A. 12:30 a.m.
21 Q. Thank you. The evening that you called
22 9-1-1, when is the first time you realized that
23 the person in the house or that you'd been woken
24 up by was Tito?
25 A. I woke up and I heard noise. And I looked

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- 1 outside and saw his car.
- 2 Q. And why would just seeing Tito's car be
- 3 alarming to you?
- 4 A. Because it was pulled up on the yard.
- 5 Q. To your knowledge was he supposed to be at
- 6 the house?
- 7 A. No, he wasn't.
- 8 Q. And about what time was that, if you know?
- 9 A. About 5:00 o'clock, 5:00 a.m.
- 10 Q. You just read off a lot of calls in a row
- 11 from Tito to Shantay. Did you or Shantay
- 12 receive any calls from Tito earlier in the
- 13 evening?
- 14 A. Yes.
- 15 Q. How many, if you know?
- 16 A. It was a lot.
- 17 Q. And was he calling anyone else that was at
- 18 your house?
- 19 A. Yes.
- 20 Q. Who?
- 21 A. His uncle.
- 22 Q. And did y'all pick up all those calls or
- 23 some of those calls, or do you know how many you
- 24 actually answered?
- 25 A. No, I didn't answer any.

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1 SOLICITOR WILLIAMS: Your Honor, I'm
2 going to show defense counsel State's 11.

3 MR. VITETTA: No objection.

4 THE COURT: Marked and admitted
5 without objection.

6 (SO ENTERED AS STATE'S EXHIBIT 11)

7 SOLICITOR WILLIAMS: May I approach
8 the witness, Your Honor?

9 THE COURT: You may.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR WILLIAMS:

12 Q. Tonia, what is this?

13 A. It's a diagram of my sister's house.

14 Q. Is that the house you lived in with her?

15 A. Yes.

16 Q. Is that an accurate drawing of where all
17 the rooms were in that house?

18 A. Yes, it is.

19 SOLICITOR WILLIAMS: The Court's
20 indulgence for just a moment.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR WILLIAMS:

23 Q. If you could turn around and look at the
24 diagram. It's sideways. But if you could give
25 us an idea of who was sleeping in which room,

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1 and just point to whose rooms each of them were.

2 SOLICITOR WILLIAMS: May I approach,
3 Your Honor?

4 THE COURT: Yes.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR WILLIAMS:

7 Q. Push that black button and you can point to
8 different things on the diagram.

9 A. My sister was sleeping there, and her son
10 was.

11 Q. Okay, and where were you sleeping?

12 A. Right here, with my daughter.

13 Q. How old was your daughter?

14 A. At the time she was possibly ten or nine.

15 Q. And where were the other bedrooms up there?

16 A. E.H. 's room.

17 Q. Who was to sleep in that room that night?

18 A. E.H. and T.H. and J.W. ?

19 Q. And how old were T.H. and J.W. ?

20 A. T.H. was twelve. J.W. was eleven.

21 Q. Was there any other bedrooms up there?

22 A. T.H. 's bedroom.

23 Q. And who was asleep in there?

24 A. My two boys.

25 Q. And how old are they?

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- 1 A. Five and seven.
- 2 Q. We listened to that 9-1-1 call. At some
- 3 point you disconnected from the call. Why was
- 4 that?
- 5 A. My sister screamed.
- 6 Q. And what did you do?
- 7 A. I got up and went to her room.
- 8 Q. After you went into her room did you see
- 9 anybody before you entered her room?
- 10 A. Yes, I did.
- 11 Q. And who was that?
- 12 A. Tito Harris.
- 13 Q. Can you describe what his demeanor was like
- 14 when you saw him?
- 15 A. He was going down the hall.
- 16 Q. Was he upset?
- 17 A. No.
- 18 Q. Was he -- how would you describe him? How
- 19 was he acting?
- 20 A. He was just normal.
- 21 Q. Could you repeat that answer?
- 22 A. Normal.
- 23 Q. And did he say anything that you heard?
- 24 A. Yes.
- 25 Q. What did he say?

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1 A. "She's gone."

2 Q. And at that point what did you do?

3 A. I was telling him that he shouldn't be
4 here. He just said "she's gone."

5 Q. Where did he go, if you saw?

6 A. I don't know. I went to go check on my
7 sister.

8 Q. And so did you go check on your sister?

9 A. Yes, I did.

10 Q. And what did you see when you went in that
11 room?

12 A. She was propped up against the wall.

13 Q. And who else was in the room?

14 A. E.H. .

15 Q. And what was he doing?

16 A. He was just -- (emotional).

17 THE COURT: Ma'am, do you need a
18 break? Mr. Foreman and ladies and gentlemen,
19 we're going to take advantage of this break to
20 take a restroom break. During the break please
21 do not discuss the case and please leave your
22 notepads in your seats.

23 (JURY OUT @ 11:56 A.M.)

24 THE COURT: You may be seated.

25 Ma'am, how long do you think you'll need to

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1 collect yourself?

2 THE WITNESS: I think I'm okay.

3 THE COURT: Do you need some water?

4 (BRIEF RECESS)

5 (DEFENDANT PRESENT)

6 THE COURT: Are you ready?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Please bring in the jury.

9 (JURY IN @ 12:04 P.M.)

10 THE COURT: Ladies and gentlemen, we
11 appreciate your patience. We'll now resume
12 testimony. You may proceed with questioning the
13 witness.

14 SOLICITOR WILLIAMS: Thank you, Your
15 Honor.

16 DIRECT EXAMINATION RESUMED

17 BY SOLICITOR WILLIAMS:

18 Q. Ms. Watkins, do you remember what E.H.
19 was doing when you observed him in the room that
20 night?

21 A. Yes. He was crying.

22 Q. And what did you do when you saw your
23 sister? What did you do?

24 A. I repositioned her and tried to give her
25 CPR.

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1 Q. And where were the other children when you
2 were doing that, if you remember?

3 A. I don't remember.

4 Q. Did anyone else to your knowledge and in
5 your presence call 9-1-1 while you were doing
6 that?

7 A. Yes.

8 Q. Who was that?

9 A. T.H.

10 Q. And whose child is he?

11 A. Shantay's.

12 Q. Is that Tito Harris's son?

13 A. Yes.

14 SOLICITOR WILLIAMS: Your Honor, I am
15 going to show defense counsel what has been
16 previously marked as State's 46.

17 MR. VITETTA: (Review).

18 SOLICITOR WILLIAMS: May I approach
19 the witness?

20 THE COURT: Any objection?

21 MR. VITETTA: No objection.

22 THE COURT: Marked and admitted
23 without objection.

24 (SO ENTERED AS STATE'S EXHIBIT 46)

25 DIRECT EXAMINATION CONTINUED

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1 BY SOLICITOR WILLIAMS:

2 Q. Do you recognize this?

3 A. Yes, I do.

4 Q. And what is that?

5 A. It's the shirt my sister was wearing that
6 night.

7 Q. And is this the shirt that she was wearing
8 the night that she was killed?

9 A. Yes, it is.

10 SOLICITOR WILLIAMS: Your Honor, we
11 would just offer 46 into evidence.

12 THE COURT: It's been marked and
13 entered into evidence.

14 SOLICITOR WILLIAMS: Thank you, Your
15 Honor.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR WILLIAMS:

18 Q. Did you see any blood elsewhere around your
19 sister, if you remember?

20 A. Yes.

21 Q. Where was that?

22 A. On the wall.

23 Q. And did you see what part of her body is
24 was coming from?

25 A. The back of her head.

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1 Q. Did you call anybody or do anything after
2 that?

3 A. Yes.

4 Q. Who did you call?

5 A. I called my sister, April Strain.

6 SOLICITOR WILLIAMS: The Court's
7 indulgence for just a moment.

8 THE COURT: Um-humm.

9 SOLICITOR WILLIAMS: I have no
10 further questions. Please answer any questions
11 of defense counsel.

12 THE COURT: Any questions of the
13 witness?

14 MR. VITETTA: Yes, Your Honor.

15 THE COURT: You may proceed.

16 CROSS EXAMINATION

17 BY MR. VITETTA:

18 Q. Ma'am, you indicated that your sister and
19 Tito Harris, Mr. Harris, were having marital
20 problems?

21 A. Yes.

22 Q. And she, in fact, had made an appointment
23 to see a divorce lawyer?

24 A. Yes.

25 Q. And you were aware that Tito was upset

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1 about the separation?

2 A. Yes.

3 Q. And Tito didn't want to be separated and
4 was having a hard time with that. Is that
5 correct?

6 A. Yes.

7 Q. You indicated that you were alarmed because
8 he was at the house, and he was not supposed to
9 be there. Is that correct?

10 A. Yes.

11 Q. Wasn't he there just several days before
12 for their wedding anniversary? Did you get
13 together at the house for his wedding
14 anniversary? Do you remember?

15 A. No.

16 Q. You don't remember that?

17 A. No.

18 Q. Do you remember about a week before your
19 sister died that both of your families again got
20 together and went to the movies and Bryan's. Do
21 you remember that?

22 A. No.

23 Q. You don't remember that. In your statement
24 to 9-1-1 you indicated that somebody was trying
25 to kill you and that you were afraid that Mr.

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- 1 Harris was trying to kill you.
- 2 A. Yes.
- 3 Q. But when you saw him that evening he didn't
- 4 threaten you, did he?
- 5 A. No.
- 6 Q. And he didn't try to kill you?
- 7 A. No.
- 8 Q. Didn't try to hurt you? Didn't touch you
- 9 or do anything, correct?
- 10 A. No.
- 11 Q. He just walked right by you. Is that
- 12 correct?
- 13 A. After she was dead.
- 14 Q. Right. He just walked right by you.
- 15 A. I saw him and he said "she's gone". And I
- 16 went to check on my sister.
- 17 Q. The weekend before you moved in with your
- 18 sister do you remember being at your sister's
- 19 house with Tito and the kids, cooking on the
- 20 grill in the backyard and talking about how you
- 21 were going to move in?
- 22 A. No.
- 23 Q. You don't remember that?
- 24 A. No.
- 25 MR. VITETTA: Thank you, Judge.

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1 No further questions.

2 THE COURT: Any redirect of the
3 witness?

4 SOLICITOR WILLIAMS: No, Your Honor.

5 THE COURT: Any objection to the
6 witness being excused from the State?

7 SOLICITOR WILLIAMS: None from the
8 State.

9 THE COURT: From the defense?

10 MR. VITETTA: No, Your Honor.

11 THE COURT: You're excused, ma'am.

12 (WITNESS STEPS DOWN)

13 THE COURT: Will counsel approach,
14 please?

15 (OFF RECORD BENCH CONFERENCE)

16 THE COURT: Mr. Foreman and ladies
17 and gentlemen, we're going to take advantage of
18 this break in testimony to take our lunch
19 recess. During the break please do not discuss
20 the case among yourselves. Please leave your
21 notepads in your seats. And, again, please
22 don't have any contact with anyone in or about
23 the court house. We're going to resume at 1:15,
24 which is about an hour and five minutes. Please
25 return directly to your jury room, and we will

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1 begin promptly at 1:15. If you will go with the
2 bailiffs for me, please.

3 (JURY OUT @ 12:11 P.M.)

4 THE COURT: Is there anything before
5 we break for lunch from the State?

6 SOLICITOR WILLIAMS: Nothing from the
7 State, Your Honor.

8 THE COURT: From the defense?

9 MR. VITETTA: No, Your Honor.

10 THE COURT: Have a good lunch. See
11 you at 1:15.

12 (LUNCH RECESS)

13 (DEFENDANT PRESENT)

14 THE COURT: Is the State ready to
15 proceed?

16 SOLICITOR WILLIAMS: Yes, Your Honor.

17 THE COURT: Do you have the next
18 witness ready to go?

19 SOLICITOR WILLIAMS: Yes, Your Honor.

20 THE COURT: Is the defense ready to
21 proceed?

22 MR. VITETTA: Yes, Your Honor.

23 THE COURT: Please bring in our jury.

24 (JURY IN @ 1:27 P.M.)

25 THE COURT: Ladies and gentlemen, I

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1 hope that y'all had a pleasant lunch recess.

2 We'll now resume testimony. State may call its
3 next witness.

4 SOLICITOR WILLIAMS: Thank you, Your
5 Honor.

6 THE COURT: You're welcome.

7 SOLICITOR WILLIAMS: The State calls
8 E.H.

9 (WITNESS TAKES STAND)

10 E.H. , being duly sworn to tell
11 the truth, the whole truth and nothing but the
12 truth, testified, as follows:

13 THE COURT: You may proceed.

14 SOLICITOR WILLIAMS: Thank you, Your
15 Honor.

16 DIRECT EXAMINATION

17 BY SOLICITOR WILLIAMS:

18 Q. E.H. , how old are you?

19 A. Twelve.

20 Q. And where you live now?

21 A. With my aunt April.

22 Q. Do you know where that is?

23 A. In Monroe.

24 Q. And do you go to school up there?

25 A. Yes, ma'am.

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- 1 Q. What grade are you in?
- 2 A. Seventh.
- 3 Q. Who was Shantay Harris?
- 4 A. My mother.
- 5 Q. Where is she now?
- 6 A. Deceased.
- 7 Q. Where did you live with your mother when
- 8 you lived in Berkeley County?
- 9 A. Moncks Corner.
- 10 Q. Do you remember the address?
- 11 A. Golden Aspen Road.
- 12 Q. Okay. E.H. , what was your mama like?
- 13 A. A great person.
- 14 Q. Did she used to do things with you?
- 15 A. Um-humm, a lot.
- 16 Q. What kind of things?
- 17 A. Played, hang out.
- 18 Q. What did you all play?
- 19 A. Games and stuff.
- 20 Q. Video games?
- 21 A. Yes, ma'am.
- 22 Q. Did you watch TV together?
- 23 A. Yes, ma'am.
- 24 Q. What kinds of shows did y'all watch?
- 25 A. Golf.

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- 1 Q. And when you lived with your mama on Golden
2 Aspen Road who lived in that house with you?
3 A. My mama and my brother.
4 Q. And at some point did your aunt move in?
5 A. Yes, ma'am..
6 Q. Who did she move in with?
7 A. My mama and my brother.
8 Q. And did she have some other children?
9 A. Yes, ma'am.
10 Q. Who are they?
11 A. J.W. , D.W. , Jonelle, Asia.
12 Q. Four children?
13 A. Um-humm.
14 Q. Now, do you remember about when they moved
15 in, like what month it was?
16 A. No.
17 Q. Has school started yet?
18 A. No.
19 Q. Was school about to start or do you know?
20 A. Probably.
21 Q. If you don't know the answer you can just
22 say 'I don't know.' It's okay.
23 A. Okay.
24 Q. Did your dad live with you in that house at
25 that time?

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1 A. No.

2 Q. Do you know where he was living? What is
3 your dad's name?

4 A. Tito Harris.

5 SOLICITOR WILLIAMS: Your Honor, I'm
6 going to show the defense what's been previously
7 admitted as State's 54 and State's 1 and State's
8 11.

9 (STATE'S EXHIBITS 1, 11 AND 54

10 MARKED FOR IDENTIFICATION)

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR WILLIAMS:

13 Q. E.H., if you could just turn around and
14 look at the picture that's behind you and tell
15 us what that is.

16 A. That's our house.

17 Q. And is that the house you lived in in Moncks
18 Corner?

19 A. Yes, ma'am.

20 Q. And what school did you go to when you
21 lived in that house?

22 A. Berkeley Intermediate.

23 Q. Tell us what that is a picture of.

24 A. My mom and dad's master bedroom.

25 Q. And the night that your mama passed away

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1 were you sleeping in that room?

2 A. Yes, ma'am.

3 Q. What are all those boxes there for? Do you
4 know?

5 A. Some was for trophies and pictures.

6 Q. E.H. , there's going to be a diagram up
7 there. And I want you to turn around and look
8 at it. And I'm going to give you a pointer.

9 The way this works is if you push this black
10 button it makes a little red dot on there. Do
11 you think you can point to things as I ask you
12 questions? Don't point it at any people; just
13 at this thing right here, okay?

14 THE COURT: Or yourself. Please
15 don't point it at yourself or anybody else.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR WILLIAMS:

18 Q. E.H. , show me the room that your mama
19 slept in.

20 A. In here.

21 Q. And where was your room?

22 A. Right here.

23 Q. And the night that your mama died were you
24 sleeping in your room?

25 A. No.

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- 1 Q. Why is that?
- 2 A. Because I got in trouble.
- 3 Q. What did you do?
- 4 A. I threw my cousin out.
- 5 Q. So you were sleeping in your mama's room.
- 6 What's your brother's name?
- 7 A. T.H.
- 8 Q. And where was he sleeping?
- 9 A. In my same room.
- 10 Q. And where is the bathroom on that diagram?
- 11 A. What room?
- 12 Q. Like the bathroom that's upstairs?
- 13 A. There's two.
- 14 Q. Where's the one that's in the hallway or
- 15 close -- not the one in your mom's room.
- 16 A. (Indicating).
- 17 Q. And were there any other kids in other
- 18 rooms? Where was your aunt Tonia?
- 19 A. Right in here.
- 20 Q. And who was in there with her?
- 21 A. Asia.
- 22 Q. Do you remember how old Asia was?
- 23 A. She was nine.
- 24 Q. And what about the other room that you
- 25 haven't pointed to? Who was sleeping in there?

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- 1 A. J.W. and D.W. .
- 2 Q. And do you remember how old they were?
- 3 A. Jonelle was four and J.W. was six.
- 4 Q. Do you remember what time you went to bed
- 5 that night?
- 6 A. Probably say like 10:00'ish.
- 7 Q. You can set that down, if you want, E.H. .
- 8 A. (Complies).
- 9 Q. You said your aunt moved down.
- 10 A. Um-humm.
- 11 Q. If you remember how long before your mama's
- 12 death did your aunt move down? How long had she
- 13 lived with you?
- 14 A. Since when I was eight.
- 15 Q. No, I mean right around that time. Had she
- 16 just moved in with her four kids?
- 17 A. No, probably a week.
- 18 Q. A week?
- 19 A. Probably two weeks.
- 20 Q. So she had been there. Before your aunt
- 21 moved down did your mother work?
- 22 A. Yes, ma'am.
- 23 Q. And when she went to work and you weren't
- 24 at school who watched you?
- 25 A. My older brother.

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- 1 Q. Did relatives ever help watch you?
- 2 A. (Affirmative nod).
- 3 Q. Who?
- 4 A. My aunt -- because she works at the same
- 5 place as my mom.
- 6 Q. How about other relatives? Any uncles?
- 7 Did they ever watch you?
- 8 A. Sometimes.
- 9 Q. Which uncles?
- 10 A. Sometimes they'd come down.
- 11 Q. Do you remember their names?
- 12 A. Dave.
- 13 Q. The night that you said you were sleeping
- 14 with your mom and you got woken up about 10:00
- 15 -- or you went to sleep about 10:00, how did you
- 16 wake up that night? What was going on?
- 17 A. We was horsing around.
- 18 Q. And did someone come into the room that
- 19 night?
- 20 A. My Aunt Tonia at first.
- 21 Q. What about your dad? Did you see your dad
- 22 that night?
- 23 A. No.
- 24 Q. How about the next morning?
- 25 A. Yes.

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- 1 Q. Tell me about that.
- 2 A. It was 4:00 o'clock in the morning.
- 3 Q. Okay. And were you asleep?
- 4 A. Barely.
- 5 Q. Was your mama asleep?
- 6 A. Yes, ma'am.
- 7 Q. And so what happened after that?
- 8 A. I heard a downstairs banging.
- 9 Q. And then what happened next?
- 10 A. And I heard his footsteps coming up the
- 11 stairs and going into the room.
- 12 Q. And then did you see him?
- 13 A. Yes.
- 14 Q. And what did he do next?
- 15 A. He asked my mother to come outside.
- 16 Q. And what did she say?
- 17 A. No.
- 18 Q. And then what did he do?
- 19 A. Asked her again.
- 20 Q. And then what?
- 21 A. She said no.
- 22 Q. Okay. What happened next?
- 23 A. And then he asked her again and she said
- 24 no.
- 25 Q. At some point did he ever touch your mama?

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- 1 A. No. My mama showed me to my dad.
- 2 Q. Okay. When you say your mom showed you to
- 3 your dad, what do you mean? Was she showing him
- 4 that you were in the room?
- 5 A. Yes, ma'am.
- 6 Q. Then what happened?
- 7 A. Then he came between me and her and he
- 8 jumped on my mama.
- 9 Q. And did what to your mom?
- 10 A. He jumped on her.
- 11 Q. When you say he jumped on her what does
- 12 that mean, E.H. ?
- 13 A. He jumped on her and shoved her off the
- 14 bed.
- 15 Q. Shoved her off the bed?
- 16 A. Um-humm.
- 17 Q. Where was your mom's phone at this point?
- 18 A. It was thrown at the foot of the bed.
- 19 Q. And at some point where did it land?
- 20 A. It landed on the floor.
- 21 Q. And after your mom was shoved where did she
- 22 wind up?
- 23 A. On the floor.
- 24 Q. Did your dad ever hit your mom?
- 25 A. Yes.

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1 Q. Do you remember giving a statement to the
2 police the night that this happened?

3 A. Yes, ma'am.

4 Q. If I showed you your statement would that
5 refresh your memory?

6 A. Yes.

7 SOLICITOR WILLIAMS: May I approach,
8 Your Honor?

9 THE COURT: You may.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR WILLIAMS:

12 Q. You don't have to do it out loud, but if
13 you'd just read your statement to yourself about
14 all that stuff. This was two years ago, wasn't
15 it, E.H. ?

16 A. Yes, ma'am.

17 Q. Can you just read your statement to
18 yourself and see what it says? And then I'll
19 ask you some questions. Here's the other page.
20 You can take your time.

21 A. (Complies)

22 Q. Is it hard to be here to talk about this,
23 E.H. ?

24 A. Yes.

25 Q. You take your time. Now, do you remember

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1 if you saw your dad hit your mom at all? Does

2 it say in your statement?

3 A. Yes, he slapped her.

4 Q. He slapped her?

5 A. After that she was in the floor.

6 Q. After that she was on the floor. You just
7 need to speak into the microphone.

8 A. Yes, ma'am.

9 Q. How many times did he slap her?

10 A. It was only like when she was on the floor
11 and then I came down and then they started
12 getting the phone and then he found my uncle
13 Marcus's name in it. And then she said she was
14 doing it.

15 Q. So let's back up. She was on the floor and
16 where were you at that time?

17 A. I was on the bed and then came off.

18 Q. When you came off where did you go?

19 A. In my mom's lap.

20 Q. Do you remember why you went in your mom's
21 lap?

22 A. To check on her.

23 Q. To check on her? And then you said
24 something about the phone. What did your dad
25 do with the phone?

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- 1 A. He found it and he got it and put it in his
2 hand.
- 3 Q. Okay. And when he looked at the phone what
4 did he say?
- 5 A. He said to my mom that Marcus's name was
6 there.
- 7 Q. He found your uncle ---
- 8 A. Marcus's name on there.
- 9 Q. Okay. And what did he say when he found
10 your Uncle Marcus's name in the phone?
- 11 A. He said -- I told him that she was working
12 all the time.
- 13 Q. He said she was working all the time?
- 14 A. Yes, ma'am.
- 15 Q. Why did you have to say that?
- 16 A. Because that's what it was.
- 17 Q. What did he say that made you want to say
18 that?
- 19 A. He just said ---
- 20 Q. What did he say when he looked and saw that
21 your uncle's name was in the phone?
- 22 A. He said Marcus, Marcus, Marcus, and he
23 asked her what she was doing with my uncle.
- 24 Q. What did he ask her?
- 25 A. "Why have you been with my uncle?"

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- 1 Q. And is that when you said ---
- 2 A. I said "she's been working the whole time."
- 3 Q. And what did you say?
- 4 A. I said "she's been working the whole time."
- 5 Q. She's been working the whole time. And
- 6 then what happened? Is that when he slapped
- 7 her?
- 8 A. Yes, ma'am.
- 9 Q. What happened next, E.H. ?
- 10 A. My mom started crying.
- 11 Q. And then what happened?
- 12 A. My mom started crying and stuff.
- 13 Q. Crying?
- 14 A. Crying and stuff.
- 15 Q. Did you remain in her lap the whole time?
- 16 A. Yes, ma'am.
- 17 Q. At some point did you get out of her lap?
- 18 A. Yes, ma'am.
- 19 Q. How did that happen?
- 20 A. When my dad shot her she shoved me away.
- 21 THE COURT: I need you to repeat the
- 22 answer and I need you to speak a little louder
- 23 for me and speak directly into the microphone so
- 24 the court reporter can take down what you're
- 25 saying, okay?

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1 THE WITNESS: Yes, ma'am.

2 THE COURT: Can you repeat your
3 answer for me?

4 THE WITNESS: Ummm ---

5 THE COURT: Speak directly into the
6 microphone for me and repeat your answer.

7 THE WITNESS: My mama shoved me
8 out of the way when my dad pulled out the gun
9 and shot her.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR WILLIAMS:

12 Q. When you say your dad pulled out the gun,
13 where did he pull it out from?

14 A. In his front pocket.

15 Q. So after he pulled out the gun your mother
16 ---

17 A. Just shoved me out of the way.

18 Q. Did she say anything to you?

19 A. No, she ---

20 THE COURT: Please repeat your
21 answer.

22 THE WITNESS: That she wanted me out
23 of the way.

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR WILLIAMS:

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- 1 Q. And then what happened?
- 2 A. My dad walked out of the room.
- 3 Q. What was he acting like after he shot her?
- 4 A. I didn't see his face but one second, but
- 5 he walked out into the hall.
- 6 Q. Do you remember writing in your statement
- 7 the way he was acting?
- 8 A. At the end it says that he was smirking and
- 9 laughing.
- 10 Q. Can you repeat that, E.H. , I'm sorry?
- 11 A. That he was smirking.
- 12 Q. Smirking?
- 13 A. Um-humm.
- 14 Q. And what else?
- 15 A. Laughing.
- 16 Q. Laughing?
- 17 A. (Affirmative nod).
- 18 Q. What happened when your Aunt Tonia came
- 19 into the room?
- 20 A. Well, she asked my dad why and my dad said
- 21 "it's not my fault, it's her fault."
- 22 Q. Now, E.H. , did you know of any weapons
- 23 that were kept in your house?
- 24 A. Yes, ma'am.
- 25 Q. What kind of weapons?

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1 A. It was a Glock. It's a magnum.

2 Q. And what was the gun -- what gun did you
3 see that night, if you know? What did it look
4 like?

5 A. It was a little bitty gun.

6 THE COURT: Please repeat your
7 answer.

8 THE WITNESS: It was a little
9 bitty gun.

10 DIRECT EXAMINATION

11 BY SOLICITOR WILLIAMS:

12 Q. And where did y'all keep the little bitty
13 gun?

14 A. It was inside a basket that was downstairs
15 above the cabinets.

16 Q. In what room in the house?

17 A. Downstairs.

18 Q. What room is that?

19 A. Downstairs in the kitchen.

20 Q. And the next day after your mom died did
21 you notice anything unusual about the basket?

22 A. Yes, the baskets was lifted up.

23 Q. E.H., did you ever see your dad go to the
24 closet that night?

25 A. No, ma'am.

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1 Q. Are you sure?

2 A. No, ma'am.

3 Q. Are you sure he didn't go to the closet?

4 A. No, ma'am.

5 Q. You're not sure or he didn't go?

6 A. He did not go to the closet.

7 SOLICITOR WILLIAMS: The Court's
8 indulgence for just a second.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR WILLIAMS:

11 Q. E.H. , when your aunt came into the room
12 what did she do?

13 A. She started screaming and yelling.

14 Q. Did she do anything to your mom?

15 A. She started doing CPR.

16 Q. No further questions. Please answer any
17 questions the defense might have.

18 THE COURT: Any cross examination of
19 the witness?

20 CROSS EXAMINATION

21 BY MR. VITETTA:

22 Q. E.H. , my name is Guy Vitetta. I'm your
23 dad's lawyer. E.H. , I'm very sorry that you
24 had to see this happen.

25 A. Yes, sir.

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1 Q. I have just a couple of questions for you,
2 okay? When you gave your statement to the
3 police after this happened you told them that
4 your dad saw your uncle Marcus's number in your
5 mom's cell phone, correct?

6 A. Yes, sir.

7 Q. And I think you told the police that when
8 he saw that he went berserk.

9 A. Yes, sir.

10 Q. Is that what you told them?

11 A. Yes, sir.

12 Q. And that was because he was jealous?

13 A. Probably.

14 Q. Probably? Do you know that your mom and
15 your dad were having marital problems, right?

16 A. Yes, sir.

17 Q. Because they weren't even living together.

18 A. Yes, sir.

19 Q. Did you know that she wanted to get a
20 divorce?

21 A. Yes, sir.

22 Q. But even though your parents weren't living
23 together wasn't your dad coming down on the
24 weekends to hang out with you guys?

25 A. Yes, sir.

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1 Q. And wasn't Friday nights were like family
2 night?

3 A. Yes, sir, but he's not supposed to come
4 over because they had a DSS order.

5 Q. So he's not supposed to come over. But
6 your mom would let him come over anyway.

7 A. No, sir.

8 Q. Didn't you have family nights together and
9 stuff?

10 A. Yes, sir.

11 Q. The statement that you gave to the police,
12 did you tell that -- you were staying at the
13 house -- let me go back. Right after your mom
14 died were you staying with your grandmother and
15 aunt?

16 A. When my mom died?

17 Q. Yes.

18 A. Yes, sir.

19 Q. And did you tell her what happened too,
20 what you saw that night?

21 A. No, sir.

22 Q. You didn't tell her what you saw?

23 A. No, sir.

24 Q. Did your dad take you to church on Sundays?

25 A. Half the time.

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1 Q. Half the time. And who took you the other
2 half?

3 A. Nobody.

4 Q. So it was just your dad?

5 A. Once a month, probably.

6 Q. I'm sorry, I can't hear you.

7 A. Probably once a month.

8 Q. Once a month your dad would take you?

9 A. Yes.

10 Q. Do you remember your mom and dad having a
11 wedding anniversary about a week before she died
12 at your house?

13 A. No.

14 Q. And that Tonia came down with the kids and
15 you were there and your dad was there and your
16 brother?

17 A. No.

18 Q. You don't remember that?

19 A. No, he wasn't there.

20 Q. Thank you.

21 THE COURT: Any redirect?

22 SOLICITOR WILLIAMS: Yes, short
23 redirect.

24 THE COURT: Proceed.

25 REDIRECT EXAMINATION

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1 BY SOLICITOR WILLIAMS:

2 Q. E.H. , Mr. Vitetta just asked you about
3 why your dad wasn't allowed to be there, and you
4 said because of a DSS order. Is that right?

5 A. Yes, ma'am.

6 Q. What happened that DSS told him he couldn't
7 come over?

8 MR. VITETTA: Your Honor, I object.

9 THE COURT: Sustained. Prior bad
10 acts. It's not the subject of a conviction.
11 Requires an independent hearing.

12 SOLICITOR WILLIAMS: Your Honor, may
13 we approach?

14 THE COURT: You may.

15 (BENCH CONFERENCE)

16 THE COURT: Proceed.

17 SOLICITOR WILLIAMS: Nothing further,
18 Your Honor.

19 THE COURT: Any objection to the
20 witness being excused from the State?

21 SOLICITOR WILLIAMS: Not from the
22 State.

23 THE COURT: From the defendant?

24 MR. VITETTA: (Negative gesture),
25 thank you. He may be excused.

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1 THE COURT: Young man, you're
2 excused.

3 (WITNESS STEPS DOWN AND IS EXCUSED)

4 THE COURT: Call your next witness.

5 SOLICITOR WILLIAMS: The State calls
6 J.W.

7 (WITNESS TAKES STAND)

8 J.W. , being duly sworn to
9 tell the truth, the whole truth and nothing but
10 the truth, testified, as follows:

11 THE COURT: You may proceed.

12 SOLICITOR WILLIAMS: Thank you, Your
13 Honor.

14 DIRECT EXAMINATION

15 BY SOLICITOR WILLIAMS:

16 Q. J.W. , how old are you?

17 A. Thirteen.

18 THE COURT: I need you to speak
19 directly into the microphone. I need you to
20 speak loudly and clearly.

21 THE WITNESS: Thirteen.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR WILLIAMS:

24 Q. Where do you live now?

25 A. Monroe, North Carolina.

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- 1 Q. Do you have any brothers and sisters?
- 2 A. Yes.
- 3 Q. How many?
- 4 A. Two brothers, one sister.
- 5 Q. And at any time did you ever live down here
- 6 in Berkeley County?
- 7 A. Yes.
- 8 Q. And who is your mom?
- 9 A. Tonia Wakins.
- 10 Q. And who is Shantay Harris to you?
- 11 A. My aunt.
- 12 Q. When you lived in Berkeley County do you
- 13 remember when that was?
- 14 A. About two years ago.
- 15 Q. And while you were living in Berkeley
- 16 County did your aunt die, Aunt Shantay?
- 17 A. Yes.
- 18 Q. Were you in the house that night?
- 19 A. Yes.
- 20 Q. Who lived in the house at that time?
- 21 A. T.H. , E.H. , my two brothers, little
- 22 sister and my mom.
- 23 Q. Okay. And whose room were you sleeping in
- 24 that night?
- 25 A. E.H. 's.

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- 1 Q. And do you remember about what time you
2 went to bed?
3 A. I think 8:00.
4 Q. And when did you wake up?
5 A. I don't know.
6 Q. What woke you up that morning?
7 A. A light.
8 Q. And after the light woke you up did you
9 hear anything?
10 A. No.
11 Q. Did you get out of your room at any time?
12 A. Yes.
13 Q. Did you eventually hear anything?
14 A. Yes.
15 Q. What did you hear?
16 A. A scream.
17 Q. Who was screaming?
18 A. E.H., my mom, I think T.H.
19 Q. And did you see anybody upstairs besides
20 the people that lived there?
21 A. Yes.
22 Q. Who was that?
23 A. Tito.
24 Q. Is that your uncle?
25 A. Yes.

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1 Q. Describe to us what you saw when you saw

2 Tito.

3 A. I saw him on the top staircase.

4 Q. How was he acting?

5 A. Blank.

6 Q. Did he have anything in his hands?

7 A. I don't remember.

8 Q. Did he have anything in his pockets that

9 you could see?

10 A. I thought.

11 Q. What did you think?

12 A. I thought he did.

13 Q. What pocket was it, if you remember?

14 A. I don't remember.

15 Q. Did you hear him say anything?

16 A. Yes.

17 Q. What did you hear him say?

18 A. Can I read that?

19 Q. Do you need your statement to refresh your

20 memory? When did you give your statement?

21 A. More later that night over at the police

22 office.

23 Q. So that same morning?

24 A. Yes.

25 SOLICITOR WILLIAMS: Your Honor, may

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1 I approach?

2 THE COURT: You may.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR WILLIAMS:

5 Q. If you could just read this to yourself and
6 then I'll ask you some questions.

7 A. (Complies).

8 Q. After reading that statement does it
9 refresh your memory as to what he said?

10 A. Yes.

11 Q. What did he say?

12 A. He said that he was over it and he couldn't
13 bring her back to life.

14 Q. Do you remember him saying anything else?

15 A. That she had no business doing whatever.

16 Q. And did you see where he went?

17 A. Downstairs.

18 Q. And what did your mama do? What did you
19 see her do?

20 A. She was running to their room to help Aunt
21 Shantay.

22 Q. Do you remember, if anything, what she was
23 saying?

24 A. She was -- like that.

25 Q. What was T.H doing?

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1 A. Picking up the cell phone to call the
2 police.

3 Q. What were the other kids doing?

4 A. They was crying.

5 SOLICITOR WILLIAMS: The Court's
6 indulgence.

7 THE COURT: Um-humm.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR WILLIAMS:

10 Q. I don't have any other questions for you,

11 J.W. . Please answer any questions of the
12 defense.

13 THE COURT: Any cross examination of
14 the witness?

15 CROSS EXAMINATION

16 BY MR. VITETTA:

17 Q. T.H , did you come down to Charleston the
18 week before your aunt died?

19 A. I believe so. My name's not T.H .

20 Q. I'm sorry?

21 A. My name's not T.H .

22 Q. I'm sorry. It was about a week before?

23 A. Yes.

24 Q. And it was for -- they were celebrating
25 their wedding anniversary? Do you remember

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1 that?

2 A. No.

3 Q. Do you remember everybody being there and
4 grilling out?

5 A. Yes.

6 Q. Do you remember Tito being there?

7 A. Yes.

8 Q. And the kids and everybody?

9 A. Yes.

10 Q. And his wife, Shantay?

11 A. Yes.

12 MR. VITETTA: Nothing further.

13 THE COURT: Any redirect?

14 SOLICITOR WILLIAMS: No, Your Honor.

15 THE COURT: Any objection to the
16 witness being excused from the State?

17 SOLICITOR WILLIAMS: Not from the
18 State.

19 THE COURT: From the defense?

20 MR. VITETTA: No, Your Honor, thank
21 you.

22 THE COURT: You're excused.

23 (WITNESS STEPS DOWN AND IS EXCUSED)

24 THE COURT: Call your next witness.

25 SOLICITOR ALFARO: The State calls

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1 Jamie Taylor.

2 (WITNESS TAKES STAND)

3 JAMES W. TAYLOR, being duly sworn to
4 tell the truth, the whole truth and nothing but
5 the truth, testified, as follows:

6 THE COURT: You may proceed.

7 SOLICITOR ALFARO: Thank you, Your
8 Honor.

9 THE COURT: You're welcome.

10 DIRECT EXAMINATION

11 BY SOLICITOR ALFARO:

12 Q. Officer Taylor, could you tell the jury
13 where you currently work?

14 A. I'm a patrolman with the Moncks Corner
15 Police Department.

16 Q. How long have you been with the Moncks
17 Corner Police Department?

18 A. Three years.

19 Q. What are your current duties and
20 responsibilities?

21 A. I'm currently assigned to the Patrol
22 Division.

23 Q. Were you working for the Moncks Corner
24 Police Department on August 19th, 2009?

25 A. Yes, I was.

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1 Q. And were you serving as a patrol officer at
2 that time as well?

3 A. Yes, sir.

4 Q. Did you have the opportunity to be
5 dispatched to a call at [REDACTED] Golden Aspen Road
6 in Moncks Corner at approximately 5:30 a.m.?

7 A. Yes, I was.

8 Q. And do you recall where that address is
9 located, what subdivision that's in?

10 A. Oak Hill.

11 Q. Is that located here in Berkeley County?

12 A. Yes, it is.

13 Q. And how was the call dispatched to you?

14 A. We received a call from central dispatch in
15 reference to a domestic dispute.

16 Q. And were any other officers dispatched to
17 that location with you?

18 A. As far as dispatched, no. Patrolman
19 Scarborough came along with me to provide
20 backup.

21 Q. Were you in the same vehicle? Separate
22 vehicles?

23 A. Separate vehicles.

24 Q. Who was the lead car?

25 A. I was.

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- 1 Q. And when you arrived at the residence, what
2 did you see what you arrived?
- 3 A. I observed a black male walking in front of
4 the house and he ran to a black vehicle and
5 proceeded to leave the scene.
- 6 Q. And did either you or Officer Scarborough
7 attempt to stop this individual?
- 8 A. Patrolman Scarborough did.
- 9 Q. Was he able to stop him before the
10 defendant left the scene?
- 11 A. No, he was not.
- 12 Q. Did either of you follow after that
13 individual?
- 14 A. Patrolman Scarborough did.
- 15 Q. And to your knowledge did he eventually
16 catch up with that person?
- 17 A. Yes, sir.
- 18 Q. And do you know where he located that
19 individual?
- 20 A. I believe it was on Maplewood Drive.
- 21 Q. How close is that to the address on Golden
22 Aspen?
- 23 A. I would say less than a quarter of a mile.
- 24 Q. Is it in that same subdivision?
- 25 A. Yes, sir.

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1 Q. And when Officer Scarborough was following
2 after that vehicle did you stay at the scene?

3 A. Yes, I did.

4 Q. And what did you do?

5 A. To find out what the situation was, I then
6 proceeded to the front door of the residence.

7 Q. And were you able to gain entry?

8 A. Yes, sir, after ringing the doorbell and
9 knocking on the door an individual opened the
10 door for me.

11 Q. Do you recall who opened the door for you?

12 A. It was a younger child.

13 Q. And at that point did you enter into the
14 home?

15 A. Yes, I did.

16 Q. And what did you see when you went inside
17 the house?

18 A. Nothing when I entered the house. The
19 individual that answered the door stated
20 something to me.

21 Q. Do you recall what he told you?

22 A. Yes, he stated ---

23 MR. VITETTA: Objection as to hearsay.

24 SOLICITOR ALFARO: I think I can
25 establish it.

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1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR ALFARO:

3 Q. Can you describe the demeanor of the person
4 that answered the door?

5 A. Shocked.

6 Q. How were they acting?

7 A. Kind of like they were lost, I guess you
8 could say.

9 Q. Lost as in -- can you describe that a
10 little better?

11 A. I guess shocked and lost would the best
12 that I could describe it as.

13 Q. Did you ask him what happened, or did he
14 just volunteer what happened?

15 A. I just asked what was going on.

16 Q. Did asking that question and getting that
17 answer help you determine what to do next in
18 response to that call that you were sent to?

19 A. Yes.

20 SOLICITOR ALFARO: Your Honor, I
21 believe he's allowed to ---

22 THE COURT: The objection is over-
23 ruled. It comes within the exception of sudden
24 utterances as well as statements made in the
25 course of an investigation. You may answer the

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1 question, sir.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR ALFARO:

4 Q. Can you tell us what the child who answered
5 the door said?

6 A. Yes, he stated to me that his father had
7 just killed his mother.

8 Q. And at that point did you continue entering
9 into the house?

10 A. I asked him where and he directed me
11 upstairs.

12 Q. Do you recall what room you went into?

13 A. As I went up the stairs it was the first
14 bedroom to the right.

15 Q. And what did you find in that bedroom?

16 A. Upon entering the room I observed two black
17 females, one laying on her back and one on her
18 knees trying to provide aid.

19 Q. And what type of -- what was she doing when
20 you say she was attempting to provide aid?

21 A. Attempting CPR.

22 Q. And was anyone else in the room other than
23 those two -- the victim and the person giving
24 aid?

25 A. No, sir.

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1 Q. Where did the child that opened the door,
2 where did he go?

3 A. Before I went in the room I directed him to
4 stay up in the loft area.

5 Q. Is the loft area still upstairs?

6 A. Yes, sir.

7 Q. Or is that a separate part of the house?

8 A. Yes.

9 Q. Upstairs?

10 A. Upstairs.

11 Q. And were you -- did you remain at the scene
12 when -- let me rephrase that question. Did
13 anyone else arrive at the scene while you were
14 there?

15 A. Yes, sir. Corporal Edwards arrived on the
16 scene.

17 Q. Did any medical personnel arrive?

18 A. Yes. After I established what was going on
19 I called central dispatch and asked for EMS and
20 first responders to respond to the scene.

21 Q. And were you still at the scene when they
22 arrived?

23 A. Yes, I was.

24 Q. And did you attempt to provide any first
25 aid to the victim?

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- 1 A. I checked for any vital signs.
- 2 Q. Did you find any?
- 3 A. No, sir.
- 4 Q. Did you personally participate in any
- 5 further investigation at the scene?
- 6 A. No, sir. After medical personnel arrived
- 7 on the scene, I cleared the bedroom.
- 8 SOLICITOR ALFARO: I have no
- 9 further questions.
- 10 THE COURT: Any cross examination of
- 11 the witness?
- 12 CROSS EXAMINATION
- 13 BY MR. VITETTA:
- 14 Q. The person you saw leaving the house, what
- 15 was their demeanor like when you saw him? How
- 16 did he appear to you?
- 17 A. He appeared to be just leaving the house,
- 18 going to work, no rush.
- 19 Q. Did he acknowledge you?
- 20 A. No, sir.
- 21 Q. And how close were you?
- 22 A. I would say less than me to you.
- 23 MR. VITETTA: Thank you. Nothing
- 24 further.
- 25 THE COURT: Any redirect?

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1 SOLICITOR ALFARO: No, Your Honor.

2 THE COURT: Any objection to the
3 witness being excused from the State?

4 SOLICITOR ALFARO: None from the State.

5 THE COURT: From the defense?

6 MR. VITETTA: No, Your Honor.

7 THE COURT: Sir, you're excused.

8 THE WITNESS: Thank you, Your Honor.

9 (WITNESS STEPS DOWN)

10 THE COURT: You may call your next
11 witness.

12 SOLICITOR ALFARO: The State calls
13 Chris Scarborough.

14 (WITNESS TAKES STAND)

15 CHRIS SCARBOROUGH, being duly sworn to
16 tell the truth, the whole truth and nothing but
17 the truth, testified, as follows:

18 THE COURT: You may proceed.

19 DIRECT EXAMINATION

20 BY SOLICITOR ALFARO:

21 Q. Officer Scarborough, could you tell the
22 jury where you currently work?

23 A. Moncks Corner Police Department.

24 Q. And how long have you been with the Moncks
25 Corner P.D.?

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- 1 A. Two years..
- 2 Q. And prior to joining Moncks Corner, did you
- 3 have any prior law enforcement experience?
- 4 A. Yes, sir.
- 5 Q. Could you tell us what your experience is
- 6 in law enforcement?
- 7 A. I worked for the Roane County Sheriff's
- 8 Department in east Tennessee for three years or
- 9 three and a half, and Cobb County Sheriff's
- 10 Department just outside of Atlanta for four
- 11 years.
- 12 Q. Were you working for Moncks Corner on
- 13 August the 19th, 2009?
- 14 A. Yes, sir.
- 15 Q. And what was your rank at that time?
- 16 A. Patrolman.
- 17 Q. Are you still a patrolman?
- 18 A. No, sir, I'm a corporal now.
- 19 Q. And on August 19th, 2009 did you have the
- 20 opportunity to respond to or be dispatched to
- 21 [REDACTED] Golden Aspen Road in Moncks Corner?
- 22 A. Yes, sir.
- 23 Q. Do you recall what subdivision that's in?
- 24 A. Oak Hill Subdivision.
- 25 Q. Is that in Berkeley County?

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1 A. Yes, sir.

2 Q. And what type of call were you dispatched
3 to?

4 A. It was a domestic dispute.

5 Q. And did any other officers go to that scene
6 with you?

7 A. Officer Taylor.

8 Q. And which one of you got there first?

9 A. I was following behind Officer Taylor in my
10 vehicle, so we pulled in at the same time but he
11 was in front of my car.

12 Q. And when you arrived what, if anything, did
13 you see?

14 A. As we turned onto Golden Aspen there was a
15 black car parked at the driveway. As we got
16 closer I saw a black male walking behind the car
17 and up to the driver's door.

18 Q. And could you describe the demeanor of the
19 person that you saw walking to the car?

20 A. He was just nonchalantly walking to his
21 vehicle. He didn't seem to be in a hurry or
22 anything.

23 Q. Do you recall what kind of car he left the
24 scene in?

25 A. It was a black car.

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1 Q. Did either you or Officer Taylor attempt to
2 stop this person?

3 A. Yes, sir. As I pulled up beside his car as
4 he was at the driver's door opening it up. And
5 my intention was to exit my car and to tell him
6 to wait so I could talk to him. But before I
7 could get all the way out of my car he'd already
8 gotten into his car and started driving off.

9 Q. And did you attempt to follow him?

10 A. Yes, sir.

11 Q. And were you able to eventually catch up
12 with him?

13 A. Yes, sir.

14 Q. And where did you stop him?

15 A. On Maple Leaf Drive, at the corner of Maple
16 Leaf and Robin Wood.

17 Q. Is that same in the same subdivision?

18 A. Yes, sir.

19 Q. And when you finally got him stopped what
20 happened?

21 A. As I pulled up behind his vehicle I was
22 giving his license tag over the radio to my
23 dispatcher. And as I was doing that the guy got
24 out of his car and closed the door and started
25 walking towards my patrol car. And he put his

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- 1 hands up.
- 2 Q. And at that time did you stop him or have
3 any interaction with him?
- 4 A. Yes, sir. When I seen him getting out of
5 his vehicle, I went ahead and exited my car and
6 finished my transmission. I told him to stop
7 and put his hands on his vehicle, on the back of
8 his car.
- 9 Q. And the vehicle you were driving that
10 morning, was that a marked Moncks Corner police
11 car?
- 12 A. Yes, sir.
- 13 Q. And was that car equipped with any kind of
14 recording equipment?
- 15 A. Yes, sir, it had an ICOP video recorder --
16 video and audio recorder.
- 17 Q. Is ICOP just -- what is that?
- 18 A. It's just the name of the company, name of
19 the ---
- 20 Q. So you had a video camera in that car?
- 21 A. Yes, sir.
- 22 Q. And did it also have the ability to record
23 any sound inside or around the car?
- 24 A. Yes, sir.
- 25 Q. How many cameras were located in your

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1 vehicle?

2 A. It has two cameras, one for the dashcam
3 that shows outside and then there's also one
4 that shows the back seat.

5 Q. And for the camera that's on the dash, how
6 is that activated?

7 A. It's either activated when you turn your
8 emergency lights on, the blue lights, or if you
9 get over a certain speed it'll activate it, or
10 you can manually start it.

11 Q. And was your camera activated at any point
12 in time during your -- after you were dispatched
13 to that scene?

14 A. Yes, sir.

15 Q. At what point?

16 A. Shortly after we were dispatched, and I
17 turned my lights on -- blue lights. And that's
18 when it came on.

19 Q. So it automatically started when you cut
20 the ---

21 A. Yes, sir.

22 Q. Are you aware if the recording -- a copy of
23 that recording was secured into evidence in this
24 case?

25 A. Yes, sir.

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1 Q. And have you had the opportunity to review
2 that video -- in-car video?

3 A. Yes, sir.

4 Q. I'm going to show you what has been marked
5 as State's Exhibit 59 for identification. Do
6 you recognize that item?

7 A. Yes, sir.

8 Q. And can you tell the Court and the jury
9 what that item is?

10 A. It's a copy of my in-car camera from the
11 night of the incident.

12 Q. And you've had an opportunity to review
13 this?

14 A. Yes, sir.

15 Q. And how do you recognize that as being one
16 that you've reviewed?

17 A. After I watched it I put my initials on it.

18 Q. And was the -- is the video a fair and
19 accurate representation of the scene that night,
20 the time to the stop as well as the traffic stop
21 itself?

22 A. Yes, sir.

23 Q. Any deletions or changes that you observed
24 in the video?

25 A. No, sir.

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1 SOLICITOR ALFARO: At this time the
2 State would ask that Exhibit 59 be entered into
3 evidence.

4 THE COURT: Marked and admitted
5 subject to your objection.

6 (SO ENTERED AS STATE'S EXHIBIT 59)

7 THE COURT: Marked and admitted
8 without objection.

9 SOLICITOR ALFARO: At this time we'd
10 like to publish it for the jury.

11 THE COURT: That's Number 59?

12 SOLICITOR ALFARO: Yes, Your Honor.

13 MR. VITETTA: That would be subject to
14 my objection.

15 THE COURT: Marked and admitted
16 subject to the objection. You may proceed.

17 SOLICITOR ALFARO: At this time we're
18 going to publish State's Exhibit 59 for the
19 jury.

20 (STATE'S EXHIBIT 59 PLAYED FOR JURY)

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR ALFARO:

23 Q. Corporal Scarborough, the audio was a
24 little fuzzy at times. When you asked the
25 defendant if he had any weapons in his

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- 1 possession, what did he tell you?
- 2 A. He said yes.
- 3 Q. Did he tell you where that weapon was
- 4 located?
- 5 A. Yes, sir, he said it was in his pocket.
- 6 Q. And did you check him for weapons in that
- 7 pocket that he told you?
- 8 A. Yes, sir.
- 9 Q. And what did you find?
- 10 A. It was a .22 pistol or revolver.
- 11 Q. And do you recall what that weapon looked
- 12 like?
- 13 A. Yes, sir.
- 14 Q. I want to show you what has previously been
- 15 marked as State's Exhibit 39 for identification
- 16 as well as State's Exhibit 39A and State's
- 17 Exhibit 39B. I've cleared the weapon. As
- 18 always, you want to doublecheck that before you
- 19 look at it or touch it. Keep the bullets
- 20 separate for me.
- 21 A. Yes, sir.
- 22 Q. Could you look at that exhibit and tell me
- 23 if you recognize those three items?
- 24 A. Yes, sir.
- 25 Q. And is State's Exhibit 39, is that the

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1 weapon that you removed from the defendant's
2 pocket at that traffic stop that was on the
3 video?

4 A. It is.

5 Q. And when you removed that weapon from his
6 pocket what did you do with it?

7 A. I put it in my back pocket.

8 Q. Until what point?

9 A. Until I had him secured and in my patrol
10 car. And then I put it in the trunk of my
11 patrol car after that.

12 Q. On the video you walked off camera with
13 him. Did you put him in the back of your car or
14 another person's car?

15 A. My car.

16 Q. Your car?

17 A. Yes, sir.

18 Q. And when you removed that weapon from the
19 defendant was it loaded?

20 A. Yes, sir.

21 Q. And how many rounds -- first of all, how
22 many rounds does that gun hold?

23 A. Five.

24 Q. And how many live rounds were contained in
25 that weapon when you retrieved it from the

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1 defendant's pocket?

2 A. Four.

3 Q. And were there any spent cartridges inside,
4 spent casings inside?

5 A. There was one.

6 SOLICITOR ALFARO: At this time the
7 State would ask that Exhibits 39, 39A and 39B be
8 admitted into evidence.

9 THE COURT: Any objection?

10 MR. VITETTA: No, Your Honor.

11 THE COURT: Marked and admitted
12 without objection.

13 (SO ENTERED AS STATE'S EXHIBIT 39, 39A & 39B)

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR ALFARO:

16 Q. While the defendant was in your custody, in
17 the back seat of your patrol car, did you ask
18 him any questions about the incident?

19 A. No, sir.

20 Q. Why is that?

21 A. I'm not an investigator. So my main
22 concern is my safety, and then to detain or
23 arrest or whatever the case may be. And I don't
24 investigate the cases. I don't ask questions.

25 Q. Is it fair to say that your main role in

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1 this investigation was locating the defendant
2 and securing the weapon?

3 A. Yes, sir.

4 Q. And you said that you put the gun in the
5 trunk of your car. What did you eventually do
6 with the weapon? What did you do with the
7 weapon after you put it in the trunk?

8 A. After I got back to the station I took it
9 out and put it in -- cleared the weapon and put
10 it into the evidence.

11 Q. So that day when you went back to the
12 station?

13 A. Yes, sir.

14 Q. And did you transport the defendant from
15 that location, from the traffic stop location?

16 A. Yes, sir.

17 Q. And where did you take him?

18 A. To the Moncks Corner Police Department.

19 Q. And at any time while he was in your
20 custody did you threaten him or use any force
21 against him?

22 A. No, sir.

23 Q. Did you promise him anything if he was to
24 cooperate with the investigation?

25 A. No, sir.

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1 Q. Did you have any conversation with him at
2 all while he was in back seat of your car?

3 A. No, sir, I didn't have any conversation
4 with him. I asked him where the keys to the
5 vehicle were and the registration.

6 Q. And did he ask you anything about the case
7 or the car or anything like that?

8 A. No, sir.

9 Q. And while he was in your custody did you
10 witness any other law enforcement officers speak
11 with him?

12 A. Yes, sir.

13 Q. And which officer was that?

14 A. Lieutenant Roach.

15 Q. Did he do that at the location of the
16 traffic stop?

17 A. Yes, sir.

18 Q. And you said you secured the weapon -- you
19 cleared the weapon and secured it into evidence.
20 Did you secure the bullets as well at that time?

21 A. Yes, sir.

22 Q. And were you responsible for securing any
23 other physical evidence in this case?

24 A. Yes, sir.

25 Q. And what evidence was that?

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1 A. The clothing he was wearing and his shoes.

2 Q. How did you go about -- tell that process
3 of how you went about obtaining -- obtaining and
4 securing those, the defendant's clothing?

5 A. After we got back to the station someone
6 had gone and gotten a uniform from the jail.
7 And I had him remove his clothes. He was in the
8 holding cell at the police station. And I had
9 him remove his clothes. And as he was removing
10 them I put them in a paper bag. And then after
11 that I gave him his uniform to put on.

12 Q. So other than handling the gun, the bullets
13 and the casing and the defendant's clothes, did
14 you have any other involvement in the processing
15 of the scene or any other physical evidence?

16 A. No, sir.

17 Q. Thank you. Please answer any questions the
18 defense has.

19 A. Yes, sir.

20 THE COURT: Any cross examination?

21 MR. VITETTA: No, Your Honor.

22 THE COURT: Any objection to the
23 witness being excused from the State?

24 SOLICITOR ALFARO: No, Your Honor.

25 THE COURT: From the defense?

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1 MR. VITETTA: No, Your Honor.

2 THE COURT: Sir, you're excused.

3 (WITNESS STEPS DOWN)

4 THE COURT: Who's the State's next
5 witness?

6 SOLICITOR ALFARO: Therissa Miller,
7 emergency medical technician.

8 THE COURT: Mr. Foreman and ladies
9 and gentlemen, we're going to take a very brief
10 restroom break. During the break please do not
11 discuss the case, and please leave your notepads
12 in your seats.

13 (JURY OUT @ 2:34 P.M.)

14 THE COURT: You may be seated.

15 (BRIEF RECESS)

16 (DEFENDANT PRESENT)

17 (JURY IN @ 2:53 P.M.)

18 THE COURT: You may be seated. The
19 State will call its next witness.

20 SOLICITOR ALFARO: The State calls
21 Therissa Miller.

22 (WITNESS TAKES STAND)

23 THERISSA ELVIRA MILLER, being duly
24 sworn to tell the truth, the whole truth and
25 nothing but the truth, testified, as follows:

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1 THE COURT: You may proceed.

2 SOLICITOR ALFARO: Thank you, Your
3 Honor.

4 DIRECT EXAMINATION

5 BY SOLICITOR ALFARO:

6 Q. Ms. Miller, could you tell the jury where
7 you currently work?

8 A. I work with the County of Berkeley in EMS.

9 Q. And what do you do for EMS?

10 A. I'm a paramedic.

11 Q. Do you have any other prior jobs in the
12 medical field?

13 A. Prior to coming to Berkeley County, I
14 worked for Dorchester County for five years.
15 And I do have some medical experience in the
16 United States Army.

17 Q. And your time at Dorchester, was that also
18 as an EMT?

19 A. Yes, sir.

20 Q. And could you tell us what type of training
21 and educational background you have in that
22 field?

23 A. I attended Trident Technical College to get
24 EMT Basic. I went on and procured a job with
25 Dorchester County. They sent me to school. I

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1 got another certification as an intermediate.

2 Then they sent me to school for a year to get my
3 paramedic.

4 Q. And were you working for Berkeley County
5 Emergency Medical Services on August the 19th,
6 2009?

7 A. Yes, sir, I was.

8 Q. And did you have occasion that morning to
9 be dispatched to [REDACTED] Golden Aspen Drive in
10 Moncks Corner?

11 A. Yes, sir.

12 Q. Do you recall what time you were dispatched
13 and what time you arrived?

14 A. May I look at my report? I believe we were
15 dispatched about 5:30'ish in the morning and
16 arrived, I believe, about six minutes later to
17 that address.

18 Q. Did you prepare a report related to this
19 incident?

20 A. Yes, sir.

21 Q. And does that report contain details as far
22 as the arrival times and also things that are
23 recording what's done at that scene?

24 A. Yes, sir.

25 Q. Would referring to that report help refresh

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1 your recollection?

2 A. Yes, sir, it would.

3 Q. Can I see your report one minute so I can
4 show it to defense counsel? Ms. Miller, if you
5 could look over that and once you've had a
6 chance to review it and refresh your
7 recollection, let me know and I'll ask you some
8 questions.

9 A. (Upon review), okay.

10 Q. Does referring back to that report refresh
11 your recollection as to what time you arrived at
12 the scene?

13 A. Yes, we arrived at 5:42 in the morning.

14 Q. And when you arrived were there any other
15 medical or first responders present at the
16 scene?

17 A. Two first responders from the City of
18 Moncks Corner Fire Department had arrived just
19 moments prior to us.

20 Q. And were any law enforcement officers
21 present at the scene?

22 A. Yes, sir.

23 Q. And when you arrived what did you -- what
24 did you do when you got to the house?

25 A. Law enforcement told us that our patient

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1 was upstairs in a bedroom. So when we had gone
2 upstairs and we had an officer on the landing
3 that directed us to a bedroom that was to the
4 front of the house.

5 Q. And was the victim still at the scene when
6 you arrived?

7 A. The victim?

8 Q. Yes.

9 A. Yes, she was there.

10 Q. And which room was she located in?

11 A. It was an upstairs bedroom to the front of
12 the house. It appeared to probably have been a
13 master bedroom.

14 Q. And what did you see when you got to that
15 master bedroom?

16 A. There was a black female lying supine on
17 the floor next to the bed.

18 Q. And who else was in the room at the time?

19 A. At that time the two firemen/first
20 responders and a young child was in the room.

21 Q. And what were they doing when you arrived?

22 A. The first responders was just getting their
23 equipment together. They do carry what we call
24 an AED. They were getting prepared to possibly
25 put it on the patient. One of the firemen had

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1 said to me that he didn't notice any breathing,
2 so I went on to do my assessment. And I found
3 that the patient was PEA and pulseless. And I
4 proceeded to put the cardiac monitor on her, and
5 she was in asystole at that time.

6 Q. Can you tell the jury in laymen's terms
7 what asystole means?

8 A. Asystole is what you would understand as a
9 flatline. There was no heart activity at all.

10 Q. And that's the reading from the heart
11 monitor that you used?

12 A. Yes.

13 Q. And did you attempt to find a pulse?

14 A. Yes.

15 Q. And were you able to locate one?

16 A. No.

17 Q. And her appearance, could you describe her
18 appearance when you were attempting to determine
19 if she had a pulse or a heartbeat?

20 A. She was a dark-skinned female, but her skin
21 -- her face was dusky and ashen looking.

22 Q. And what does that indicate to you in your
23 experience?

24 A. Significant loss of blood.

25 Q. And did you see any blood at the scene?

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1 A. Yes, sir. There was quite a bit of blood
2 on her right side stemming from the right side
3 of her head, a large pool down to about her
4 waistline.

5 SOLICITOR ALFARO: Your Honor, we
6 have some photos that we want to show.

7 THE COURT: Do you have a matter of
8 law that we need to take up outside the jury's
9 presence?

10 SOLICITOR ALFARO: Yes, Your Honor.

11 THE COURT: Mr. Foreman and ladies
12 and gentlemen, I have a brief matter of law I
13 need to take up with the attorneys. During the
14 break please do not discuss the case, and please
15 leave your notepads in your seats.

16 (JURY OUT @ 3:01 P.M.)

17 THE COURT: I need to see the photos,
18 please.

19 SOLICITOR ALFARO: The photos in
20 question are State's Exhibits 6, 7, 13 and 14.

21 THE COURT: For what purpose are you
22 offering the photographs?

23 SOLICITOR ALFARO: Your Honor,
24 regarding State's Exhibits 6, 7, 13 and 14, with
25 this witness we believe it's important to ---

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1 THE COURT: Who took the photos? You
2 can establish the foundation and why the witness
3 would be appropriate.

4 SOLICITOR ALFARO: She would be
5 appropriate because she was in the scene -- the
6 room that night and witnessed it. We have to
7 lay a foundation, of course, that they are a
8 fair and accurate representation of what she saw
9 that night. But her testimony is to blood.
10 That's on some of the -- the head wound and the
11 blood that had accumulated on the floor. The
12 photos, we believe, are necessary to show that
13 properly to paint the picture for the jury as to
14 what happened that night, as far as the actions
15 of the defendant.

16 THE COURT: Why do you need all of
17 them? Two of them are the same thing. Well,
18 four, but two each of the same thing.

19 SOLICITOR ALFARO: We would be able
20 to use 6 or 7.

21 THE COURT: Are you going to be
22 seeking to introduce photographs through the
23 medical examiner?

24 SOLICITOR ALFARO: We have photos
25 that were taken -- through the medical examiner,

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1 yes, not the actual crime-scene photos.. These
2 are photos that were taken at the residence.

3 THE COURT: I understand that. But
4 I'm trying to figure out why they wouldn't all
5 be cumulative. They're being offered for one
6 purpose, to show malice. I don't know that
7 they're necessary to aid this witness's
8 testimony. I think her description is
9 sufficient. I'm just trying to figure out --
10 and I'm trying to determine in advance the
11 cumulative nature of the photographs. Where are
12 the photographs? I would assume number 27 and
13 28 are the bullet fragment, correct?

14 SOLICITOR ALFARO: Are those the x-
15 rays, Your Honor?

16 THE COURT: No.

17 SOLICITOR ALFARO: They are, Your
18 Honor.

19 THE COURT: Mr. Vitetta, do you have
20 any objection to 27 and 28 which is the bullet
21 fragment, pictures of the bullet fragments?

22 MR. VITETTA: The x-rays, no.

23 THE COURT: Bullet fragments.

24 MR. VITETTA: No, Your Honor.

25 THE COURT: 27 and 28 would be marked

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1 and admitted without objection.

2 (SO ENTERED AS STATE'S EXHIBIT 27)

3 (SO ENTERED AS STATE'S EXHIBIT 28)

4 THE COURT: While we're on that
5 topic, do you have any objection to the x-rays
6 of where they lodged, which is 15 and 16?

7 MR. VITETTA: No, Your Honor.

8 THE COURT: Those would be marked and
9 admitted without objection.

10 (SO ENTERED AS STATE'S EXHIBIT 15)

11 (SO ENTERED AS STATE'S EXHIBIT 16)

12 THE COURT: The rest of these are
13 incredibly cumulative. 30, 29, 21, 24, 22, 23,
14 25 and 26 all depict the same thing.

15 SOLICITOR ALFARO: That was 22?

16 THE COURT: 21, 22, 23, 24, 25, 26,
17 29 and 30 all depict the same thing. 21 and 22
18 are the same picture. One's in color and one's
19 in black and white. 23 and 24 are the same
20 picture. One's in black and white and one's in
21 color. 25 is just a different version of the
22 projectile, the wound. 26 is the same thing, as
23 well as 30 and 29.

24 SOLICITOR ALFARO: Your Honor, we are
25 not wanting to admit both the color and black

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1 and white versions.

2 THE COURT: So what are you seeking
3 to admit?

4 SOLICITOR ALFARO: We always copy
5 the black and white as well as the color, Your
6 Honor.

7 THE COURT: My question again is what
8 are you seeking to admit?

9 SOLICITOR ALFARO: We initially
10 seek to admit the color photographs.

11 THE COURT: Which black and whites
12 are you seeking to introduce, because they're
13 cumulative. They all show the same thing. And
14 you don't have a black and white of 30 and 29.

15 SOLICITOR ALFARO: 23 would be that
16 we would -- 21 would be one that we would want
17 to admit, Your Honor. 21 and 24.

18 THE COURT: Do you have any objection
19 to number 21, which is the black and white of
20 the wound, Mr. Vitetta?

21 MR. VITETTA: Yes, Your Honor.

22 THE COURT: What would be the basis
23 of the objection?

24 MR. VITETTA: Your Honor, these
25 photos of the deceased are going to be highly

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1 inflammatory. I don't believe it's going to
2 prove any element of their case.

3 THE COURT: It goes for the malice.

4 MR. VITETTA: Well, you know, Your
5 Honor, I think they also can prove it through
6 testimony and through testimony already
7 presented.

8 THE COURT: They're not limited to
9 that.

10 MR. VITETTA: I understand. I
11 believe that there is a better way to do it.
12 They can simply use mannequins. They can use
13 the descriptions or the written report or
14 drawings, that sort of thing. But I just think
15 that in a case like this where they have ample
16 evidence of malice from the testimony which has
17 already been presented, I think it outweighs the
18 probative value. Thank you.

19 THE COURT: You're welcome. I guess
20 I'm trying to figure out which one you want to
21 show them. Which one do you want to show?

22 SOLICITOR ALFARO: Your Honor, 21
23 is to show the condition of the victim as a
24 result of the ---

25 THE COURT: What element will that

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1 prove of the crime?

2 SOLICITOR ALFARO: I believe it
3 goes to malice, Your Honor.

4 THE COURT: Does the picture of the
5 wound go to malice? The means the mechanism
6 that was used to kill her?

7 SOLICITOR ALFARO: I believe that
8 goes as well, Your Honor, the accurate depiction
9 of the way the victim was left lying. It's also
10 a factor on ---

11 THE COURT: I'm not getting to those
12 yet. I'm dealing with the autopsy photos. You
13 said you wanted to admit 21, and I need to know
14 what that purports to show.

15 SOLICITOR ALFARO: The purpose of
16 21, Your Honor, would be to show the condition
17 of the victim in order to help us establish the
18 element of malice.

19 THE COURT: Do you have black and
20 white photos that you can introduce and is there
21 a reason we can't use those as well as the
22 evidence?

23 SOLICITOR ALFARO: The one picture,
24 number 14 that shows the position of the body,
25 we didn't do a black and white of that because

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1 it wasn't in reply to them.

2 THE COURT: I won't admit 14. It
3 really doesn't serve any purpose. I don't think
4 it's been contested how the body was found.

5 And the rest of them, 6, 7 and 13 are
6 cumulative to show that she lost a copious
7 amount of blood. The least prejudicial
8 depiction of that would be number 13. Did you
9 do that in black and white?

10 SOLICITOR ALFARO: No, Your Honor.

11 THE COURT: Can you produce those in
12 black and white?

13 SOLICITOR ALFARO: We could
14 probably produce it. We could put those in
15 through a different witness if we need to.
16 That's photograph 16?

17 THE COURT: 13. 13 would have to be
18 in black and white, either that or number 7.
19 The other two, 6 and 14, I would not admit.
20 They are cumulative, one, and while they would
21 serve to corroborate the witness's testimony,
22 that is how she was found after they treated
23 her, I believe it doesn't go to any element of
24 the crime. I don't think there's any contest.

25 Normally, we admit photographs to show

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1 malice, is where there's some contest about what
2 implement -- whether a dangerous implement was
3 used. Normally, those types of photographs come
4 in, say, for example, when someone has beaten
5 somebody or oftentimes they do come in with the
6 use of a gun to show that there was use of a
7 dangerous instrument. But I don't think there's
8 any contest in this case that a gun was used and
9 that that was the implement that killed the
10 victim.

11 But I need to look at the black and
12 white photos and you'll have to try to introduce
13 these through another witness because I'd need
14 to see those photos to make that determination.

15 And then I will deal with the rest of
16 these regarding the medical examiner's testimony
17 when the medical examiner testifies.

18 Also, in the future, when I tell you
19 all not to make reference to anything in the
20 presence of the jury and it's to be taken up in
21 camera, don't make any reference in the presence
22 of the jury.

23 And also no speaking objections. If
24 there is an objection I'll ask you the basis. I
25 expect you to state it succinctly and I'll ask

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1 for argument if it's necessary to aid the Court.

2 If not, I'll make a contemporaneous ruling.

3 Is the State ready to proceed?

4 SOLICITOR ALFARO: Yes, Your Honor.

5 THE COURT: Is the defense ready to
6 proceed?

7 MR. VITETTA: Yes, Your Honor.

8 THE COURT: Please bring in the jury.

9 (JURY IN @ 3:26 P.M.)

10 THE COURT: You may be seated.

11 Ladies and gentlemen, we appreciate your
12 patience. You may resume the questioning of the
13 witness.

14 SOLICITOR ALFARO: Thank you, Your
15 Honor.

16 THE COURT: You're welcome.

17 DIRECT EXAMINATION RESUMED

18 BY SOLICITOR ALFARO:

19 Q. Ms. Miller, I believe you left off
20 describing the appearance of the victim. You
21 referenced her being, I believe, you said ashen?

22 A. Ashen in color.

23 Q. Based on your observations what did you do
24 at that time?

25 A. At that time we checked that she was not

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1 breathing. We checked for a carotid pulse.

2 There was no pulse. We put her on the cardiac
3 monitor and found that she was in asystole or a
4 flatline.

5 Q. And what did you do at that point?

6 A. At that point I told everybody just stop
7 what they were doing, pack up and leave the
8 room.

9 Q. And why is that?

10 A. At that point there was no way that we
11 would be able to get this patient back due to
12 the blood loss and her heart had already
13 stopped.

14 Q. So at that point did you or someone else
15 in the room declare her as being dead?

16 A. I did.

17 Q. And do you recall what time you made that
18 declaration?

19 A. No, sir, I don't.

20 Q. How long would you say that you were there
21 with the attempts at getting a pulse and setting
22 up the monitor and defibrillator? How long
23 would you say that took?

24 A. Five to seven minutes.

25 Q. So would that be about the approximate

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1 time, after that, that you declared her dead?

2 A. Yes, sir.

3 Q. And after that, did you leave the bedroom
4 where the victim was located?

5 A. Yes.

6 Q. Did the other first responders leave at
7 that same time?

8 A. Yes, they left before me.

9 Q. Thank you. Please answer any questions the
10 defense has for you.

11 THE COURT: Any questions of the witness?

12 MR. VITETTA: No, Your Honor.

13 THE COURT: Any objection to the
14 witness being excused from the State?

15 SOLICITOR ALFARO: No, Your Honor.

16 THE COURT: From the defense?

17 MR. VITETTA: No, Your Honor.

18 THE COURT: Ma'am, you're excused.

19 (WITNESS STEPS DOWN)

20 THE COURT: Call your next witness.

21 SOLICITOR ALFARO: The State calls
22 Bradley Norvell.

23 (WITNESS TAKES STAND)

24 BRADLEY EDWARD NORVELL, being duly
25 sworn to tell the truth, the whole truth and

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1 nothing but the truth, testified, as follows:

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION

4 BY SOLICITOR ALFARO:

5 Q. Officer Norvell, could you tell the jury
6 where you currently work?

7 A. I currently work for the Town of Moncks
8 Corner as a Sergeant over investigations and the
9 school resource officers.

10 Q. And how long have you been with Moncks
11 Corner?

12 A. Approximately seven years.

13 Q. And were you working for the Moncks Corner
14 Police Department on August 19th, 2009?

15 A. Yes, sir.

16 Q. And in what capacity?

17 A. It was the Sergeant over investigations.

18 Q. On that day did you have the opportunity to
19 assist in a murder investigation at [REDACTED] Golden
20 Aspen Road in Moncks Corner?

21 A. Yes, sir, I did.

22 Q. And do you recall when you were notified
23 and by whom?

24 A. I was notified by phone at home at
25 approximately 5:40 in the morning.

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1 Q. And do you recall who notified you?

2 A. My supervisor, Lieutenant Roach.

3 Q. And after you received the call where did
4 you go first?

5 A. Lieutenant Roach had advised that there was
6 a possible homicide. And he asked me to go to
7 the scene.

8 Q. And did you -- what was Lieutenant Roach
9 doing when you stopped to talk with him?

10 A. On the way to the [REDACTED] Golden Aspen
11 address, I believe it was off of Maple Leaf,
12 there was some patrol units that was there.
13 Sergeant Krause was there. He was the fellow
14 officer I worked with. And I stopped there
15 briefly to touch base with him. Sergeant Krause
16 advised me that Lieutenant Roach had the suspect
17 in a patrol vehicle speaking with him at that
18 time in reference to the incident. So at that
19 point I headed on to the incident location where
20 the victim was.

21 Q. And was the victim still at the scene when
22 you arrived?

23 A. Yes, sir.

24 Q. And when you arrived what did you do?

25 A. When I first arrived I spoke with Corporal

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1 Edwards. He's the supervisor on the shift that
2 night. Corporal Edwards gave me a run-down of
3 what had happened with regards to the incident.
4 Specifically, he advised me that it was a
5 domestic situation where the victim, the female
6 party was shot in the head. He also advised me
7 that there was a number of juvenile children in
8 the house also. I remember him mentioning five
9 to six. He said there was five to six, and he
10 specifically said that there was one juvenile
11 that was actually sitting on the lap of the
12 victim prior to her being shot.

13 Q. And when you spoke with Officer Edwards, in
14 addition to him giving you that information to
15 assist in the investigation, did you obtain any
16 physical evidence from him?

17 A. Yes, sir, I did.

18 Q. And what was that?

19 A. It was the victim's cell phone.

20 Q. And what was done with that cell phone?

21 A. It was secured in my vehicle.

22 Q. And you testified that the victim was at
23 the scene when you arrived. Where was she at
24 when you arrived?

25 A. When I first entered the residence Corporal

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1 Edwards and Officer Jamie Taylor led me up to
2 the area where the victim was located. The
3 victim was located in the master bedroom, lying
4 next to the bed on the floor.

5 Q. And had she already passed by the time you
6 arrived?

7 A. Yes, sir, she had already expired.

8 Q. And when you went into the room was anyone
9 else in there other than the victim?

10 A. Just Corporal Edwards and Officer Taylor
11 was there for a moment.

12 Q. And when you arrived in the bedroom were
13 you able to observe any physical injuries to the
14 victim?

15 A. Yes. Upon looking closer at the victim,
16 she was laying on her back with her arms
17 outstretched and her legs outstretched.
18 Corporal Edwards advised me that the blanket
19 that was located on the victim was put there
20 after EMS had tried to resuscitate her. I
21 didn't touch the victim or touch anything in the
22 scene at that point, but the victim's head was
23 not covered. It appeared that she had blood
24 coming out of her right ear, and there appeared
25 to be blood coagulating behind her head towards

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1 the right part of her head.

2 Q. And was Tonia Watkins still at the scene
3 when you arrived?

4 A. Yes, sir, she was.

5 Q. And did you speak with her at the scene?

6 A. I did.

7 Q. And did you obtain permission from her or
8 anyone else in the residence for you to remain
9 in the residence to process the scene?

10 A. Yes, sir. Corporal Thelma Lewis, who was
11 also an investigator at the time, we had a
12 consent to search the residence from Ms. Watkins
13 at that time. Due to the situation and the way
14 the events played out, she, at that point, was
15 the adult owner of the residence who could give
16 us permission to search the house.

17 Q. And did you assist in the processing of the
18 crime scene?

19 A. Yes, sir, I did.

20 Q. And when did you do in your role as
21 processing the crime scene?

22 A. I primarily observed the master bedroom. I
23 observed the whole residence and determined that
24 it didn't appear that any other incident had
25 occurred in any other part of the house. So

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1 with that being said, I took photographs of the
2 scene which would have been the master bedroom.

3 Q. And did anyone else assist you in the
4 processing of the crime scene?

5 A. Yes, sir.

6 Q. And who was that?

7 A. Lieutenant Kokinda with the Berkeley County
8 Sheriff's Department.

9 Q. And did you two process the scene together,
10 or did you take separate sections of the house?

11 A. No, sir. Lieutenant Kokinda, he was in
12 charge of processing the scene. When we called
13 him in we let him handle it all. I assisted
14 with taking pictures for our records.

15 Q. And did you personally collect any of the
16 physical evidence from the house?

17 A. Not other than taking pictures and the
18 victim's cell phone.

19 Q. I'm going to show you what has been marked
20 for identification as State's Exhibits 37 and
21 43. If you could look over these items briefly
22 and then I'll ask you some questions about them.

23 A. (Complies)

24 Q. Do you recognize those items?

25 A. Yes, sir.

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1 Q. I'm also going to show you what has been
2 previously marked for identification as State's
3 Exhibit Number 8. Do you recognize Exhibit 8 as
4 well?

5 A. Yes, sir.

6 Q. And could you tell us what is -- how do you
7 recognize that exhibit?

8 A. This is the gun case that was located in
9 the closet of the master bedroom and the gun
10 case was also accompanied with a receipt from
11 The Gun Doctor, which is this right here, that
12 has Tito Harris's information on it, and
13 information regarding the fact of what type of
14 weapon it was.

15 Q. Specifically regarding photograph, State's
16 Exhibit 8, is that a fair and accurate
17 representation of the bedroom closet as you saw
18 it that evening or that morning?

19 A. Yes, sir.

20 SOLICITOR ALFARO: Your Honor, at this
21 time, the State would ask that State's Exhibit 8
22 be entered into evidence.

23 THE COURT: Any objection?

24 MR. VITETTA: No objection.

25 THE COURT: Marked and entered

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1 without objection.

2 (SO ENTERED AS STATE'S EXHIBIT 8)

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR ALFARO:

5 Q. I'm going to show you State's Exhibit 8.

6 It's on the screen behind you. There's a
7 pointer up there. And regarding -- can you tell
8 us what's in that photograph, what you see in
9 that photograph?

10 A. The gun case right there. I'm not sure if
11 -- that's the gun case. That's a shoebox.
12 That's all that's in the photograph that's
13 relevant.

14 Q. And is State's Exhibit 43 depicted in that
15 photograph?

16 A. Yes.

17 Q. And was that item secured that night or
18 that morning in your presence?

19 A. It was, by Lieutenant Kokinda.

20 SOLICITOR ALFARO: Your Honor, at this
21 time, the State would ask that State's Exhibit
22 43 be admitted into evidence.

23 THE COURT: Any objection?

24 MR. VITETTA: No objection.

25 THE COURT: Marked and admitted

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1 without objection.

2 (SO ENTERED AS STATE'S EXHIBIT 43)

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR ALFARO:

5 Q. And regarding State's Exhibit 43, the gun
6 case, what was contained in that gun case?

7 A. I believe it was the receipt from The Gun
8 Doctor.

9 Q. Was there a weapon in the case?

10 A. No.

11 Q. And what type of weapon comes in that gun
12 case or came in that gun case?

13 A. A .22 handgun.

14 Q. And you said -- the receipt, which is
15 State's Exhibit 36, was that contained in the
16 gun case as well?

17 A. Yes.

18 Q. Does the information contained on State's
19 Exhibit 36 -- is that receipt in the same
20 condition as it was when you -- when it was
21 secured that night or that morning from the gun
22 case?

23 A. Yes, sir.

24 SOLICITOR ALFARO: Your Honor, at
25 this time, the State would ask that State's

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1 Exhibit 36 be admitted into evidence.

2 THE COURT: Any objection?

3 MR. VITETTA: No, Your Honor.

4 THE COURT: Without objection marked
5 and introduced.

6 (SO ENTERED AS STATE'S EXHIBIT 36)

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR ALFARO:

9 Q. And you testified a little about the
10 information on that receipt. What is that
11 receipt for?

12 A. It's a receipt from The Gun Doctor which is
13 a gun dealer. And it's a receipt for the
14 purchase of a North American .22 handgun.

15 Q. Is that the same firearm that that gun case
16 goes to?

17 A. Yes, sir.

18 Q. Please answer any questions the defense has
19 for you.

20 THE COURT: Any cross from the
21 defense?

22 MR. VITETTA: No questions.

23 THE COURT: Any objection that the
24 witness be excused from the State?

25 SOLICITOR ALFARO: No, Your Honor.

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1 THE COURT: From the defense?

2 MR. VITETTA: No, Your Honor.

3 THE COURT: Sir, you are excused

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 (WITNESS STEPS DOWN)

7 THE COURT: You may call your next
8 witness.

9 SOLICITOR ALFARO: The State calls Dean
10 Kokinda.

11 (WITNESS TAKES STAND)

12 DEAN ROBERT KOKINDA, being duly sworn
13 to tell the truth, the whole truth and nothing
14 but the truth, testified, as follows:

15 THE COURT: You may proceed.

16 SOLICITOR ALFARO: Thank you, Your
17 Honor.

18 THE COURT: You're welcome

19 DIRECT EXAMINATION

20 BY SOLICITOR ALFARO:

21 Q. Lieutenant Kokinda, could you tell us where
22 you currently work?

23 A. Currently, I'm employed with the Berkeley
24 County Sheriff's Office.

25 Q. And what do you do for the Sheriff's

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1 Office?

2 A. I'm the Lieutenant over the Forensic
3 Services Division.

4 Q. How long have you been working in
5 Forensics?

6 A. Since 1990.

7 Q. And were you on duty on August the 19th,
8 2009?

9 A. Yes, sir, I was.

10 Q. And on that date, did you have the
11 opportunity to assist the Moncks Corner Police
12 Department with an investigation at [REDACTED] Golden
13 Aspen Road?

14 A. Yes, sir, I did.

15 Q. And how it that you came to be involved in
16 the Moncks Corner Police Department case?

17 A. I was notified by our central dispatch that
18 the Moncks Corner Police Department had
19 requested our assistance in processing a crime
20 scene.

21 Q. And did any other Sheriff's deputies
22 respond with you?

23 A. No, sir, not to my knowledge.

24 Q. And what did you do at the crime scene?

25 A. When I arrived at the crime scene I spoke

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1 with Detective Novell who kind of briefed me on
2 what they had. We then documented the crime
3 scene using photographs. I collected samples
4 from the victim's hands for gunshot residue, and
5 then we searched the area and collected several
6 items of evidence.

7 Q. You said you collected a gunshot residue
8 kit. Who did you collect that from?

9 A. From the victim.

10 Q. That was done at the residence?

11 A. Yes, sir.

12 Q. I'm going to show you what has been marked
13 for identification as State's Exhibit Number 41.
14 Do you recognize that item?

15 A. Yes, I do.

16 Q. And how do you recognize that?

17 A. It's my handwriting written on the outside
18 of the package.

19 Q. Can you tell what that item is?

20 A. It's a gunshot residue evidence collection
21 kit.

22 Q. And that's the one from Shantay Harris?

23 A. That's correct.

24 Q. Could you briefly tell the jury how you go
25 about collecting those types of kits?

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1 A. The gunshot residue kit is actually a two-
2 part test. One is what they call an SEN or
3 scanning electron microscope test. And the
4 other is what they call an atomic absorption
5 test which is a chemical-reaction test. The
6 atomic absorption test is merely a cotton swab
7 -- sterile cotton swab with nitric acid on it
8 as preservative which you swab the areas of the
9 hand. If you're looking at your hand, it would
10 be across the bottom where the knuckles are at
11 and about the thumb, and also on the back side.
12 Then you would take the scanning electron
13 microscope -- it's basically an adhesive disc
14 which actually pulls the particles off the
15 hands. When they're submitted to the state lab,
16 they use the atomic absorption test basically as
17 a precursor to determine whether they need to do
18 the scanning electron microscope test.

19 Q. And after you collected those swabs from
20 the victim what did you do with those swabs?

21 A. I sealed them up in a bag and took them
22 back to my office and eventually turned them
23 over to Det. Roach with the Moncks Corner Police
24 Department.

25 SOLICITOR ALFARO: Your Honor, at

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1 this time the State would ask to admit Exhibit
2 Number 41 into evidence.

3 THE COURT: Any objection?

4 MR. VITETTA: No, Your Honor.

5 THE COURT: Marked and admitted
6 without objection.

7 (SO ENTERED AS STATE'S EXHIBIT 41)

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR ALFARO:

10 Q. In addition to doing the gunshot residue
11 kit, what else did you do at the scene?

12 A. Documented the scene with photographs and
13 there was a couple of items that were collected.

14 Q. I'm going to show you what has already been
15 entered into evidence as State's Exhibit 8.

16 Also -- just State's Exhibit 8. Do you
17 recognize this photograph?

18 A. Yes, sir.

19 Q. Is that a fair and accurate representation
20 of the portion of the crime scene as you saw it
21 that night?

22 A. That morning.

23 Q. That morning?

24 A. Yes, sir.

25 Q. And what is depicted in that photograph?

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1 A. It's a view of the master bedroom walk-in
2 closet. It's depicting the upper shelf in which
3 there was a gun case, plastic gun case located
4 on that shelf.

5 Q. And I'm going to show you what is already
6 in evidence as State's Exhibit Number 43. Is
7 that the case that you were just referring to?

8 A. Yes, sir, it is.

9 Q. And did you yourself secure that into
10 evidence that night?

11 A. That morning?

12 Q. That morning.

13 A. Yes, sir, I did.

14 SOLICITOR ALFARO: Your Honor,
15 there's a matter of law we need to take up
16 outside the jury's presence.

17 THE COURT: Will you approach?

18 (BENCH CONFERENCE)

19 THE COURT: The exhibit will be
20 marked and admitted subject to the objection,
21 however the objection is overruled. It serves
22 the corroborate the testimony of the witness.
23 Also it serves to support an element of the
24 offense. And also it's a contemporaneous
25 picture of the body and how it was found during

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1 the time of the investigation.

2 (SO ENTERED AS STATE'S EXHIBIT 60)

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR ALFARO:

5 Q. I'm going to show you what has just been
6 admitted in evidence as State's Exhibit Number
7 60. Do you recognize what's depicted in that
8 photograph?

9 A. Yes, sir, I do.

10 Q. Can you tell the jury what is depicted in
11 that photograph?

12 A. This photograph shows a portion of the
13 victim's head and a portion of a cardboard --
14 a piece of a cardboard box against the wall.
15 There's blood on the floor and a little bit of
16 low velocity blood splatter on the cardboard
17 box.

18 Q. We're going to put that -- State's Exhibit
19 60 on the screen behind you. There's a laser
20 pointer there. Once it comes up if you can just
21 go back through it and tell the jury what you
22 just testified was contained in that photograph.

23 THE COURT: You need to also
24 establish the foundation for the record.

25 DIRECT EXAMINATION CONTINUED

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1 BY SOLICITOR ALFARO:

2 Q. You testified that you took photographs at
3 the scene that night?

4 A. That morning, yes, sir.

5 Q. That morning. And does the photograph that
6 you reviewed, State's Exhibit 60, fairly and
7 accurately depict the condition of the victim at
8 the time that you were present at the crime
9 scene?

10 A. Yes, sir, it does.

11 Q. I'm going to show you that on the screen
12 now, State's Exhibit 60. It's not real clear.
13 This is a black light. Can you show with that
14 pointer -- show the -- just tell the jury what's
15 in the photograph and point to it as you come to
16 it.

17 A. Looking at the photograph, in the lower
18 right-hand side -- it's kind of difficult to see
19 on this screen -- it's the portion of the
20 victim's head. Looking to the left of the head
21 is a cardboard box that was leaned up against
22 the wall. The lower left-hand corner of the
23 photograph, near where I'm pointing the laser
24 at, is an area of blood that settled on the
25 floor. Right above that on the cardboard box

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1 you'll see what's called low velocity blood
2 spatter.

3 Q. Thank you. Please answer any questions the
4 defense has.

5 THE COURT: Any cross examination of
6 the witness?

7 MR. VITETTA: No, Your Honor.

8 THE COURT: Any objection to the
9 witness being excused from the State?

10 SOLICITOR ALFARO: No, Your Honor.

11 THE COURT: From the defense?

12 MR. VITETTA: No, Your Honor.

13 THE COURT: Sir, you're excused.

14 (WITNESS STEPS DOWN)

15 THE COURT: The State may call its
16 next witness.

17 SOLICITOR ALFARO: The State calls
18 Michael Roach.

19 (WITNESS TAKES STAND)

20 MICHAEL ANTHONY ROACH, being duly sworn
21 to tell the truth, the whole truth and nothing
22 but the truth, testified, as follows:

23 THE COURT: You may proceed.

24 DIRECT EXAMINATION

25 BY SOLICITOR ALFARO:

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1 Q. Lieutenant Roach, could you please tell the
2 jury where you currently work?

3 A. Moncks Corner Police Department.

4 Q. And how long have you been with Moncks
5 Corner P.D.?

6 A. Twenty-two years in August.

7 Q. And what do you do from them now?

8 A. Currently, I'm assigned to and in charge of
9 the Investigations Division and over the school
10 resource officers.

11 Q. In that capacity did you have the
12 opportunity to assist in a murder investigation
13 at [REDACTED] Golden Aspen Road in Moncks Corner?

14 A. I did.

15 Q. And do you recall what time you were asked
16 to respond?

17 A. I want to say 5:30, 5:40 in the morning.

18 Q. And after you were notified to respond
19 where did you go first?

20 A. Patrolman Scarborough had the subject
21 detained on Maple Leaf Drive, and I stopped
22 there first.

23 Q. And what did you do at that location?

24 A. I met the defendant Tito Harris who was
25 secured in the back seat of Scarborough's patrol

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1 vehicle and interviewed him.

2 Q. You said he was secured in the back seat of
3 Scarborough's vehicle. Was he handcuffed at
4 that time?

5 A. He was.

6 Q. And had you had any prior dealings with
7 this defendant before?

8 A. I know him. He used to work at Johnny's
9 Truck and Auto, and I had bought several
10 vehicles from there. He worked in the
11 accessories department.

12 Q. And you said that you spoke with the
13 defendant at that location. Did you conduct
14 that interview with him in the back seat of the
15 car?

16 A. I did.

17 Q. Did you sit in the front seat, or did you
18 get in the back seat?

19 A. I was in the back driver's side of the
20 vehicle.

21 Q. And when you first spoke with the defendant
22 did you recognize him?

23 A. I did.

24 Q. And did he recognize you?

25 A. Yes, he did. He said, "Hey, Roach."

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1 Q. At that point did you ask if he'd be
2 willing to speak with you about what happened?

3 A. Yes.

4 Q. And what was his answer?

5 A. He said, "you know I'll speak to you any
6 time," or words to that effect.

7 Q. And prior to beginning to ask him about
8 what happened at [REDACTED] Golden Aspen Road did you
9 provide him with his Miranda rights?

10 A. I did.

11 Q. I show you what's been marked for
12 identification as State's Exhibit 61. If you
13 could look at that Exhibit and tell me if you
14 recognize what it is.

15 A. It's a *Miranda* waiver form, and it's the
16 form that I used to advise him of his rights at
17 the scene.

18 Q. Could you tell the jury how you went about
19 advising him of his rights and specifically what
20 rights you advised him of.

21 A. I advised him of his right to remain
22 silent. That anything he said could be used
23 against him in court. That he had the right to
24 seek the advice of an attorney and have him
25 present during questioning and he could stop

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1 answering questions at any time. I read this
2 form to him. He was in the back seat of the
3 patrol vehicle which was dark, and asked him if
4 he wanted to tell me his story.

5 Q. Did he indicate to you that he understood
6 the rights that you had provided to him?

7 A. He did.

8 Q. And during the course of your interaction
9 with him and giving him his rights did he appear
10 to be under the influence of any drugs or
11 alcohol at that time?

12 A. No.

13 Q. Did he have any physical manifestations of
14 being under the influence of anything, any
15 slurred speech or anything like that?

16 A. Not at all.

17 Q. And you were seated in the back seat with
18 him in the police car?

19 A. That's correct.

20 Q. And how close would you say you were to the
21 defendant?

22 A. There's a protective screen in there, so
23 we're ten or twelve inches apart.

24 Q. Did you smell alcohol or any drugs
25 emanating from his person?

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1 A. No.

2 Q. And he acknowledged that he understood the
3 rights that you had provided to him?

4 A. Yes.

5 Q. And did he, at any time while you were
6 speaking with him -- did he ask for a lawyer?

7 A. No.

8 Q. Did he ever ask to stop speaking?

9 A. No.

10 Q. At any time in that patrol car did he ask
11 to stop for a little while to take a break
12 during the questioning?

13 A. No.

14 Q. And was he promised anything in exchange
15 for his giving you or telling you about what
16 happened at the residence?

17 A. Not at all.

18 Q. And was he threatened in any way?

19 A. Not at all.

20 Q. And that Exhibit, State's Exhibit 61, did
21 you have him sign that form at that time?

22 A. No, I did not. He was handcuffed.

23 SOLICITOR ALFARO: Your Honor, at this
24 time the State would that Exhibit 61 be entered
25 into evidence.

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1 THE COURT: Any objection?

2 MR. VITETTA: To the form itself,
3 no, Your Honor.

4 THE COURT: It's marked and admitted
5 without objection.

6 (SO ENTERED AS STATE'S EXHIBIT 61)

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR ALFARO:

9 Q. After advising him of his Miranda rights
10 was he willing to tell you what happened at [REDACTED]
11 Golden Aspen Road?

12 A. Yes.

13 Q. And while you were speaking with him in the
14 police car was he able to give you details of
15 what had taken place inside the residence?

16 A. He did.

17 Q. And briefly, what were you able to get from
18 him during the course of that conversation?

19 A. That over the course of the weekend or
20 several days that him and his wife ---

21 MR. VITETTA: Object for reasons
22 stated.

23 THE COURT: Overruled.

24 THE WITNESS: That him and his
25 wife had been arguing. He couldn't get in touch

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1 with her on the phone. She wouldn't answer his
2 phone calls. There was an alleged affair
3 between her and his uncle. And that he went to
4 the house. He told me he got a gun out of the
5 closet, the gun that's been seen, and cocked it
6 and put it in his pants. I asked him why he
7 cocked it. He said "because I was mad." He
8 said that the argument ensued and that he ended
9 up shooting and left the scene and was stopped
10 two and a half blocks, less than a quarter of a
11 mile from the scene.

12 Q. Those details that you've just provided
13 this jury, were those details that the defendant
14 told you, or were those things that you had
15 learned from other sources?

16 A. That was -- I had not been to the scene or
17 been advised of anything. That was from him.

18 Q. And was he able to give you any further
19 details about who else was in the residence at
20 the time of the shooting?

21 A. He told me his son was there and I believe
22 Tonia, his sister-in-law and several children
23 were there.

24 Q. Can you describe for us the defendant's
25 demeanor at the time you were speaking with him

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1 in the police car?

2 A. Calm, collected, had no issues with talking
3 to me at all. I mean, it was just like we were
4 sitting down and having a conversation.

5 Q. Did he seem angry or anxious?

6 A. No.

7 Q. And during the time you were speaking with
8 the defendant in the vehicle, was anybody else
9 inside the car with you?

10 A. No.

11 Q. And are you aware of whether or not the
12 vehicle that you were in was equipped with
13 recording equipment, cameras and audio
14 recorders?

15 A. Yes.

16 Q. And to your knowledge was a -- was the
17 conversation you had with the defendant recorded
18 on the in-car video and audio?

19 A. Yes.

20 Q. And was a copy of that recording secured
21 into evidence?

22 A. It was.

23 Q. Have you had the opportunity to view it?

24 A. I have.

25 Q. I show you what has been admitted into

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1 evidence as State's Exhibit 59. If you can look
2 at that and tell me if you recognize what that
3 is.

4 A. This is a copy of the in-car camera footage
5 and audio from Patrol Scarborough's vehicle, and
6 it has my initials on it.

7 Q. Have you had the opportunity to review this
8 recording?

9 A. I have.

10 Q. And at what point did you put your initials
11 on the recording?

12 A. After I reviewed it.

13 Q. Is State's Exhibit 59 a fair and accurate
14 representation of the interview you conducted
15 with this defendant on August the 20th, 2009?

16 A. Yes.

17 Q. And in your review of that video, were
18 there any edits or deletions or changes made to
19 it?

20 A. No.

21 Q. So in its entirety it's a fair and accurate
22 representation of your interaction with the
23 defendant?

24 A. That's correct.

25 SOLICITOR ALFARO: Beg the Court's

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1 indulgence.

2 THE COURT: Mr. Foreman and ladies
3 and gentlemen, we're going to take advantage of
4 this break in testimony to give you an afternoon
5 rest room break. When we break please do not
6 discuss the case. Please let your notepads in
7 your seats. You can go with the bailiff.

8 (JURY OUT @ 4:06 P.M.)

9 THE COURT: You may be seated.
10 State's 6, 7, 13 and 14 are marked for I.D.
11 only.

12 (STATE'S EXHIBITS 6, 7, 13 AND 14
13 MARKED FOR IDENTIFICATION)

14 THE COURT: What are you trying to
15 do?

16 SOLICITOR ALFARO: We're just
17 trying to reboot the in-car video to play
18 Lieutenant Roach's portion of the interview.

19 THE COURT: Okay, you're just going
20 to publish it?

21 SOLICITOR ALFARO: We have ---

22 THE COURT: He's not going to be able
23 to give any running editorial of what's being
24 said. The tape speaks for itself. It's self-
25 authenticating.

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1 SOLICITOR ALFARO: Yes, ma'am. We
2 will publish a portion of it.

3 THE COURT: Okay. We'll be at-ease
4 for a moment.

5 (BRIEF RECESS)

6 (DEFENDANT PRESENT)

7 SOLICITOR ALFARO: The tape is
8 approximately twenty minutes. That will take us
9 close to 5:00 o'clock. There's another portion
10 of the micro cassette that we'd like to address
11 as far as editing that micro cassette. We would
12 like to complete this portion of his direct
13 examination and then stop so we can have the
14 evening to try to fix that editing problem.

15 THE COURT: Any exceptions, Mr.
16 Vitetta?

17 MR. VITETTA: No, Your Honor.

18 THE COURT: Okay.

19 SOLICITOR ALFARO: Thank you, Your
20 Honor.

21 THE COURT: You're welcome. Please
22 bring in the jury.

23 (JURY IN @ 4:37 P.M.)

24 THE COURT: You may be seated.
25 Ladies and gentlemen, I hope you enjoyed your

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1 break. . We'll now resume with the witness's
2 testimony. You may proceed.

3 SOLICITOR ALFARO: Thank you, Your
4 Honor.

5 THE COURT: You're welcome.

6 (IN-CAR INTERVIEW PLAYED FOR JURY)

7 DIRECT EXAMINATION RESUMED

8 BY SOLICITOR ALFARO:

9 Q. Lieutenant Roach, there were a couple of
10 portions of that where parts of your
11 conversation with the defendant were drowned
12 out. What was causing that?

13 A. Bleed over from the radio in the front of
14 the car. The system was a new system to us. We
15 didn't know that you had to push a separate
16 button to shut off one audio to turn another one
17 off. We had just started receiving those units.

18 Q. So those interruptions in the radio traffic
19 were actual time, that's what was going on in
20 the car?

21 A. Everything is actual, real-time, what's
22 going on around us.

23 SOLICITOR ALFARO: Your Honor, may we
24 approach?

25 THE COURT: You may.

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1 (BENCH CONFERENCE)

2 THE COURT: Mr. Foreman, ladies and
3 gentlemen, we're going to take advantage of this
4 break in testimony to our evening recess.
5 During the break please do not discuss the case
6 among yourselves or with anyone else. Please do
7 not allow yourselves to be exposed to any media
8 coverage about this case, whether it be in the
9 newspaper, radio, television or internet.
10 Please don't have any contact with anyone in or
11 about the courthouse when you return in the
12 morning.

13 I hope that you all have a pleasant
14 evening, and we appreciate the patience that
15 you've extended to us today as we've worked our
16 way through some technological issues. We'll
17 see you in the morning at 9:30. Please leave
18 your notepads in your seats.

19 (JURY OUT @ 4:57 P.M.)

20 THE COURT: You may be seated. Is
21 there anything we need to take up before we
22 break for the evening?

23 SOLICITOR WILLIAMS: Not from the
24 State, Your Honor.

25 THE COURT: Anything from the

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1 defense?

2 MR. VITETTA: Nothing, Your Honor.

3 THE COURT: Have a good evening. See
4 you at 9:30.

5 (COURT IN RECESS)

6 (TRANSCRIPT CONTINUED NEXT PAGE)

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1 MARCH 16, 2011 9:30 A.M.

2

3 (DEFENDANT PRESENT)

4 SOLICITOR WILLIAMS: Your Honor, as
5 this witness continues his testimony we are
6 going to introduce a tape recording of the
7 defendant's interview at the police station. We
8 have redacted the portions that are prejudicial.
9 Mr. Vitetta has stipulated to the authenticity
10 of the tape with the redacted portions. And it
11 is State's Exhibit 62.

12 In addition to that, defense counsel
13 has prepared a transcript of the tape. We
14 wanted to produce it as a demonstrative aide
15 because we both agreed.

16 THE COURT: You agreed?

17 SOLICITOR WILLIAMS: To give it to
18 the jury and give one to the Court and then
19 collect it afterwards. But, yes, I agreed.

20 THE COURT: Is that correct, Mr.
21 Vitetta?

22 MR. VITETTA: It is.

23 THE COURT: What is the agreement?

24 MR. VITETTA: Your Honor, the
25 agreement is that the transcript of the

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1 statement that my client made to Detective Roach
2 in his office will be submitted to the jury as a
3 demonstrative aide.

4 THE COURT: You all realize you're
5 creating a problem, because when they deliberate
6 they're going to ask for that transcript.

7 SOLICITOR WILLIAMS: We will just
8 tell them, Your Honor, it is only a
9 demonstrative aid.

10 THE COURT: I'll deal with it, but I
11 just want you to know it's going to be a problem
12 down the road. Because they're going to ask for
13 it during deliberations. So as long as you all
14 recognize that, going into it and you agree,
15 that's fine.

16 SOLICITOR WILLIAMS: Your Honor, at
17 this time can I approach to give the Court a
18 copy of the transcript?

19 THE COURT: Sure. The court reporter
20 needs a copy.

21 SOLICITOR WILLIAMS: Yes, Your Honor.

22 COURT REPORTER: Would you like that
23 as a court exhibit, Judge?

24 THE COURT: That's an interesting
25 question. Let me think about that.

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1 SOLICITOR WILLIAMS: Shall I give the
2 ones for the jury to the bailiff?

3 THE COURT: Yes.

4 SOLICITOR WILLIAMS: There should be
5 fifteen here. That would leave one for the
6 court reporter.

7 THE COURT: Is there anything else we
8 need to take up before we proceed?

9 SOLICITOR WILLIAMS: Not from the
10 State, Your Honor.

11 THE COURT: Anything from the
12 defense?

13 MR. VITETTA: No, Your Honor.

14 THE COURT: Are you ready to proceed?

15 MR. VITETTA: Yes, Your Honor.

16 THE COURT: You need to sequester
17 witnesses.

18 MR. VITETTA: Yes, I'm sequester-
19 ing his mother.

20 THE COURT: Is there anybody else in
21 the courtroom that could be potentially be a
22 witness? I don't want that to come up later.

23 MR. VITETTA: No, Your Honor.

24 THE COURT: The State needs to double
25 check as well.

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1 SOLICITOR WILLIAMS: No, Your Honor.

2 THE COURT: And please caution your
3 witnesses not to even have innocent
4 conversations with one another during testimony.
5 I don't want that to be an issue as well. It's
6 a funny thing when someone is observing a
7 conversation and they cannot hear it. They will
8 always assume the worst. So if you all would do
9 that as well, it would save us a lot of time in
10 the long run.

11 SOLICITOR WILLIAMS: Yes, Your Honor.

12 THE COURT: Is there anything else
13 before we proceed from the State?

14 SOLICITOR WILLIAMS: No, Your Honor.

15 THE COURT: From the defense?

16 MR. VITETTA: No, Your Honor.

17 THE COURT: Please bring in the jury.

18 (JURY IN @ 9:50 A.M.)

19 THE COURT: You may be seated. Good
20 morning, ladies and gentlemen. I hope that you
21 all had a pleasant evening. We will now resume
22 trial testimony. The State may proceed.

23 SOLICITOR ALFARO: Thank you, Your
24 Honor. The State calls Michael Roach back to
25 the stand.

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1 THE COURT: Resume the witness stand.

2 I'll remind you that you're still under oath.

3 THE WITNESS: Yes, ma'am.

4 (WITNESS TAKES STAND)

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR ALFARO:

7 Q. Good morning, Lieutenant Roach.

8 A. Morning.

9 Q. As we left off yesterday in the middle of
10 your testimony, we viewed the in-car video
11 camera from the morning of the traffic stop with
12 the defendant. At the conclusion of your
13 interview with the defendant, do you know where
14 he was taken to?

15 A. The Moncks Corner Police Department.

16 Q. And how did he get to the Moncks Corner
17 Police Department?

18 A. Transported by Officer Scarborough.

19 Q. And prior to you leaving the scene of the
20 traffic stop did you inquire with him about
21 whether he would speak with you again?

22 A. I did.

23 Q. Did he agree to speak with you?

24 A. Yes, he did.

25 Q. And did you eventually have the opportunity

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1 to speak with him again?

2 A. I did.

3 Q. And was that at the Moncks Corner Police
4 Department?

5 A. It was.

6 Q. And could you describe for us where the
7 interview at the Moncks Corner Police Department
8 was conducted?

9 A. In my office.

10 Q. And can you describe for the jury briefly
11 what your office looks like, what kind of
12 setting this interview took place in?

13 A. It might be eight-by-ten. I have a desk
14 that is against one wall, a computer stand
15 against another one, a bookcase and a file
16 cabinet and two chairs.

17 Q. Was anyone else in the room with you and
18 the defendant that morning?

19 A. No, sir.

20 Q. And while the defendant was with you in
21 your office for that interview was he threatened
22 or coerced in any way to give an additional
23 statement?

24 A. No.

25 Q. And promised anything in exchange for

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1 giving you a statement at the police station?

2 A. Not at all.

3 Q. And prior to that second interview or that
4 additional interview, did you provide him with
5 his Miranda rights?

6 A. I did.

7 Q. How did you go about doing that?

8 A. I asked him if he -- I informed him that he
9 still had his rights and went over them again
10 with him.

11 Q. Were those the same rights you had provided
12 to him prior to the interview in the police car?

13 A. Yes.

14 Q. And at that time at the station did he
15 appear to understand the rights that you had
16 provided to him?

17 A. He did.

18 Q. Did he indicate that he had any difficulty
19 understanding what you were reading to him or
20 ask you to clarify anything?

21 A. No.

22 Q. And did he appear to be cognizant and alert
23 enough to understand what you were telling him?

24 A. He did.

25 Q. And at any point during that interview did

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1 he ask to speak with a lawyer?

2 A. No.

3 Q. Did he ever ask to stop the interview to
4 take a break or to just stop the interview
5 completely?

6 A. No.

7 Q. And do you recall how long approximately
8 that interview lasted?

9 A. Fifty minutes to maybe an hour and five
10 minutes, somewhere in between there.

11 Q. In this second interview were you able to
12 get more details from the defendant about what
13 happened at Golden Aspen Road?

14 A. Yes.

15 Q. And was he able to give you his version or
16 his account of what happened that night?

17 A. Yes.

18 Q. And were the details that he provided
19 details based on his recollection or was it you
20 telling him what had happened and getting him to
21 answer that way?

22 A. It was off of his recollection and his
23 details.

24 Q. And did he appear to you to have difficulty
25 recalling those details?

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1 A. No.

2 Q. And, specifically, was he able to give you
3 any information regarding the weapon that was
4 used?

5 A. It was a .22 revolver. Some people might
6 consider it a derringer, but it's a really small
7 handgun, five shot.

8 Q. And was he able to provide you with details
9 as to his whereabouts the evening before and
10 morning of the murder?

11 A. Correct. He told me he drove down from
12 North Carolina.

13 Q. And at what point did he drive from North
14 Carolina?

15 A. I believe he said he left at 1:45 in the
16 morning.

17 Q. And did he tell you where he went when he
18 left North Carolina?

19 A. To the wife's house.

20 Q. I'm going to show you what has been marked
21 as Exhibit 62. Prior to that, are you aware if
22 the interview that you conducted with the
23 defendant at the station was recorded?

24 A. It was.

25 Q. Could you describe for the jury how that

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1 was recorded?

2 A. Micro cassette recorder which is a small
3 tape placed in plain view between myself and Mr.
4 Harris on my computer stand, which he's sitting
5 on one side and I'm sitting on the corner of the
6 other.

7 Q. Was the micro cassette recorder in a
8 position where he would know that he was being
9 recorded?

10 A. Yes.

11 Q. And was the interview in its entirety
12 recorded?

13 A. Yes.

14 Q. And did you have the opportunity to review
15 the original recording of that interview?

16 A. I did.

17 Q. And was the recording that you reviewed,
18 was it a complete copy of the interview? Were
19 there any deletions or anything like that?

20 A. No.

21 Q. And now I'm going to show you what has been
22 marked as State's Exhibit Number 62.

23 SOLICITOR ALFARO: With the stipulation
24 from the defense to the authenticity, Your
25 Honor, we would like to admit this into evidence

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1 at this time.

2 MR. VITETTA: No objection.

3 THE COURT: Without objection.

4 (SO ENTERED AS STATE'S EXHIBIT 62)

5 SOLICITOR ALFARO: May we publish,
6 Your Honor?

7 THE COURT: You may.

8 SOLICITOR ALFARO: Your Honor, may we
9 approach?

10 THE COURT: Um-humm.

11 (BENCH CONFERENCE)

12 THE COURT: Mr. Hutton, if you could
13 pass out (copies).

14 BAILIFF: (Distributes copies of
15 transcript of interview to jurors).

16 (RECORDING OF INTERVIEW PLAYED FOR THE JURY)

17 THE COURT: Is that the entire
18 interview?

19 SOLICITOR ALFARO: Yes, Your Honor.

20 THE COURT: Mr. Foreman, ladies and
21 gentlemen, you all have been sitting almost an
22 hour -- actually, a little over an hour. I'm
23 going to give you a brief restroom break.
24 During the break please do not discuss the case,
25 and please leave your notepads in your seats.

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1 We'll be out about ten minute.

2 (JURY OUT @ 11:05 A.M.)

3 THE COURT: Officer, you can go to
4 the restroom, if you like. Please don't discuss
5 your testimony with anyone during the break.

6 We'll be out about ten minutes.

7 THE WITNESS: Thank you.

8 (BRIEF RECESS)

9 (DEFENDANT PRESENT)

10 THE COURT: Please bring in the jury.

11 (JURY IN @ 11:35 A.M.)

12 THE COURT: You may be seated.

13 Ladies and gentlemen, I hope you enjoyed your
14 morning recess. We'll now resume testimony.

15 You may proceed with your questioning, Mr.
16 Alfaro.

17 SOLICITOR ALFARO: Thank you, Your
18 Honor.

19 THE COURT: You're welcome.

20 DIRECT EXAMINATION RESUMED

21 BY SOLICITOR ALFARO:

22 Q. Lieutenant Roach, during a portion of the
23 interview that we just listened to there
24 appeared to be some discussion where you were
25 asking the defendant where he and the victim and

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1 **E.H.** were in the room. Could you describe for
2 us what you were doing at that time?

3 A. I was drawing a rough draft of a diagram of
4 the room and asking him to mark the places where
5 him, his wife and **E.H.** were.

6 Q. Was he able to make those marks on the
7 diagram?

8 A. Yes.

9 Q. And do his marking correlate with the crime
10 scene photos that you saw as part of your
11 investigation?

12 A. Yes.

13 Q. And there was also mention of a GSR kit.
14 Were you performing a kit on the defendant at
15 that time?

16 A. Yes, during the beginning of the interview
17 all that shuffling of paper you hear is me doing
18 that.

19 Q. There was also some mention of you asking
20 whether he had washed his hands. I wasn't able
21 to hear that.

22 A. I had asked him he had washed his hands.
23 The officer put him in a holding cell and there
24 is a bathroom in there. And I had asked him if
25 he had washed his hands, which could affect the

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1 test.

2 Q. Did he indicate whether he did or didn't?

3 A. He did wash his hands.

4 Q. And could you briefly describe the process
5 that you used to collect the GSR kit?

6 A. The kit comes with directions. There's
7 swabs with a chemical you place on the swabs.
8 And you swab the back of the hand, put that --
9 of each hand -- in the vial that is marked for
10 the palm, the front of the hand. And then you
11 do what's called a control somewhere on the body
12 that you know gunpowder didn't touch. We
13 usually do an under the leg, underneath the
14 sock. That's just a control sample.

15 Q. And after taking those samples what did you
16 do with the samples?

17 A. You seal it, initial. There's a red
18 sticker you put on there which if you open it,
19 it's going to tear the envelope up. And you
20 initial it, and I secured it.

21 Q. I'm going to show you what has been marked
22 as State's Exhibit 42 for identification. If
23 you can look at that Exhibit and tell me if you
24 recognize it.

25 A. This is the kit that was performed on Mr.

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1 Harris, the GSR kit.

2 Q. And after you performed the kit did you
3 seal the samples in that package?

4 A. Yes.

5 Q. Did you have the opportunity to -- or what
6 did you do with the package after you sealed it?

7 A. After the interview and everything I -- I
8 have a safe in my office.

9 Q. What was eventually done with this gunshot
10 residue kit?

11 A. It was transported to SLED for processing.

12 Q. And do you recall who transported it to
13 SLED?

14 A. I believe I may have.

15 SOLICITOR ALFARO: At this time,
16 Your Honor, we'd ask that State's Exhibit 42 be
17 admitted into evidence.

18 THE COURT: Any objection?

19 MR. VITETTA: No, Your Honor.

20 THE COURT: Marked and admitted
21 without objection.

22 (SO ENTERED AS STATE'S EXHIBIT 42)

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR ALFARO:

25 Q. In addition to the GSR kit you just

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1 testified about do you recall handling any other
2 physical evidence involved in this
3 investigation?

4 A. There is the diagram that Mr. Harris marked
5 on in the office. I am sure I handled other
6 evidence in relation to transporting it to SLED.

7 Q. I'm going to show you a couple of exhibits.
8 I show you State's Exhibits 39, 39A and 39B.
9 Would you look at those?

10 A. This is the weapon that was secured by
11 Officer Scarborough and taken to SLED.

12 Q. Do you recall transporting those items to
13 SLED?

14 A. I do.

15 Q. And I'm also going to show you what has
16 been previously marked as State's Exhibit 48.
17 Let me get you some gloves.

18 A. Okay. This would be Mr. Harris's shirt.

19 Q. And do you recall whether you transported
20 that item to SLED?

21 A. I transported his clothing to SLED, yes.

22 Q. And in the time that the items you
23 testified to, Exhibits 48 for identification as
24 well as the weapon, the casings and the live
25 rounds -- when you transported those to SLED

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1 were they securely packaged when you took
2 custody of them?

3 A. Yes.

4 Q. And did you tamper with that packaging in
5 any way when it was in your custody?

6 A. No.

7 Q. Thank you. Please answer any questions of
8 the defense.

9 THE COURT: Any cross examination of
10 the witness?

11 MR. VITETTA: Yes, Your Honor. Thank
12 you.

13 THE COURT: Did you move in 48, or
14 did you simply ask him to identify it?

15 SOLICITOR ALFARO: I asked for
16 identification.

17 CROSS EXAMINATION

18 BY MR. VITETTA:

19 Q. Lieutenant Roach, you interviewed Mr.
20 Harris twice on the night of his arrest,
21 correct?

22 A. Yes.

23 Q. And the first time was in the patrol car?

24 A. Yes.

25 Q. And then the second time was back at your

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1 office?

2 A. Correct.

3 Q. And the first time you were both sitting in
4 the back seat very close together?

5 A. Yes.

6 Q. And the second time you were sitting across
7 the table from each other?

8 A. Yes.

9 Q. Now, by the time you got to your office
10 during the second interview you had learned that
11 he had been up all night long?

12 A. No, sir.

13 Q. Okay, when did you learn that?

14 A. I really never -- I assumed he had been up,
15 you know, reasonable hours, you know.

16 Q. But didn't he tell you that he had driven
17 from North Carolina that morning?

18 A. He told me he left North Carolina at 1:45
19 in the morning. That's three -- three and a
20 half hours.

21 Q. So maybe he got some sleep before then? Do
22 you know that?

23 A. I don't know.

24 Q. In this statement that he gives you he
25 repeatedly tells you that he did not

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1 intentionally shoot his wife, correct?

2 A. Not repeatedly. He says on there that he
3 didn't know that he had shot her until after he
4 was told.

5 Q. And he said the next thing I know the gun
6 went off.

7 A. Yes, sir.

8 Q. And at the very end of his statement he
9 tells you that he didn't even know that she had
10 been hit with the bullet, much less killed,
11 until you told him that.

12 A. That's what he says, yes.

13 Q. And that he didn't know the magnitude until
14 you told him.

15 A. That's his version, yes.

16 Q. Okay. The gunshot residue, you took swabs
17 of his hands.

18 A. That's correct.

19 Q. And that is to show whether or not any
20 gunpowder from firing a weapon was on his hands.

21 A. There's three parts of it. I'm not a
22 gunshot residue expert -- you know, a little
23 more than most. But you can show that there are
24 one of three particles or it could show that
25 there's all three particles.

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1 Q. Okay. But as far as you know there wasn't
2 any that came out on his hands.

3 A. As far as I know, yes, sir.

4 Q. At some point you mentioned to him that you
5 felt this was a crime of passion?

6 A. I never mentioned that. He did.

7 Q. And you learned that this was a domestic
8 dispute between the two of them. They were
9 arguing over their marital relationship?

10 A. That's how the call was broadcast.
11 Unfortunately, things get grouped in a domestic
12 dispute label.

13 Q. Even still, I mean, you were aware that --
14 you eventually learned that this was his wife
15 and they weren't living together.

16 A. Right.

17 Q. And that they were having marital problems.

18 A. Correct.

19 Q. through the course of your investigation
20 you learned that Mr. Harris looked at the cell
21 phone that belonged to the victim, correct?

22 A. Yes, he did.

23 Q. And that's when he apparently saw telephone
24 numbers or text messages to or from an alleged
25 paramour.

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1 A. I'm sorry. I didn't hear the last part.

2 Q. I'm sorry. That he look at his wife's
3 telephone and that he saw text messages or
4 telephone calls to an alleged paramour?

5 A. Yes.

6 Q. And that alleged paramour turned out to be
7 his uncle?

8 A. Correct.

9 Q. And you learned in your investigation that
10 this is apparently what triggers him to get
11 extremely enraged and upset.

12 A. I don't know about enraged, but it's the
13 cause for their arguments.

14 Q. And, in fact, he tells you this in his
15 interview, this whole thing about the uncle.
16 That he couldn't believe she would have an
17 affair with his uncle, of all the people in the
18 world. Why did it have to be his uncle,
19 correct?

20 A. That's correct.

21 MR. VITETTA: One moment, please,
22 Your Honor. Thank you, Your Honor. I have no
23 further questions of the Lieutenant.

24 THE COURT: Any redirect?

25 SOLICITOR ALFARO: Yes, Your Honor.

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1 REDIRECT EXAMINATION

2 BY SOLICITOR ALFARO:

3 Q. Lieutenant Roach, Mr. Vitetta just asked
4 you if the defendant had said that he didn't
5 realize that he had shot his wife. Was the
6 defendant, during your interview with him, was
7 he clear on the fact that he had actually
8 retrieved the gun prior to this?

9 A. Yes.

10 Q. And was he -- did he also tell you that he
11 was clear that he had indeed cocked the hammer
12 back prior to the shooting?

13 A. He was adamantly clear about that.

14 Q. And did he indicate to you that he was
15 aware that he had, in fact, fired the gun?

16 A. Yes.

17 Q. And you were also asked on cross about
18 references to the uncle. Did the defendant tell
19 you that the morning of the murder was the first
20 that -- first conversation he had with his wife
21 about the uncle?

22 A. I don't know if that was the exact time he
23 had the first conversation. I know he had had
24 conversations prior.

25 Q. Do you recall if the defendant informed you

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1 of conversations a few days before this about
2 his beliefs or thoughts about the possibility of
3 an affair?

4 A. Yes, because the kids were staying at the
5 uncle's house and found out from E.H.

6 Q. And how many days was that before?

7 A. I want to say at least two.

8 Q. Thank you.

9 THE COURT: Any objection to the
10 witness being excused from the State?

11 SOLICITOR ALFARO: No, Your Honor.

12 THE COURT: From the defense?

13 MR. VITETTA: No, Your Honor.

14 THE COURT: Sir, you are excused.

15 (WITNESS STEPS DOWN)

16 THE COURT: You may call your next
17 witness.

18 SOLICITOR ALFARO: May we approach
19 for scheduling?

20 THE COURT: You may.

21 (BENCH CONFERENCE)

22 SOLICITOR WILLIAMS: John Roberts.

23 THE COURT: Mr. Foreman, ladies and
24 gentlemen, we're going to take a very brief
25 recess. During the break please do not discuss

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1 the case, and please leave your notepads in your
2 seats.

3 (JURY OUT @ 11:50 A.M.)

4 THE COURT: You all can take your
5 seats. We should only be out for a few moments.
6 We had a juror that needed to take a break.

7 And who's your next witness going to be
8 after Mr. Roberts?

9 SOLICITOR WILLIAMS: Suzanne Cromer,
10 Your Honor, from SLED as well.

11 THE COURT: And who's from medical
12 examiner?

13 SOLICITOR WILLIAMS: Dr. Schandl.

14 THE COURT: And then on this list are
15 there any witnesses you're not calling? Are you
16 calling T.H. ?

17 SOLICITOR WILLIAMS: Your Honor,
18 T.H. will be the last witness.

19 THE COURT: D.W. ?

20 SOLICITOR WILLIAMS: No, Your Honor.

21 THE COURT: April Strain?

22 SOLICITOR ALFARO: No, Your Honor.

23 Actually, the three witness -- the two SLED and
24 Dr. Schandl -- after that is T.H. , and that
25 would be only other witnesses.

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1 THE COURT: Then you will rest?

2 SOLICITOR ALFARO: Yes, Your Honor.

3 THE COURT: All right. And is the
4 defense going to have any witnesses, Mr.
5 Vitetta?

6 MR. VITETTA: It looks like we
7 will not. But after the State rests, we may be
8 calling Rose Hemphill.

9 THE COURT: Rose Hemphill. Was she
10 listed as a witness?

11 MR. VITETTA: Yes.

12 THE COURT: I'm probably going to
13 have to *voir dire* the jury because I don't
14 remember asking about her. My law clerk had the
15 list and all I read was the top part of it. All
16 I read was you don't plan to call any witnesses.

17 MR. VITETTA: I'm sorry.

18 THE COURT: That's okay. I doubt
19 anybody knows her. I don't think it'll be a
20 problem

21 MR. VITETTA: She's from Monroe.

22 (BRIEF RECESS)

23 (DEFENDANT PRESENT)

24 (JURY IN AT 11:59 A.M.)

25 THE COURT: You may be seated.

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1 Ladies and gentlemen, we'll resume the
2 testimony. Call your next witness.

3 SOLICITOR WILLIAMS: Thank you, Your
4 Honor. John Roberts.

5 (WITNESS TAKES STAND)

6 JOHN G. ROBERTS, being duly sworn to
7 tell the truth, the whole truth and nothing but
8 the truth, testified, as follows:

9 THE COURT: You may proceed.

10 SOLICITOR WILLIAMS: Thank you, Your
11 Honor.

12 THE COURT: You're welcome.

13 DIRECT EXAMINATION

14 BY SOLICITOR WILLIAMS:

15 Q. Mr. Roberts, where do you work?

16 A. I work for the South Carolina Law
17 Enforcement Division, more commonly called SLED.

18 Q. And how long have you worked for SLED?

19 A. Six years this February.

20 Q. And how long have you worked in the field
21 of forensic science, more specifically trace
22 evidence analysis, dealing with gunshot residue?

23 A. Six years this February.

24 Q. What are your duties?

25 A. I'm a certified law enforcement officer

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1 with SLED, so in addition to any forensic
2 duties, I also have some special duties that I
3 may get called out to. But mainly what I do is
4 work in the forensics lab. I work in the Trace
5 Evidence Section. Trace evidence is the
6 analysis of evidence that you generally cannot
7 see with your naked eye. In our department we
8 do gunshot residue. We do bullet hole analysis,
9 which is multiple target distance determination.
10 We do paint, fiberglass, explosives, arson
11 analysis, bank dye packs and duct tape.

12 Q. What training and experience do you have in
13 your field?

14 A. I have a bachelor's of science degree in
15 chemistry from Texas A & M, Corpus Christi.
16 I've got through in-house training at SLED for
17 gunshot residue analysis, for bullet hole
18 analysis, arson evidence analysis and bank dye
19 pack analysis.

20 Q. And have you testified as an expert in the
21 field of trace evidence before?

22 A. Yes, ma'am.

23 Q. Roughly how many times?

24 A. Forty.

25 Q. Have you been qualified as an expert in

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1 General Sessions Court before in trace evidence
2 analysis?

3 A. Yes, ma'am.

4 Q. Do you know how many times?

5 A. Thirty-nine or forty.

6 SOLICITOR WILLIAMS: Your Honor, at
7 this time we would offer Mr. Roberts as an
8 expert in the field of trace evidence analysis.

9 THE COURT: Any objections or
10 questions?

11 MR. VITETTA: No, Your Honor.

12 THE COURT: He's qualified without
13 objection. You may proceed.

14 SOLICITOR WILLIAMS: Thank you, Your
15 Honor.

16 THE COURT: You're welcome.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR WILLIAMS:

19 Q. In the course of your work as a forensic
20 scientist did you receive items of evidence from
21 this case?

22 A. Yes, ma'am, I did.

23 Q. And what items of evidence did you receive?

24 A. The very first pieces of evidence I
25 received was a pair of gunshot residue kits, one

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1 from -- give me a minute and I'll give you the
2 exact names that are on the gunshot residue
3 kits. One from Tito Harris and one from Shantay
4 Harris. Earlier this year I was given some
5 clothing. And if you'll give me a minute I will
6 tell you exactly what I received as far as
7 clothing. Received a white tee shirt, a pair of
8 blue jeans, a white tank-top style undershirt, a
9 pair of white Nike tennis shoes and a pair of
10 socks.

11 SOLICITOR WILLIAMS: Your Honor, I
12 show these items that have been previously
13 marked as State's 41 and 42. May I approach the
14 witness?

15 THE COURT: Any objection, Mr.
16 Vitetta?

17 MR. VITETTA: No objection.

18 THE COURT: Marked and admitted
19 without objection, Exhibits 41 and 42.

20 (SO ENTERED AS STATE'S EXHIBIT 41)

21 (SO ENTERED AS STATE'S EXHIBIT 42)

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR WILLIAMS:

24 Q. Do you recognize these?

25 A. Yes, ma'am, I do.

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1 Q. And what are those?

2 A. These are the remnants of a pair of gunshot
3 residue kits that I received in this case. When
4 I say "remnants," it's because GSR kits come in
5 two parts. They come as a set of swabs, like
6 cotton swabs. And they come as a set of
7 particle lifts. In most cases whenever we
8 receive the combo kits, we run the swabs first.
9 And then, if necessary, we'll run the particle
10 list. In this case, the swabs are gone so I
11 know I've ran at least the swabs.

12 Q. Okay. And how do you know that those are
13 the ones that you received?

14 A. They have my initials on them. They also
15 have the date in which they were processed for
16 analysis.

17 Q. And what condition was the packaging when
18 you received it?

19 A. They were sealed.

20 Q. Had they been tampered with in any way?

21 A. No, ma'am.

22 Q. What tests, if any, did you conduct on
23 those two pieces of evidence?

24 A. Well, these gunshot residue kits, what I
25 did was run the swabs, looking for any metals

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1 that were present on the hands when the swabs
2 were taken. When you fire a gun, the primer
3 releases the metals that are used to explode the
4 primer into the air. And those metals form
5 droplets and coat things that are in the near
6 vicinity of the weapon when it's fired, for
7 instance, someone's hands. The swabs are used
8 on the palms of both hands, so there's swabs for
9 the palms and swabs for the backs of the hands.
10 In this case, we just ran the swabs.

11 Q. And when you say "residue from the
12 gunpowder," what components are you looking for?

13 A. What we're looking for is metals.
14 Specifically, we're looking for lead, barium and
15 antimony. And those are the metals that are
16 present in the primer.

17 Q. And where would you typically find those
18 metals in traces on someone who has fired a gun?

19 A. Usually, we find them on the hands if it's
20 been within a certain amount of time between the
21 time of shooting and the time of collection.
22 You can also find them on clothing of the person
23 who's been doing the shooting.

24 Q. About how long would gunshot residue remain
25 on someone's hands?

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1 A. Our protocol at SLED is six hours.

2 Q. And what factors might prevent you from
3 finding gunshot residue on someone that has
4 fired a weapon?

5 A. The size of the firearm and the size of the
6 cartridge that's fired has a lot to do with it.
7 In addition, the time between the shooting and
8 the collection -- people are constantly putting
9 their hands in their pockets, removing material
10 thereby. Any moisture -- if you wash your hands
11 it'll remove the material. Basically, anything
12 like that.

13 Q. So a small-caliber weapon might prevent you
14 from finding gunshot residue on the hands?

15 A. The smaller the caliber the less residue is
16 given off. The bigger the caliber, the more
17 residue you get.

18 Q. And if someone had fired a small-caliber
19 weapon and then washed their hands, would you
20 expect to find gunshot residue on their hands?

21 A. No, ma'am.

22 Q. Are there any other ways that gunshot
23 residue can be transferred, like, say, from the
24 hands to anywhere else?

25 A. If you rub your hands on your pants, rub

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1 your hands on your shirt, you go to hug
2 somebody, you can transfer it from you to
3 somebody else that way.

4 Q. Now, did you prepare a report on the
5 results of those gunshot residue kits?

6 A. Yes, ma'am, I did.

7 Q. And are those items identified by number in
8 your report?

9 A. Yes, ma'am. They are my item number one,
10 which is State's -- State's 42 is my item one.

11 It's a gunshot residue kit from Tito Harris.
12 My item number two, State's Item Number 41, is
13 a gunshot residue kit from Shantay Harris.

14 Q. And turning your attention to your item
15 two, the gunshot residue kit from Shantay
16 Harris, was any gunshot residue detected?

17 A. No, ma'am, it was not.

18 Q. And what about on Tito Harris's gunshot
19 residue kit? Any gunshot residue detected on
20 his hands?

21 A. No, ma'am.

22 Q. Now, can this result be consistent with
23 someone not firing a gun?

24 A. Yes, ma'am.

25 Q. Can this result be consist with someone

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1 firing a gun and then washing their hands?

2 A. Yes, ma'am.

3 SOLICITOR WILLIAMS: Your Honor, I'm
4 going to show defense counsel what has been
5 previously marked but not admitted as State's
6 45, and also State's 48.

7 THE COURT: Any objection, Mr.
8 Vitetta?

9 MR. VITETTA: No objection.

10 THE COURT: Marked and admitted
11 without objection, State's 45 and 48.

12 (SO ENTERED AS STATE'S EXHIBIT 45)

13 (SO ENTERED AS STATE'S EXHIBIT 48)

14 SOLICITOR WILLIAMS: Your Honor, may
15 I approach the witness?

16 THE COURT: You may.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR WILLIAMS:

19 Q. Mr. Roberts, if you would just look at
20 these items, both the packaging and what's
21 contained in them, and tell me what those are.

22 A. May I have some gloves?

23 Q. Here's some gloves, if you'd like to use
24 them.

25 A. State's Exhibit 45 is a container that has

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1 particle lifts that I took from my items five,
2 six and seven. Items five, six and seven were a
3 white tee shirt, pair of blue jean shorts and a
4 white tank-top style undershirt. The item in
5 the box is the white tee shirt.

6 Q. And when you received 45 and 48 what
7 condition were they in?

8 A. Well, 45 I created myself.

9 Q. Okay.

10 A. 48 was in a box that was sealed with the
11 blue jean shorts, the undershirt, the shoes and
12 socks.

13 Q. So 45 is just the chemical test that you
14 used to take whatever residue might be found on
15 the clothing?

16 A. What happens with clothing is that when we
17 get it in, it's packaged by itself. You know,
18 there's a shirt, shorts, what-have-you in the
19 box. We have to separate those and take
20 particle lifts from them. The same particle
21 lifts that were used in the gunshot residue kits
22 off of somebody's hands, we use when we take
23 particle lifts off of clothing. In this case,
24 we have our own particle lifts at the lab. And
25 I put them together and I take particle lifts

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1 myself. So State's item 45, the particle lifts
2 from the clothing, wasn't submitted with the
3 clothing. It was created by me, because I have
4 to have something to analyze off of clothing.
5 So that's where that separation comes from.

6 Q. Okay. And State's Exhibit 48 contained,
7 you said, a white tee shirt, a tank top and jean
8 shorts?

9 A. There's just a tee shirt in there now.

10 Q. But it had three items of clothing
11 initially?

12 A. Yes, white tee shirt, pair of blue jean
13 shorts, white tank-top style undershirt, pair
14 of tennis shoes and then the pair of socks.

15 Q. And what about the packaging on this box
16 lets you know that those were the items that you
17 received?

18 A. There is a pieces of butcher paper in there
19 that's folded up that I used to set the clothing
20 items out on. It's got my initials, the date
21 that I did it and what items I examined written
22 down on the piece of paper. In addition, it's
23 my initials on the seal of that box and the
24 container number of that box matches the
25 container number that I have written down in my

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1 notes.

2 Q. So out of all those items of clothing that
3 came from the defendant Tito Harris, which items
4 did you actually test?

5 A. The -- well, the ones that I tested were
6 the blue jean shorts and the white tee shirt.

7 Q. And why would you not test the other ones?

8 A. The white tank-top style undershirt is, by
9 its nature an undershirt. It would not normally
10 have been exposed to gunshot residue. Only
11 usually the outer garments are exposed to
12 gunshot residue.

13 Q. And what about the shoes and the socks?
14 Why would you not test those?

15 A. Socks are also inner garments. And shoes
16 are generally so far away from the pistol when
17 it's fired that it's not necessary to test them
18 for gunshot residue.

19 Q. And what result did you get from the white
20 tee shirt?

21 A. On the white tee shirt, I took four
22 particle lifts from the sleeve -- right sleeve,
23 left sleeve, right chest and the left chest, and
24 I found round lead particles on the white tee
25 shirt. Round lead particles are one of the

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1 components of gunshot residue.

2 Q. So you found round lead particles, and
3 that's one of the components out of three, did
4 you say?

5 A. It's one of the components out of several.
6 It's one of the elements out of three that we
7 look for. When we're looking for the particles,
8 on the particle list what we're looking for,
9 specifically for gunshot residue, is a round
10 particle that contains all three components,
11 lead, barium and antimony. In this case, what I
12 found were round particles that just had lead or
13 maybe lead and antimony in them, but no barium.

14 Q. And what is that result consistent with, or
15 what is the significance of it?

16 A. The round lead particles are consistent
17 with somebody or, in this case, the tee shirt
18 being near a firearm when it's fired.

19 SOLICITOR WILLIAMS: The Court's
20 indulgence for just a minute. 41, 42, 48 and 45
21 have been admitted.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR WILLIAMS:

24 Q. Thank you. Please answer any questions of
25 the defense.

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1 THE COURT: Any cross examination of
2 the witness?

3 MR. VITETTA: No questions.

4 THE COURT: Any objection to the
5 witness being excused from the State?

6 SOLICITOR WILLIAMS: None from the
7 State.

8 THE COURT: From the defense?

9 MR. VITETTA: None, Your Honor.

10 THE COURT: Sir, you're excused.

11 (WITNESS STEPS DOWN)

12 THE COURT: You may call your next
13 witness.

14 SOLICITOR ALFARO: The State calls
15 Suzanne Cromer.

16 (WITNESS TAKES STAND)

17 SUZANNE CROMER, being duly sworn to
18 tell the truth, the whole truth and nothing but
19 the truth, testified, as follows:

20 THE COURT: You may proceed.

21 SOLICITOR ALFARO: Thank you, Your
22 Honor.

23 DIRECT EXAMINATION

24 BY SOLICITOR ALFARO:

25 Q. Ms. Cromer, could you please tell the jury

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1 where you currently work?

2 A. I'm employed at the South Carolina Law
3 Enforcement Division, commonly referred to as
4 SLED, in the Firearms Department.

5 Q. And how long have you been with SLED?

6 A. I've been with SLED about twelve and a half
7 years.

8 Q. And what are your current duties in the
9 Firearms Department?

10 A. I'm a Firearms and Toolmarks Examiner.
11 What we do in the Firearms Department is analyze
12 ammunition components, bullets, cartridge cases,
13 shotgun shells, to determine whether they were
14 fired by or loaded into and extracted out of a
15 specific firearm.

16 Q. And in your capacity with SLED have you had
17 the opportunity to testify in Courts of record
18 in South Carolina?

19 A. Yes, sir, I have.

20 Q. And how many times have you done that?

21 A. Approximately forty-five.

22 Q. And of those occasions how many times have
23 you previously been qualified as an expert in
24 the field of firearms and toolmark
25 identification?

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1 A. All forty-five.

2 SOLICITOR ALFARO: Your Honor, at
3 this time we would ask that Agent Cromer be
4 qualified as an expert in the field of firearm
5 and toolmark identification.

6 THE COURT: Any objections or
7 questions?

8 MR. VITETTA: No, Your Honor.

9 THE COURT: So admitted. You may
10 proceed.

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR ALFARO:

13 Q. Agent Cromer, in the course of your duties
14 did you have the opportunity to examine evidence
15 related to this case?

16 A. Yes, sir, I did.

17 Q. And do you recall what items you examined?

18 A. I examined three items, actually, two
19 items. I received one North American Arms mini
20 revolver, .22 magnum caliber. I also received a
21 fired .22 magnum caliber cartridge case, some
22 unfired .22 magnum cartridges and one fired
23 bullet.

24 Q. I'm going to show you what has been
25 previously marked for identification as State's

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1 Exhibit 40. Take a look at that and tell the
2 jury if you recognize that item.

3 A. Yes, sir, I do. This was my item nine.
4 This was the fired bullet I examined. First
5 off, it's in a sealed container with my seal
6 date and my initials and another container with
7 my seal date and my initials.

8 Q. And was the condition -- or could you tell
9 the jury what condition that item was in when
10 you received it?

11 A. It received it in this bottle, in this bag.
12 Prior to my examination I cleaned it and soaked
13 it in a ten percent Clorox solution.

14 Q. And why did you do that?

15 A. Because it was labeled as coming from
16 autopsy. That's just a precaution that we do.

17 Q. Because it was coming from a victim, that's
18 why you went through that process?

19 A. Yes, sir.

20 Q. And I'd also like to show you State's
21 Exhibits 39, 39A and 39B.

22 A. State's Exhibit 39A is part of my item
23 three. Again, this is in a sealed Ziploc bag
24 with my initials and my seal date, my lab
25 number, my item number and my initials. This is

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1 four unfired .22 magnum caliber cartridges.
2 State's Exhibit 39B is also in a sealed Ziploc
3 with my lab number, my item number, my initials
4 which is sealed with my initials and seal date
5 which is a fired .22 magnum caliber cartridge
6 case.

7 Q. Regarding State's Exhibit 39?

8 A. State's Exhibit 39 is -- I took out the
9 cylinder. What I did was remove the cylinder
10 and check for my markings. This was my item
11 number three. And, again, it's scribed with my
12 lab number, my item number and my initials on
13 this firearm. This is the North American Arms
14 mini revolver, .22 magnum caliber, serial number
15 E144389.

16 SOLICITOR ALFARO: Your Honor, at
17 this time we would like to admit State's Exhibit
18 40 into evidence.

19 THE COURT: Any objection?

20 MR. VITETTA: No, Your Honor.

21 THE COURT: Without objection, marked
22 and admitted as State's 40.

23 (SO ENTERED AS STATE'S EXHIBIT 40)

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR ALFARO:

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1 Q. Agent Cromer, could you describe for us
2 what type of analysis or examination you
3 conducted on the items that you received in this
4 case?

5 A. Yes, sir. When I receive evidence like
6 this in a case, what I do is first look at the
7 firearm. I received it in this box. I take a
8 picture of how I receive it. Then I look at it.
9 I measure it. I check its safeties and
10 determine whether or not it's safe to fire.
11 After that, I also mark it with my lab number
12 and my item number and my initials. I move on
13 to any of my fired evidence. In this case, I
14 moved on to the fired bullets. I looked at it.
15 I cleaned it. I measure it. I weigh it and
16 determine what caliber it is. Then I also
17 determine whether or not it meets the general
18 rifling characteristics as having been fired by
19 this firearm, or if it could have been. If I
20 received a bullet that was a different caliber,
21 then I know then it couldn't have been fired by
22 this firearm. These were .22 caliber. So then
23 I move into the rifling part of the general of
24 unknown characteristics. This firearm was
25 marked with an eight wide rifling. What rifling

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1 is, it's put there in the barrel -- it's putting
2 rotary motion on the bullet. It's a series of
3 lands and grooves, raised and depressed areas.
4 And with that rotary motion, it puts it into a
5 spiral, very similar to watching a quarterback
6 throw a football. He wants to put it into a
7 tight spiral so it will go more accurately
8 towards its target instead of lobbing end-over-
9 end. So that's what the rifling does. Well,
10 this firearm had eight right rifling, which
11 means it had eight lands and grooves and it was
12 going to spin to the right. This bullet also
13 displayed eight right rifling. So I received
14 similar ammunition to what I received in this
15 case, and then I test-fired this firearm. After
16 test-firing the firearm, I take my test back.
17 We test-fire into a vertical tank. Our lab is
18 on the second -- our department is on the second
19 floor of the Forensics Lab at SLED. The tank
20 goes all the way down to the first floor. It's
21 full of water. We shoot into water because it
22 will slow the bullet down without adding to or
23 taking from the markings that are put there by
24 the gun. So I shot this firearm three times
25 into that tank. I took those bullets out. I

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1 look at them on my comparison microscope. And
2 what I'm looking for is those tiny individual
3 identifying characteristics that are left by the
4 manufacturing process in those rifling marks or
5 rifling impressions. And I compare those test
6 bullets to each other, noting how consistently
7 it marks. So once I can compare all of those
8 test bullets to each other, then I move to my
9 evidence bullet. I do that on my comparison
10 microscope too. I put the evidence bullet up on
11 my comparison microscope and compare it to those
12 tests and then I make my conclusion. In this
13 case I found that there was sufficient agreement
14 in those individual identifying characteristics
15 to determine that, in my opinion, this bullet
16 was fired by this firearm.

17 After I make my conclusion, all
18 conclusions that are rendered in the SLED
19 Firearms Department are agreed upon by two
20 examiners. So I find another firearms examiner.
21 They look at it. They come to the conclusion.
22 We agree upon it, and then I can issue my
23 report.

24 And then I do further testing on the
25 gun by testing its trigger pull. You don't want

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1 to test the trigger pull before you actually
2 test-fire the gun because sometimes doing a
3 trigger-pull test can actually break a firearm.

4 Q. And could you tell the jury what trigger
5 pull is?

6 A. Trigger pull is the amount of pressure that
7 you have to apply to this trigger to actually
8 make the firearm go off.

9 Q. And what was the trigger pull that you
10 found -- what was the finding regarding the
11 trigger pull?

12 A. I found the trigger pull weight of this
13 firearm to be between three and a half to three
14 and three-fourths pounds.

15 Q. And did you -- you testified that the fired
16 bullet that you examined, in your opinion, came
17 from the gun. Did you do any kind of
18 examination or test on the spent shell casing
19 that was submitted?

20 A. No, sir, I didn't. We have what's called
21 case acceptance guidelines. We do not examine
22 any fired or unfired evidence that comes
23 received in a firearm. And since it was labeled
24 as being pulled out of the cylinder of the
25 revolver, which the cylinder is this little

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1 piece right here that sits in the gun, I did not
2 examine that.

3 Q. Now, regarding your -- the time you were
4 handling the revolver during your test fire and
5 your other examinations, you found it to be --
6 did you find it to be in good working order?

7 A. Yes, sir, I did.

8 Q. I believe you also testified that you --
9 part of that is that you checked the safeties on
10 the gun?

11 A. Yes, sir, I did.

12 Q. And were there safeties present on that
13 gun?

14 A. This firearm has what's called a hammer
15 block safety. If you depress the trigger, you
16 have to pull it all way to the rear and hold it
17 for the hammer to fall forward. If the trigger
18 is just tapped rearward, if it's just tapped
19 rearward, the hammer block has not been
20 disengaged. So it will not let the firing pin
21 come through the frame of the firearm to hit the
22 cartridge.

23 Q. So for that gun, in order for you to get
24 past the safety in order to fire the weapon,
25 you'd have to exert the three and a half pounds

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1 of pressure that you testified to earlier?

2 A. Yes, sir, you do. You have to actually
3 physically pull the trigger rearward.

4 Q. Prior to pulling the trigger rearward to
5 fire the gun, what else do you have to do in
6 order to make that weapon fire?

7 A. It's considered a single-action revolver,
8 which means you actually have to cock the hammer
9 and then pull the trigger. So you have to pull
10 this back and then pull the trigger.

11 Q. Is there any way to fire that weapon
12 without going through both of those steps?

13 A. No, sir, it cannot be fired another way.

14 Q. And in the time that you were handling the
15 weapon for your analysis did the gun at any
16 point in time just go off?

17 A. No, sir, it didn't.

18 Q. Thank you. Please answer any questions of
19 defense counsel.

20 THE COURT: You may proceed.

21 MR. VITETTA: No questions, Your
22 Honor.

23 THE COURT: Any objection to the
24 witness being excused from the State?

25 SOLICITOR ALFARO: No, Your Honor.

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1 THE COURT: From the defense?

2 MR. VITETTA: No.

3 THE COURT: Ma'am, you're excused.

4 (WITNESS STEPS DOWN)

5 THE COURT: You may call your next
6 witness.

7 SOLICITOR WILLIAMS: Thank you, Your
8 Honor. Dr. Schandl. Your Honor, may we
9 approach?

10 THE COURT: Yes.

11 (BENCH CONFERENCE)

12 (WITNESS TAKES STAND)

13 CYNTHIA ANNA SCHANDL, being duly sworn
14 to tell the truth, the whole truth and nothing
15 but the truth, testified, as follows:

16 THE COURT: You may proceed.

17 SOLICITOR WILLIAMS: Thank you, Your
18 Honor.

19 THE COURT: You're welcome.

20 DIRECT EXAMINATION

21 BY SOLICITOR WILLIAMS:

22 Q. Dr. Schandl, where do you work?

23 A. I work at the Medical University of South
24 Carolina in Charleston, South Carolina in the
25 Medical and Forensic Autopsy Section.

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1 Q. And are you a licensed physician?

2 A. Yes, I am a licensed physician, both in
3 South Carolina and in Florida.

4 Q. And how long have you been licensed?

5 A. I've been licensed as a physician since
6 1999.

7 Q. And do you specialize in a particular
8 branch?

9 A. Yes, after medical school you make choose
10 to specialize. I chose to specialize in the
11 field of pathology and laboratory medicine. And
12 during that training I also chose to further
13 specialize in the field of forensic pathology.
14 Pathology itself is the study of disease. And
15 forensic pathology is the study of disease as it
16 relates to often crime or trauma or misadventure
17 and certainly natural disease processes that
18 might lead to an individual's death.

19 Q. And does your work involve performing or
20 participating in autopsies?

21 A. Yes, it does.

22 Q. Are you a member of any specialized medical
23 groups or associations?

24 A. Yes, several, including the College of
25 American Pathologists, the American Society of

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1 Clinical Pathology, the National Association of
2 Medical Examiners and others.

3 Q. Are special examinations required to be
4 certified in your specialized area of medicine?

5 A. Yes. To become a medical doctor, there are
6 three Board examinations. So, of course, I've
7 taken those. To become specialized in the field
8 of pathology and laboratory medicine there are -
9 - there's the American Board of Pathologists who
10 has two Board examinations, both anatomic
11 pathology and clinical pathology Board
12 examinations, which I have both passed -- passed
13 both of. And then for forensic pathology this
14 is yet a third Board examination by the American
15 Board of Pathology, which I have also passed.
16 So I'm Board Certified in those three areas of
17 pathology, anatomic, clinical and forensic.

18 Q. Just in general, what does forensic
19 pathology deal with?

20 A. Again, forensic pathology is putting the
21 study of disease into the realm of the cause of
22 death. So we're looking at causes of death.
23 Forensic pathology will often deal with those
24 individuals who die under circumstances that are
25 not natural, meaning that their cause of death

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1 is not known or expected, such as somebody with
2 cancer. That might not be a case that would be
3 referred to our office. However, somebody who
4 was shot or stabbed or was found dead at home
5 and did not have a medical history, those kinds
6 of cases likely would be referred to our office,
7 so that we might do an autopsy in order to
8 determine the cause of death.

9 Q. How many autopsies would you say you've
10 performed in your career?

11 A. I have performed about two thousand
12 autopsies.

13 SOLICITOR WILLIAMS: Your Honor, at
14 this time we would move Dr. Schandl to be
15 qualified as an expert in the field of forensic
16 pathology.

17 THE COURT: Any objections or
18 questions?

19 MR. VITETTA: No, Your Honor.

20 THE COURT: So admitted without
21 objection.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR WILLIAMS:

24 Q. During August of 2009 where were you
25 working?

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1 A. In August of 2009 I was at the Medical
2 University of South Carolina.

3 Q. And were you performing autopsies at that
4 time?

5 A. Yes, ma'am.

6 Q. Did you perform an autopsy on Shantay
7 Harris on August 19th, 2009?

8 A. Yes, I did.

9 Q. How old was Shantay Harris?

10 A. Shantay Harris was thirty-three years old.

11 Q. And about how long did the autopsy take to
12 perform?

13 A. The autopsy -- the initial autopsy, where
14 the body is brought to the autopsy studio, we'll
15 first perform an external examination, take
16 photographs of the individual of how they come
17 to us, whether clothed or unclothed, remove the
18 clothes examine those. We'll later continue to
19 what we call the external examination where we
20 examine the skin of the body for identifying
21 features such as height and weight as well as
22 eye color and also look for any evidence of
23 trauma or active disease process that we can see
24 on the skin surface. Following external
25 examination we move to the internal examination

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1 which is what is commonly thought of as the
2 autopsy procedure where we will look at the
3 organs and tissues themselves, looking for
4 disease processes and any evidence of injury.

5 So that's the first part of an autopsy.
6 And that initial part where we have -- where
7 we're actually working with the body, takes
8 anywhere from two to four hours.

9 The autopsy is not complete at that point
10 because we are then going to be looking at
11 perhaps toxicology results. Certainly we will
12 look at tissue under the microscope to look,
13 again, for disease processes and trauma. We had
14 to then generate a report.

15 So an autopsy generally takes altogether
16 about eight hours to perform.

17 Q. And was there any evidence on Shantay
18 Harris of somebody trying to resuscitate her at
19 some point in time?

20 A. Yes, her -- she had been wearing panties
21 and a tank top. The tank top was cut. That's
22 very frequent when first responders or a
23 paramedic will get to the scene and they're
24 going to attempt resuscitation. So the shirt
25 was cut and there were EKG pads on the body,

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1 which would suggest that they were looking for a
2 heart rhythm.

3 Q. You mentioned toxicology. In the
4 toxicology reports for this case was there any
5 evidence of alcohol or drugs in the body of
6 Shantay Harris?

7 A. There was no alcohol and no illegal drugs.
8 I believe she may have been a smoker. There was
9 -- let me double check. I'm referring to the
10 report that we would generate. Yes, she has
11 nicotine in her blood. So that's from smoking,
12 as well as cotinine, which is a breakdown
13 product of nicotine, so they're related. And
14 she also had some caffeine.

15 Q. And based on this particular autopsy and
16 within a reasonable degree of medical certainty,
17 have you formed an expert opinion on the cause
18 of death?

19 A. Yes, ma'am.

20 Q. And what is that?

21 A. Ms. Harris died of brain stem, cerebral and
22 cerebellar disruption due to a penetrating
23 gunshot wound to the head.

24 Q. And how many bullets did she have in her
25 head?

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1 A. This was a single gunshot wound to the
2 head. It was penetrating as opposed to
3 perforating, meaning it went in but did not come
4 out. So basically there was a single gunshot
5 wound and there was a bullet still in her brain,
6 which we were able to recover at the time of
7 autopsy.

8 Q. And you mentioned some big words just then
9 when you looked at your report. What is
10 cerebral disruption?

11 A. Essentially, the entrance wound, where the
12 bullet went into her body was on the right
13 temple, right side of the head in the region of
14 the temple, in the hairline. So the bullet went
15 into the brain. It went through the scalp. It
16 went through the skull causing multiple skull
17 fractures. It went through the outer layer of
18 the brain which is called the cerebrum, the
19 right temple area of the brain. It went through
20 the brain stem which is where all your basic
21 functions are located, such as regulation of
22 heartbeat and breathing. And then it went into
23 another brain structure called the cerebellum,
24 which is helpful with movement or balance and
25 those sorts of things. And that's where I got

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1 the bullet from. So during that course through
2 her brain -- and there was also some hemorrhage
3 into the structures around the brain. So
4 hemorrhage within the skull, around the brain,
5 as well as hemorrhage along the pathway of where
6 the bullet went, and certainly those tissues
7 that the bullet struck and affected by its
8 energy transfer which can be quite a bit larger
9 than the bullet itself or what we call
10 macerated, which basically means turn to mush.

11 So that's a basic description of how this
12 bullet went in. It went in at the temple
13 region. It was going slightly down and slightly
14 back. And it started like in this direction
15 through her brain, and then we were able to
16 recover the bullet.

17 Q. And would it assist you to be able to use a
18 diagram from your report to show the jury just
19 where the bullet entered and lodged in the
20 victim's head?

21 A. Yes, I would be happy to.

22 SOLICITOR WILLIAMS: Your Honor, I'm
23 going to show defense counsel what's been marked
24 as State's 31.

25 MR. VITETTA: No objection.

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1 THE COURT: Marked and admitted
2 without objection.

3 (SO ENTERED AS STATE'S EXHIBIT 31)

4 SOLICITOR WILLIAMS: May I approach,
5 Your Honor?

6 THE COURT: Yes, you may.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR WILLIAMS:

9 Q. This is a drawing, and he's going to put it
10 up here. I'm going to find you a laser pointer.
11 You just push this little black button and you
12 can point to --

13 A. This is a photocopy of a diagram that was
14 produced during the course of the autopsy. And
15 so what we're seeing here -- it's a little bit
16 difficult to understand. But what we do in
17 order to look at the skull -- this is the skull
18 -- is we make an incision around the back of the
19 head. And then the scalp is brought forward
20 over the front of the face. So that's why you
21 don't see the face here. You see inside of the
22 scalp. So that's what we're looking at here.
23 These markings here are leading into the scalp.
24 So that's hemorrhage and bleeding into the
25 scalp. This is the actual entrance gunshot

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1 wound through the scalp which then continues
2 here on the skull. So that's the region of the
3 entrance wound at the skull. And then these
4 lines radiating out from that defect in the
5 skull, the fracture in the skull, are also
6 fracture lines that are associated with that
7 gunshot wound. And this is just the bottom half
8 of that diagram, and I don't see any markings on
9 this. This little thing here says "FXS" for
10 fractures, referring to these again.

11 Q. And based on your examination of the
12 victim, were you able to determine some sense of
13 how far away the shooter would have been from
14 her head when he shot?

15 A. Range of fire is one thing that we do try
16 to determine when we're looking at a gunshot
17 wound. There are a couple of ways you can do
18 that just using your eyes, which is what we're
19 able to do at autopsy. If you have a contact
20 gunshot wound, meaning the muzzle or the end of
21 the gun is up against or very close to the
22 target -- in this case, Ms. Harris's head, then
23 you might get soot deposited on the skin or in
24 the tissues underlying that defect. So that
25 would tell us if this is a very close situation.

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1 We do not have soot.

2 The other thing that you can look for is
3 something that is called stippling. And
4 stippling is again from things that are coming
5 out of the end or the muzzle of the gun. These
6 are more little pieces of things rather than
7 just smoke. So they travel a longer distance
8 than the smoke does. In addition, when they get
9 to the target they actually scrap the target, in
10 this case, the skin.

11 So what we can do in this case is, since
12 it's in the hairline, we'll shave the hair away
13 over the entrance wound and we'll look for that
14 stippling or those scrapes of the skin. In this
15 case there is stippling. So that tells us that
16 the muzzle or the end of the gun is close enough
17 to the target where those particles coming out
18 of the muzzle at the end of the gun to scrape
19 the skin. I can't tell you exactly how far that
20 is. It's best determined by taking that same
21 weapon and the same ammunition that was used, so
22 you don't have any differences, and test firing
23 that weapon from different ranges until you get
24 the same pattern.

25 So if you're very close to a target, the

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1 stippling or the markings will be very close to
2 the hole or the entrance wound. And as you go
3 further out, they will start to disperse and
4 become -- put a larger pattern on, in this case,
5 the skin.

6 So the best way to look at that is with
7 test firing. We have numbers that we can give
8 you that we call close range which is when you
9 see stippling, usually less than three feet.

10 Q. So in this case would you consider this a
11 close-range gunshot wound?

12 A. Yes, I do.

13 Q. And by that you mean about three feet?

14 A. Three feet or less. And, again, that's an
15 estimate.

16 SOLICITOR WILLIAMS: Your Honor, I'm
17 going to show defense counsel what's been
18 previously marked and admitted as State's 40.

19 MR. VITETTA: No objection, Your Honor.

20 THE COURT: Marked and admitted
21 without objection.

22 (SO ENTERED AS STATE'S EXHIBIT 40)

23 SOLICITOR WILLIAMS: May I approach,
24 Your Honor?

25 THE COURT: You may.

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1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR WILLIAMS:

3 Q. Dr. Schandl, if you could look at this
4 packaging and tell me if you recognize it?

5 A. Yes, this is a container that we use at our
6 autopsy service and a label that we generated
7 during the case. And I've written on it -- it
8 has Shantay Harris's name and her case number on
9 it as well as I've written on the tag itself
10 "bullet" to indicate that I placed this bullet
11 into this container.

12 Q. And so is it fair to say that's the
13 fragment of bullet that you extracted from
14 Shantay Harris's head?

15 A. Yes.

16 SOLICITOR WILLIAMS: Your Honor, at
17 this time we have a matter of law that we would
18 like to take up.

19 (BENCH CONFERENCE)

20 THE COURT: You may proceed.

21 SOLICITOR WILLIAMS: Thank you, Your
22 Honor. I'm going to show defense counsel ---

23 THE COURT: They've already been
24 marked.

25 SOLICITOR WILLIAMS: May I approach

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1 the witness?

2 THE COURT: You may.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR WILLIAMS:

5 Q. Dr. Schandl, what are those two pictures
6 of?

7 A. These are x-rays of Ms. Shantay Harris, of
8 her head before we began the internal
9 examination. In cases of gunshot wounds when
10 we're trying to show that there is no bullet in
11 the cavity or in the person, or trying to find
12 the bullet in the person and we take x-rays.
13 And the reason we take two is that we want one
14 from the front and one from the side so that we
15 can really find out where that bullet is when
16 we're looking for it in the body. So it is
17 routine in gunshot wound cases and other cases
18 where we're looking for something that the x-
19 rays cannot pass through to do x-rays in order
20 to find those objects.

21 SOLICITOR WILLIAMS: Your Honor, may
22 we publish?

23 THE COURT: You need to identify the
24 numbers of those photos for the record.

25 SOLICITOR WILLIAMS: Yes, Your Honor,

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1 they are items 15 and 16 and we are now
2 publishing 15.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR WILLIAMS:

5 Q. Can you just use the pointer to kind of
6 show the jury where the bullet entered and where
7 it wound up?

8 A. Yes, this is a picture of the X-ray of Ms.
9 Harris's head. So you can see the outline here
10 of the skull. And here's the lower jaw and the
11 upper jaw. And this thing that is more white
12 and really opaque than the bones around it, that
13 is the bullet.

14 Q. And what is trajectory?

15 A. The trajectory is just a description of the
16 direction that the bullet was going through the
17 body. And it's based on somebody standing still
18 and in what we call anatomical position, which
19 is just like this standing up.

20 Q. And so in this case what was the trajectory
21 of the bullet?

22 A. The trajectory of the bullet in this case
23 was -- this should be the right side of her. So
24 we're looking through her from the front. So
25 this is the right side of her. And the bullet

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1 went towards her right and a bit down and back
2 into this region.

3 Q. So if she was sitting down and the person
4 that shot her was standing up, would that be
5 consistent with that trajectory?

6 A. That is possible.

7 Q. Can you put up 16?

8 A. And so this is the second in the series of
9 x-rays of her head. And this we're looking from
10 the side of her. So this is the back of her
11 head and the back of her skull. In the front,
12 this is where her eyes are. And this is the
13 bullet.

14 Q. And where you say the bullet entered?

15 A. The entrance wound from this picture is
16 right about here. You can see the fracture
17 lines radiating from that variant.

18 Q. The temple area?

19 A. Yes, it is, the right temple area.

20 SOLICITOR WILLIAMS: Your Honor, may
21 I approach?

22 THE COURT: Yes.

23 SOLICITOR WILLIAMS: I'm showing her
24 what has been marked, just for identification
25 purposes, as 29.

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1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR WILLIAMS:

3 Q. You mentioned stippling. And without
4 showing that to the jury, if you could just look
5 at that yourself, and if you would publish 29 in
6 black and white.

7 A. This is a photograph of Ms. Shantay
8 Harris's head closeup in the region of the
9 gunshot wound. So the right temple region,
10 after we had shaved the hair from around the
11 gunshot wound. And what you can see in this are
12 the characteristics of an entrance gunshot wound
13 which is an abrasion around the entrance wound
14 itself. And then you can also see the scrapes
15 of the skin that are the stippling that we
16 talked about that suggest a close range fire.

17 Q. They're working on getting that up on the
18 board. But while they're doing that, let me ask
19 you a couple of other questions. Were there
20 other -- did you have a section of your report
21 that had significant findings? Can you talk
22 about some of the other damage that was done to
23 the victim by the bullet?

24 A. Yes, I can really go back through that.
25 Essentially, as the bullet went through the head

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1 it caused multiple skull fractures. It caused
2 bleeding around the brain and into the brain.
3 It caused maceration or destruction of the brain
4 structures along the path of the bullet. It
5 caused some abrasion in different areas, both
6 subarachnoid and subdural hemorrhages, which is
7 just the three areas around the brain. And
8 certainly hemorrhage to the scalp in the region
9 of the gunshot wound itself.

10 Q. And what can you tell us about bruising on
11 the face? If somebody had been slapped
12 repeatedly on the face right before they died
13 and they were a dark-complected woman, would you
14 expect to always see bruises on their face?

15 A. It's going to vary. It's going to vary on
16 several things, whether there is actual
17 bruising, of course. We're not going to see it
18 if there isn't any. Individuals with darker
19 skin pigmentation, they can mask bruising and we
20 may not see it. And we do see the face as far
21 down as the eyebrows when we're pulling the
22 scalp forward. And there are some changes that
23 happen after death that can accentuate bruising
24 and make bruising more visible later. I did not
25 see bruising on her face.

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1 Q. Would you describe this victim as a dark-
2 complected female?

3 A. Yes.

4 Q. So you might not have seen the bruises for
5 that reason?

6 A. It's possible.

7 Q. Did you see any evidence of wounds on her
8 arms or hands that would suggest to you either
9 defensive wounds or offensive wounds?

10 A. No, there were no other wounds to her body,
11 to her hands or her arms.

12 SOLICITOR WILLIAMS: Beg the Court's
13 indulgence for just a moment.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR WILLIAMS:

16 Q. You gave us a description of the stippling
17 that indicated the close range. And you also
18 gave the jury a description of the trajectory.
19 And we talked about the hypothetical of her
20 sitting down and being three feet away. What
21 about -- could you describe what the entrance
22 wound looked like?

23 A. So there are some characteristics of an
24 entrance wound that we do see here. One is that
25 there is an abrasion border that goes all the

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1 way around the entrance wound. That's fairly
2 characteristic of an entrance. It's fairly
3 punched out. An entrance wound often has tissue
4 loss, so you actually have a hole there as
5 compared to an exit wound where you rarely will
6 have a hole but just an opening of the skin.
7 And we did see that in this case as well. And
8 then the uncharacteristic, in this case, was the
9 stippling, the abrasions or scrapes around the
10 skin suggesting distance of fire.

11 Q. I have no further questions. Please answer
12 any questions of the defense.

13 THE COURT: Any questions for the
14 witness?

15 MR. VITETTA: I have just a
16 couple.

17 CROSS EXAMINATION

18 BY MR. VITETTA:

19 Q. Doctor, you've indicate with the stippling,
20 it's critical that you want to know exactly how
21 far away a person was and have some sort of
22 independent analysis done, correct?

23 A. Yes, that is correct.

24 Q. Where the same gun is fired at an object at
25 different distances.

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1 A. Yes, the same gun and the same ammunition.

2 Q. And the same ammunition, right. And then
3 you can compare the patterns?

4 A. That's correct.

5 Q. So if you don't have that information, you
6 really don't know how far away, in other words?

7 A. Not with any certainty. You have a range.

8 Q. Yes. Thank you. Nothing further.

9 THE COURT: Any redirect?

10 SOLICITOR WILLIAMS: The Court's
11 indulgence.

12 REDIRECT EXAMINATION

13 BY SOLICITOR WILLIAMS:

14 Q. But despite not having what Mr. Vitetta
15 just described to you, which is a copy of
16 patterns, you were able to determine a range.

17 A. That's correct.

18 Q. And the range you determined was close
19 range?

20 A. Close range.

21 Q. And you described that as about three feet.
22 Is that correct?

23 A. Three feet and less.

24 Q. Thank you.

25 THE COURT: Any objection to the

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1 witness being excused from the State?

2 SOLICITOR WILLIAMS: No, Your Honor.

3 THE COURT: From the defense?

4 MR. VITETTA: No, Your Honor.

5 THE COURT: Doctor, you're excused.

6 (WITNESS STEPS DOWN)

7 THE COURT: Mr. Foreman and ladies
8 and gentlemen, we're going to take advantage of
9 this break in testimony to take our lunch and
10 recess. We'll break until 2:15. During the
11 break please do not discuss the case among
12 yourselves or with anyone else. Please do not
13 allow yourselves to be exposed to any media
14 coverage about this case if there is any.
15 Please return directly to your jury room and do
16 not have any contact with anyone in or about the
17 court house.

18 Before I excuse you I need to ask an
19 additional question that I neglected to in *voir*
20 *dire*, and I appreciate your patience in advance.
21 Is there any member of the panel related by
22 blood or marriage to or have a close personal or
23 social or business relationship with Rosetta
24 Hemphill? If so, please raise your right hand.
25 (No response). Let the record reflect that

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1 there was a negative response. Have a good
2 lunch. Leave your notepads in your seats. See
3 you at 2:15.

4 (JURY OUT @ 12:58 P.M.)

5 THE COURT: You may be seated.

6 Please make sure that door's closed for me. The
7 Court has admitted State's 29 for I.D. only
8 which is the photograph of the victim showing
9 stippling, the shaved portion of her skull with
10 the stippling. It does not show her entire
11 face. It is for I.D. only at this time until
12 the State can produce a black and white copy of
13 the photo, at which time it will be marked and
14 admitted subject to the objection.

15 The Court is admitting the photograph
16 pursuant to *State v. Nance*, *State v. Martucci*,
17 *State v. Crosby* and *State v. Tucker*. The
18 photograph is admitted to corroborate the
19 doctor's testimony. It also corroborates her
20 testimony of the entrance and distance of the
21 shot which is, pursuant to her testimony, a
22 close range of three feet or less. It also
23 serves to corroborate the element of the crime,
24 that being malice.

25 The Court finds that the picture is

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1 relevant and more probative than prejudicial.
2 And it also is made more probative than
3 prejudicial by the defense's argument which I am
4 anticipating, based on opening argument, that
5 somehow this was an accident in the heat of
6 passion and that it was not intentional. The
7 close-range nature of the shot refutes that
8 theory and therefore makes it more relevant and
9 more probative than prejudicial.

10 Now, as regards the other photographs,
11 and I will deal with State's 22, 24 -- actually,
12 I took them out of order. I apologize. 22, 23,
13 24 and 21. Again, I took them out of order
14 because I grouped them based on basically what
15 they were showing. And, actually, they are
16 duplicates of one another, those being in color
17 and in black and white. And they show a picture
18 of the wound from a distance with blood flowing
19 down into the victim's ear. One identifies it
20 with a marker which appears in the Medical
21 Examiner's office. One does not. The Court
22 would find the pictures are cumulative and they
23 are not the best representation to corroborate
24 the witness's testimony, that being the
25 stippling.

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1 As regards number 26, 25 and 30, 26 is
2 an unshaved head picture of the wound which is
3 cumulative. 25 shows a far-away picture of a
4 portion of the skull shaved with the wound which
5 is not the best representation of the stippling.
6 And number 30 is cumulative to the one I've
7 already admitted, because it shows the very same
8 thing except that the one that I've admitted is
9 a better representation of the stippling
10 pattern, that corroborating the close-range
11 shot.

12 Now, as regards 20, 19, 17 and 18, 20
13 and 17 are the very same picture -- well, back
14 and front, I guess, but it's still the same
15 picture, as well as 19 and 18, which show -- 19
16 and 18 show the white tee shirt front and back.
17 20 and 17 show the tank top and her underwear
18 front and back, which show the amounts of blood
19 that she lost at the time of the incident. The
20 Court finds that they are more prejudicial than
21 probative. They have the tendency to appeal to
22 the emotions of the jury, and they really don't
23 serve to corroborate anything that really needs
24 to be corroborated. I think -- I've already
25 admitted one photograph which shows the amount

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1 of blood she lost at the scene. And it also is
2 an accurate representation of how her body was
3 found after the incident, which corroborates the
4 testimony of the officer -- and I believe it was
5 -- and I apologize -- of the officer who
6 testified regarding that photograph. Therefore,
7 there would be no necessity in admitting those
8 photographs. I think they would tend to appeal
9 to the passions of the jury, and they really are
10 not -- they're cumulative. They really aren't
11 necessary to corroborate testimony. They'll all
12 be marked for I.D. only, and they're up above
13 your head, Vivian (court reporter).

14 Is there any further argument for the
15 record regarding the -- I believe I heard full
16 argument yesterday regarding them. I told you
17 all that I needed to hear the medical examiner's
18 testimony so that I could make a decision
19 regarding whether they, in fact, did corroborate
20 her testimony. And so I waited to make that
21 decision until I could hear her testimony prior
22 to the State seeking to admit the photographs.

23 But I believe, Mr. Vitetta, you stated
24 your objections on the record yesterday,
25 correct?

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1 MR. VITETTA: I did, thank you.

2 THE COURT: And the Court will note
3 your objection for the record. And the State
4 has already provided its basis for seeking the
5 admissibility of the photographs, correct?

6 SOLICITOR WILLIAMS: That's right,
7 Your Honor. We do have a black and white
8 photograph. Do you want us to mark it as 29, or
9 a new number?

10 THE COURT: It need to be whatever
11 number Vivian needs to give it, whatever is
12 easier for her. It probably needs to be your
13 next photograph -- I mean your next Exhibit in
14 line, which y'all are in the sixties now, aren't
15 you? What will be the next number, Vivian?

16 COURT REPORTER: The next number is
17 63, Your Honor.

18 THE COURT: It'll be number 63. And
19 you can publish that to the jury if you'd like
20 when they come back from lunch.

21 SOLICITOR WILLIAMS: Thank you, Your
22 Honor.

23 THE COURT: Prior to resuming
24 testimony.

25 (SO ENTERED AS STATE'S EXHIBIT 63)

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1 THE COURT: That's 29 that I had
2 marked for I.D. I had them do it in black and
3 white which shows the stippling. Now, as I
4 understand it, your next witness is T.H
5 T.H and that will be your last witness,
6 correct?

7 SOLICITOR WILLIAMS: That is correct,
8 Your Honor.

9 THE COURT: If the defendant would
10 stand for me, please. Do you all have any
11 record that y'all will be seeking to impeach his
12 credibility if he were to testify?

13 SOLICITOR WILLIAMS: No, Your Honor.

14 THE COURT: Sir, raise your right
15 hand to be sworn, please.

16 DEFENDANT: (Complies).

17 THE COURT: Do you swear or affirm
18 the testimony you give will be the truth?

19 DEFENDANT: Yes.

20 THE COURT: You can put your right
21 hand down. State your full name for the record.

22 DEFENDANT: Tito Fernando Harris.

23 THE COURT: Mr. Harris, I'm going to
24 advise you of certain rights and you can discuss
25 them with your attorney over luncheon recess.

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1 Because after this last witness we'll be moving
2 more quickly and then we'll give you the
3 opportunity to have any meaningful discussion
4 with him regarding this issue. And at the time
5 that we reach those proceedings I'm going to
6 need answers to these questions. And so I want
7 to give you ample opportunity to discuss these
8 matters with him.

9 Sir, we will soon reach the stage of
10 the trial when you may present your defense.
11 And as a part of that you will have to make the
12 decision as to whether you wish or do not wish
13 to testify. I'm going to explain to you certain
14 of your rights. If you do not understand
15 anything that I say, please let me know. If you
16 want me to explain anything in more detail,
17 please let me know. Do you understand?

18 DEFENDANT: Yes, ma'am.

19 THE COURT: Bear with me just one
20 moment. As I've indicated, sir, we will soon
21 reach the stage of the trial where you may
22 present your defense. You may claim the
23 protection given to you by the Fifth Amendment
24 to the Constitution, and that Amendment states,
25 in part that no person shall be compelled in any

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1 criminal case to be a witness against himself.

2 This means that you cannot be required to
3 testify in this case.

4 You have the right to testify in your
5 own behalf, however no one can make you testify.
6 This is a personal right and no one can waive
7 this right except you. If you decide to testify
8 you will be subject to the same rules that
9 govern other witnesses, and you may be examined
10 and cross examined on any relevant issue in this
11 case.

12 In addition, if you have any
13 convictions involving dishonesty or false
14 statement or for crimes punishable by
15 imprisonment for more than one year and this
16 Court determines that the probative value of
17 admitting this evidence outweighs its
18 prejudicial effect to you, the Solicitor will
19 be able to introduce your record to attack your
20 credibility.

21 If you decide to testify, this decision
22 on your part must be made freely, voluntarily
23 and intelligently with knowledge of the
24 protections given to you by the Fifth Amendment
25 and the consequences of your decision to

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1 testify.

2 If you decide not to testify I will
3 instruct the jury that they cannot give that
4 fact any consideration whatsoever and that there
5 is to be absolutely no prejudice to you because
6 you did not testify. In fact, they would be
7 instructed that it cannot be discussed in any
8 manner whatsoever during the course of
9 deliberations; that you have the Constitutional
10 right to remain silent, and you cannot be
11 prejudiced for exercising that right. And the
12 burden remains on the State to prove each
13 element of the offense beyond a reasonable
14 doubt, and that you have no burden of proof.

15 It is left entirely up to you whether
16 or not you testify. You may speak with your
17 attorney, your family members, friend or anyone
18 else. But that final decision is left entirely
19 up to you.

20 Sir, do you understand your rights as
21 I've just explained them to you?

22 DEFENDANT: Yes, ma'am.

23 THE COURT: Do you have any questions
24 about what I've just explained to you?

25 DEFENDANT: No, ma'am.

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1 THE COURT: And, Mr. Vitetta, I'll
2 allow you the luncheon recess to discuss that
3 with him.

4 MR. VITETTA: Yes, ma'am.

5 THE COURT: And then when we reach
6 the appropriate time, I'll ask him the
7 questions.

8 MR. VITETTA: Thank you.

9 THE COURT: Okay. Have a good lunch.
10 See you at 2:30.

11 (LUNCH RECESS)

12 (DEFENDANT PRESENT)

13 (JURY IN @ 2:36 P.M.)

14 THE COURT: You may be seated.
15 Ladies and gentlemen, I hope that you all had a
16 pleasant lunch recess. We'll now resume with
17 the trial. If you will give the attorneys your
18 undivided attention. The State may call its
19 next witness.

20 SOLICITOR WILLIAMS: Thank you, Your
21 Honor. The State calls T.H.

22 THE COURT: The witness will come
23 forward and be sworn.

24 (WITNESS TAKES STAND)

25 T.H , being duly

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1 sworn to tell the truth, the whole truth and
2 nothing but the truth, testified, as follows:

3 THE COURT: You may proceed.

4 SOLICITOR WILLIAMS: Thank you, Your
5 Honor.

6 THE COURT: You're welcome.

7 DIRECT EXAMINATION

8 BY SOLICITOR WILLIAMS:

9 Q. T.H , how old are you?

10 A. Fourteen.

11 Q. And where do you live now?

12 A. North Carolina.

13 Q. And who do you live with now?

14 A. Aunt April.

15 Q. And who is -- is she Shantay's sister?

16 A. Yes.

17 Q. And who is Shantay Harris?

18 A. My mom.

19 Q. And who is Tito Harris?

20 A. My father.

21 Q. Is this difficult for you today, being here
22 and talking about this?

23 A. Yes, ma'am.

24 Q. Is it hard to do in front of your dad?

25 A. Sort of.

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- 1 Q. If you need a break, just let us know.
- 2 A. Yes, ma'am.
- 3 Q. When you lived with your mom, do you
- 4 remember where you lived?
- 5 A. Yes, ma'am.
- 6 Q. Where was that?
- 7 A. The address?
- 8 Q. Yes.
- 9 A. [REDACTED] Golden Aspen Drive.
- 10 Q. And was that in Berkeley County?
- 11 A. Yes, ma'am.
- 12 Q. Where did you go to school when you were
- 13 here?
- 14 A. Berkeley Intermediate.
- 15 Q. And who is E.H. to you?
- 16 A. My brother.
- 17 Q. And at the time of your mother's death did
- 18 your brother live with you?
- 19 A. Yes, ma'am.
- 20 Q. And what about your Aunt Tonia? Where did
- 21 she live?
- 22 A. With me too.
- 23 Q. Who else lived with you?
- 24 A. My four other cousins.
- 25 Q. Now, at that time was your father living

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- 1 with you?
- 2 A. No, ma'am.
- 3 Q. Was he allowed to be in your house?
- 4 A. No, ma'am.
- 5 Q. And do you remember the night that your
- 6 mama died?
- 7 A. The only thing I know is August.
- 8 Q. Do you remember -- that was two years ago.
- 9 Is that correct?
- 10 A. Yes, ma'am.
- 11 Q. Can you remember right after your mama died
- 12 giving a statement to the police?
- 13 A. Yes, ma'am.
- 14 Q. Was that pretty much right after everything
- 15 happened?
- 16 A. Yes, ma'am.
- 17 Q. Now, think back to that night. Do you
- 18 remember what time you went to sleep about that
- 19 night?
- 20 A. About 10:00.
- 21 Q. And who were you sleeping with? Who else
- 22 was in the room that you were sleeping in?
- 23 A. J.W.
- 24 Q. And who is that?
- 25 A. My cousin.

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1 Q. And did you wake up -- did something wake
2 you up that night?

3 A. Yes, ma'am.

4 Q. What was that?

5 A. Screaming.

6 Q. Who was screaming?

7 A. My mom.

8 Q. And so what did you do?

9 A. I went to the bathroom and listened.

10 Q. When you say the bathroom, is that a
11 bathroom in the hall or in the bedroom, or
12 where was that?

13 A. When I walk out of the room, I walk
14 straight and turn right to the bathroom.

15 Q. And when you went in there what did you
16 hear?

17 A. I heard my mom screaming and then my dad
18 saying "shut up".

19 Q. And after that, did you see your Aunt
20 Tonia?

21 A. Like I knocked on the door, but I can't
22 come in.

23 THE COURT: I'm sorry. Please repeat
24 your answer. You knocked on the door, but ---

25 THE WITNESS: And I can't go in.

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1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR WILLIAMS:

3 Q. Why couldn't you go in?

4 A. Because they was hollering.

5 Q. And what happened next, T.H. ?

6 A. Then my dad stepped out.

7 Q. And did you see him?

8 A. Yes, ma'am.

9 Q. How would you describe him? How was he
10 acting?

11 A. Like happy.

12 Q. Did you hear him say anything?

13 A. Yes, ma'am.

14 Q. What did he say?

15 A. "She's gone." And that's when he'd go by.

16 Q. And then what did he do next?

17 A. Walked downstairs.

18 Q. And what did you do next?

19 A. I went into the room.

20 Q. And what did you see?

21 A. My mom.

22 Q. And what did she look like?

23 A. On the ground, in the corner by the
24 cardboard box.

25 Q. Was she -- what was she on, like, in the

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1 room?

2 A. She was like laying in the corner on a
3 cardboard box.

4 Q. And what did you do then? What was Aunt
5 Tonia doing?

6 A. She told me to help her to do CPR.

7 Q. And did you?

8 A. I didn't do it. She did it.

9 Q. And what did you do?

10 A. I called the police.

11 SOLICITOR WILLIAMS: Your Honor, I'm
12 going to show defense counsel what's been
13 previously admitted as State's 49.

14 MR. VITETTA: No objection.

15 SOLICITOR WILLIAMS: May I approach,
16 Your Honor.

17 THE COURT: Has that been admitted
18 already, or are you seeking it to be admitted?

19 SOLICITOR WILLIAMS: It has been
20 admitted, so I just want to establish the
21 relevance by just having him -- we can just
22 publish, Your Honor.

23 THE COURT: You may proceed.

24 SOLICITOR WILLIAMS: Thank you, Your
25 Honor.

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1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR WILLIAMS:

3 Q. T.H , what is this?

4 A. That's the CD from the police call.

5 Q. And how do you know that that's what it is?

6 A. Because of my initial.

7 Q. And have you listened to this before?

8 A. Yes, ma'am.

9 Q. And is this an accurate recording of your
10 phone call to the police that night?

11 A. Yes, ma'am.

12 SOLICITOR WILLIAMS: Your Honor, at
13 this time, we would ask to publish State's 49.

14 THE COURT: Any objection?

15 MR. VITETTA: No, Your Honor.

16 THE COURT: Proceed, without
17 objection.

18 (STATE'S EXHIBIT 49 PUBLISHED)

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR WILLIAMS:

21 Q. T.H , I don't have any other questions
22 for you. Please answer any questions the
23 defendant counsel may have.

24 THE COURT: Any questions for the
25 witness?

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1 MR. VITETTA: Just a couple, Your
2 Honor.

3 THE COURT: You may proceed.

4 CROSS EXAMINATION

5 BY MR. VITETTA:

6 Q. T.H , my name's Guy Vitetta. I'm your
7 dad's lawyer. I'm very sorry that you had to
8 see this happen in your house. I have just a
9 couple of questions for you real quick, okay?

10 A. (No verbal response).

11 Q. T.H , the couple of weeks before this
12 happened do you remember a time when your mom
13 and you and E.H. and Tonia and her kids all
14 went up to see your dad in North Carolina?

15 A. No, sir.

16 Q. Did y'all get together in Charleston at all
17 for a barbecue or anything?

18 A. No, sir.

19 Q. Was there any time when your father got
20 together with you and your family?

21 A. Yes, sir.

22 Q. That was some time before your mom died,
23 right?

24 A. Yes, sir.

25 Q. But after they had separated?

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- 1 A. Yes, sir.
- 2 Q. So he would meet you guys and that sort of
3 stuff at the house in Charleston?
- 4 A. It wasn't Charleston.
- 5 Q. Not Charleston, okay. And you said that he
6 had a key to your house, correct?
- 7 A. Yes, sir.
- 8 Q. Do you know how he got the key? Did he
9 always have it or did somebody give it to him?
- 10 A. I don't know.
- 11 Q. And you knew that your mom and dad weren't
12 getting along, didn't you?
- 13 A. Yes, sir.
- 14 Q. That's why they weren't living together,
15 correct?
- 16 A. Yes, sir.
- 17 Q. You saw your dad almost every day when your
18 parents were separated, right?
- 19 A. Not really.
- 20 Q. Did you, as a family, leave from South
21 Carolina and go to North Carolina for a visit?
- 22 A. Yes, sir.
- 23 Q. And that was like after your parents were
24 separated?
- 25 A. It was all the time.

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1 Q. All the time. A week before your mom was
2 killed did you, your mom and your dad and Eli go
3 to the movies to see Wolverine?

4 A. Yes, sir.

5 Q. And then you sent to Ruby Tuesday's,
6 correct?

7 A. I think it was Applebee's.

8 Q. Applebee's? Okay. And then every weekend
9 y'all got together at Uncle Cootie's?

10 A. Yes, sir.

11 Q. Your daddy took you to church oftentimes?
12 Did he?

13 A. Like rarely.

14 Q. Rarely.

15 MR. VITETTA: Thank you, Judge. I
16 have nothing further.

17 THE COURT: Any redirect?

18 SOLICITOR WILLIAMS: No, Your Honor.

19 THE COURT: Any objection to the
20 witness being excused from the State?

21 SOLICITOR WILLIAMS: No, Your Honor.

22 THE COURT: From the defendant?

23 MR. VITETTA: No, Your Honor.

24 THE COURT: Son, you're excused.

25 (WITNESS STEPS DOWN)

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1 THE COURT: The State may proceed.

2 SOLICITOR WILLIAMS: Your Honor, at
3 this time the State would rest.

4 THE COURT: Mr. Foreman, ladies and
5 gentlemen, the State has rested their case. I
6 have some brief matters of law to take up with
7 the attorneys. During this break please do not
8 discuss the case, and please leave your notepads
9 in your seats. We appreciate your patience.

10 (JURY OUT @ 2:50 P.M.)

11 THE COURT: You may be seated. Are
12 there any Motions?

13 MR. VITETTA: Thank you, Judge. I
14 would move for a directed verdict based on the
15 evidence. There's been insufficient evidence to
16 send this case to the jury. The motion is based
17 on the evidence presented as well as all motions
18 and objections made. Thank you, Judge.

19 THE COURT: Any response from the
20 State?

21 SOLICITOR WILLIAMS: Your Honor, on
22 the issue of directed verdict, the Court is
23 concerned with the existence of evidence, not
24 the weight of evidence. And there has been
25 adequate evidence in this case of murder.

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1 There's evidence, even from the statement of the
2 defendant, that the defendant drove down from
3 North Carolina, that he got a gun, he cocked it,
4 he shot the victim. He at one point said -- the
5 detective asked him where were you standing?
6 Where was she when you shot her? He said she
7 was sitting, not standing. There is adequate
8 evidence of malice aforethought. He used a
9 weapon. He shot her in front of his child, and
10 he shot her in the head.

11 THE COURT: Anything further, Mr.
12 Vitetta?

13 MR. VITETTA: No, Your Honor, thank
14 you.

15 THE COURT: In considering a motion
16 for directed verdict the Court is required to
17 view the evidence in a light most favorable to
18 the State. In addition to that, the Court is
19 concerned with the existence or nonexistence of
20 evidence and not its weight. Of course, the
21 Court should not refuse to grant a directed
22 verdict when the evidence merely raises a
23 suspicion that the accused is guilty. The
24 Court, however, is not required to find that the
25 evidence infers guilt to the exclusion of any

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1 other reasonably hypothesis.

2 Again, the Court is concerned with the
3 existence or nonexistence of evidence and not
4 its weight. And there is replete direct
5 evidence as well as substantial circumstantial
6 evidence reasonably tending to prove the
7 accused's guilt, and therefore the motion is
8 denied.

9 Sir, please stand. I'll remind you
10 that you're still under oath. Have you had an
11 adequate opportunity to discuss with your lawyer
12 whether you should or should not testify?

13 DEFENDANT: Yes.

14 THE COURT: And, sir, do you need to
15 speak with him any further at this time?

16 DEFENDANT: No.

17 THE COURT: Sir, do you wish to
18 testify?

19 DEFENDANT: No.

20 THE COURT: Do you plan to call any
21 other witnesses, Mr. Vitetta?

22 MR. VITETTA: No, Your Honor.

23 DEFENDANT: No.

24 THE COURT: Do you then rest your
25 case as well?

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1 MR. VITETTA: I would rest.

2 THE COURT: Do y'all want to just
3 close and charge in the morning? Because I'm
4 thinking we've got to do a charge conference.
5 That's going to take us a few moments, at least
6 fifteen or twenty minutes. That'll take us to
7 at least 3:15 or 3:20, probably be a little
8 more, probably longer than that. And then my
9 charge is thirty minutes. So then I usually
10 unless the lawyers tell me otherwise -- the
11 argument takes less than hour, especially if the
12 State's going to open and close. So we're
13 already at two hours and a half, which takes us
14 beyond 5:00 o'clock with the jury beginning
15 deliberation. I don't think that would be wise.
16 What is the defense's position?

17 MR. VITETTA: That's fine.

18 THE COURT: What I'm going to do, Mr.
19 Vitetta, is let you rest in the presence of the
20 jury.

21 MR. VITETTA: Thank you, Judge.

22 THE COURT: And then I will excuse
23 them for the remainder of the day and then we'll
24 have a charge conference.

25 MR. VITETTA: Okay, thank you.

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1 THE COURT: Please bring in the jury.

2 (JURY IN @ 2:55 P.M.)

3 THE COURT: You may be seated. Mr.
4 Vitetta, you may proceed.

5 MR. VITETTA: Thank you, Your
6 Honor. The defense rests.

7 THE COURT: Mr. Foreman, ladies and
8 gentlemen, both the State and the defense have
9 rested their case. The next case of this
10 process will involve closing arguments and the
11 Court's instructions. And that would take us
12 well beyond 5:00 o'clock. And I don't want to
13 tax you all in that way. So what we're going to
14 do is break for the afternoon and resume in the
15 morning at 9:30 fresh with closing arguments and
16 the Court's instruction.

17 And in the meantime, there are matters
18 of law that the attorneys and I have to go over
19 that probably will take another thirty minutes.
20 So, in any event, we wouldn't start until close
21 to 3:30 which would take us -- really, actually,
22 the entire process would take us well beyond
23 5:00 o'clock. So, again, we'll begin in the
24 morning at 9:30 with closing arguments and
25 instruction.

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1 It is essential that you have no
2 interaction with anyone in or about the court
3 house and that you have no discussion about this
4 case among yourselves or with anyone else. I
5 know it might seem simple to discuss or innocent
6 to discuss what you've already heard. But to do
7 that would require you to process that
8 information, to draw conclusions based upon it,
9 and that, by its very nature, is deliberations.
10 And you're only allowed to do that once you've
11 heard the closing arguments, the Court's
12 instructions, and then, even with that, you're
13 only allowed to do that in your jury room among
14 you twelve for the deliberative process.

15 So I would ask that you guard
16 yourselves against any discussions of what
17 you've heard in terms of the evidence and the
18 testimony in this case.

19 Also, especially guard yourselves not
20 to be exposed to any media coverage. That
21 includes anything on the radio, television,
22 internet, and do not do any independent research
23 on the internet, as well as discussing your jury
24 service on any social networking sites such as
25 Facebook or LinkedIn or otherwise, or MySpace.

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1 There's so many now I've lost count of them.

2 You will return in the morning directly
3 to your jury room just as you've been doing
4 every day. And if you'll leave your notepads in
5 your seats, I hope you have a wonderful
6 afternoon. We'll see you in the morning at
7 9:30. Have a great evening.

8 (JURY OUT @ 2:57 P.M.)

9 THE COURT: You all can take your
10 seats. Give me one moment. I need for my
11 secretary to send something to me. I'm so
12 sorry. The fax machine said it was receiving
13 and it wasn't. Finally, it decided it wanted
14 to work.

15 I'll give the jury a general
16 instruction regarding their responsibility and
17 my responsibility, how they are to judge witness
18 credibility and believability. I'll give a
19 general instruction regarding expert witness
20 testimony. I don't think identification is
21 really an issue. Does everybody agree?

22 SOLICITOR WILLIAMS: Yes, Your Honor.

23 MR. VITETTA: Yes.

24 THE COURT: I'll give a general
25 instruction regarding the statement of the

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1 defendant which deals with the usual aspects,
2 Miranda, et cetera, that it's up to them to
3 determine whether the State has proven beyond a
4 reasonable doubt that the statement was made
5 voluntarily. And in addition to that whether
6 the statement was made at all and to what degree
7 they give that statement weight is solely within
8 their province if they determine that it's true
9 and that it was freely and voluntarily given.

10 I'll give them a general instruction
11 regarding direct and circumstantial evidence
12 from State v. Rappon. I'll give them a general
13 instruction that the charge, the arrest and the
14 indictment are not evidence, as well as a
15 general instruction on the presumption of
16 innocence.

17 I will charge *Victor v. Nebraska* on
18 reasonable doubt. Then I will instruct that
19 they cannot give the fact that -- a general
20 instruction of the failure of the defendant to
21 testify. I'll then instruct on the elements of
22 murder.

23 I assume, based on the defense's
24 opening argument, that they are requesting a
25 lesser-included instruction on voluntary

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1 manslaughter?

2 MR. VITETTA: Yes, Your Honor.

3 THE COURT: Does the State have any
4 exception?

5 SOLICITOR WILLIAMS: Yes, Your Honor.
6 We have searched it and have case law. We don't
7 think that this record supports the lesser-
8 included offense of voluntary manslaughter.

9 THE COURT: What facts do you contend
10 are present in the record that support an
11 instruction on voluntary manslaughter, Mr.
12 Vitetta?

13 MR. VITETTA: Thank you, Your
14 Honor. Your Honor, the fact of the statement of
15 the eyewitness, **E.H.** , who said that at
16 the time his father saw the telephone of the
17 victim with the telephone messages or the calls
18 or texts from the paramour, the alleged
19 paramour, he went berserk. Those were the exact
20 words in his statement. And I think that that
21 is sufficient provocation.

22 THE COURT: Well, sufficient legal
23 provocation, as defined by the law, is not
24 looking at a text message. Sufficient legal
25 provocation is when somebody provokes you to

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1 act. And words alone are never sufficient to
2 justify -- to rise to the level, no matter how,
3 you know, offensive they might be -- do not rise
4 to the level of sufficient legal provocation.
5 The actual definition is such must be of the
6 type that would make a person of ordinary reason
7 and caution become enraged and to lose control
8 temporarily. The provocation needed for
9 voluntary manslaughter must come from some act
10 of or related to the victim. And words alone,
11 however vulgar or insulting, are not enough to
12 be legal provocation. Where death is caused by
13 the use of a deadly weapon, the words must be
14 accompanied by some overt threatening act which
15 could have produced the heat of passion.

16 MR. VITETTA: Yes, Your Honor.
17 And I think ---

18 THE COURT: So I need to know what is
19 in the record that is an overt, threatening act
20 by the victim that would have risen to the level
21 of sufficient legal provocation?

22 MR. VITETTA: That's what I have,
23 Your Honor, that statement of E.H. , that when
24 he saw these messages on the cell phone of the
25 victim, that he went berserk.

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1 THE COURT: That's not an action on
2 her behalf. That's an action on his behalf.

3 MR. VITETTA: They were phone
4 calls to and from her, conversations with her.

5 THE COURT: It has to be a sufficient
6 legal threatening act towards the defendant,
7 which means like somebody trying to hit you,
8 somebody trying to kill you.

9 MR. VITETTA: This would be in the
10 context of the adulterous situation. I think
11 the law would give some more legally on that.

12 THE COURT: Have you got any cases to
13 support that? That adultery is sufficient -- or
14 alleged adultery, because there's been no proof
15 that there was a paramour. The only proof in
16 the record is that there was an uncle who took
17 care of the children while she was working.

18 MR. VITETTA: Yes. This was the
19 conversation. This was his state of mind that
20 comes from the conversation he was having with
21 his wife. It's in his statement as well where
22 he is there talking about her having an affair
23 with this man. And that's what caused him to go
24 berserk in his mind and in view of the victim's
25 son, his son, E.H.

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1 THE COURT: You're saying that them
2 having a discussion about the possibility of
3 adultery is an overt threatening act?

4 MR. VITETTA: I think that at the
5 moment it at least appeared to be corroborated
6 by telephone calls from her and to her.

7 THE COURT: You mean if I cheat on my
8 husband that's an overt threatening act which
9 he's justified to shoot me?

10 I mean I -- let's use a better example.
11 Ms. Williams comes up to you and says, "I can't
12 stand you, Mr. Vitetta." Is that an overt
13 threatening act rising to the level of you being
14 able to use a gun to shoot her?

15 And I'm not married, so that's a
16 hypothetical.

17 MR. VITETTA: I understand, Your
18 Honor. This is what I have.

19 THE COURT: I'm going to think about
20 it. I might charge it, just out of an abundance
21 of caution. I don't see any harm and it
22 eliminates an appellate issue. Yes?

23 SOLICITOR WILLIAMS: The only thing
24 that I would respectfully ask the Court to look
25 at is that the lead-up case, *State v. Cooley*.

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1 And in that case ---

2 THE COURT: I'm very familiar with
3 Cooley. And I'm very familiar with the case law
4 that says that it's not what he's told me. I
5 will say for the record, what he told me is not
6 a threatening overt act that rises to the level
7 of voluntary manslaughter. But I think I might
8 instruct it, just out of an abundance of
9 caution, because it eliminates an appellate
10 issue.

11 SOLICITOR WILLIAMS: Right. I guess
12 our concern would be is if they came back with a
13 verdict on voluntary, and then an appellate
14 court found that there wasn't, you know, just
15 based on Cooley. Then we would ---

16 THE COURT: Then they'd send it back
17 for retrial, wouldn't they?

18 SOLICITOR WILLIAMS: I think in this
19 they said it was double jeopardy, and they were
20 out of luck. So, again, I know Your Honor has
21 researched it and we respect the Court. But
22 there's also a brand new case we'd just ask the
23 Court to look at too which is *State v. Smith*.
24 It was decided last month. I'm sure the Court
25 is familiar with it. And it talks about looking

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1 at all of the surrounding circumstances. And
2 considering the fact that the defendant himself
3 said that they had discussed this for days and
4 days and days, there's -- and there's not even
5 really a conclusive evidence of heat of the
6 moment. And he needs heat of the moment and he
7 needs sufficient legal provocation. So we would
8 just respectfully ask the Court to consider not
9 charging the lesser, in light of Cooley and
10 Smith. Thank you, Your Honor.

11 MR. VITETTA: Your Honor, since
12 I'm asking for the charge, clearly the reason
13 for the problem is because the defense objected
14 to the charge.

15 THE COURT: Yeah, I'm familiar. ---

16 MR. VITETTA: So that's the big
17 difference here.

18 THE COURT: I'm not aware of the
19 State ever appealing a guilty verdict. I don't
20 they have standing to appeal it.

21 SOLICITOR WILLIAMS: Your Honor, I
22 think what happened was the State did want
23 voluntary. But then when the defendant
24 appealed, the Court came back and said you know
25 what, you shouldn't have done that. Because

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1 he's not guilty of voluntary. It should have
2 never been charged. But now you can't retry him
3 for murder.

4 MR. VITETTA: The defendant didn't want
5 a voluntary charge. They wanted involuntary.
6 Here, I want a voluntary charge, so that's the
7 difference. Because they were afraid of what
8 exactly what happened and he'd get convicted of
9 voluntary and get that much time. And they
10 wanted the time for the involuntary.

11 SOLICITOR WILLIAMS: But regardless,
12 I don't think they could retry him for murder.

13 THE COURT: Clearly, it was the
14 defendant's actions, not the victim's actions
15 they were saying did not rise to the level of
16 sufficient legal provocation. You know, all of
17 these cases are fact-driven. The Court is
18 required to charge the law reflected by the
19 facts, you know, liberally construed, so to
20 speak. And whatever, you know -- whatever the
21 facts support, the Court is supposed to instruct
22 the accurate and prevailing law regarding that
23 issue. And I'm going to look at State v. Smith
24 again, but I don't think factually it's the same
25 as this case. I've read it, but I need to go

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1 back and look at the facts.

2 But all these cases are factually
3 driven. And I asked Mr. Vitetta a very specific
4 question for a very specific reason. Because I
5 have the benefit of listen to a case completely
6 objectively. I'm probably the most
7 dispassionate person involved. I'm not an
8 advocate, so I listen very intently to see what
9 the facts are as they are presented. Because
10 it's my job to make sure that all the bases are
11 covered and something's not presented to the
12 jury that is not addressed by the law so that
13 they can apply the law to the facts as they find
14 them.

15 And that's why I specifically asked him
16 what evidence in the record was there of
17 sufficient legal provocation to justify an
18 instruction of voluntary manslaughter. Frankly,
19 I don't think there were any overt acts such
20 that rose to the level to be threatening, which
21 could have produced sufficient heat of passion.
22 I don't think that there's any evidence that
23 there was not enough time for an ordinary person
24 unable to coolly reflect such that it would have
25 produced an uncontrollable impulse to do

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1 violence.

2 You know, simply being angry is not
3 sufficient legal provocation, no matter what
4 someone does to you. Sufficient legal
5 provocation is when somebody threatens your life
6 such that you, in the heat of that moment -- or,
7 you know, along those lines, such that you
8 become so enraged that you use deadly force and
9 you take that person's life.

10 Usually, that comes up when you've got
11 the shootout at the O.K. Corral or a club.
12 That's usually when it comes up most often. And
13 those, of course, are vernacular terms that we
14 generally use when young people, especially, are
15 at a club or something and they start talking to
16 one another and start using derogatory terms
17 with one another. And the gunshots start flying
18 and, for whatever reason, usually that's when
19 involuntary manslaughter comes up.

20 Or when someone says, you know, 'this
21 person threatened me and I shot him because I
22 got so enraged by this' or 'I was trying to
23 protect someone else', or it rose to the level
24 of 'me not being able to cool off and I had to
25 use deadly force.'

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1 I'm going to think about it overnight.
2 I'm probably still inclined to instruct it, just
3 to be on the safe side. Because I think it -- I
4 always look at it from the perspective of having
5 a clean record. And there has been testimony
6 that he was angry when he shot her. But I don't
7 really think there's any evidence of sufficient
8 legal provocation. But I'm going to think about
9 it.

10 The evidence is that it was as
11 premeditated act. But it's always within your
12 province to argue that. It's always within his
13 province to argue the opposite, and to do that
14 effectively.

15 So I probably may instruct it. I'll
16 see. I'll think about it over the evening and
17 do a little reading and see how I feel about it.
18 But to be on the safe side -- worst-case
19 scenario is that I'm going to instruct it.
20 Certainly, involuntary manslaughter would not be
21 appropriately instructed. It's not supported
22 factually by the record in any manner
23 whatsoever, and the Court would not consider an
24 instruction on involuntary manslaughter.

25 And involuntary usually sometimes comes

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1 up in the context when somebody catches their
2 spouse in a compromising position. That's not
3 what's happening here. There are a couple of
4 cases where that was the fact. And usually it's
5 boyfriend-girlfriend. It's usually not husband
6 and wife.

7 I would then instruct on the form of
8 the verdict. Would there be any other requests
9 to charge from the State?

10 SOLICITOR WILLIAMS: No, Your Honor.

11 THE COURT: From the defense?

12 MR. VITETTA: Thank you, no.

13 THE COURT: Any exceptions to the
14 charges proposed other than what we've already
15 discussed from the State?

16 SOLICITOR WILLIAMS: No, Your Honor.

17 THE COURT: From the defense?

18 MR. VITETTA: None.

19 THE COURT: Please make sure Vivian
20 (court reporter) has all of the exhibits before
21 y'all leave. And make sure you get here in
22 sufficient time in the morning to go ahead and
23 set up. I assume the State's going to open and
24 close?

25 SOLICITOR WILLIAMS: Yes, Your Honor.

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1 THE COURT: I'll see y'all in the
2 morning at 9:30.

3 MR. VITETTA: Thank you, Judge.

4 (COURT IN RECESS)

5 (TRANSCRIPT CONTINUED NEXT PAGE)

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1 MARCH 17, 2011 9:30 A.M.

2

3 (DEFENDANT PRESENT)

4 THE COURT: Good morning. Murphy's
5 Law -- if it can happen, it will. I went out to
6 start my car this morning, and it would not
7 start. You all, I'm sure, know the feeling. So
8 I appreciate you all being so patient with me,
9 and I apologize. My car wouldn't start. Is the
10 State ready to proceed?

11 SOLICITOR WILLIAMS: Yes, Your Honor,
12 the State is ready.

13 THE COURT: Is the defense ready to
14 proceed?

15 MR. VITETTA: Yes, we are.

16 THE COURT: I am going to, as I have
17 indicated to you -- did y'all check all the
18 exhibits and make sure everything is in place as
19 well?

20 SOLICITOR WILLIAMS: Yes, Your Honor.

21 THE COURT: Mr. Vitetta, did you
22 check the Exhibits?

23 MR. VITETTA: Yes, thank you,
24 Judge.

25 THE COURT: You're welcome. I'm

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1 going to charge involuntary manslaughter,
2 although I think there really is very scant
3 evidence of the element.

4 I'm going to instruct the lesser-
5 included offense of voluntary manslaughter,
6 although there is very scant evidence of
7 sufficient legal provocation. I'm going to
8 instruct it out of an abundance of caution..
9 Because there was some -- very little evidence,
10 but there was some evidence that the parties had
11 been engaged in some level of argument leading
12 up to this event. And while it is -- I am of
13 the opinion that it really does not rise to the
14 level of what we would generally consider
15 sufficient legal provocation, I think it could
16 be argued very effectively by both parties
17 regarding their theory.

18 Of course, the State would argue that
19 it is not sufficient legal provocation. That
20 words alone, no matter how offensive, never rise
21 to that level. And that certainly anything that
22 they could have possibly to the defendant did
23 not rise to the level that would be considered
24 threatening such that would justify the use of a
25 dangerous instrumentality.

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1 I think certainly the defense can argue
2 the contrary position of that. But I think
3 overall, the Court's instruction regarding
4 sufficient legal provocation is what is
5 applicable, and the jury will be guided by that.

6 Is there anything further. Did y'all -
7 - and I apologize. I meant to show this to you
8 all yesterday, which is the verdict form. Do
9 you all need to see it? It's the standard
10 verdict form which says "we, the jury, by
11 unanimous consent, find the defendant guilty of
12 murder," or as to the lesser-included offense,
13 guilty of voluntary manslaughter, or not guilty.
14 And then there's a place for the bailiff (sic)
15 to sign and date the form. Is there any
16 exception to the form of the verdict?

17 SOLICITOR WILLIAMS: No, Your Honor,
18 not from the State.

19 THE COURT: From the State?

20 SOLICITOR WILLIAMS: Not from the
21 State, Your Honor.

22 THE COURT: From the defense?

23 MR. VITETTA: No, Your Honor.

24 THE COURT: Do y'all need to look at
25 it? I'm going to staple it to the indictment.

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1 MR. VITETTA: I don't need to see the
2 verdict form. Judge, with regards -- if you're
3 going to charge the voluntary, would that also
4 require the King charge as well? Do you
5 normally do that?

6 THE COURT: I don't generally do King
7 charges. They're optional. I don't think
8 they're mandatory. And I think sometimes a King
9 charge will end up being more confusing.

10 MR. VITETTA: Okay.

11 THE COURT: I will instruct the jury
12 that he is charged with murder. And if they
13 find that the State has failed to prove beyond a
14 reasonable doubt the elements of murder, they
15 can also consider the element of voluntary
16 manslaughter.

17 MR. VITETTA: Okay. Thank you, Judge.

18 THE COURT: You're welcome. There's
19 something else. You know, I had originally
20 thought about charging a very brief standard
21 charge on the testimony of children. And I did
22 not print it yesterday, and so I neglected to go
23 over it. And I didn't know if the State had any
24 preference or the defense had any preference
25 regarding that.

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1 SOLICITOR WILLIAMS: Your Honor ---

2 THE COURT: It just says during this
3 trial you have heard testimony from a child -- I
4 would say "from children." Where a witness is a
5 child, you must determine, as with any witness,
6 whether that testimony is believable. In
7 deciding the believability you may consider not
8 only matters that I've already discussed with
9 you, but you may also consider the age of the
10 child, the child's ability to observe and
11 remember facts, and the child's ability to
12 understand and answer questions. Because young
13 children may not fully understand what's
14 happening, it is up to you to decide whether the
15 child understood the seriousness of appearance
16 as a witness at this criminal trial, and whether
17 the child understood the questions, whether the
18 child's memory is correct, and the child
19 understands the difference between lying and
20 telling the truth. In addition, young children
21 may be influenced by the way that questions are
22 asked. It is up to you to decide whether the
23 child understood the questions asked.

24 And I left it out yesterday because I
25 originally said that when we started the trial,

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1 because I knew children were testifying, but I
2 quickly realized that the children in this case
3 are a little more mature and are very
4 articulate. And so I eliminated that, but I did
5 want to bring it to y'all's attention that I had
6 contemplated instructing it, and I had just
7 inadvertently left out talking about it on
8 yesterday.

9 SOLICITOR WILLIAMS: Your Honor, the
10 State's position on that is that we would
11 object. I think both of the children were over
12 the age of twelve.

13 THE COURT: And I think this probably
14 is -- I haven't look at this case that this is
15 based on. But this probably is for a younger
16 child. And, actually, after I just read it out
17 loud -- and it comes from AmJur. But after I
18 read it out loud, it kind of really just repeats
19 what I say about the other witnesses, you know,
20 how you judge witness credibility, which is the
21 witness's opportunity to observe the things
22 about which the witness has testified about,
23 their recall about it, whether there was any
24 motive or prejudice. In a way, I guess, it's
25 really kind of cumulative. Mr. Vitetta?

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1 MR. VITETTA: It's up to you,
2 Judge. I really have no preference.

3 THE COURT: After I read it out loud
4 I think it's cumulative. I'm not going to
5 instruct it.

6 Is there anything else before we
7 proceed from the State?

8 SOLICITOR WILLIAMS: Just, briefly,
9 Your Honor, we understand that the Court has
10 made its ruling and we respect that. We would
11 just -- just for the record, we would just ---

12 THE COURT: The Rules provide that
13 once the Court has ruled there's to be no
14 further argument. You've already made your
15 exception, and it's noted.

16 SOLICITOR WILLIAMS: Okay, thank you,
17 Your Honor.

18 THE COURT: You're welcome. And it
19 is preserved.

20 Now, the State is going to open and
21 close. Is that correct?

22 SOLICITOR WILLIAMS: Your Honor, we
23 are going to do a brief -- we're going to do one
24 close and briefly go into the law.

25 THE COURT: Yeah, that's your

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1 opening.

2 SOLICITOR WILLIAMS: Yes, Your Honor.

3 THE COURT: Sometimes the State
4 waives that. And I just wanted to make sure you
5 plan to open and close.

6 SOLICITOR WILLIAMS: Yes. I think
7 the defense gets the last close, though.

8 THE COURT: Are you sure of that?
9 Because I've forgot.

10 SOLICITOR WILLIAMS: Yes. I wish it
11 wasn't.

12 THE COURT: I completely forgot about
13 that. So you do get the last argument. Okay,
14 then there is no open and close for the State.
15 You will just simply give your closing argument
16 and then Mr. Vitetta will give his.

17 Okay, are we ready?

18 SOLICITOR WILLIAMS: The State is
19 ready, Your Honor.

20 THE COURT: Is the defense ready?

21 MR. VITETTA: Yes, Your Honor.

22 THE COURT: Please bring in the jury.

23 (JURY IN @ 10:30 A.M.)

24 THE COURT: You may be seated. Good
25 morning, ladies and gentlemen. I hope that you

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1 all had a pleasant evening. I owe you all a
2 profuse apology. I had the best-laid plans. I
3 got in my car this morning and it would not
4 start. So I had to send out an SOS to the guy
5 that repairs my car, my secretary and everybody
6 else. So he had my car towed, and she delivered
7 me to the courthouse. So I appreciate you all
8 being so very patient with the Court. I just
9 shared with the deputy, my daddy always says,
10 "If it's manmade, it will break. So you should
11 just expect that." But I guess you know we're
12 so used to instant gratification that you just
13 get in there and you turn the key and it starts.
14 So I was -- it threw my schedule a little off
15 this morning. So please know that I do not take
16 your time for granted. I truly appreciate you
17 all being so very patient with the Court.

18 As I indicated to you on yesterday,
19 both the State and the defense have rested their
20 case. We have now reached the stage of the
21 trial where you will hear closing arguments and
22 then the Court's instruction on the law. You
23 will hear from the State followed by the
24 defense, after which I will instruct you. I
25 would ask that you give the attorneys your

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1 undivided attention.

2 The State may proceed when it's ready.

3 SOLICITOR WILLIAMS: Thank you, Your
4 Honor.

5 THE COURT: You're welcome.

6 SOLICITOR WILLIAMS: May it please
7 the Court. Counsel.

8 Good morning. I want to begin by
9 thanking all of you. We do this for our
10 profession. But we recognize that it is an
11 enormous sacrifice for you to be here. Some of
12 it is very tedious and boring. And I'm sorry
13 about that. But we appreciate your service and
14 the attention that you've paid to all the facts
15 in the case.

16 What I'd like to do is -- I'm going to
17 brief, because I know you've heard a lot of
18 testimony and you're probably anxious to go and
19 deliberate.

20 But I'd like to just go through a few
21 items, some testimony you've heard and a few of
22 the physical items, and then just go through the
23 witnesses very briefly, just to remind you.
24 Because we began this process a couple of days
25 ago and sometimes at the end you kind of forget

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1 what the first person said.

2 So let me begin by telling you that if
3 I tell you something about the law that differs
4 at all from what the judge says, the judge is
5 the authority on the law. You are the sole
6 judges of credibility and the facts in the case.
7 But the judge tells you what the law is. So if
8 I unintentionally say something that conflicts
9 with what she says please, please give deference
10 to the judge and to the Court..

11 The judge is going to give you a lot of
12 instructions at the end of this. One of them is
13 going to be about reasonable doubt. Reasonable
14 doubt is not what I say it is. It's not what
15 Mr. Vitetta says it is. It's what she says it
16 is. I believe she will tell you that reasonable
17 doubt would cause a person to hesitate. But
18 reasonable doubt is not all doubt. There is
19 nothing we know beyond all doubt.

20 If you believe he is guilty beyond a
21 reasonable doubt, reasonable doubt, then you
22 must find him guilty. So keep that in mind.

23 In addition to that, she is going to
24 give you a definition of malice. The definition
25 of malice in the law, like a lot of things in

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1 the law, doesn't always make sense. It is a
2 wicked heart. It is someone that does a cruel
3 act without any justification. And that's what
4 this really all boils down to, is malice. If
5 you find that when Tito Harris entered that home
6 at 5:00 in the morning, and while his wife was
7 sitting on the floor with their child who she
8 pushed away, and he pointed a gun three feet
9 from her head and shot her in the head and
10 killed her. If you find that that's malice, he
11 is guilty of murder. And I submit that all of
12 the evidence you heard about Tito Harris, if
13 that's not malice, what is? What is?

14 This is a woman he was married for
15 years. His child, by his own statement, is in
16 the room, and he shoots her in the head in front
17 of the child. And why?

18 I want to also bring your attention to
19 his statement. In that statement what he says
20 about Shantay Harris, you don't have to take
21 that as true. He has a problem when he gets to
22 the police station. The problem is he has
23 killed someone and people have seen him. So
24 he's got to say something. So what he says is
25 -- the first thing he says, it wasn't

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1 premeditated. And then he starts talking about
2 how she was having an affair, she was doing
3 this, she was doing that, as if that makes a
4 difference.

5 There is absolutely no evidence that
6 you have heard that Shantay Harris was having an
7 affair with his uncle, except for his paranoid
8 imagination. But what if she was? Would it
9 matter? If your wife is having an affair, do
10 you get to shoot her in the head in front of
11 your child and then walk out of the room totally
12 collected. "It's not my fault, it's hers."

13 Is there anything in this case more
14 cruel than that? To watch your mother get shot
15 in the head by your father and hear him go,
16 "It's her fault," and walks out.

17 Tito Harris would have you believe at
18 one point in his statement that, you know, 'I
19 just don't know what happened. The gun just
20 went off.' But previously in his statement --
21 and you were following along -- Detective Roach
22 says 'was she sitting or standing?' Sitting.

23 'How far away were you?

24 Oh, about four feet.

25 Where was E.H. ?

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1 *Oh, he was about a foot away.'*

2 And there's something else I want you
3 to think about. **E.H.** says that he gets in her
4 lap. He's trying to protect his mama. And when
5 he's saying Marcus, Marcus, Marcus, **E.H.** 's
6 saying 'it's just work.' 'She just works' -- he
7 is trying to protect his mother. And she pushes
8 -- she sees that gun. She pushes **E.H.** out of
9 her lap. And after she sees the gun she knows
10 it's her last words. She looks at her child and
11 says "I love you. I love everybody." So she
12 has time to say that.

13 And then the gun comes right -- three
14 feet -- think about that. A yardstick -- away
15 from her head, enters the temple and lands in
16 the back of the skull.

17 And you heard the medical examiner say
18 that that was consistent with someone standing
19 over you and shooting you at close range. He
20 would have you believe that the gun just went
21 off itself. 'It just went off.'

22 You heard what the expert said about
23 that gun. It cannot go off. He cocked it and
24 then he had to pull the trigger. By his
25 statement he cocks it and sticks it in pocket

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1 and then pulls it out. That's malice.

2 He shoots her execution style in front
3 of his child. And then his other child has to
4 come in and help her sister drag the body off
5 the wall so she could administer CPR. He tells
6 Detective Roach he's not sure if anyone got hit.
7 'The gun just went off.'

8 When he left that room his wife was
9 leaned up against the wall with blood splattered
10 on the wall and coming out of her head. This is
11 a disturbing picture, and you saw it up there.
12 And it was kind of hard to see. But that's what
13 she looked like after he shot her, after they
14 pulled her off that box.

15 Even though he's not sure that anyone's
16 hit, he doesn't seem concerned. He's not
17 worried about whether or not someone got hit.
18 You'd think he would call 9-1-1 if it just
19 accidentally went off. He gets in the hall and
20 says, "She's gone, you can't bring her back to
21 life," and calmly walks out of the house.

22 Every single person that came into
23 contact with Tito Harris that morning describes
24 him in almost the same way. The family, the
25 cops, the detective -- cool, calm and collected.

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1 When he sees Detective Roach he says "hey,
2 Roach, hey buddy" like nothing's happened. He
3 has just shot a woman in the head.

4 And you're going to see -- all of this
5 evidence can go back with you. And I just want
6 to bring your attention to a couple of pieces of
7 evidence that you saw during this trial. This
8 is Shantay Harris's shirt. Soaked with blood.
9 Ironically, they were both wearing white shirts
10 that morning. Tito Harris's shirt. What's it
11 got on it? Gunpowder.

12 I also want to bring your attention to
13 one other thing. For all his talk about Marcus,
14 if you look at those phone records, she talked
15 to Marcus twenty times in five days. He's
16 helping her with the kids. He's helping her
17 babysit the kids. Tito Harris called her
18 twenty-two times in fifteen minutes, and then he
19 decides to drive down. He is angry. She is not
20 picking up his calls any more.

21 He also says in his statement that she
22 tells him, "I don't want to be with you alone
23 without the kids." He's only got supervised
24 visitation, so she's got to supervise. And says
25 "I just don't want to be alone with you without

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1 the kids." She'll be with him with the kids so
2 he can have his visits. But she doesn't want to
3 be alone with him anymore.

4 You've heard testimony that she was
5 filing for divorce. He was not happy.

6 So let's just go through some of the
7 witnesses. As you know, the State has the
8 burden of proof in this case. We just have the
9 unlawful killing of another with malice
10 aforethought, either express or implied. He
11 shot her in the head and she died. The
12 circumstances surrounding this proves malice.

13 What is malice? It is something which
14 springs from wickedness, from depravity, from a
15 heart devoid of social duty and fatally bent on
16 mischief. The deliberate intentional doing of
17 an act without just cause or excuse. Even if
18 you believe him, does he get to shoot her? If
19 you find out your wife is unfaithful -- even if
20 we take his version, does that justify shooting
21 her in front of your child?

22 It's just mean. That's what it comes
23 down to. That's what malice is. It's a mean,
24 deliberate, wicked act.

25 Now, you heard -- you will hear the

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1 judge instruct you about another charge called
2 voluntary manslaughter. If you all decide he is
3 not guilty of murder, you can then consider
4 voluntary manslaughter. This is a murder case.
5 This is not a manslaughter case.

6 Manslaughter is the heat of passion.
7 It's not passion because he feels passionate
8 about it. He has to be able -- he is in the
9 middle of a fight, a struggle, and just thinks
10 about it in a second and takes the gun out.
11 It's not someone that walks over, grabs a gun,
12 cocks it, puts it in their pocket and then takes
13 it out and kills somebody.

14 Even if there was heat of passion, it
15 would have to be heat of passion and legal
16 provocation. There is no legal provocation in
17 this case. You can search the evidence and
18 search the record. There is nothing that
19 amounts to legal provocation. Nothing. Words
20 alone are not legal provocation. Someone would
21 have had to threaten him, come at him, try to
22 hurt him. You heard the medical examiner say
23 there were absolutely no wounds on Shantay
24 Harris, offensive, defensive. There was no
25 struggle.

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1 The only time he even suggested a
2 struggle is when he's trying to get her phone
3 because he wants to prove that she's having an
4 affair with his uncle. And as I said, heat of
5 passion -- you would have to be at the point
6 where you couldn't cool off. That's the kind of
7 passion we're talking about.

8 This is a man that was very cool, calm
9 and collected right after he murdered his wife.
10 It's something he thought about the whole three
11 hours that he drove down here. And, again,
12 legal provocation -- it just doesn't exist in
13 this case. This is a murder case.

14 Let's just go through very briefly some
15 of the evidence:

16 You heard the 9-1-1 call from Tonia
17 Watkins. It's heartbreaking. She's sitting in
18 a closet. She's scared to death. And why is
19 she so scared? A, he's not supposed to be at
20 the house. There's a DSS case and he's only
21 allowed to have supervised visitation with those
22 children. Also she's asked has he hurt her
23 before? I don't know if you heard that. The
24 9-1-1 person says has he hurt her before, and
25 she said yes. So that's why she is so afraid,

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1 and that's why she's hiding in the closet. She
2 also said "my sister screamed and told me to
3 run." What does that tell you? That at some
4 point during this whole thing when he pulls out
5 the gun, she has time to try to warn other
6 people in the house.

7 Tonia's testimony -- she talks about
8 the angry calls that she was getting from Tito
9 Harris before that morning. And you're going to
10 look at -- you'll have all the evidence back
11 there. Exhibit 38A goes through all the
12 incoming and outgoing calls from Shantay Harris
13 and from Tito. And you can see that he was
14 calling Tonia. He was calling Shantay. And as
15 it gets closer and closer to the murder, he's
16 calling more and more frequently. And what did
17 she tell you about the tone of those calls?
18 Angry, threatening. He's not happy about the
19 arrangement with the kids that DSS has. He's
20 not happy about Marcus watching those kids, and
21 he's not happy about her finally getting out of
22 that marriage. Mad that she was leaving him, as
23 I just said.

24 The other kind of chilling thing about
25 this whole thing, as I said before, is how he

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1 acts after the murder. Normal, blank, normal.
2 He's not upset. He's just very cool and calm.
3 The only thing I want you to think
4 about in this case is that you heard Tonia and
5 you heard E.H. say where that gun was kept.
6 That gun was kept in a basket downstairs in the
7 kitchen. Then you heard them both say that
8 after she was killed the baskets were moved. I
9 submit to you that he did not get that gun out
10 of the closet. And there's two reasons that you
11 can come to that conclusion. One, because they
12 told you that's not where the gun was kept. The
13 baskets were askew. Also -- and I'm going to
14 show you a bigger slide of this -- if you look
15 at State's 8, this is a picture of that closet.
16 I'm going to show to you in a minute. If he got
17 the gun from either this box -- because he says
18 in his statement it's either a shoebox, a tissue
19 box a gun box -- or the shoebox, he took a lot
20 of time to place it very neatly back in the
21 closet. He would have you believe that he
22 rushed into the closet because he got so angry
23 about Marcus's name being on the phone, grabbed
24 the gun and then, in the heat of passion, he
25 killed her.

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1 These are on the top shelf. He would
2 have had to get the gun out, neatly place it
3 back and then cock the gun and then put it in
4 his pocket. So if he got it out of the closet,
5 he had a lot of time to think about what he was
6 doing. He either got that gun from that basket
7 downstairs, which means that he went into the
8 room with the gun already, or he looked for it
9 down there and then got it from the closet, and
10 then took those boxes and put them back.

11 So think about that as you evaluate his
12 version of events. She was hysterical which is
13 a stark contrast from him. Think about her
14 voice on the 9-1-1 tape. It kind of brings you
15 back to what that scene was really like. She
16 tries to do CPR on her sister. Again, that's
17 just heartbreaking.

18 He tells Tonia at the scene she's gone.
19 "She's gone." And then when he's talking to
20 Lieutenant Roach he tries to pretend that he
21 doesn't even know if anyone's been hit by the
22 bullet. It's just not believable. And then she
23 is stuck with calling her sister, on top of
24 that.

25 There are two calls on there right at

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1 the time of the murder to Marcus. That is the
2 defendant going through her phone saying
3 "Marcus, Marcus." And he must have accidentally
4 called her, because that's the exact time of the
5 9-1-1 call and when Shantay Harris is being
6 murdered. The next call is to April, her sister
7 and Dennis, her brother. She has to grab her
8 sister's phone which is next to her body.

9 Again, the phone records, those
10 excessive calls. There's twenty-two calls in
11 eighteen minutes. He's calling over and over
12 again. He is upset. She is not picking up the
13 phone. And that's three hours before the
14 murder.

15 Those missed calls corroborate the
16 testimony that you heard from Tonia. As I just
17 said, it's kind of eerie that he gets the phone
18 and looks for Marcus's name and he must have
19 accidentally called that number. Because he has
20 called almost at the same time that the murder
21 was occurring.

22 He also tells Lieutenant Roach that he
23 left North Carolina bout 1:30. That's pretty
24 much exactly when the last call is to his wife.

25 E.H. -- he's uncomfortable

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1 testifying. Think about this. He gave his
2 statement two years ago, an 11-year-old child,
3 and now he's got to get up here and remember all
4 this stuff that's very traumatic. And there's
5 one very important detail. When he gave his
6 statement two years ago he didn't have to sit in
7 the room and look at his dad. He was scared to
8 death of him.

9 Again, he tells you exactly where the
10 gun's kept, in the basket downstairs. He tells
11 you how he slapped his mother and jumped on her,
12 pushes her off the bed. Says that in his
13 statement too. That's consistent with his
14 statement. Tells about getting the phone and
15 finding Marcus's name.

16 If you remember from the defendant's
17 statement, he tells Lieutenant Roach that he had
18 been calling her for days and accusing her of
19 this affair. But he didn't have any evidence
20 yet. It wasn't until he got into the room and
21 then he got the evidence, which was the phone.
22 And that's something that he tells Lieutenant
23 Roach in his statement.

24 He tells him "my mom works all the
25 time." That's when he gets in her lap. He says

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1 his mother tried to call 9-1-1. And he is
2 adamant -- he said it in his statement and he
3 said it again, that his daddy did not go to the
4 closet. He's in his mom's lap and she pushes
5 him out so that he doesn't get hit when she sees
6 the gun. The defendant says the same thing.
7 Lieutenant Roach says, 'Was E.H. in her lap?'
8 He said, 'Well, he was' and then 'he wasn't.'
9 He says he pulls the gun from his pocket.
10 That's exactly what the defendant says.

11 And then he tells his son -- this is
12 what he says after he shoots her, "it's her
13 fault, not mine."

14 He says his dad was smirking. And
15 that's the last words of Shantay Harris, "I love
16 you. I love everybody."

17 J.W. , he said there's six children in
18 the home, ages five to twelve. And he brings a
19 loaded weapon up there to shoot his wife and all
20 those children are in that room afterwards
21 watching Tonia Watkins try to bring her sister
22 back to life as she bleeds out on the floor. He
23 hears his mom screaming. He sees E.H. crying
24 and he hears the defendant say she had no
25 business doing that. Can't bring her back to

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1 life.

2 And how does he describe him when he's
3 saying this? Blank, no emotion. Again, he
4 wrote his statement two years ago, so his memory
5 was refreshed by his statement.

6 Now we get to the police officers that
7 come to the scene. You've heard how the family
8 described Tito Harris. The first one is Jamie
9 Taylor. He encounters a child who answers the
10 door and says "my dad shot my mom." The
11 defendant, who says the gun just went off
12 accidentally, doesn't call 911, doesn't wait, he
13 just walks out of the house, gets in his car and
14 leaves.

15 And then the officer says he acted like
16 he was just going to work. This is minutes
17 after the murder, and he's cool and calm and
18 collected.

19 Officer Scarborough, he gets out of the
20 car and his hands are already up. You saw that
21 in the video. He knows what he did. He says
22 his demeanor is nonchalant. He tells him
23 exactly where the gun is, although he kind of
24 tries to tell Lieutenant Roach he doesn't
25 remember any of the details. He knows exactly

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1 where the gun is because he knows exactly what
2 he did. The gun is in his pocket that fired the
3 bullet that was found in Shantay Harris's head.

4 You heard the EMS. She arrives at
5 5:42. The victim is ashen. She has lost a lot
6 of blood. She's flatlined. She's gone.

7 Detective Norvell, he finds the box
8 where the gun is and the gun receipt in there is
9 for a .22-caliber weapon, and it belonged to
10 Tito Harris. And, again, as I said, look at
11 that picture. It flies in the face of what he
12 says happened. That gun box and the shoebox are
13 very neatly placed on the top shelf. And that's
14 another view of that picture.

15 Unfortunately, they didn't take
16 pictures of where the baskets are. But you
17 heard testimony from two witnesses about that.

18 Lieutenant Dean Kokinda, he does the
19 crime scene photos and he described to you that
20 picture with all the blood. And he said there
21 was also blood spatter behind the victim. He
22 gets GSR from the victim's hands. There's none
23 on her hands. She didn't struggle with him.
24 She didn't fight. She didn't threaten. She was
25 sitting down.

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1 All right. Lieutenant Roach gets the
2 statement from the defendant. And I think you
3 heard his voice. It was very hard to hear
4 everything he was saying. And I was glad that
5 you had that transcript to follow along. But
6 just a few highlights on that, because it is
7 pretty amazing, all that he tells him.

8 Right after the murder, "Roach, how you
9 doing, buddy?" It's like nothing's happened.
10 The first thing he says when he sees him in the
11 police car is he's already trying to justify his
12 behavior. He knows exactly what he's doing. He
13 claims that the gun just went off. But, again,
14 shoots her at close range in the head. And the
15 medical examiner said three feet or less. And
16 that was based on the stippling around the
17 wound. By his own account he says four feet.

18 And he says in his statement -- "Were you
19 pissed? You were pissed, weren't you?" He
20 goes, "not as pissed as when I got in there
21 because I didn't have the evidence yet." 'I
22 didn't see Marcus's name in that phone', is what
23 he means, as if that would make a difference or
24 justify what he did.

25 He says two or three times I remember

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1 getting the gun. I remember cocking it and I
2 remember putting it in my pocket. He thinks
3 about it some more, argues some more, pulls the
4 gun out and shoots her. He says I cocked it as
5 soon as I got it because I was mad.

6 Again, this is just -- he claims he
7 didn't even know she was shot. But he describes
8 the murder in great detail to Lieutenant Roach,
9 where everybody was. He had to put an X on
10 where everybody was standing in the room. And
11 that's just the point about whether or not he
12 got the gun from the closet or the basket
13 downstairs. And you know what? Even if he did
14 get the gun from the closet, it doesn't matter.
15 It's still malice. You know, I don't think it's
16 true, but if he pulled that gun from the closet
17 and cocked it and put it in his pocket and then
18 argued with her some more and then shot her in
19 the head, it's still malice. It doesn't really
20 matter.

21 We talked about the fact that he tried
22 to make it sound like it all happened so fast.
23 But she's got time to push her child out of her
24 lap and give him her last words.

25 I told you a little bit about that

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1 before. He's infuriated that she had decided
2 that she didn't want to be in this relationship.
3 And he even talks about how it was a hard pill
4 to swallow that she didn't want to be alone with
5 him any more.

6 All right, let's get to the SLED
7 witnesses. John Roberts was the GSR expert.
8 No GSR, no gunshot residue on Shantay's hands.
9 I hope you noticed that he went in the bathroom
10 and washed his hands before they could do the
11 gunshot residue kit on his hands. So that's why
12 there was no gunshot residue found. But they
13 did find gunshot residue on his shirt, which is
14 consistent with him firing the weapon.

15 Suzanne Cromer was the firearms expert.
16 She confirmed that the bullet matched the gun.
17 And she also said some very important things
18 about that gun. Because that gun's so tiny, it
19 looks so non-threatening. But she talked about
20 the gun and how it was in good working order,
21 how the hammer blocked worked. That type of
22 gun, you have to pull -- you have to cock it and
23 then you have to put three and a half to three
24 and three-quarter pounds of pressure on the
25 trigger. It can't just go off. That was the

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1 significance of her testimony. It's not the
2 kind of gun that just goes off.

3 You heard from the medical examiner.
4 No big surprise here. Single gunshot wound to
5 the head. The stippling indicates three feet or
6 less. As I said, the bullet enters the right
7 temple area from above and lands right back in
8 the back of the head. It turned her brain to
9 mush. The largest fragment was retrieved from
10 the victim's head and matched to the gun. And,
11 again, no offensive wounds and no defensive
12 wounds. No struggle. She never had a chance.
13 She also said sometime dark skin doesn't show
14 bruises.

15 So E.H. testified and he said in his
16 statement that he had slapped his mom and jumped
17 on her. There was no evidence of bruises, but
18 that really doesn't mean that she did not have
19 them.

20 The last witness you heard from was
21 T.H who woke up to loud voices. Heard
22 his mother screaming and what does he hear his
23 dad say? "Shut up." Hears his dad laughing.
24 Laughing. Knew his dad was mad at his mother.
25 Called 9-1-1 and said "my mother's dead."

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1 Where was the gun? If that gun wasn't
2 taken by him from the basket downstairs, he sure
3 looked for it.

4 Now, the State's evidence proves that
5 he's guilty of murder. He drove three hours
6 from North Carolina after these arguments that
7 go over the course of three or four days,
8 especially right at the end. He's very angry
9 with the victim. The defendant's story is
10 pretty much the same. Even if you believe the
11 defendant's story, he's still guilty of murder.

12 The calls just escalate over time, and
13 that is obvious when you read the phone records.
14 The only difference between the State's evidence
15 and the defendant's story is that the State
16 contends, based on what E.H. said, who was
17 there, that he hit her. He claims he didn't hit
18 her and he didn't push her off the bed. But he
19 doesn't deny that he shot her.

20 The State's evidence would bear out
21 that he told witnesses at the scene that she's
22 gone and that he looked for the gun downstairs
23 in the basket. That's the only difference
24 between his story and the statements.

25 He would have you believe that he

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1 doesn't even know that she's been shot. And he
2 also says he got the gun from the closet.
3 Wherever he got the gun, it doesn't matter. He
4 shot his wife in the head in front of his child,
5 and that's malice.

6 The reason why this is murder and not
7 manslaughter is because there is no legal
8 provocation. Look at the definition for legal
9 provocation. You will realize that that is not
10 what happened here. Words are not enough. We
11 don't know what Shantay Harris said to him. All
12 we know is that she was crying, she was
13 screaming and he was telling her to shut up.
14 But it doesn't matter what she said. There is
15 no words she could have used that would justify
16 that behavior.

17 He was arguing about this for days. He
18 drove three hours before he got there. This was
19 something he knew he was going to do. And,
20 again, by his own statement, he got the gun,
21 cocked it, put it away and then took it back out
22 and shot her. There is no overt threatening at
23 that point. He said he was pissed while driving
24 but not as pissed as when he got to the house.

25 And we've talked about the other

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1 statements and everybody describes his demeanor
2 pretty much the same way, smirking, cool, calm,
3 nonchalant.

4 As I said before, I think this might be
5 the cruelest thing that he did. When his 11-
6 year-old child went in that room where his
7 mother was and she was out on the floor and
8 dying, he said "it's her fault, not mine." And
9 E.H. testified to that.

10 Then over the course of the last few
11 days we have talked about this murder. And it
12 gets a little sanitized. You know, we ask
13 questions in a very formal way. We have to not
14 ask leading questions. We have to kind of go
15 through the evidence very methodically. And I
16 think what gets lost is what it was like in that
17 room.

18 And so what I'd like you to do is I'm
19 going to play some of these tapes again. And I
20 think it's so chilling that you can hear Tonia
21 screaming in the background. And it kind of
22 brings you back to that moment. Because I want
23 you to think about what it was like in that
24 room, and all those kids in there crying. And
25 as you're listening to Tonia crying and T.H

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1 talking on the phone, think about what the
2 defendant was doing. There was all this mayhem
3 and tragedy in this room. And what does the
4 defendant do? He's gone. He gets in his car
5 like he's going to work. It's over.

6 It is his fault. And you are the only
7 one that can give the true and just verdict.
8 And I'm asking you to have the courage of your
9 convictions and to find him guilty.

10 (PLAYS 9-1-1 TAPE FOR JURY)

11 THE COURT: Mr. Vitetta, you may
12 proceed when you're ready.

13 MR. VITETTA: This is disturbing,
14 and we both told you at the beginning of this
15 case that this is a disturbing case, that the
16 facts are disturbing. And I'm not here to tell
17 you that you should find this man innocent.
18 That's simply not what we've been saying
19 throughout the whole trial. This is a terrible,
20 terribly tragedy.

21 The issue that we have with the
22 government, though, is whether it is truly a
23 murder case or whether it is something called
24 manslaughter. And I think where you can find
25 that evidence is in the statement of E.H.

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1 **E.H.** . Because **E.H.** tells us, as the only
2 eyewitness, that his dad went into the room and
3 began trying to talk to mom and asked his mom to
4 come outside and talk. But she didn't want to.
5 He got the cell phone, saw what he perceived to
6 be evidence of an affair. And at that point his
7 response was Dad went berserk.

8 It was impulsive. It was passionate.
9 It was a response to what he felt was evidence
10 that his wife was having an affair.

11 Now, anybody who has or has known
12 anybody who has been through a divorce knows
13 that when people are separated and going through
14 this process it's an extremely stressful period,
15 and it is one of the most stressful periods in a
16 person's life. This couple is in the middle of
17 that process. He is concerned that his wife is
18 having an affair. He suspects it. He finds out
19 at that moment in that room that it was actually
20 going on and shoots her.

21 It was not done with malice. It was
22 done impulsively. It was done spontaneously,
23 but I argue that it was not done with malice.

24 You're going to have that little
25 handgun back there with you. And it sounds like

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1 a lot of pressure, three and a half pounds. But
2 if you cock it and pull the trigger, it really
3 isn't a lot of pressure. So you can see how
4 somebody who's extremely stressed, who has just
5 learned that his spouse is, in fact, having an
6 affair, he's got this gun in his hand -- you can
7 see how the hand movement -- it could go off
8 accidentally as he has suggested.

9 He has never admitted that he intended
10 to kill his wife. He has given a statement
11 saying that he didn't even know that she was
12 killed. He said the gun just went off, but he
13 never said that he intended to kill her or that
14 he went there with the intent to kill her. In
15 fact, the evidence is he didn't have the gun on
16 him until he got to the house, from the kitchen
17 or closet or wherever. But it was at the house.

18 And I think that is another issue that
19 you have to consider. If he truly drove down
20 here from North Carolina to kill her, he could
21 have done it any number of different ways. And
22 certainly, the better way is to wait for the
23 kids to go to school. So know it was
24 passionate. You know it was impulsive because
25 of the way it happened. He could have sat down

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1 the street and waited for everybody to leave and
2 then gone to the house and killed her. But he
3 didn't do that. He went in and talked to her
4 and found out about this evidence and then just
5 went berserk, as E.H. says.

6 I think it's important for you to
7 consider all these facts. I know this is
8 disturbing. I don't want your emotions to
9 control. It certainly would be easy just to go
10 back there and say 'Well, she's dead. He's the
11 one that had the gun and you should convict him
12 of murder.' That would be the easiest thing to
13 do.

14 The government plays these tapes. If
15 somebody's shot by accident, if somebody's shot
16 intentionally, I doubt if that tape's going to
17 be any different. If somebody's shot with
18 malice or without malice, I doubt that tape's
19 going to sound any different.

20 You think Tonia or T.H are going to
21 -- somehow with malice they're going to have a
22 different response? No, it's going to be the
23 same. But it's inflammatory, and I don't want
24 it to confuse you. You are the fact finder, and
25 you need to take a reasoned approach and look at

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1 the evidence and then make a decision. And I
2 think when you do that you're going to see that
3 this is not a case where there is malice.

4 And, finally, I would also like you to
5 look at the phone records. You have all the
6 phone records here. You've got a summary on the
7 front page, and then you've got -- and if you
8 look at all the phone records, you've got a
9 summary, which the government has given to help
10 you see the calls between these two. But then
11 you can see all the phone records, and you can
12 see that Tito was, for about forty-eight hours
13 continuously -- there may be six hours where
14 there were no calls. He was up constantly
15 through these two days before this. I think
16 that's one other thing that caused him to be not
17 thinking clearly. That it happened
18 spontaneously and impulsively and without
19 malice.

20 This is an important date for this
21 family. This is an important day for the
22 government and for my client. It's a horrible
23 tragedy. I doubt that anyone is ever going to
24 be able to get over this. Mr. Harris certainly
25 has a long way to go before he's able to deal

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1 with this, without his children. Certainly, our
2 heart goes out to his wife. I'd like you to
3 take a reasoned, rational look at this. And I
4 think if you do that you're going to find that
5 there was not malice and that you can find him
6 guilty of manslaughter. Thank you.

7 THE COURT: Ladies and gentlemen,
8 stand up for me and stretch a little bit. Does
9 anybody need to go to the restroom? (No
10 response). Everybody's comfortable? My
11 instructions are about twenty minutes. I just
12 want to make sure everybody was comfortable.
13 Everybody's got their circulation going? It's a
14 little easier in a room with windows. I'm used
15 to Charleston where none of my courtrooms have
16 windows. And people tend to get sleepy because
17 there's no sunshine and all we have is, you
18 know, that recirculated air.

19 We have ordered your lunch, and it will
20 arrive by noon. Fortunately or unfortunately,
21 the most convenient thing for us is pizza. So I
22 hope everybody like that. But I've arranged to
23 have that here for you by noon.

24 During this trial, ladies and
25 gentlemen, you and I have certain duties to

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1 perform. As the trial judge, it is my
2 responsibility to pass upon or rule upon the
3 admissibility of evidence offered during this
4 trial. You are to consider only the competent
5 evidence that is before you. You are to
6 consider only the testimony which has been
7 presented from the witness stand, together with
8 any exhibits which have been made a part of the
9 record in this case, or any stipulations or
10 agreements that have been made by the attorneys
11 in this case and which have been made a part of
12 the record.

13 I have the additional duty, ladies and
14 gentlemen, to charge or instruct you on the law
15 applicable to this case. As the presiding
16 judge, I'm the sole judge of the law of this
17 case. And it is your duty as jurors to accept
18 and apply the law as I now state it to you.

19 If you have a preconceived idea as to
20 what the law is or what the law ought to be in a
21 case or in this case and it should not agree
22 with what I now tell you the law is, you are
23 obligated under the oath which you have taken,
24 to abandon this preconception on your part.
25 Because you are sworn to accept the law and

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1 apply the law precisely as I now state it to
2 you.

3 In every case tried in this Court
4 before a jury, the jury become the sole and
5 exclusive judge of the facts. You, the jury,
6 are the judges of the facts in this case. This
7 Court is the judge of the law. The Constitution
8 of our state has declared that a trial judge
9 shall not intimate, state, comment upon or make
10 any statement to a trial jury about the facts in
11 a case since you, the jury, are the sole judges
12 of the facts in this case.

13 You are not to infer anything from what
14 the Court has said during the progress of this
15 trial in ruling upon the admissibility of
16 evidence or otherwise or anything that I saw now
17 to you during the course of this instruction,
18 that I have any opinion about the facts. The
19 law of our state does not allow the trial judge
20 to have an opinion about the facts.

21 This is a matter solely for you, the
22 jury, to determine. As jurors, then, it is your
23 duty, as I have instructed you, to determine the
24 effect, the value, the weight and the truth of
25 the evidence presented during this trial.

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1 Necessarily, you must assess the
2 credibility of witnesses who have testimony. As
3 I explained to you before, credibility is simply
4 a legalistic term which means the believability
5 of each witness who has testified. It becomes
6 your duties, ladies and gentlemen, to analyze
7 and to evaluate evidence and determine that
8 evidence which convinces you of its truth.

9 I instruct you that in determining the
10 question of the credibility or believability of
11 witnesses who have testimony you may believe one
12 witness as against several witnesses or several
13 witnesses as against one witness. You may
14 believe a part of the testimony of a witness and
15 reject the remaining part of the testimony of
16 that same witness.

17 If you have a good and sound reason you
18 may believe the testimony of a witness in its
19 entirety or reject the testimony of a witness in
20 its entirety. You may consider whether the
21 witness has exhibited to you any interest, any
22 bias, any prejudice or other motive in this
23 case. You may consider the opportunity for the
24 witness to have seen the matters and things
25 about which the witness has testified. And you

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1 may consider the demeanor of the witness, that
2 is the appearance and manner of a witness from
3 the witness stand. You can believe as much or
4 as little of each witness's testimony as you
5 think appropriate.

6 Ladies and gentlemen, you have but one
7 objective during this process, to seek the truth
8 regardless of its source.

9 Our Rules of Evidence do not ordinarily
10 permit a witness to testify to opinions or
11 conclusions. An exception to this rule exists
12 for witnesses we call expert witnesses. A
13 witness who, by education and experience or
14 training, has become an expert in some art,
15 science or profession may state an opinion as to
16 relevant and material matters in which the
17 witness claims to be an expert and may also
18 state the reasons for that opinion. You should
19 consider any expert opinion received in evidence
20 in this case like any other evidence; give it
21 the weight you think it deserves. If you decide
22 that the opinion of an expert witness is not
23 based on sufficient education and experience, or
24 if you conclude that the reasons given in
25 support of the opinion are not sound or that the

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1 opinion is outweighed by other evidence you may
2 disregard the opinion entirely. An expert
3 witness's testimony is to be given no greater
4 weight than that of other witnesses simply
5 because the witness is an expert. And you are
6 not required to accept an expert's opinion, even
7 though it is not contradicted.

8 A statement is alleged to have been
9 made by the defendant which has been admitted
10 into evidence in this case. While the Court has
11 determined that the statement is admissible I
12 instruct you that you make the ultimate decision
13 of whether or not the defendant made the
14 statement. If the defendant did make the
15 statement, you must determine whether the
16 statement was made by the defendant voluntarily
17 and of his own free will. This means that the
18 statement was not caused by pressure, force,
19 fear, threats, coercion or intimidation or by
20 hope or a promise of leniency or a reward of any
21 kind.

22 In determining whether the statement
23 was voluntary you should consider both the
24 characteristics of the defendant and the details
25 of the questioning. Some of the factors you

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1 must consider are the age of the defendant, the
2 defendant's education or lack of education, the
3 defendant's mental ability or capacity, the
4 defendant's I.Q. or intelligence, the
5 defendant's background and environment, the
6 place and length of detention, the nature of the
7 questions and the advice or lack thereof to the
8 defendant of his Constitutional rights,
9 including but not limited to the right to remain
10 silent, that any statement could be used against
11 him in a court of law, the right to have a
12 lawyer present and that if he could not afford a
13 lawyer, a lawyer would be appointed to represent
14 him without any cost and that he could stop
15 making a statement at any time.

16 You must carefully consider all the
17 surrounding circumstances before you give any
18 weight to an alleged statement.

19 The State has the burden of proving
20 beyond a reasonable doubt that the alleged
21 statement was voluntary. If you determine it
22 was, you may give the statement any further
23 consideration that you deem proper. You must
24 decide what weight, if any, should be given to
25 the alleged statement. If you determine that

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1 the alleged statement was not the free and
2 voluntary statement of the defendant, you should
3 not consider the statement at all.

4 Ladies and gentlemen, there are two
5 types of evidence which are generally presented
6 during a trial: direct evidence and
7 circumstantial evidence.

8 Direct evidence is the testimony of a
9 person who asserts or claims to have actual
10 knowledge of a fact, such as an eyewitness.

11 Circumstantial evidence is proof of a
12 chain of facts and circumstances indicating the
13 existence of a fact.

14 The law makes absolutely no distinction
15 between the weight or value to be given to
16 either direct or circumstantial evidence, nor is
17 a greater degree of certainty required of
18 circumstantial evidence than of direct evidence.
19 You should weigh all of the evidence in the
20 case. After weighing all the evidence, if
21 you're not convinced of the guilt of the
22 defendant beyond a reasonable doubt, you must
23 find the defendant not guilty.

24 Conversely, if you are convinced of the
25 guilt of the defendant beyond a reasonable

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1 doubt, then you must find him guilty.

2 I instruct you, ladies and gentlemen,
3 that the fact that the defendant was arrested,
4 charged and indicted is not evidence in this
5 case and cannot be considered by you as evidence
6 of guilt, nor does it create any presumption or
7 inference of guilt. This documentation, ladies
8 and gentlemen, is simply the formal written
9 instrument which contains the charge or charges
10 made against the defendant. It serves as the
11 formal document by which the case is processed
12 or brought into this Court.

13 The defendant has pled not guilty to
14 the indictment, and that plea casts the burden
15 on the State to prove the defendant guilty.
16 Because a person charge with committing a
17 criminal offense in South Carolina is never
18 required to prove himself innocent.

19 I instruct you, ladies and gentlemen,
20 that it is a part and important rule of the law
21 of evidence that the defendant in a criminal
22 trial, no matter what the seriousness of the
23 charge made against him or her may be, will
24 always be presumed to be innocent of the crime
25 for which they are indictment unless their guilt

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1 has been proven by evidence satisfying you of
2 that guilt beyond a reasonable doubt.

3 This presumption of innocence does not
4 cease when you retire to deliberate, but it
5 accompanies the defendant from the time of his
6 appearance throughout the trial until you reach
7 a verdict satisfying you beyond a reasonable
8 doubt.

9 Our Supreme Court has said the
10 presumption of innocence is like a robe of
11 righteousness placed about the shoulders of the
12 defendant, and it remains with him and assigns
13 him to that class of the innocent until that
14 presumptive robe of righteousness has been
15 stripped from his person by satisfying you of
16 that guilt beyond a reasonable doubt.

17 Mr. Foreman and ladies and gentlemen,
18 the presumption of innocence is not mere legal
19 theory. It is not just a legal phrase. It is a
20 substantial right to which every defendant is
21 entitled unless you, the jury, are satisfied
22 from the evidence of his guilt beyond a
23 reasonable doubt.

24 The State has the burden of proving the
25 defendant guilty beyond a reasonable doubt.

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1 Some of you may have served as jurors in civil
2 cases where you were told that it is only
3 necessary to prove that a fact is more likely
4 true than not true, such as by the greater
5 weight or the preponderance of the evidence.
6 In criminal cases the State's proof must be more
7 powerful than that. It must be beyond a
8 reasonable doubt.

9 Proof beyond a reasonable doubt is
10 proof that leaves you firmly convinced of the
11 defendant's guilt. There are very few things
12 in this world that we know with absolutely
13 certainty. And in criminal cases the law does
14 not require proof that overcomes every possible
15 doubt. If, based on your consideration of the
16 evidence, you are firmly convinced that the
17 defendant is guilty of the crime charged, you
18 must find the defendant guilty.

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

23 I instruct you and emphasize that the
24 fact that the defendant did not testify is not a
25 factor to be considered by you in any manner

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1 whatsoever in your deliberation of this case and
2 in your consideration of the question of the
3 guilt or innocence of the defendant. It must
4 not be considered by you in any manner
5 whatsoever.

6 A defendant has the Constitutional
7 right to remain silent, and the assertion of
8 this right must not be considered by you in your
9 deliberations. I repeat, ladies and gentlemen,
10 under your oath you are to draw no conclusion
11 whatsoever from the fact that the defendant in
12 this case did not testify. The fact that this
13 defendant did not testify should not be
14 discussed in any manner whatsoever in the jury
15 room. The burden of proof, as I stated to you,
16 is on the State. The defendant is not required
17 to prove his innocence. The burden of proof
18 remains on the State to prove guilt beyond a
19 reasonable doubt.

20 The defendant is charged with murder.
21 The State must prove beyond a reasonable doubt
22 that the defendant killed another person with
23 malice aforethought.

24 Malice is hatred, ill will or hostility
25 towards another person. It is the intentional

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1 doing of a wrongful act without just cause or
2 excuse and with an intent to inflict an injury
3 or under circumstances that the law will infer
4 an evil intent.

5 Malice aforethought does not require
6 that malice exist for any particular time before
7 the act is committed. But malice must exist in
8 the mind of the defendant just before and at the
9 time the act is committed. Therefore, there
10 must be a combination of the previous evil
11 intent and the act. Malice aforethought may be
12 express or inferred. These terms "express" and
13 "inferred" do not mean different kinds of
14 malice, but merely the manner in which malice
15 may be shown to exist. That is either by direct
16 evidence or by inference from the facts and
17 circumstances which are proven.

18 Express malice is shown when a person
19 states words which express hatred or ill will
20 for another or when a person prepared beforehand
21 to do the act which was later accomplished. For
22 example, lying in wait for a person or any other
23 acts or preparation going to show that the deed
24 was within the defendant's mind would be express
25 malice.

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1 Malice may be inferred from conduct
2 showing a total disregard for human life.
3 Inferred malice may also arise when a deed is
4 done with a deadly weapon.

5 A deadly weapon is any article,
6 instrument or substance which is likely to cause
7 death or great bodily harm. Whether an
8 instrument has been used as a deadly weapon
9 depends on the facts and circumstances of each
10 case. The following, ladies and gentlemen, are
11 examples of instruments which may be deadly
12 weapons: a pistol, a shotgun, a rifle, a dirk,
13 a dagger, a knife, a slingshot, metal knuckles,
14 a razor, gasoline, a fire bomb or Molotov
15 cocktail and lighter fluid. A gun may be a
16 deadly weapon even if it is not operating.
17 These are simply evidentiary facts to be
18 considered by you along with the other evidence
19 in the case, and it is for you, the jury, to
20 give the effect, value and weight you decide it
21 should have.

22 If you find that the State has failed
23 to prove beyond a reasonable doubt that the
24 defendant committed murder you may consider
25 whether the State has proven beyond a reasonable

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1 doubt that the defendant committed voluntary
2 manslaughter.

3 To prove voluntary manslaughter the
4 State must prove beyond a reasonable doubt that
5 the defendant took the life of another in the
6 sudden heat of passion based on sufficient legal
7 provocation. Both heat of passion and
8 sufficient legal provocation must be present at
9 the time of the killing to constitute voluntary
10 manslaughter.

11 Sudden heat of passion may, for a time,
12 affect a person's self control and temporarily
13 disturb a person's reason. The sudden heat of
14 passion must be of the type that would make an
15 ordinary person unable to fully reflect on his
16 actions and would produce an uncontrollable
17 impulse to do violence.

18 Sufficient legal provocation must be
19 the type that would make a person of ordinary
20 reason and caution become enraged and to lose
21 control temporarily. The provocation needed for
22 voluntary manslaughter must come from some act
23 of or related to the victim. Words alone,
24 however vulgar or insulting, are not enough to
25 meet legal provocation. Where death is caused

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1 by use of a deadly weapon, the words must be
2 accompanied by some overt, threatening act which
3 would have produced the heat of passion.

4 The exercise of a legal right, no
5 matter how offensive it is to another, is never
6 sufficient legal provocation for voluntary
7 manslaughter. If the heat of passion had cooled
8 or if there was enough time between the
9 provocation offense and the killing for the
10 passion of a reasonable person to cool, the
11 killing would not be voluntary manslaughter.

12 In deciding whether a reasonable person
13 would have had enough time to cool off you
14 should consider all the circumstances
15 surrounding the killing. You may consider the
16 nature of the provocation, the defendant's
17 mental and physical state and the circumstances
18 and relationships between the parties.

19 Again, ladies and gentlemen, these are
20 simply evidentiary facts to be considered by you
21 along with the other evidence in the case.. And
22 it is for you, the jury, to give it the fact
23 value and weight that you decide it should have.

24 Ladies and gentlemen, there are three
25 possible verdicts in this case. And you don't

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1 have to try to write this down because the
2 verdict form will go into the jury room with
3 you. There's no significance whatsoever to the
4 order in which I state these possible verdict.
5 It's simply that one must be stated first. And
6 it reads as follows: "As to the indictment
7 2010-GS-08-0091, we, the jury, by unanimous
8 consent, find the defendant guilty of murder,"
9 or as to the lesser-included offense "guilt of
10 voluntary manslaughter," or "not guilty."

11 Again, there's absolutely no
12 significance whatsoever to the order in which
13 these verdicts are stated.

14 Ladies and gentlemen, your verdict must
15 be a unanimous one which means that all twelve
16 of you must agree in order to reach a verdict.
17 When you agree on a verdict, Mr. Foreman, it
18 will be your responsibility to write on the
19 verdict form. It will also be your responsi-
20 bility to knock on the door and advise the
21 bailiffs that the jury has, in fact, reached a
22 verdict. Also, if the jury has any questions
23 during deliberations it is your responsibility
24 to write those out, and again follow the same
25 procedure, knock on the door and advise the

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1 bailiffs that the jury has a question.

2 Ladies and gentlemen, if you have any
3 questions during deliberations please know that
4 there will be in a delay in our response. It
5 does not mean we're ignoring you. It simply
6 means that -- there's a process that we have to
7 follow in answering your questions. So if there
8 is a question we have to follow that procedure,
9 and then we will answer your question. So
10 please do not think that we're ignoring you or
11 that, in some way, we have not received the
12 question or that we're not being attentive to
13 it.

14 I'm going to ask now that you return to
15 your jury room. But do not yet begin your
16 deliberations. Please leave your notepads in
17 your seats. I have some matters of law I need
18 to take up with the attorneys that may require
19 further instruction or clarification of an
20 instruction. However, if there is no further
21 instruction, we will send in the evidence to
22 you, the verdict form, and at that time we will
23 dismiss the alternates, and then we will allow
24 you to then begin your deliberations.

25 If you would go with the bailiffs for

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1 me, please. Again, do not begin your
2 deliberations, and leave your notepads in your
3 seats.

4 (JURY OUT @ 11:33 A.M.)

5 THE COURT: You may be seated. Any
6 exceptions from the State?

7 SOLICITOR WILLIAMS: No, Your Honor,
8 just the previous ones to voluntary.

9 THE COURT: Any from the defense?

10 MR. VITETTA: No, Your Honor.

11 THE COURT: Please make sure all the
12 evidence is in place for me one more time. And
13 then, Mr. Hutto, if you would bring me the
14 alternates. And can you put them in a separate
15 -- I guess I can ask them if they want to wait
16 and stay for lunch. If they don't, I can let
17 them go. If they want to stay, we can put them
18 some place else until 12:00. Can you go back
19 and get them for me? Ms. Evelyn, can you go
20 ahead and start collecting their notebooks for
21 me, except, of course, not the alternates
22 notebooks.

23 Did you need to tell Mr. Hutto
24 something? Go ahead and start collecting their
25 notebooks for me. The alternates are the last

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1 two right, so you don't have to collect those.
2 But if you could go ahead and collect the other
3 jurors' notebooks for me.

4 (REVIEW OF EXHIBITS)

5 THE COURT: I'm going to bring them
6 back in and instruct them that if they want to
7 watch the videos or the audio that they'll have
8 to let us know because they'll need to come back
9 in the courtroom for that. They don't have
10 sufficient equipment in there. And also I'm
11 going to give them a brief instruction from
12 *State v. Lindsay* which is a 2007 Supreme Court
13 decision which says that you are not allowed to
14 conduct your own experimentation with the
15 evidence or attempt to re-enact any of the
16 events. That that is strict prohibited. They
17 can observe the evidence, but they can't attempt
18 to re-enact it or to, you know -- they're bound
19 by the evidence that is in the record. Is there
20 any exception from the State?

21 SOLICITOR WILLIAMS: None from the
22 State, Your Honor.

23 THE COURT: From the defense?

24 MR. VITETTA: No. I apologize, Your
25 Honor.

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1 THE COURT: No, it was an accident.
2 You argued what was within the evidence, which
3 was what the expert said. But I need them to be
4 clear. They can't try to re-enact what
5 happened; that they are bound by the evidence as
6 it has been testified to. Because that would
7 them have them producing facts outside the
8 evidence.

9 MR. VITETTA: I understand.

10 THE COURT: Okay. I'm going to
11 excuse the alternates. I don't think I need to
12 instruct the alternates. Any exception from the
13 State?

14 SOLICITOR WILLIAMS: No, Your Honor.

15 THE COURT: From the defense?

16 MR. VITETTA: None.

17 THE COURT: As soon as I get done
18 with this, I'm going to excuse them. So don't
19 bring the alternates in.

20 THE BAILIFF: Are you ready for the
21 others?

22 THE COURT: Yes.

23 (JURY IN @ 11:45 A.M.)

24 THE COURT: You may be seated.
25 Ladies and gentlemen, I wanted to instruct you

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1 that we do not have a safety mechanism for the
2 gun, and I forget the number of that exhibit,
3 and I apologize. So I wanted to let you know we
4 have -- one of the other exhibits is live rounds
5 of ammunition. So that exhibit will not go into
6 the jury room with you, just for safety
7 purposes. If you wish to see it we will take
8 the gun out of the jury room, allow you to see
9 the live ammunition and, in other words, we'll
10 swap those back out. But just for safety
11 purposes, since we don't have that -- there's a
12 safety mechanism that we usually run through the
13 gun that would prevent you from being able to
14 put live ammunition in it or otherwise. And so
15 since we don't have that for safety precautions,
16 we will not be sending the live ammunition in to
17 you.

18 So I wanted you to know so that you
19 will know that you are not missing an exhibit.
20 But if you wish to see it, by all means let us
21 know and we will accommodate you immediately.

22 Also, if you need to watch or listen to
23 any of the video or audio, let us know and we
24 will bring you back into the courtroom. We
25 don't have sufficient equipment in the jury room

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1 for you to do that, but we have the equipment
2 out here. So if you wish to watch or listen to
3 anything, just let us know and again we will
4 immediately accommodate you.

5 Also, by way of additional instruction,
6 I need to advise you that as the fact finders
7 you are not to conduct any independent
8 experimentation or experiments regarding any of
9 the evidence that will be sent in with you. It
10 is not proper for the jury to conduct any
11 independent experiments or to attempt to re-
12 enact any portions of the evidence that has been
13 described to you. You are bound by the evidence
14 that has been presented to you during the course
15 of this trial by the lips of the sworn witnesses
16 and the other evidence that has been introduced.
17 So I will strictly admonish you not to attempt
18 to do any independent experiments regarding the
19 evidence or re-enactments on your own.

20 With that additional instruction, you
21 are excused to your jury room. The bailiff is
22 going to bring in the evidence, the verdict form
23 and your notebooks. And then at that time
24 you'll be allowed to begin your deliberations.
25 If you would go with the bailiffs, please.

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1 (JURY OUT @ 11:48 A.M.)

2 THE COURT: You may be seated. Any
3 exceptions from the State?

4 SOLICITOR WILLIAMS: None from the
5 State, Your Honor.

6 THE COURT: From the defense?

7 MR. VITETTA: None, Your Honor.

8 THE COURT: Okay, if you could, Mr.
9 Hutto, go ahead and take in their notebooks, the
10 evidence, probably need some gloves and the
11 verdict form and the records shall reflect that
12 the jury has begun its deliberations at 11:45.
13 And if you could bring in the alternates for me,
14 please, so that I can excuse them.

15 (ALTERNATES ENTER JURY ROOM)

16 THE COURT: Gentlemen, I want to
17 thank you for your time and your attention to
18 this case. I've watched and you both have been
19 incredibly attentive and timely. And we
20 appreciate the time that you've given us this
21 week, which I know has been a sacrifice, both
22 to your personal and your professional
23 responsibilities. I hope it's been educational
24 for you. I hope you've learned it's nothing
25 like television and how very important you are

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1 to us. We couldn't do our job without you all
2 being willing to sacrifice your time and be here
3 with us.

4 You are welcome to discuss this case,
5 but I would ask that you not do it until after
6 Friday when the entire panel has been released.
7 By the same token, if someone persists in trying
8 to speak with you and it makes you uncomfort-
9 able, please let us know so that we can take the
10 appropriate action to protect your privacy.

11 Lunch will be here at noon. You are
12 welcome to stay and have pizza with us. You're
13 welcome -- if pizza is not, you know, sounding
14 really good to you, you may be excused. But
15 we're going to put you in this other room where
16 we have you and it should be here in about ten
17 minutes. And we encourage you to stay with us
18 and at least let us feed you for the time that
19 you've been here with us.

20 Again, we appreciate you all being with
21 us, and we have your notepads. If you want to
22 destroy your notes you're welcome to, or Mr.
23 Hutto will destroy them for you.

24 JUROR: He can destroy them for us.

25 THE COURT: Perfect. Thank you so

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1 much. I just wanted to thank you both
2 personally.

3 JUROR: I've got a question about
4 staying around, Judge.

5 THE COURT: Sure, you're welcome to
6 stay and wait. We'll keep you company. We'll
7 entertain you. Mr. Nolan and Mr. Hutto and
8 myself, we'll keep you company.

9 JUROR: Thank you.

10 THE COURT: You probably need to keep
11 your badge while you're staying with us.

12 JUROR: Okay. Thank you, ma'am.

13 THE COURT: Thank you very much.
14 They'll take care of you.

15 (ALTERNATE JURORS RELEASED AT 11:50 A.M.)

16 THE COURT: I would suggest that you
17 all -- the jury's lunch will be here in ten
18 minutes. I would hang around until noon, and
19 then get some lunch and hang tight and leave us
20 your cell phone numbers just in case you leave
21 the court house so we can reach you in case
22 there's a question, or in case they want
23 something replayed or something. I would
24 imagine we might get a question before they eat.
25 And usually questions come very shortly after

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1 people eat. So y'all hang tight for me until we
2 get their food situated. And once their food
3 gets here I'll have one of the clerks come let
4 you know so y'all can go eat as well.

5 Thank you all very much. It was a very
6 pleasant experience, and I appreciate y'all
7 being so patient with my technical difficulties
8 this morning.

9 (NOTIFIED OF VERDICT AT 12:43 P.M.)

10 THE COURT: You may be seated. The
11 jury has reached a verdict. Is there anything
12 before we receive the verdict from the State?

13 SOLICITOR WILLIAMS: No, Your Honor.

14 THE COURT: From the defense?

15 MR. VITETTA: No, Your Honor.

16 THE COURT: Please bring in the jury.

17 (JURY IN @ 1:04 P.M.)

18 THE COURT: You may be seated. Mr.
19 Foreman, is it correct that the jury has reached
20 a verdict?

21 THE FOREMAN: Yes, we have, Your Honor.

22 THE COURT: If you would give the
23 verdict form to the bailiff for me, please.

24 THE FOREMAN: (Complies)

25 THE COURT: Madam Clerk, please stand

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1 for publication of the verdict. Madam Clerk, if
2 you would publish the verdict.

3 THE CLERK: State of South Carolina,
4 County of Berkeley versus Tito Fernandez Harris.
5 As to indictment number 2010-GS-08-0091, we, the
6 jury, by unanimous consent, find the defendant
7 guilty of murder. Signed by the foreperson,
8 March 17th, 2011.

9 Ladies and gentlemen, if this be your
10 verdict please signify by raising your right
11 hand at this time. (Unanimous response by
12 jurors). Is there any request to poll the jury
13 from the State?

14 SOLICITOR WILLIAMS: Not from the
15 State.

16 THE COURT: From the defense?

17 MR. VITETTA: No, Your Honor.

18 THE COURT: Mr. Foreman, ladies and
19 gentlemen, we thank you for your time and your
20 attention to this case. We know that jury
21 service really -- I'm a little embarrassed, to
22 tell you the truth, as a civil servant -- at the
23 small amount of money that we pay you for your
24 service. Please know that it is absolutely no
25 indication of the value that we place on your

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1 service. You are so very important to us.

2 We probably, in Charleston -- and I use
3 that as a barometer, because we have not been
4 traveling very much since the State has had so
5 many budgetary issues. But we hold Court about
6 forty-two out of fifty-two weeks of the year.

7 And so I do this about forty-two weeks, other
8 than mixed in with that some non-jury court.

9 But we could not do what we do without you all
10 being willing to sit as fact finders in cases
11 and apply a very complicated set of laws to
12 those facts and render verdicts.

13 So thank you so much for your time and
14 your attention to this case. I hope you learned
15 this week that it's nothing like what you see on
16 television and how very valuable you are to us.

17 You are welcome to discuss this case if
18 you would like. By the same token, if someone
19 pressures you or exceeds your comfort level in
20 trying to discuss the case with you, please
21 notify the Clerk's Office so that we can take
22 the appropriate action to protect your privacy.

23 You are welcome to remain with us if
24 you would like for sentencing, or you are
25 welcome to be excused at this time. Just let

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1 the bailiffs know if you would like to remain
2 for sentencing or if you'd like to be excused.
3 I can simply do that by a show of hands. Is
4 there anyone that wishes to remain for
5 sentencing? If so, if you would raise your
6 hand. Okay, those who wish to remain for
7 sentencing, you may stay in the jury box. Those
8 who wish to be excused, you're excused at this
9 time. And if you would come go with Mr. Hutto
10 if you wish to be excused at this time.

11 (JURORS EXCUSED)

12 THE COURT: Are there any post-trial
13 motions from the State?

14 SOLICITOR WILLIAMS: I'm sorry, Your
15 Honor. The family is just trying to collect
16 themselves.

17 THE COURT: I asked if there are any
18 post-trial motions?

19 SOLICITOR WILLIAMS: No, Your Honor.

20 THE COURT: From the defense?

21 MR. VITETTA: Your Honor, I would
22 move for a new trial based on the reasons set
23 forth in my motion for directed verdict.

24 THE COURT: Any response from the
25 State?

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1 SOLICITOR WILLIAMS: Your Honor, no,
2 but I think the Court has been clear in her
3 rulings and provided support in the way of case
4 law. And we would just agree with the Court's
5 rulings.

6 THE COURT: The Court would deny that
7 motion based on its previous ruling and the
8 grounds in the case law articulated at that
9 time. In the interests of time I think it's
10 clear for the record, and there's no need to go
11 back through that. So you all have a sentence
12 sheet?

13 SOLICITOR WILLIAMS: We do, Your
14 Honor. We should be able to give it to you in
15 one second.

16 THE COURT: Are you ready to go
17 forward with argument with regard to sentencing?
18 Is the State ready to proceed?

19 SOLICITOR ALFARO: We are, Your
20 Honor.

21 THE COURT: Is the defense ready to
22 proceed?

23 MR. VITETTA: Yes. Do you want us
24 to stay here?

25 THE COURT: You're going to need to

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1 stay at counsel table. Nobody's going to be
2 allowed to come beyond that for security
3 purposes. None of them. Right there.

4 SOLICITOR WILLIAMS: Your Honor, you
5 have heard all the evidence in the case and you
6 recognize how heinous these facts area. I would
7 just ask the Court to keep in mind the two young
8 boys that are left behind in this case and the
9 courage that they showed when they testified.
10 And to please just keep in mind the horrible,
11 horrible circumstances of this murder. And for
12 him to shoot this woman in front of their child
13 is unspeakable. And we would just ask the Court
14 to please sentence him to the higher end of the
15 range.

16 There are two family members that would
17 like to speak.

18 THE COURT: Certainly. I'll be glad
19 to hear from them. And if they would state
20 their name, of course, for the record and then
21 I'd be glad to hear any statement they'd like to
22 make.

23 APRIL STRAIN: My name is April
24 Strain.

25 THE COURT: Thank you, ma'am. You

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1 may proceed when you're ready.

2 APRIL STRAIN: I just want to say
3 that we totally miss my sister. I am seven
4 years older than her, and just watching her grow
5 up, she was a very active young woman. She was
6 on the honor rolls at school, a homecoming
7 queen, a cheerleader. And we just miss her very
8 much. I miss talking to her on the phone. That
9 was very hard not being able to call her or come
10 down and see her or she come to North Carolina
11 and we'd get together as a family. We just
12 loved to get together, you know, out in the
13 yard. She was just a sweet person and enjoyed
14 life. And a good mother to her two young boys,
15 and a good aunt to my kids and my younger
16 sister's kids. And this has very impacted our
17 lives. You know, I have the boys now, for which
18 I'm grateful, because we're just all so close.
19 And he didn't have to do what he done. He just
20 could have just left. He just could have left
21 the marriage. You know, the boys miss her.
22 E.H. misses her. T.H. misses her, you know.
23 We just miss her. Thank you.

24 THE COURT: Thank you. And you're
25 welcome, ma'am. Is there anyone else that would

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1 like to speak on behalf of the family?

2 DENNIS STRAIN: Yes, my name is
3 Dennis Strain.

4 THE COURT: Dennis Strain?

5 DENNIS STRAIN: Yes.

6 THE COURT: Yes, sir.

7 DENNIS STRAIN: I'm T.H.'s uncle.

8 Shantay was my sister-in-law. We were real
9 close. I mean, close as a sister and a brother.
10 I think we were real close. As far as
11 relationships and stuff, I don't know what was
12 going on. But she wouldn't give me the power to
13 do -- to protect her. And I feel so bad that
14 she's gone. Because it takes a coward to do
15 what this man did in my sister's house. Because
16 right now my wife -- she's not exciting. My
17 sister-in-law's not exciting. My kids are not
18 exciting. Shantay was a whole part of this
19 family. When she came around everybody would
20 just get a smile because she was there. And for
21 this person to sit here and make these people
22 right here go through what they're going through
23 now, it's a shame. And I don't think he needs
24 to be nowhere around the public again. He's a
25 coward. And I ask y'all to give me this hope.

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1 Because I've got to wake up in the middle of the
2 night and hope I'm right. I've got to look at
3 my sister-in-law's face, knowing what she's
4 thinking. I can look at my father-in-law over
5 there. He just lost his wife a year before
6 that. And now they're going to turn around and
7 lose a sister, a daughter because somebody
8 thinking crazy thoughts in their head. That
9 just don't make no sense, Your Honor. The only
10 thing I would ask the Court is that the Court,
11 please, you do whatever you can to make sure
12 that he never sees light again. Thank you so
13 much.

14 THE COURT: You're welcome, sir. Is
15 there anybody else that wishes to be heard from
16 the family?

17 DENNIS STRAIN: Your Honor, he's
18 scared. Can I read it?

19 THE COURT: Absolutely. Is that from
20 Ty'Rek?

21 DENNIS STRAIN: E.H. .

22 THE COURT: From E.H. . I'm sorry.
23 I didn't mean to presume. You want to read it,
24 son?

25 E.H. : You don't mind if I

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1 do?

2 THE COURT: No, absolutely not. Just
3 tell us your name for the record.

4 E.H. : E.H. .

5 THE COURT: Yes, sir, young man. You
6 may proceed when you're ready.

7 E.H. : I really miss my
8 mother, and I miss her smile and everything. I
9 miss her great sense of humor. We'd always joke
10 around with one another. We had a great time
11 with our family. She was really responsible on
12 her job. And we miss her in our whole family.
13 That's the only thing I want to say.

14 THE COURT: Thank you so much. Is
15 there anybody else that wishes to be heard? Is
16 there anything from the State?

17 SOLICITOR WILLIAMS: No, Your Honor.

18 THE COURT: Mr. Vitetta?

19 MR. VITETTA: We have some family
20 members who would like to speak.

21 THE COURT: Certainly.

22 ROSETTA HEMPHILL: Good afternoon, Your
23 Honor.

24 THE COURT: Yes, ma'am. Please state
25 your name for the record.

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1 ROSETTA HEMPHILL: My name is

2 Rosetta Hemphill.

3 THE COURT: Yes, ma'am.

4 ROSETTA HEMPHILL: Tito Harris is
5 my son and I'd like to say that I had Tito at
6 the age of eighteen years old. And he lived in
7 Moncks Corner with his grandmother here. So I
8 have not raised Tito from the time he was four
9 years old. And concerning this what's going on
10 here, I loved Shantay. She was my daughter-in-
11 law, but I loved her as my daughter. And as far
12 as this family here, I know them. We grew up
13 together. Her father's nieces and nephews are
14 my father's nieces and nephews. This man raped
15 and molested me at nine years old. There's be
16 deaths in our family. There's another of my
17 family, where someone took my sister's son's
18 life and my son's father's life. So it's a lot
19 going on in our family. I hate it that this had
20 to come to this. My son, I would talk to him on
21 the phone. I talked to his daughter-in-law
22 probably two weeks -- I mean, talked to his
23 wife, Shantay, about two weeks before this
24 happened and she asked me would I take care of
25 E.H. and T.H. . And I told her that I would.

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1 And I said, "Shantay, you and Tito need to get
2 yourself together, because y'all need to raise
3 these boys." And I said, "You need to give your
4 life to Jesus." So I led her to the Lord and
5 wanted her to know that I know it's not easy
6 being a parent. But as far as doing the right
7 thing -- and every summer I would take a week
8 off, my PTO time with Wachovia, and would take
9 care of the boys and try to have a relationship
10 with my grandchildren.

11 And when this was going on after they
12 was going through a custody thing about the kids
13 and all this stuff, it was just like this
14 craziness. And so I asked -- when Shantay
15 called me she said, "Will you take care of the
16 boys?" And I told her I would take care of the
17 boys. And it was just like, "Well what are
18 y'all doing? You know, what's going on?" And
19 I said, "Shantay," I said, "if y'all can't get
20 together," I said, "y'all just need to
21 separate." And so I would talk to my son --
22 like, the other day he was saying he was in his
23 car and he was at his uncle's or whatever. I
24 said, "Tito, just leave the house and all that,"
25 hoping that things was going to get better. And

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1 so he called me one day, as a matter of fact,
2 the day before this happened, and he said,
3 "Mama," he said, "I'm coming to High Point where
4 you are." And I said, "Tito," I said, "you need
5 to get away from there." He said, "Mama," he
6 said, "what's going happen to my boys." I said,
7 "Tito, your boys are going to be fine." I said,
8 "But you need to get away from there." So my
9 intentions was that night my son was on his way
10 to my house. And I called him, and I don't know
11 about the phone records, but my number should be
12 on there about fifty times as well. Because he
13 kept telling me, he's like, "Mama, what are you
14 having for dinner?" I said, "I've got some
15 baked chicken." He said, "That's fine." He
16 said, "Well, what are you getting ready to do?"
17 I said, "I've got to run to Wal-Mart, but I'll
18 be back." But I have prayed about it. I said,
19 "Lord, please help me to listen to my son,
20 because I know he's hurting." And I said, "I
21 don't want to fuss at him, because I am the kind
22 of mother that I'll be just getting on him, boy,
23 you need to do this and boy, you need to do
24 that," even though he's a man. But to me he's
25 still a boy.

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1 So my intentions was that that's where
2 he was coming that night. And I went to bed,
3 and I don't normally go to bed that early on
4 Tuesday night, because I had my Wednesdays off.
5 But it was like I wanted to just hear him. I
6 didn't want to just harass him or whatever about
7 his situation. And I said, "Lord, just give me
8 the strength to hear him." So when I fell
9 asleep that night, I don't know what time it was
10 -- probably 11:00 or something like that. It's
11 probably in the records, when he called me, he
12 said, "Mama" -- I said, "Boy, are you coming?"
13 He said, "Yes, ma'am." And he said, "Mama, I
14 love you," and he always tells me that he loves
15 me. And I went off to sleep. And when I woke
16 up that morning my oldest -- his sister, my
17 oldest daughter, she called me. She said,
18 "Mama, Tito has killed Shantay." And I was like
19 'this can't be happening.' And I was like, 'oh
20 my God', because I'm single. And so it was like
21 I have nobody to run to. I said, "Help me."
22 And I said, "Oh, Lord, what am I going to do?"
23 And so, anyway, and I started calling and I
24 started calling Shantay and was like just
25 please, please don't let this be happening.

State of South Carolina v. Tito Harris
Case No. 10-GS-08-0091
Jury Trial of March 14-17, 2011
before The Honorable Deadra L. Jefferson

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1 Lord, please don't let this be happening. It
2 happened. And ever since this happened I've had
3 the boys with me, because I was trying to take
4 care of them. And then the judge down here took
5 the boys from me saying I didn't need to have
6 them. And so my grandchildren have been in
7 foster care for over a year. And so I've been
8 down here a couple of time and it's like when
9 they was with me I would never had to call their
10 family and stuff because I love them and I
11 always have loved them. Because they're still
12 my family. And the boys will never come back.
13 And some said you shouldn't have had him, you
14 know, disrespecting me. And I'm just like,
15 Lord, what are we going to do?

16 And so I have been on medication. They
17 said I have a post-stress disorder.

18 So I know their verdict. I've heard it
19 too. I lost my daughter-in-law and my son as
20 well. And then when my grandchildren, when I've
21 been in this courtroom for two days and when I
22 come through there they said 'well, you can't
23 speak to your grandchildren.' It's like 'my
24 God.' Lord, I can't even talk to my own
25 grandchildren. Because I love them so much.

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1 And, like I said, I love my family. I love all
2 of them, and I am so sorry. If I could have
3 gave my life for her, I would have. But it
4 wasn't my choice to do. So I beg for mercy for
5 my son. I hate it came to this thing because I
6 love my children as well. So I just ask for
7 mercy.

8 THE COURT: Anything further, Mr.
9 Vitetta?

10 MR. VITETTA: Yes.

11 LEONARD BURDEN: Yes, ma'am.

12 THE COURT: Your name, sir?

13 LEONARD BURDEN: Leonard Burden. Me
14 and Tito Harris is best friends. And so is his
15 wife, Shantay. She was my best friend also.
16 But Tito loved Shantay. I know they had
17 problems, like a lot of marriages. All I know
18 is to beg for a little mercy for Tito's life
19 because when Tito found out that his wife was
20 having an affair with his uncle, of all people,
21 it tipped him over. I wish he would have done
22 something else. I'm sorry. I wish he'd never
23 had to get a gun or anything. And I know he
24 feels sorry that he done that, too. But all I'm
25 asking for is mercy is because I know he feels

State of South Carolina v. Tito Harris
Case No. 10-GS-08-0091
Jury Trial of March 14-17, 2011
before The Honorable Deadra L. Jefferson

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1 bad about the whole thing. And if he had a
2 chance he would do it all over and do it
3 different. And I feel that the mercy of the
4 Court to spare his life. Thank you.

5 THE COURT: You're welcome, sir. Is
6 there anything you'd like to state for the
7 record?

8 DEFENDANT: The first thing I'd like
9 to do is apologize to my mother. She's looking
10 at her son up here in front of these people.
11 And it ain't nothing but a devil and demon. You
12 look at me for what I've done and I want y'all
13 to look at y'all's self and ask y'all's self
14 what y'all could have done better.

15 Mr. Strain, who got up and made the
16 statement, he made the statement about me being
17 a man. But you allowed my wife to take company
18 in front of you at your house in front of my
19 kids. And my son, T.H , come home crying to
20 me about it and said I can't believe it, just as
21 well as the affair with Uncle Marcus, the same
22 thing.

23 But as I want to say today, if I could
24 take it back, I would.

25 I want to say to Charles and my family

State of South Carolina v. Tito Harris
Case No. 10-GS-08-0091
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before The Honorable Deadra L. Jefferson

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1 as well that we was married for fourteen years.
2 I know what happened was a bad act, but I'm not
3 going to lie. I was hurting. So that'd be it.
4 Judge Jefferson, I plead to the Court.

5 THE COURT: Anything further, Mr.
6 Vitetta?

7 MR. VITETTA: Judge, I'd just like
8 to point out he's thirty-eight years old and a
9 sentence of thirty years would incarcerate him
10 until he's sixty-eight years old. I would like
11 you to consider something less than a life
12 sentence, because he would be sixty-eight.
13 That's old. He's not going to be a danger at
14 that point. Thank you, Judge.

15 THE COURT: You're welcome. You may
16 take your seats. Anything further from the
17 State? Is there anything further, Mr. Vitetta?

18 MR. VITETTA: No, ma'am.

19 THE COURT: Anything further from the
20 State?

21 SOLICITOR WILLIAMS: Not from the
22 State.

23 THE COURT: Having heard all the
24 evidence in this case and now having to consider
25 the argument -- well, not the arguments, but

State of South Carolina v. Tito Harris
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before The Honorable Deadra L. Jefferson

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1 what would probably be classified as victim
2 impact testimony from the victim's family as
3 well as having heard what I guess could be
4 termed as mitigation from the defendant and his
5 family, the Court finds it appropriate under the
6 circumstances of this case, sir, that you be
7 sentenced to the State Department of Corrections
8 for a period of life. You'll get time for any
9 credit that you've served pursuant to 24-13-40
10 to be calculated and applied by the Department
11 of Corrections.

12 Thank you all very much. Have a good
13 day.

14 (END OF PROCEEDINGS)

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State of South Carolina v. Tito Harris
Case No. 10-GS-08-0091
Jury Trial of March 14-17, 2011
before The Honorable Deadra L. Jefferson

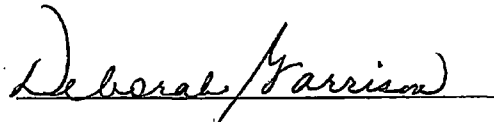
458

CERTIFICATE OF REPORTER

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I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the jury
trial prepared from the audio notes of Vivian
Cross, presiding court reporter, held before The
Honorable Deadra L. Jefferson on March 14-17,
2011;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison
Circuit Court Reporter
9th Judicial Circuit

Charleston, South Carolina
December 10, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TITO HARRIS,

APPELLANT

Appellate Case No. 2011-190108

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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The court abused its discretion by refusing to direct a verdict on the charge of murder since the evidence showed that appellant killed his wife in the heat of passion over her affair with his uncle, and the confrontation over the affair came immediately before the shooting providing the adequate legal provocation, and the killing was therefore voluntary manslaughter, without malice, and not murder as a matter of law	5
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STATEMENT OF ISSUE ON APPEAL

Whether the court abused its discretion by refusing to direct a verdict on the charge of murder since the evidence showed that appellant killed his wife in the heat of passion over her affair with his uncle, and the confrontation over the affair came immediately before the shooting providing the adequate legal provocation, and the killing was therefore voluntary manslaughter, without malice, and not murder as a matter of law?

STATEMENT OF THE CASE

Appellant was indicted by the Berkeley County Grand Jury for the offense of murder. R. 459. His case was called to trial on March 14, 2011 before the Honorable Deadra L. Jefferson, and a jury. Guy Vitetta represented appellant. Bryan Alfaro and Anne Williams were the Assistant Solicitors. R. 1.

At the conclusion of the trial, the jury found appellant guilty of murder rather than the verdict option of voluntary manslaughter. R. 440, ll. 3-8. Judge Jefferson sentenced appellant to life imprisonment. R. 457, ll. 6-8.

This appeal follows.

ARGUMENT

The court abused its discretion by refusing to direct a verdict on the charge of murder since the evidence showed that appellant killed his wife in the heat of passion over her affair with his uncle, and the confrontation over the affair came immediately before the shooting providing the adequate legal provocation, and the killing was therefore voluntary manslaughter, without malice, and not murder as a matter of law

Relevant Facts

In his opening statement, defense counsel argued appellant killed his wife in the heat of passion without malice. The shooting occurred over marital struggles [the confrontation over the affair came immediately before the shooting] and the shooting was spontaneous and impulsive. R. 128, l. 1 – 129, l. 9.

Tonia Watkins, the sister of appellant's wife, testified in the days before her sister was shot appellant called her several times. There was evidence his wife was avoiding talking to him. Appellant was very angry because his wife and his children had stayed at his Uncle Marcus' house over the weekend. Appellant's Uncle Marcus was strongly suspected of having an affair with appellant's wife and led to the fatal confrontation. R. 138, l. 17 – 139, l. 10.

Appellant and his wife were separated at the time. Tonia said that appellant's wife was packed to move again. Tonia confirmed that appellant was very upset about her move and upset that his wife had made an appointment to see a lawyer. R. 139, l. 14 – 140, l. 18.

Tonia testified that after appellant shot his wife he walked by her and said "She's gone." R. 157, ll. 3-16. Tonia confirmed appellant did not threaten or hurt anyone else in the house that fatal night. R. 157, ll. 3-10.

Appellant's son, E.H. , also testified that he was awakened at about four o'clock in the morning where he was sleeping beside his mother. E.H. acknowledged appellant was incensed upon finding his Uncle Marcus' phone number in his wife's cell phone. Appellant asked his wife -- and E.H. 's mother -- what she was doing with his Uncle Marcus. E.H. said his wife began crying during the confrontation, and appellant shot her. R. 167, l. 21 -- 173, l. 25.

Moncks Corner police officer Michael Roach responded to the decedent's house at five-thirty or five-forty a.m. He encountered appellant there and said appellant did not appear to be under the influence of alcohol or drugs and he did not request an attorney. R. 248, l. 15 -- 253, l. 16. Officer Roach said that appellant, who knew him before the shooting, told him that he and his wife had been arguing about an affair she was having with his uncle. Appellant admitted he was very mad and he ended up shooting his wife over the affair. R. 253, l. 24 -- 254, l. 11. The victim died from a single gunshot wound to the head that was probably fired from within three feet. R. 317, l. 15 -- 323, l. 15.

Appellant chose not to testify and to hold the state to its burden of proof. Defense counsel Vitetta argued there was insufficient evidence to send the case to the jury on the charge of murder. R. 354, ll. 13-18. The solicitor argued: "There is adequate evidence of malice aforethought. He used a weapon. He shot [her] in front of his child, and he shot her in the head." R. 354, l. 24 -- 355, l. 10.

The judge ruled there was evidence for the jury to consider the murder charge. R. 355, l. 15 -- 356, l. 8. Once the directed verdict motion was denied, the judge agreed that voluntary manslaughter should be a verdict option. Defense counsel Vitetta was left to argue to the jury that the shooting was without malice and was voluntary manslaughter. R. 408, l.

21 – 410, l. 8. Vitetta told the jury the shooting “happened spontaneously and impulsively and without malice.” R. 412, ll. 17-19.

Discussion

The circuit court judge should only deny a motion for a directed verdict if there is direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused to the crime charged. Here, the crime charged was murder.

A circuit judge should also direct a verdict where the evidence merely raises a suspicion the accused is guilty. See State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450-451, 452 (1984). Here, the evidence showed appellant shot his wife in the heat of passion upon the sufficient legal provocation during the confrontation of her having an affair with his uncle. The crime here was voluntary manslaughter and not murder.

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) the Supreme Court ruled a directed verdict should have been issued despite evidence that the victim’s personal effects were found in a burn pile located on Bostick’s nearby family property. Also, Bostick’s shoes contained a pattern that matched gasoline and gasoline was the accelerant used to start the house fire after the victim had been killed inside. Blood was also found on clothes Bostick was wearing on the day of the murder.

The Court in Bostick noted the state never introduced a motive for the murder, and it noted its opinion in State v. Lollis, 343 S.C. 480, 541 S.E.2d 254 (2001) in which it held the evidence was insufficient to submit an arson charge to the jury. The Court noted the defendant in Lollis had alleged financial problems, and the fact he placed his personal

belongings in storage one day before the fire. As in Bostick the Court determined that the evidence in Lollis was insufficient to withstand the motion for a directed verdict.

In State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the Supreme Court held that the circuit court judge should have directed a verdict of acquittal on the charges of first degree burglary, grand larceny, criminal conspiracy and malicious injury to an electric utility system. Odems was riding in a car with the admitted burglars when they were pulled over by the police. All of the men in the car fled, and Odems asked a nearby woman to lie for him to the police, and tell them that she was his wife. The Court noted that the stolen property from the burglary was found inside the car.

The Supreme Court held that the evidence of flight and Odems being in the same car with the stolen property from the burglary was insufficient to submit the case to the jury since it only established a suspicion of his guilt. Further, there was evidence that the defendant's flight may have been based on the mistaken belief that all riding in the car were criminally liable because the driver had a suspended license.

In State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000), the victim testified Mitchell had been over to his house on a couple of occasions. The police officer investigating the burglary found glass on the floor, and was able to identify a fingerprint from the screen. It was later matched to Mitchell. The Supreme Court held this did not constitute substantial circumstantial evidence reasonably tending to prove the guilt of the accused for the crime of burglary, and it held a directed verdict should have been issued.

In State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000), the Supreme Court also held the defendant was entitled to a direct verdict on the charge of murder. In Martin

there was strong circumstantial evidence of guilt, but the Supreme Court held it was not substantial circumstantial evidence of guilt.

A vehicle seen on the night of the murder in the victim's apartment complex was very similar to the car in which Martin and his co-defendant were driving that night. When Martin and his co-defendant were late picking up Martin's girlfriend that night, Martin told her "some shit happened" and the co-defendant added "somebody may have died tonight." State v. Martin, 340 S.C. at 600, 533 S.E.2d at 601. Incriminating items that could have been used in the murder were also found in a trash can near the bar where Martin's girlfriend worked.

Finally, in State v. Schrock, the Supreme Court held that evidence that Schrock was in the area of the murder scene, including prints that were similar to Martin's prints, as well as Marlboro cigarette butts -- where Schrock admitted he smoked Marlboro cigarettes -- were all insufficient circumstantial evidence to take the case to the jury.

Here, also, the evidence only raised a suspicion that appellant committed the homicide with malice aforethought. The undisputed evidence was that appellant was very angry because of an affair he thought his wife was having with his Uncle Marcus. Appellant's son confirmed that the confrontation immediately before appellant shot his wife over her affair with his Uncle Marcus. There was evidence his wife "broke down" when confronted about the affair, and appellant shot her.

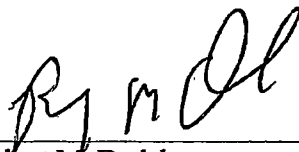
Further, appellant admitted to Officer Roach immediately after the shooting that he was incensed about the affair. This was a voluntary manslaughter case and not a murder case. Since voluntary manslaughter is the killing of another human being in the heat of passion upon an adequate legal provocation and *without malice*, the circuit judge

abused her discretion by refusing to direct a verdict of acquittal on the murder charge (unlawful killing of another with malice aforethought).

CONCLUSION

An order of acquittal should be issued.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ry m Ol', is written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of December, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TITO HARRIS,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tito Harris states:

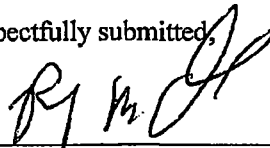
1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Deadra L. Jefferson, which was held on March 14-17, 2011, 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 Tito Harris.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of December, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley CountyDeadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TITO HARRIS,

APPELLANT

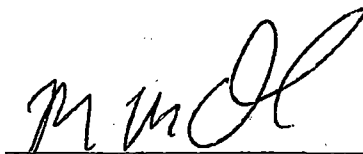
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment;
- (2) Entire Trial Transcript
- (3) State's Exhibit #62 (Micro cassette of appellant's statement).
The Clerk of Court advises that no transcript was introduced
despite the court reporter's index.

I certify that this designation contains no matter which is irrelevant to this appeal.

December 7th, 2012



Robert M. Dudek
Chief Appellate Defender

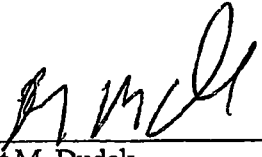
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 7th, 2012



Robert M. Dudek
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

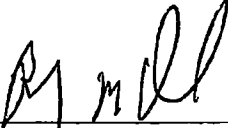
V.

TITO HARRIS,

APPELLANT

CERTIFICATE OF SERVICE

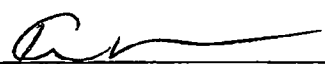
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at P.O. Box 50666, Columbia, SC; and on Tito Harris, #345287 at Lieber Correctional Institution, this 7th day of December, 2012.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of December, 2012.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Tito Harris, Appellant.

Appellate Case No. 2011-190108

2014 JAN 13 PM 1:41
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED
KWM

Appeal From Berkeley County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2013-UP-477
Submitted September 1, 2013 – Filed December 18, 2013

APPEAL DISMISSED

Chief Appellate Defender Robert M. Dudek, of
Columbia; and Tito Harris, pro se, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Donald J. Zelenka,
both of Columbia, for Respondent.

cc: Sol

KWM

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

FEW, C.J., and PIEPER and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
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www.sccourts.org

January 08, 2014

The Honorable Mary P. Brown
PO Box 219
Moncks Corner SC 29461-0219

REMITTITUR

Re: The State v. Harris, Tito
Lower Court Case No. 2010GS0800091
Appellate Case No. 2011-190108

FILED
14 JAN 13 PM 1:58
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

hwm

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

J. A. Kitchings
CLERK

cc: Tito Harris
Robert Michael Dudek, Esquire
Donald J. Zelenka, Esquire

hwm

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Tito Fernando Harris(00345287))

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-08-1727

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution, Ridgeville, SC
2. Name and location of Court which imposed sentence Berkeley County, Monks Corner, SC
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 10-GS-08-0091 murder
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence

2014 APR 29 PM 12:20
CLERK OF COURT
BERKELEY COUNTY, SC
Revised 3/2003

- (a) March 17, 2011
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. judgment affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. December 18, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2013-UP-477
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

- (a) Trial counsel failed to object to the charge that a jury may infer malice from the use of a deadly weapon.
- (b) Trial counsel failed to present evidence that would mitigate this offense from murder to manslaughter
- (c) Trial counsel failed to object to the charge by the trial judge which said "the words must be accompanied by some overt, threatening act which would have produced the heat of passion."
- (d) Trial counsel failed to object to the charge by the trial judge that stated "The provocation needed for voluntary manslaughter must come from some act of or related to the victim. Words alone, however vulgar or insulting, are not enough to meet legal provocation."

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) At the time of my trial, State v. Belcher had been the law for almost 19 months. Trial counsel should have raised an objection to the charge that permitted the jury to infer malice from the use of a deadly weapon.
- (b) The sole defense was the fact that the case should have been manslaughter and not murder. Trial counsel failed to investigate and call witnesses who would verify that my wife was having an affair with my uncle.
- (c) Trial counsel should have objected to the charge that equated manslaughter with self defense. While words alone may not be sufficient to cause one to act in self defense, words alone may lessen a murder charge to manslaughter.
- (d) Trial counsel should have objected to the charge that again improperly informed the jury that words alone would not reduce a murder charge to a manslaughter charge. Again the requirement of an act to lessen murder to manslaughter is not a proper statement of the law.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Trial counsel failed to raise any object to the request charge.

(b) Ineffective assistance of counsel for his failure to investigate the case cannot be raised on direct appeal.

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Guy Vietta, 225 Seven Farms, Suite 201, Charleston, SC

ii. same as above

iii. Robert Dudek, South Carolina Commission on Indigent Defense, Division of

Appellate Defense, P. O. Box 11589, Columbia, SC 29211

iv. C. Rauch Wise, 305 Main St., Greenwood, SC 29646

(b) the proceedings at which each such attorney represented you:

i. arraignment and plea

ii. trial

iii. appeal

iv. Preparation of post conviction relief petition

19. State clearly the relief you seek in filing this application:

A new trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Tito F. Harris, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Tito F. Harris

SWORN to and subscribed before me this 2th
day of July, 2014.

Lyndee Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

FILED
JUL 29 PM 12:20
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Tito Harris, #345287,

2014-CP-08-1727

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on July 29, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Berkeley County Clerk of Court's orders of commitment. The Applicant was indicted by the February 2010 term of the Berkeley County Grand Jury for murder (2010-GS-08-0091). Guy Vietta, Esquire, represented him. On March 14-17, 2011, the Applicant proceeded to a trial before the Honorable Deadra L. Jefferson and a jury. The Applicant was found guilty as indicted. Judge Jefferson sentenced the Applicant to confinement for life.

A notice of appeal was filed and an appeal perfected on the Applicant's behalf pursuant to Anders¹. Robert M. Dudek, Esquire, represented the Applicant on appeal. The South Carolina Court of Appeals dismissed the Applicant's appeal and granted Counsel's petition to be relieved. State v. Harris, Op. No. 2013-UP-477 (S.C. Ct. App. filed December 18, 2013). The Remittitur was issued on January 8, 2014.

¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

FILED
2015 SEP 10 AM 10:42
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

N/C
N/E

II.

In his application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Trial counsel failed to object to the charge that a jury may infer malice from the use of a deadly weapon"
 - a. "At the time of my trial, State v. Belcher² had been the law for almost 19 months. Trial counsel should have raised an objection to the charge that permitted the jury to infer malice from the use of a deadly weapon"
2. "Trial counsel failed to present evidence that would mitigate this offence from murder to manslaughter"
 - a. "The sole defense was the fact that the case should have been manslaughter and not murder. Trial counsel failed to investigate and call witnesses who would verify that my wife was having an affair with my uncle"
3. "Trial counsel failed to object to the charge by the trial judge which said "the words must be accompanied by some overt, threatening act which would have produced the heat of passion"
 - a. "Trial counsel should have objected to the charge that equated manslaughter with self defense. While words alone [sic] may not be sufficient to cause one to act in self defense, words alone may lessen a murder charge to manslaughter"
4. "Trial counsel failed to object to the charge by the trial judge that stated "The provocation needed for voluntary manslaughter must come from some act of or related to the victim. Words alone, however vulgar or insulting, are not enough to meet legal provocation"
 - a. "Trial counsel should have objected to the charge that again improperly informed the jury that words alone would not reduce a murder charge to a manslaughter charge. Again the requirement of an act to lessen murder to manslaughter is not a proper statement of the law"

Attached herewith and incorporated herein by reference are the records of the Beaufort County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the opinion of the South Carolina Court of Appeals. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

² State v. Belcher, 385 S.C. 597, 685 S.E.2d, 802 (2009)

III.

The Applicant's allegations are claims of ineffective assistance of trial counsel. The Respondent submits that these allegations are without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

(SIGNATURE BLOCK ON NEXT PAGE)

V.

WHEREFORE, the Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's trial counsel was ineffective.

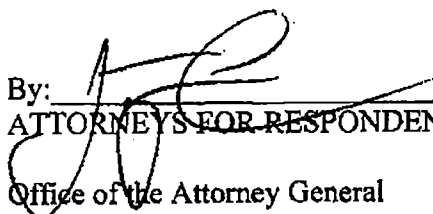
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
~~ATTORNEYS FOR RESPONDENT~~

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

September 4, 2015

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

2014-CP-08-1727

TITO HARRIS, #345287

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,
Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Clarence Rauch Wise, Esq.
305 Main Street
Greenwood, SC 29646

DATED this 4th day of September, 2015.

Elizabeth McCallan
Elizabeth McCallan, Legal Assistant
For Respondent

FILED
2015 SEP 10 AM 10:42
MARY R. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

1 STATE OF SOUTH CAROLINA)
2) Court of Common Pleas
COUNTY OF CHARLESTON) Case No. 2014-CP-08-1727
3)
TITO FERNANDO HARRIS,)
4)
Applicant,)
5)
vs.) Transcript of Record
6)
STATE OF SOUTH CAROLINA,)
7)
Respondent.) DATE: January 13, 2017
8)
9

10 B E F O R E:

11 THE HONORABLE WILLIAM SEALS
12

13 A P P E A R A N C E:

14 C. RAUCH WISE
Attorney for the Applicant
15

ALICIA OLIVE
16 Attorney for the Respondent
17

18 Karen V. Andersen, RMR, CRR
19 Circuit Court Reporter
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1 MS. OLIVE: May it please the Court, Your Honor.
2 This is Tito Harris, 2014-CP-08-1727. He was indicted in
3 February of 2010 for murder. He was represented on that
4 charge by Guy Vitetta. He went to trial March 14th through
5 17th, 2011, before Judge Jefferson and a jury. He was found
6 guilty as indicted. Judge Jefferson sentenced him to
7 confinement for life.

8 Timely notice of appeal was filed on his behalf and
9 Robert Dudek filed an Anders brief on his behalf. The South
10 Carolina Court of Appeals dismissed his appeal. And that was
11 by unpublished opinion filed December 18th, 2013. The
12 remittitur was returned on January 8th, 2014.

13 He filed this application for post-conviction relief
14 July 29th, 2014, alleging several grounds of ineffective
15 assistance of counsel.

16 He is present in the courtroom today and represented
17 by Rauch Wise. I will turn it over to Mr. Wise at this
18 point.

19 THE COURT: All right. Mr. Wise.

20 MR. WISE: Your Honor, that's basically correct. We
21 would start out by calling Guy Vitetta.

22 GUY VITETTA,
23 having been duly sworn, testifies as follows:

24 THE CLERK: Please state your name for the record
25 and spell your last name.

1 THE WITNESS: Yes, ma'am. My name is Guy Vitetta,
2 V-i-t-e-t-t-a.

3 DIRECT EXAMINATION

4 BY MR. WISE:

5 Q. Please give us your full name again.

6 A. Yes, sir. Guy Vitetta.

7 Q. Mr. Vitetta, you represented Mr. Harris in the trial
8 of this matter?

9 A. Yes, I did.

10 Q. You believe you were retained?

11 A. Yes.

12 Q. Tell us, if you would, basically your basic
13 assessment of the case.

14 A. My assessment of the case, that we had difficult
15 facts. I was hoping to try to find some mitigating evidence
16 that would at least allow me to get a charge of voluntary
17 manslaughter. I know that during the time, Mr. Harris and
18 his wife, I think they were in the process of a divorce or
19 were thinking about a divorce or something like that. And so
20 I felt that I was -- what I wanted to really try to do was
21 keep him from having a life sentence.

22 Q. And under the facts, would it be accurate to say
23 manslaughter was the best you could hope for?

24 A. Yes, sir.

25 Q. And so that was the basic theory of the case, or

1 what you wanted to do with it?

2 A. Yes.

3 Q. You and I have sat down and discussed this matter
4 over a year or so ago?

5 A. Yes, sir, we have.

6 Q. During the judge's charge -- do you got a transcript
7 with you?

8 A. I do, yes.

9 Q. In the judge's charge on page 426 of the
10 transcript -- unfortunately, the transcript number and the
11 appeal numbers aren't the same.

12 A. 426 on my transcript?

13 Q. Right.

14 A. Okay. I got it. Yes, sir.

15 Q. All right. The judge charged that you could infer
16 malice from the use of a deadly weapon?

17 A. Yes, she did.

18 Q. And there was no objection made?

19 A. No objection made.

20 Q. You and I, when we had our discussion, we discussed
21 the case of *State v. Belcher*?

22 A. Yes.

23 Q. Were you familiar with that at the time of this
24 trial?

25 A. I was not. I missed it. I'm sorry.

1 Q. Excuse me?

2 A. I said I was not. I missed that case. I'm sorry.

3 Q. Right. And I believe this was tried about a year
4 and a half after the *Belcher* decision.

5 A. Yes. I think *Belcher* was end of '09 and this was in
6 '11. I should have known about it, and I didn't.

7 Q. 14 or 15 months?

8 A. Yes.

9 Q. Okay. And also, there was some charges to the
10 jury on page -- I have to make sure, on end of page 427 and
11 beginning of page 428, there was a charge that basically said
12 that words accompanied by overt act is what's needed.

13 A. Yeah, I think she's talking about voluntary, that
14 was the voluntary charge.

15 Q. And talking about voluntary manslaughter?

16 A. Yes, sir.

17 Q. There was no objection to that?

18 A. No, sir.

19 Q. Have you done your research on whether or not that's
20 more applicable to what we call an imperfect self-defense
21 case?

22 A. No.

23 Q. Okay. In this case, you never alleged that she made
24 any threatening motions toward him?

25 A. No.

1 Q. Allegation was that and -- well, as the State
2 attempted to refute in their argument, apparently
3 successfully, was her actions in having an affair is what
4 caused it?

5 A. Yes, sir.

6 Q. And he found it out that day?

7 A. I think so, something like that.

8 Q. And I believe under testimony, he had not come to
9 the house with a weapon of any type?

10 A. I don't remember. I'm sorry, but if that's what the
11 record says, yes, sir.

12 Q. I believe the record -- there's a dispute as to
13 where the gun was found in the house. Does that refresh your
14 memory?

15 A. Yes.

16 Q. And the gun --

17 A. Yes, yes.

18 Q. -- that was used was in the house?

19 A. Yes. I think that it was in a closet or something.

20 Q. Excuse me?

21 A. I think it might have been in a closet or
22 something.

23 Q. Okay. And did you argue that -- let me rephrase
24 that. That's a poor question before I started it.

25 And so the jury was allowed to infer malice, which

1 is a key element of murder, from the use of the deadly
2 weapon?

3 A. Yes, sir, they were.

4 MR. WISE: Thank you very much.

5 THE WITNESS: Okay. Thank you.

6 THE COURT: Cross.

7 MS. OLIVE: Thank you, Your Honor. May it please
8 the Court.

9 CROSS-EXAMINATION

10 BY MS. OLIVE:

11 Q. Good morning, Mr. Vitetta.

12 A. Good morning.

13 Q. Can you briefly describe the facts of this case, the
14 State's evidence against Mr. Harris?

15 A. I think they were alleging that he had come to her
16 house. He had driven all night and went to her house and
17 shot his wife in the head, I believe in the -- I know in the
18 presence of one of their children. And I think the child
19 might have been kind of close at the time of the homicide.

20 Q. Were they together at the time, was Mr. Harris and
21 his wife?

22 A. As a married couple? No, I believe they were
23 separated. I'm almost positive. This matter came to me from
24 a divorce lawyer. So I think that they were -- they had
25 filed or they were contemplating filing or whatever. But I

1 do believe that Mr. Harris was living elsewhere at the
2 time.

3 Q. Do you recall whether he had made any calls to her?
4 Well, let me ask you first. Do you recall what time in the
5 day this happened, the shooting happened?

6 A. This was nighttime. You know, it was night. I
7 remember that the video where he got stopped was, I think,
8 was at night.

9 Q. Could it have been maybe very early morning, around
10 5 a.m.?

11 A. Yes, it was dark; easily could have been, yes.

12 Q. Do you recall whether Mr. Harris had made any
13 attempts to contact the victim the night before?

14 A. I think he may have. You know, he was very -- you
15 know, I think he was having a difficult time with the
16 separation. I think he was coming down from North Carolina,
17 you know, to speak with her or something. I don't remember
18 exactly.

19 Q. So prior to the shooting, he had driven down from
20 North Carolina?

21 A. Right, that day or that evening or something, yeah.

22 Q. Did Mr. Harris give any statements in this case?

23 A. Well, he gave two video -- two on video, one right
24 when they stopped him right down the street from the
25 incident, and another one, I think, at the station. And he

1 might have written one as well. They were just confessions,
2 essentially.

3 Q. And you challenged those statements prior to
4 trial?

5 A. Right. We had a full hearing on it, yes.

6 Q. Did he make an admission in those statements?

7 A. Yes. Yeah, I think it was -- the whole thing was
8 just so sad. You know, the officer that stopped him was a
9 friend of his, you know. And you watch that video and this
10 was heartbreaking.

11 Q. Do you recall -- you stated that her son was close
12 by when the shooting occurred?

13 A. Yeah. I think he was either on mom's lap or mom had
14 just pushed him off or something, or something like that.
15 But, I mean, the child was in the room.

16 Q. Did he testify at trial; do you remember?

17 A. Tito or the child?

18 Q. The child.

19 A. I don't think so. I'm sorry. I just can't ...

20 Q. Do you have your transcript up there with you?

21 A. I do.

22 Q. I'm going to refer you to page 160 of the
23 transcript.

24 A. Okay.

25 Q. That's the testimony --