

ORIGINAL

VOLUME II OF III

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable R. Knox McMahon, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAVID RICHARD WALKER, JR.,

APPELLANT

APPELLATE CASE NO. 2017-000550

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT #2 (CD IN-CAR VIDEO) AND
STATE’S EXHIBIT #45 (REDACTED CD IN-CAR VIDEO)**

Kyle Walker - Direct examination
by Mr. Walker

1 get away from Carrie in a sense due to the fact that she was
2 being abusive and also stipulating and being manipulative
3 (sic) towards me, her daughter, or the situation in general?

4 A No.

5 Q So, you would not agree to that?

6 A No, the only thing I remember is you want -- y'all just
7 wanted me to come up there. She -- so no.

8 Q Would you give any testimony as to what you think it
9 was said -- what was said?

10 A That, like I just said before, that y'all wanted me to
11 come up there. Carrie wanted me to come up there because
12 she was scared that, while she was at work, you was gonna do
13 something to the house.

14 Q But, in your opinion, or would you agree that there was
15 stipulations or, or that I intentionally tried to leave
16 from, from the proximity of, of Carrie's, Carrie's beings
17 to, to get away from her actions and the, and the person,
18 her demeanors, and her abusiveness towards me?

19 SOLICITOR DAVIS: Objection, Your Honor. He's asked
20 this question in a different, a different way. The witness
21 has already said he doesn't have any recollection.

22 MR. WALKER: Your Honor, I'll move on to the next
23 question. This is the next question.

24 THE COURT: All right. Thank you, Mr. Walker. Ask
25 your next question.

Kyle Walker - Direct examination
by Mr. Walker

1 MR. WALKER: I did move on. This is the next question,
2 Your Honor.

3 Is that proper?

4 THE COURT: You can't keep asking the same question.

5 MR. WALKER: I'm trying to -- he -- Your Honor, he said
6 he couldn't recollect and I asked Your Honor if, if I could
7 ask simple questions to try to recollect his memory.

8 THE COURT: And, and I allowed that---

9 MR. WALKER: And plus---

10 THE COURT: ---over the solicitor's objection.

11 MR. WALKER: And I'm still on that---

12 THE COURT: His response was no to your attempt to
13 refresh his recollection or use your recollection to refresh
14 his recollection and he said no. All I remember is y'all
15 both wanted me to come up there and Carrie was concerned
16 that you may do something to the house. So, I allowed that
17 question to be asked over the objections of the State.
18 Mr. Walker responded as he did and I'm, I'm just asking you
19 now to ask, ask Mr. Walker your next question.

20 MR. WALKER: Your, Your Honor, if I may?

21 He's given partial testimony of what I'm asking him.
22 So, I'm trying to recollect his memory further to what I'm
23 trying to get out. What I'm trying to get at is I'm just
24 trying for him to state what the conversation between me and
25 him. He says he doesn't remember but he's remembering

Kyle Walker - Direct examination
by Mr. Walker

1 partial. So, therefore, it's relevant to try to get his
2 memory.

3 THE COURT: He actually testified to -- that you and
4 Carrie -- his recollection was that you and Carrie both
5 wanted him to come up there that weekend, that he, he wasn't
6 able to come cause he had to work, and that Carrie was
7 afraid that you were gonna do something to the house. So,
8 he does have memory and that is his memory. I -- please,
9 Mr. Walker, we've been through body language and hand
10 gestures.

11 MR. WALKER: May, Your Honor, I'm wondering, if you get
12 a chance?

13 THE COURT: And that is in -- been his recollection
14 and, again, I allowed you to ask a question based on your
15 recollections to see if it would spur any difference in Kyle
16 Walker's recollection. It did not. And, and he, again,
17 stated no, I don't remember that and repeated what he had
18 said basically before I allowed you to use your recollection
19 and question to refresh his recollection and allowed that
20 over the solicitor's objection.

21 So, I, I guess, ask your next question. If there's an
22 objection, I'll rule on it.

23 MR. WALKER: I'm -- all right. Your Honor. I'm
24 proceeding, Your Honor.

25 THE COURT: Sir?

Kyle Walker - Direct examination
by Mr. Walker

1 MR. WALKER: I'm proceeding.

2 You're saying I contacted you recently before the
3 death, and you couldn't recall or whatnot, whether it was
4 texts or what -- I meant what the, what the agenda was
5 there.

6 outside of that, do you recall any testimony that I
7 given -- that, that I give you recently before the death on
8 my part and not, not Carrie's?

9 A No.

10 MR. WALKER: Okay. No, no further questions, Your
11 Honor.

12 THE COURT: Thank you, Mr. Walker.

13 Solicitor.

14 SOLICITOR DAVIS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY SOLICITOR DAVIS:

17 Q Mr. Walker, how long did you know Carrie Banty?

18 A I'm not sure. I'm not sure.

19 Q Years?

20 A I can't -- yes, ma'am.

21 Q At sometime did she live with you?

22 A Yes, ma'am.

23 Q And how long was that?

24 A Around about a month or maybe a little bit more.

25 Q Did Cassidy live with you as well?

Kyle Walker - Cross-examination
by Solicitor Davis

- 1 A Yes, ma'am.
- 2 Q So, you saw Carrie and Cassidy interact?
- 3 A Every day.
- 4 Q Was she a good mom to Cassidy?
- 5 A Great.
- 6 Q Did you ever see her abuse her?
- 7 A No, ma'am.
- 8 Q You ever see her physically harm her?
- 9 A No.
- 10 Q You only saw typical discipline?
- 11 A Yes, ma'am.
- 12 Q Did Cassidy seem scared of her?
- 13 A No, ma'am.
- 14 Q Did you ever see any violence from Carrie at all?
- 15 A No, ma'am.
- 16 Q Did you ever see Carrie and the defendant together?
- 17 A Yes, ma'am.
- 18 Q Did you ever see them arguing?
- 19 A No, ma'am.
- 20 Q Did you ever see them have a physical argument?
- 21 A No, ma'am.
- 22 Q You said that Carrie told you she was scared that the
- 23 defendant was gonna come and burn up the house.
- 24 was that shortly before, as in days, before her death?
- 25 A I know it was come mess up the house.

Kyle Walker - Cross-examination
by Solicitor Davis

1 Q Right.

2 A But it had a police report saying that that's what it
3 was suppose to be about or whatever.

4 Q But that was a couple of days before she was killed?

5 A Yes.

6 Q Okay. Do you recall the defendant telling you that he
7 was mad that Carrie had called law enforcement on him?

8 A I think so, yes, ma'am.

9 Q And you were on the phone with the defendant when law
10 enforcement was there talking to him about the house
11 situation?

12 A I think so, yes, ma'am.

13 Q How close were you and Carrie?

14 A Pretty close.

15 Q Was she like your sister?

16 A Yes, ma'am.

17 SOLICITOR DAVIS: No further questions, judge.

18 THE COURT: Thank you.

19 Redirect, Mr.---

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

21 THE COURT: ---Walker?

22 MR. WALKER: Yes, sir.

23 REDIRECT EXAMINATION

24 BY MR. WALKER:

25 Q How you doing?

Kyle Walker - Redirect examination
by Mr. Walker

1 How you doing again, Mr. Walker?

2 He -- you just stated that it was a police report on
3 the, on the burn your house situation.

4 Is, is -- how did -- is it relevant that you come
5 across this police report and how did you come across it?

6 A I -- if I'm remember correctly, I think my father and
7 my mother told me.

8 Q So, then you think they had access to this police
9 report?

10 A No, they probably heard from you or somebody else.

11 Q All right. Do you recall me contacting them at anytime
12 about this police report?

13 THE COURT: Him who?

14 Contacting him --?

15 MR. WALKER: I said -- I, I think I said them, Your
16 Honor.

17 THE COURT: You talking about you contacting the
18 witness?

19 MR. WALKER: No, he, he stated that I, that I -- he may
20 of heard from my mother or father. So, I asked---

21 THE COURT: I'm just asking who him is you're referring
22 to. I don't know.

23 MR. WALKER: I said them.

24 THE COURT: Sir?

25 MR. WALKER: T-E-M (sic). Them.

Kyle Walker - Redirect examination
by Mr. Walker

1 THE COURT: Them.

2 Then who is them?

3 MR. WALKER: My mother and father that he just
4 testified---

5 THE COURT: Thank you very much. I, I can't track
6 pronouns.

7 MR. WALKER: I couldn't track cause you said he and I
8 couldn't skip, Your Honor.

9 THE COURT: You understand the question, Mr. Walker?

10 THE WITNESS: No, sir.

11 THE COURT: Ask your question, Mr. Walker.

12 Q All right. Did -- do you, do you recall me contacting
13 your mother or your father and -- about this police report?

14 A I don't but I'm sure I heard it from them -- from my
15 mom or dad.

16 Q So, you have no recollection as me contacting my mother
17 or father and generally why the police report or burning
18 down a home or damaging a home?

19 A No, I don't think they've got a hold of no police,
20 police report.

21 Q Excuse me.

22 Did you just you say you think they got a hold of---

23 A I said I do not think they got a hold of one.

24 Q How else would you say that you've referenced the
25 police report and them knowing?

Kyle Walker - Redirect examination
by Mr. Walker

1 SOLICITOR DAVIS: Objection, Your Honor. He's going
2 outside the scope of what this witness has knowledge of.

3 THE COURT: That's over, that's overruled.

4 Q So, back again, how do you think they acknowledged this
5 police report?

6 A Coming from you or Carrie.

7 Q But you just give testimony that I, I didn't, I didn't
8 contact them about a police report.

9 A I'm not sure then.

10 Q All right. All right. I'm gonna move on.

11 The, the solicitor asked you -- stated that -- you give
12 testimony that I didn't agree with the law enforcement
13 officer making contact with me.

14 Is that correct?

15 A Excuse me?

16 Q You, you give testimony as to that -- you give
17 testimony that I did not agree to the law enforcement
18 officer making contact with me.

19 Is that correct?

20 A I don't think that's the way it went but I know, if I
21 remember correctly, we was on the phone as the police got
22 there or whatever, and you said you was about, if I remember
23 correctly, I think you said you's about to go to jail cause
24 something, I don't know, and then we got off the phone.

25 Q Well, what -- would you agree that doesn't give you a

Kyle Walker - Redirect examination
by Mr. Walker

1 reason to, to say that I acted negative towards the law
2 enforcement contact?

3 A Did I say you acted negative?

4 Q You told the solicitor that I, I did not agree and that
5 I was kind of hostile towards that. So, that would be
6 negative.

7 A That's, that's not what I said.

8 Q Could you -- you can repeat your answer if you wish.

9 A I -- I'm, I'm not sure. I'm not.

10 Q So, are you saying your memory is bad on that also?

11 A Correct.

12 Q Okay. I'm proceed.

13 So, you said -- you give testimony that, that I told
14 you that the law enforcement officer that -- the, the
15 solicitor asked you if I gave you testimony that the law
16 enforcement -- when that law officer, officer made contact
17 with me, that I disagreed with that.

18 Can you give that either affirmative answer and give
19 detail into that?

20 A No, I don't.

21 MR. WALKER: Can you, can you direct him to answer that
22 question, Your Honor?

23 THE COURT: He said he can't give details.

24 Do you know details?

25 THE WITNESS: No, sir.

1 THE COURT: He can't answer---

2 MR. WALKER: He just---

3 THE COURT: ---what he doesn't know.

4 MR. WALKER: Your Honor, he just give the solicitor the
5 details. Can he -- you can repeat the same answer that you
6 give the solicitor.

7 THE COURT: He's already asked -- been asked and
8 answered the question. It's in the record.

9 MR. WALKER: But I'm redirecting, Your Honor.

10 THE COURT: If he's already asked -- been asked the
11 question and answered it, it's in the record.

12 MR. WALKER: But I'm giving another question.

13 THE COURT: Ask your next question, Mr. Walker.

14 MR. WALKER: No further questions, Your Honor.

15 THE COURT: Thank you.

16 Thank you very much, Mr. walker. You may step down.

17 THE WITNESS: Thank you, sir.

18 THE COURT: Thank you for being with us today.

19 THE WITNESS: Yes, sir.

20 THE COURT: Any other witnesses or testimony to be
21 offered on behalf of the defense in the Stand Your Ground
22 hearing, Mr. Walker?

23 MR. WALKER: No, sir, Your Honor.

24 THE COURT: The State has already rested in that
25 regard, correct?

1 SOLICITOR GRAHAM: Correct, Your Honor.

2 THE COURT: And both parties have rested in regard to
3 the in camera hearing on Jackson versus Deno.

4 Is that correct?

5 MR. WALKER: Yes, Your Honor. Defense rests on --
6 rests.

7 THE COURT: Is that correct, solicitor?

8 SOLICITOR GRAHAM: Correct, Your Honor.

9 THE COURT: As far as Stand Your Ground, I do not want
10 to listen to any further argument from either side as to
11 Stand Your Ground except to the extent that I will listen as
12 it -- that motion may be affected by testimony of
13 Mr. Walker, Senior and the testimony of Kyle Walker.

14 So, if you want to address any argument to me on Stand
15 Your Ground, the scope of the testimony that's been
16 presented on behalf -- by those two witnesses, I'll hear it.

17 Mr. Walker.

18 MR. WALKER: Yes, sir, Your Honor.

19 I'd like to make an argument that, as, as -- I, I
20 believe Mr. Walker, Senior give testimony that he was
21 indelegency (phonetic) a hostile witness towards, towards
22 me. I believe his testimony was pretty accurate but I think
23 the Court should take into consideration his hostility
24 (phonetic) towards defense. And also, as far as Mr. Walker
25 goes, Kyle Walker, I think he give testimony to the

1: solicitor and did not give proper testimony to the defense
2: in contradiction. So, maybe that can be weighed in, into
3: your consideration, Your Honor.

4: Thank you.

5: THE COURT: Solicitor.

6: SOLICITOR GRAHAM: Nothing, Your Honor.

7: THE COURT: All right. Solicitor, as to the Jackson
8: versus Deno.

9: SOLICITOR GRAHAM: The State's position, Your Honor, is
10: Sergeant Kostyk, he does have him -- I believe he does have
11: him in investigative detention. He doesn't read him his
12: rights.

13: The question that the State would want to introduce in
14: the case in chief is, at some point, he asked what do you
15: think you have a warrant for, and Mr. Walker's response is
16: murder. The State would argue that that is not an -- that
17: is not a custodial interrogation. Although he may be
18: detained, he's not being interrogated. That's a routine
19: question.

20: Whether it's a routine, routine question or I think the
21: Fourth Circuit has called it, if I could find it, United
22: States versus Taylor, that they make a distinction of
23: whether the incriminating statement, depends on whether the
24: question be prompted by responses to questions that were
25: administrative rather than investigatory.

1 At the time Sergeant Kostyk ran into him, he states,
2 according to the sergeant, that he was doing a Terry type
3 stop situation. He had an individual at a convenience or a
4 grocery store that was closed near a convenience store that
5 was often robbed in a high crime area and that it was
6 suspicious behavior and he approached him. He asked him his
7 name, and, as routine to situations when people are in weird
8 situations, I think the sergeant said he asked do you have
9 warrants. The response is murder.

10 We think that that was not an interrogation but, under
11 case law, would be an administrative question similar to the
12 routine book-in questions that the South Carolina Supreme
13 Courts and the Court of Appeals have allowed.

14 Once past that, Your Honor, he's placed into handcuffs
15 at that point, and we move into the next question, which is
16 something like you, you've murdered somebody, and the
17 testimony from Sergeant Kostyk is yes.

18 The State would claim that that is an impeachable, that
19 it would not be used in its case in chief, but would be used
20 in impeachment purposes cause his response is you murdered
21 somebody and the answer was yes. And then it's I said yes,
22 sir.

23 Past that point, Your Honor, he quickly asked for a
24 lawyer and we agree that he's in custody and he's asked,
25 he's invoked his rights. Although there could be a question

1 of voluntariness after that point, there's nothing the State
2 wants to use.

3 So, as far as Sergeant Kostyk's statement, we would ask
4 for a ruling that we could get in our case in chief that it
5 is not a violation of Miranda for a custodial interrogation
6 for the question murder, and his response when are you --
7 oh, excuse me, what do you have a warrant for, murder, for
8 impeachment purposes.

9 To go to the Stand Your Ground hearing, Your Honor, we
10 would ask to include that and also a ruling from Your Honor
11 that the question is you've murdered somebody and his
12 response was yes. That that would be for impeachment
13 purposes as that was free and voluntary. Although he was in
14 custody, he had not yet invoked his rights even yet and he
15 was not forced to do that.

16 South Carolina has developed case law regarding the
17 voluntariness, voluntariness of the statement for Your Honor
18 to consider. That comes from State versus Miller, which is
19 375 SC 370. That's a 2007 Supreme Court case.

20 You look at the background of the defendant, his prior
21 experience, his conduct, his age, the length of the custody,
22 misrepresentations by the police, isolation of a minor,
23 which doesn't apply in this case, threats of violence,
24 promises of leniency.

25 Again, you're gonna have a credibility issue of the

1 defendant and his claim of what happened versus what the
2 officers say. And I think his Stand Your Ground testimony
3 is, is complete that he has credibility issues. He's
4 contradicted by Doctor Ross. He's contradicted by Tommy
5 Hines regarding use of the phone. He is contradicted by his
6 father and Judy Banty regarding Carrie's---

7 MR. WALKER: Objection, Your Honor.

8 THE COURT: What's your objection?

9 MR. WALKER: He is -- this is Jackson versus Deno, is
10 it not?

11 THE COURT: It is.

12 MR. WALKER: And he is giving testimony on -- outside
13 of this video as he addressed me earlier.

14 THE COURT: All right. Solicitor.

15 SOLICITOR GRAHAM: I'm addressing it to his
16 credibility, Your Honor.

17 MR. WALKER: Credibility on what, if I may, Your Honor?

18 THE COURT: Whether or not you're believable.

19 MR. WALKER: Thank you so much, Your Honor.

20 THE COURT: Credibility of your testimony.

21 MR. WALKER: Thank you, and this is for impeachment?
22 Is that correct?

23 THE COURT: No, sir. Credibility, I've, I've got to
24 weigh the credibility of all the witnesses that have
25 testified in the in camera hearing. So, this is solely on

1 the issue of whether or not you are believable.

2 MR. WALKER: In this -- I mean I don't understand what
3 the state is getting at. I understand credibility but I
4 don't understand what is he trying to credibility?

5 what is trying to credit, credit in, credibility, if I
6 may?

7 THE COURT: He's saying, as I understand his argument,
8 is that your credibility would be questioned because there
9 were -- because of the testimony of Doctor Ross. It did not
10 corroborate your statements and the testimony of Mr. Hines
11 that did not corroborate your statements.

12 MR. WALKER: I, I mean I, I will rest, Your Honor, on
13 this objection but I just don't understand what Ms. Ross has
14 to do with Mr. Hines and others.

15 THE COURT: All witnesses -- when you're, when you're
16 the fact finder, whether in an in camera hearing or at a
17 bench trial, you have to determine the believability, the
18 credibility of the witnesses that testify for you. Whether
19 or not there was testimony offered that corroborated what
20 you say or any witnesses or whether or not there was
21 testimony that was inconsistent, whether or not there was
22 prior inconsistent statements or consistent statements.

23 MR. WALKER: If I may?

24 THE COURT: Credibility is the foundation of fact
25 findings.

1 MR. WALKER: If I may, Your Honor?

2 I said I would like to rest but I would like to
3 further, if I may, on the, on the fact that it's irrelevant
4 but it's further if you get what I'm getting at, Your Honor.

5 THE COURT: It's what?

6 MR. WALKER: It's -- I, I believe his testimony, what
7 he's, what he's stating, is relevant but I believe it's
8 furthering his, his contradictions and his statements that
9 he's giving it as an argument is, is further than what needs
10 to be.

11 THE COURT: All right. well, your, your objection
12 noted for the record. Thank you, Mr. Walker.

13 Solicitor.

14 SOLICITOR GRAHAM: Thank you, Your Honor.

15 In addition, specifically to his credibility, you have
16 four police officers. You have Sergeant Kostyk from the
17 Aiken County Public Safety or Sheriff's Department, that,
18 Deputy Kemfort with the Lexington County Sheriff's
19 Department. You have Page Moore, now McCraw, an
20 investigator with the West Columbia Police Department, and
21 you have Detective Bruce Wade.

22 Each of their testimony supports, on their own, that
23 they all told him that he was free to go at the times he was
24 free to go, that he was wearing, not wearing cuffs when he
25 says that he was. They denied that he -- that they

1 threatened to murder him or to use capital punishment on him
2 if he didn't cooperate.

3 Each one of them speaks to that he was not actually in
4 custody, that he voluntarily went where he choose to go.
5 They deny the allegations of tampering with audiotapes and
6 videotapes. I think all of that goes to the defendant's
7 credibility as well.

8 When you look at the next statement that the State
9 would plan to use and did use in the Stand Your Ground
10 hearing for even impeachment purposes, that would of been
11 the audiotape interview with Mr. Walker by Detective --
12 Captain Wade and Investigator McCraw on the morning of the
13 18th. The State only planned to use it for the Stand Your
14 Ground hearing in the case and did a reply -- well, on
15 cross, if the defendant choose to testify for the purposes
16 of impeachment.

17 So, we would ask that you make a ruling on that second
18 interview, audio-taped interview, as to its voluntariness
19 and the State's ability to use it for impeachment purposes
20 only.

21 THE COURT: All right. Anything further, solicitor?

22 SOLICITOR GRAHAM: No, sir. Thank you.

23 THE COURT: Thank you.

24 Mr. Walker.

25 MR. WALKER: Yes, sir, Your Honor.

1 I would like to start by the credibility of the
2 officers that give testimony.

3 As, as I stated in my testimony, I had numerous and
4 abundant problems and issues and also constitutional
5 violations of these officers. Therefore, their credibility
6 is very far and further. And I would like to -- I would
7 like to -- for the Court to weigh, if Your Honor may, their
8 testimony contradictions.

9 You know, I understand the solicitor's argument on, on
10 impeachment against this, and I believe it's injustice
11 there. I believe he's not really using it for impeachment.
12 He's just trying to get it in, if I may, Your Honor, and I
13 believe that the Court shall weigh the probative, the
14 probative weight. I, I can spell the word. It's
15 P-R-O-B-A-T-I-V-E. The value of that rather than for
16 impeachment purposes, and I think that should be a very
17 strong issue in the Court's consideration.

18 Also, the video, again, I'm gonna state to the Court,
19 and I've stated numerous times, the video is very false and
20 farfetched and it's been contradicted, not only by me, but
21 by, by Sergeant Kowalski (sic) in terms of basically his
22 personality there. It just relevantly how he testified to
23 it. I would say that would be the defense's opinion if the
24 Court may add that.

25 And, and then I would like to start with the actual --

1 the apprehension of what happened. As I said, Your Honor, I
2 was -- I have a public -- as a public citizen, I was not
3 under arrest there at no way, shape, or form. I was just
4 enjoying my public duties and my public rights being at a
5 supermarket, and the, the officers there -- and I'm, I'm --
6 I've read this in case law, Your Honor, and I can't -- they
7 was doing what they call a blackout. And there's a case law
8 that I have read and I no longer come across it.

9 Therefore, the U.S. Supreme Court has ruled that all
10 blackouts in the whole nation is unconstitutional via public
11 privacy and also individual privacy. So, therefore, what
12 they was doing was unconstitutional.

13 Also, I, I made contact with the owners and, and I was
14 in the store at the time. And also in the, in the video,
15 if, if it was furthered, Your Honor, the, the officer in
16 there, Mr. Kowalski (sic), he, he states in there that, that
17 the reason I was -- the reason -- and I would like to play
18 this, Your Honor, if you may but I may have to have a minute
19 to, to get it ready, but it -- he gives---

20 THE COURT: You'd like to what?

21 MR. WALKER: I would like to play the video, a portion
22 of the video for Your Honor to show.

23 THE COURT: The portion of the video---

24 MR. WALKER: Yeah.

25 THE COURT: ---that's already been introduced into

1 evidence?

2 MR. WALKER: It's been introduced partial.

3 Basically---

4 THE COURT: Yes, sir, and the hearing's closed.

5 MR. WALKER: All right.

6 THE COURT: That's all that's in the record.

7 MR. WALKER: All right. At, at your discretion, Your
8 Honor.

9 The reason I would like to show the video in argument
10 is basically to give -- to show the contradiction that, that
11 the officer gave testimony that his reasons was to -- that
12 he was staking out the, the convenience store but, in that
13 video, he gives testimony that I looked suspicious and I
14 just walked under the car awning and that I was just a
15 suspicious person. I had nothing to do with any type of
16 burglary, and he contradicts his statement in that video.

17 But I'm gonna leave it at the Court's discretion and I
18 don't---

19 THE COURT: It hadn't been introduced into evidence
20 except partially, Mr., Mr. Walker.

21 MR. WALKER: But this is to the credibility. I'm
22 arguing to the credibility of the witness who testified on
23 the---

24 THE COURT: I understand what you're saying but it
25 wasn't introduced into the record.

1 MR. WALKER: I---

2 THE COURT: Are you asking me, now that the record's
3 been closed, to introduce it into the record?

4 MR. WALKER: Not at this time, Your Honor. I'm gonna
5 rest on it because I mean it's, it's fair but it's not, it's
6 not fair. I, I was just giving argument that the, the
7 officer contradicts hisself in the video and also
8 contradicts hisself on the stand and The Honor may take it
9 that way, how he pleases.

10 So, therefore, I'm gonna leave it at that but back to
11 my, my being at the -- my beings. I have a, I have a right,
12 a public interest, as a public citizen.

13 THE COURT: I understand.

14 MR. WALKER: And so, I proceeded that, at that -- I
15 made -- I went into the store. I, I contacted the owner.

16 THE COURT: Mr. walker, please, I -- sometime I think
17 lawyers and pro se don't think judges can read, write,
18 think, hear, or see. I can read and write. I can listen.
19 I've heard your testimony. I've heard the testimony of all
20 the witnesses that's been presented, and I'm not -- I'm not
21 gonna cut you off on your argument but I don't need to hear
22 the same argument repeated time and time and time again. It
23 should be concise and focused and complete.

24 You've been found competent. You've been -- the same
25 standard, competency to stand trial, is the same standard in

1 South Carolina of competency to represent yourself.

2 So, please keep your arguments concise and focused.

3 MR. WALKER: Your Honor?

4 THE COURT: You may continue.

5 MR. WALKER: If I may, I wish to continue but if I may
6 address the Court on what the Court just addressed. And
7 that is I, I understand -- I asked the, the Court to bear
8 with me due to my neurological (phonetic) problems and
9 testimony. As I said, my memory scatters and also my
10 thoughts and also my, my speech. Therefore, I'm having
11 scattered thoughts and it, it -- that, that's due to
12 neurological (phonetic) effects.

13 So, that's, that's why the testimony is, is the way it
14 is, Your Honor.

15 THE COURT: I'll bear with you but you've been found,
16 under the standards of Faretta versus California, to be
17 competent to stand trial and competent to represent
18 yourself. There are standards that you have met and choices
19 that you have made.

20 We all have the right to make our own choices, whether
21 they be wise or unwise.

22 MR. WALKER: That's, that's correct, Your Honor.

23 THE COURT: So, you may continue.

24 MR. WALKER: Your Honor, in the constitutional rights,
25 there's a, there's a Fourth Amendment right to privacy and I

1 believe the officers violated that in that video. I believe
2 the Terry stop was inaccurate. It was not valid. It was
3 not a valid Terry stop.

4 Also, I believe, once I was produced in handcuffs, that
5 the testimony -- from, from that handcuff -- once they
6 handcuff me, I was arrested. Therefore, I should of had
7 Miranda rights.

8 Now -- and I, I understand it goes past -- may go past
9 the point that introduce but I think the Court should take
10 that in consideration in a whole because the whole valid,
11 the whole valid video, I mean you can't portion something
12 like you have a, you have a, you have a rule and the rule of
13 evidence I, I believe is -- I'm not sure. It's called a --
14 it's a full rule, Your Honor.

15 It's where, where one thing must compel to the other.
16 You can't give a portion of something and not give the, the,
17 the whole, the whole thing there and, and that rule --.

18 THE COURT: Sheriff. Sheriff.

19 (Pause.)

20 THE COURT: Excuse me just a minute, Mr. Walker.

21 MR. WALKER: Thank you, Your Honor.

22 (Pause.)

23 THE COURT: All right. You may continue, Mr. Walker.

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

25 That, that rule I was speaking was the Rule of

1 Completeness.

2 THE COURT: I don't disagree with the Rule of
3 Completeness. I don't disagree with State versus Jackson,
4 which is the foundation of the Rule of Completeness, but you
5 didn't offer it into evidence.

6 MR. WALKER: I may be -- I may not of did that, Your
7 Honor, due to the pro se-ism. I mean I -- I'm not sure that
8 I produced it---

9 THE COURT: You can't have it both ways.

10 MR. WALKER: I understand, Your Honor. I acknowledgely
11 (phonetic), I acknowledgely (phonetic) waived my right to
12 proceed pro se and I do but I just would like the Court to
13 acknowledge that that may be the reason that it was not
14 introduced at the time.

15 THE COURT: Well, you have an excellent, excellent
16 standby attorney --

17 MR. WALKER: I, I---

18 THE COURT: -- who has tried numerous felony cases and
19 non-felony cases.

20 MR. WALKER: I would---

21 THE COURT: But anyway. Go ahead. Go ahead with your
22 argument.

23 MR. WALKER: Yes, sir.

24 Like I said, Your Honor, if the, if the -- if Your
25 Honor will just take the Rule of Completeness into

1 consideration.

2 THE COURT: All right.

3 MR. WALKER: And, and back, back to the Terry, I don't
4 think the officer had valid articulatory (phonetic) facts to
5 stop and also that there's case law that says that
6 officer's, an officer's agendivs (phonetic) should not be
7 taken (sic) into consideration on the Terry stop.
8 Basically, if it's something out of the portion --
9 proportion of the actual activity, that, that he cites
10 anything that he was doing before, during, or after is
11 relevant and him casing out a robbery is irrelevant to the
12 articulatory (phonetic) fact that I was in the public.

13 Therefore, the Court should take that into
14 consideration.

15 THE COURT: All right. And you may move on now to the
16 44 Truck Stop.

17 MR. WALKER: I would object to that, Your Honor, on the
18 fact that the Court is leading into my argument. If you
19 may---

20 THE COURT: I can limit the time of an argument.

21 MR. WALKER: I'm not saying -- I'm not, I'm not---

22 THE COURT: I'm going to.

23 MR. WALKER: I'm not objecting to your time, Your
24 Honor. I'm objecting that, that -- your time. I'm
25 objecting that you're leading to, me to consider the Exit 44

1 and to---

2 THE COURT: All right.

3 MR. WALKER: Court will be in recess 15 minutes, and
4 thereafter we will restart with Mr. Walker's argument.

5 Thank you very much, Mr. Walker.

6 (WHEREUPON, a short recess was taken at this time.)

7 THE COURT: All right. Mr. Walker.

8 MR. WALKER: Yes, sir, Your Honor.

9 I believe I was -- I believe I'm gonna go back to, to
10 the sterry -- Terry stop a little bit, Your Honor. In
11 consideration for that, I'd like to allow the Court to know
12 that I strongly and revelently (phonetic) believe that the
13 Terry stop was invalid and I -- due to articular (phonetic)
14 facts and also the blackouts, the blackout situation, and
15 others, Your Honor. And I just have -- I had a, I had a
16 Fourth Amendment right to my public interest and I, I was
17 under that when I was apprehended.

18 The officer could, under my, under my view, the officer
19 could of revelently (phonetic) come close to me and made
20 sure that I wasn't making anything rather than aggressively
21 doing what he did.

22 And, also, in the apprehension, he was very aggressive
23 and I think the Court would, would agree with that and he
24 was also aggressive in his integrigation (phonetic) and
25 in -- there's, there's a situation that his aggressiveness,

1 and as the State has already asked that -- asked to edit it,
2 the, the, the circumstances in the video, because it's very
3 invalid. And, therefore, I would like the, the, the Court
4 to take that into consideration because I don't think any of
5 the video was valid.

6 I was placed under -- I was placed under arrest. That
7 should be valid enough. The officer was aggressive in
8 there. I don't think that that should be viewed by the
9 jury. Their aggressiveness towards me, I think it could,
10 could go to my, my personality. Not necessarily character.
11 But, but as who I am and the way, the way that I, I may, may
12 have been in a -- and, also, I, I would just like to, I
13 would just like to -- I just like the Court, you know, to
14 understand that it's, it's very invalid.

15 It's not a, it's not a correct Terry stop. There was,
16 there was -- they was under what they call blackout. The
17 officer says he was actually specifically in blackout.
18 That's -- under U.S. Supreme Court is ruled on that from,
19 from my view.

20 And I, I, I was a public citizen at that time. And I
21 was -- they, they unlawfully searched and seized me and
22 violated my Fourth Amendment. I, I think that should be
23 took into consideration. And I think that matter -- that,
24 that there, standing on its own, invalids (sic) the video.

25 And also I'll take it back to the probative, probative

1 value. I think that the probative value, especially for
2 impeachment purposes, outweighs its view and I believe the
3 State is just complicating the trial by trying to get it
4 viewed by the jury to entice. I don't think it has anything
5 to do with impeachment, and I'm gonna leave it at that, Your
6 Honor.

7 THE COURT: Anything further?

8 MR. WALKER: No, sir, Your Honor.

9 THE COURT: Thank you.

10 Anything in reply, solicitor?

11 SOLICITOR GRAHAM: No, Your Honor.

12 THE COURT: I would like the cite on U.S. versus
13 Taylor.

14 SOLICITOR GRAHAM: United States versus Taylor is 799
15 F.2d 126 (Fourth Circuit 1986).

16 THE COURT: S.2d?

17 SOLICITOR GRAHAM: F.2d 126.

18 THE COURT: And I would like the cite on the blackout
19 case, Mr. Walker.

20 MR. WALKER: Your Honor, I viewed that case off and I
21 don't know if it's relevant anymore because I know I have
22 the cite to it, Your Honor. I looked numerous and abundant
23 times for the case and I've also tried to research it, view
24 westlaw, and I can no longer find it but I do believe that
25 it's, it is, it is---

1 THE COURT: What is the name of the case?

2 MR. WALKER: I can not remember, Your Honor. I, I
3 viewed it and it was -- I, I can't even, I can't even
4 relevantly tell you what the, that genit (phonetic) case
5 was.

6 THE COURT: Okay.

7 MR. WALKER: But I do know that it went to the U.S.
8 Supreme Court and they ruled on blackout, and basically
9 that, that's a -- the, the, the, the police force viewing --
10 staking out -- they're basically staking out the public or
11 whatnot. And basically they said that they can't enforce
12 the public in what they do by viewing because it brings law
13 enforcement's view -- basically it entices law enforcement
14 authority because basically they're trying to use their
15 authority to, to surveilling something and they, they can't
16 do that because it violates the public's, public's interest
17 to the constitutional -- to the Constitution.

18 THE COURT: All right. Thank you. Thank you very
19 much.

20 MR. WALKER: Thank you so much, Your Honor.

21 THE COURT: All right. Perhaps now would be a good
22 time to take our luncheon recess.

23 The jury is eating now. I will take this under
24 advisement. I'll be back out about 1:15. Oh, I'll say
25 1:15 and I have, have my ruling in this.

1 Thank you. Thank you.

2 Oh, a couple of things.

3 I do -- I am going to view the entire video from the
4 traffic stop in Aiken. I'll take that into consideration.
5 I will take whatever it's marked as and have -- view it in
6 my chambers.

7 Also, just a couple of matters.

8 I do want to put in the record, in just a moment,
9 during the cross-examination of Mr. Walker by the solicitor,
10 during the Stand Your Ground hearing, Mr. Walker had taken I
11 don't know how many pages of notes to the stand with him.
12 The solicitor asked to review those notes on
13 cross-examination, which I allowed.

14 I cited the case called State versus Harrison. I was
15 wrong. It was State versus Hamilton, 276 S.E.2d 704, (1981)
16 in which, during the cross-examination of an officer that
17 revealed that the officer had made notes during the
18 interview of Appellate Hamilton and had reviewed those notes
19 in preparation of his incorporated testimony. Appellate's
20 counsel, Hamilton's counsel, requested to see the notes.
21 The State opposed the request. Asked the judge to review
22 them and the judge did so and he found two relevant sections
23 of the notes which he offered to show appellate's counsel.
24 The State objected. And appellate's counsel was not
25 permitted to see the notes.

1 Later in the trial, the judge refused counsel's request
2 that the officer's notes, admittedly used by him in his
3 preparation to testify, be placed in a sealed envelope added
4 to the transcript.

5 This case goes on to say and is cited a newer case,
6 State versus Hughes, 346 S.C. 339, (2002). In that case,
7 which is post-codification of the Rules of Evidence,
8 Hamilton is pre Rules of Evidence, the Court did not allow
9 the notes to be produced. It was reversed but they now go
10 to Rule 612 of the South Carolina Rules of Evidence and Rule
11 612, since I was ruling on a pre-codification case, Rule 612
12 says if a witness uses a writing to refresh his memory for
13 purposes of testifying, either while testifying or before
14 testifying, with some other language in there, it says the
15 Court shall make any order justice requires except that, in
16 criminal cases, when the prosecution elects not to comply,
17 the order shall be one striking the testimony or if the
18 Court, in its discretion, determines that the interest of
19 justice so requires, declaring a mistrial.

20 Hughes directs me that this is a discretionary call and
21 it should be based on the interest of justice. If it's
22 necessary to the interest of justice, and if a denial would
23 significantly impair the proceeding, and based on my
24 observations of Mr. Walker, that he actually read those
25 notes that he had into the record, and it was a rather

1 lengthy process, I would find, in my discretion, under Rule
2 612 and Hughes, that they should have been turned over as
3 they were.

4 And, also, I think, on some medical records that,
5 during the cross-examination of Doctor Maddox concerning
6 medical records from Lexington Medical Center, that I
7 allowed -- I think I cited the wrong rule. I should of
8 cited 803(4) as opposed to 803 -- as opposed to 803(5). And
9 I just wanted those part of the record.

10 All right. Thank you very much. 1:15.

11 MR. WALKER: I would like to put into exhibit on, on
12 behalf of the defense just in case, precaution.

13 THE COURT: They can be moved in as a Court's Exhibit.

14 MR. WALKER: Thank you so much, Your Honor.

15 THE COURT: All right. Court's Exhibit for the
16 purposes of this hearing.

17 (WHEREUPON, the defendant's notes were marked as
18 Court's Exhibit No. 7 and received into for purposes of this
19 hearing only at this time.)

20 THE COURT: All right. Thank y'all very much.

21 (WHEREUPON, Court was in recess for the lunch break.)

22 MR. WALKER: Your Honor?

23 THE COURT: Sir?

24 MR. WALKER: I have, I have some pretrial issues I'd
25 like to get out of the way as soon as possible so I'm not in

1 the way of wasting the Court's time or the jury's time.

2 THE COURT: what, what pretrial matter do you have,
3 Mr. walker?

4 MR. WALKER: I would like to object to the photos of
5 the evidence at, at the---

6 THE COURT: You have to object to evidence when it's
7 offered.

8 MR. WALKER: I would like to -- I would like to in line
9 the photos at -- and object to their admissibility.

10 THE COURT: I'm not gonna cover that now. You can
11 object when they're offered.

12 MR. WALKER: Even in the view of the jury?

13 I mean there's numerous pictures that I think are---

14 THE COURT: They won't be shown to the jury if they're
15 offered properly. I'm not gonna hear that now, Mr. walker.

16 All right. what's the other motion?

17 MR. WALKER: Also, Your Honor, there's a, there's an
18 issue going on with my lunch. I haven't eaten.

19 THE COURT: The staff deals with that.

20 MR. WALKER: I told the staff and they said I needed to
21 deal with you.

22 THE COURT: All right. what member of the staff told
23 you they had to deal with me?

24 MR. WALKER: The sheriff.

25 THE OFFICER: Sir, he asked me about lunch. I told him

1 that it was provided by SCDC. They control what type of
2 food he gets. They left today before lunches were made.
3 So, we provided him with a bag lunch. He just---

4 THE COURT: All right.

5 THE OFFICER: ---just doesn't want to eat it.

6 THE COURT: And that's typically what is provided to
7 inmates?

8 THE OFFICER: Yes, sir.

9 THE COURT: All right. So, what's your issue?

10 MR. WALKER: My issue is that they're, they're two
11 different type of bags, Your Honor, and typically I don't
12 eat cheese and I don't eat the contents of that bag. The
13 bag that I usually get is a totally different contents.

14 THE COURT: All right. Well, I'm not gonna deal with
15 that right now cause lunchtime has passed. I'll deal with
16 it at the end of the day.

17 MR. WALKER: Your Honor, I did try to---

18 THE COURT: I said I'll deal with it at the end of the
19 day, Mr. Walker.

20 what's next?

21 MR. WALKER: Your Honor, I would like Your Honor to
22 make the State number these photos that they just---

23 THE COURT: The State -- the photos are numbered by the
24 court reporter. I'm not gonna deal with that now,
25 Mr. Walker.

1 MR. WALKER: I---

2 THE COURT: What's your next motion?

3 MR. WALKER: All right. I have no numbered 46.

4 THE COURT: I'm not gonna deal with that now, Mr.
5 walker.

6 what's your next motion?

7 MR. WALKER: At, at this time, I have no more motions,
8 Your Honor.

9 THE COURT: Thank you.

10 All right. As to the Jackson versus Deno, addressing
11 it in the timeframe or chronologically from the Aiken, South
12 Carolina sheriff's deputy to the Lexington County sheriff's
13 deputies to Detective McCraw and then I believe Corporal
14 King, who did not testify but I believe was the transport
15 officer, to Captain Wash at the West Columbia Police
16 Department along with Detective McCraw. The basic -- and
17 also I base my ruling on the testimony of all of those
18 individuals along with the testimony of Mr. Walker.

19 I look to State versus Parker, 381 S.C. 68, (2008
20 case). Under State versus Parker, also citing State versus
21 Miller that has been cited previously, and also citing
22 Jackson versus Deno, the process for determining whether a
23 statement is voluntary and thus admissible is bifurcated.
24 It involves determination by both the judge and the jury.

25 First, the trial judge must conduct an evidentiary

1 hearing outside the presence of the jury where the State
2 must show the statement was voluntarily made by the
3 preponderance of the evidence. If it is found to have been
4 given voluntarily, it is then submitted to the jury for its
5 voluntariness must be established beyond a reasonable doubt.

6 Looking at the statement to the officer in Terry versus
7 Ohio, and the officer's testimony, that being the Aiken
8 Sheriff's Office testimony and the other witness that was at
9 the scene being Mr. Walker, I find that it was a valid Terry
10 stop, that it tracks the same, the officer's observations
11 view, such like that, tracks the same as Detective
12 McFadden's did in Terry versus Ohio.

13 Then it is -- that at no time during the period of time
14 at which certain identifying information was given and
15 questions were asked to Mr. Walker by the Aiken deputy was
16 Mr. Walker in custody. As far as that tape is concerned
17 that it was perhaps not a roadside but a closed -- a parking
18 lot at a closed business with a garage type area, open
19 garage type area, with a couple of picnic tables then a
20 darkened location where the officer observed Mr. Walker, and
21 then his attention is continually peaked, and then even more
22 so upon him driving up and Mr. Walker coming towards him.

23 He asked -- he, quite frankly, if you view that tape
24 even up to the point of when he is handcuffed, Mr. Walker is
25 handcuffed, the officer treats Mr. Walker very respectfully,

1 calls him by his first name, David, of course has him
2 identify himself, which Mr. walker does. The officer senses
3 are -- I think he testified he was an eight year veteran and
4 a supervisor, road patrol deputy supervisor with Aiken
5 County. He observed his behavior, searched him for weapons.
6 He has him get in a position of, I guess I would call it, I
7 don't recall the officer's exact terminology, of
8 inferiority, I guess, of where he's leaning on the front of
9 the patrol car and his body weight is more on the patrol car
10 and his feet are further back away. That would of been a
11 front leaning position. And the officer barely has his
12 hands on him at that point, and is talking into a, a
13 shoulder microphone trying to get some information.

14 when he asked him about warrants, do you have any
15 warrants, and Mr. walker kind of turns his head to the right
16 and answers yes or maybe. And he says well what for? And
17 he says murder. The officer's kind of surprised. Murder?
18 Huh? Or huh, murder? And they attempt to continue to gain
19 some information.

20 Mr. walker asked for an attorney. According to the
21 testimony, once that is asked for, the State does not intend
22 to present any further evidence of any further conversations
23 that Mr. walker had with either that Aiken officer or any
24 other officer.

25 They have information that he has been listed as a

1 missing and perhaps endangered person, and Aiken takes him
2 to I believe what's been identified as Aiken Regional
3 Hospital. Thereafter, he is free to leave, and as I
4 understand the flow of the testimony, he voluntarily accepts
5 a ride to the 44 Truck Stop, which is in Lexington, South
6 Carolina, Lexington County, South Carolina.

7 He, Mr. Walker, is unsure who actually was the
8 transport officer from Aiken County to Lexington County but
9 there is where Detective Kemfort, with the Lexington County
10 Sheriff's Department, comes into the picture. And the
11 testimony there from Mr. Kemfort is that Mr. Walker was not
12 handcuffed. Quite frankly, at that point, whether he was or
13 was not is of no moment to this Court. Even if I assumed he
14 was handcuffed, it -- I, I see no police misconduct in that
15 regard with a stranger, missing person, endangered person.
16 If, for the officer's safety, for example, he wanted to
17 handcuff him, he could have. However, I do believe the
18 testimony of Mr. Kemfort that he -- his observations of
19 Mr. Walker was that Mr. Walker was not handcuffed when he
20 saw him at the 44 Truck Stop.

21 In that information, also that Detective Kemfort
22 testifies to, is Mr., Mr. Walker is kind of meandering
23 around, walking around that area, the parking lot of the 44
24 Truck Stop, between the 44 Truck Stop and the old peach
25 stand and Juniper, Juniper Springs Road, the dirt road right

1 there. So, he's, he's kind of meandering around that whole
2 area. That's a clear -- that clearly not being in custody.

3 And Officer Kemfort also says he has contact with West
4 Columbia and there's kind of a middle person of West
5 Columbia and then Mr. Kemfort's kind of the liaison between
6 Aiken and West Columbia. And he's asked, you know, can you,
7 can you kind of keep him there? We'd like to talk with him
8 and Detective Kemfort tells him, upfront, West Columbia
9 wants to talk with you. You know, what do you want to do?
10 You know, you want to do this, that, and the other and he
11 says yeah, I'll talk to them.

12 So, he voluntarily accepts a ride. I believe Detective
13 Crawford testified that she was in her personal vehicle and
14 I think the name's Corporal King is the one that actually
15 transported Mr., Mr. Walker to the West Columbia Police
16 Department.

17 So, you have Detective Crawford, Detective Wash is
18 called in, Weed is called in, and Detective Wade's testimony
19 is Mr. Walker tells him he can't read or write. Therefore,
20 they audio-taped the conversation and the statement, as was
21 published in court, is taken.

22 Mr. Walker, of course, testifies that he was threatened
23 with the death penalty, threatened that he'd never see his
24 child again. I looked at State versus Corns wherein there
25 the officers did say something about, and, and had testified

1 to it, that they advised that they would call the
2 defendant's children -- call DSS on the children and such
3 like that and that was found to be coercive.

4 The crux here though is both officers testify at all
5 times they were with -- there was not a time Detective Wade
6 was alone with Mr. Walker. I, I find there were no threats,
7 no coercion. I further find he, he's really not even in
8 custody then. If there were continuous chain of custody,
9 once he invoked his right to counsel, and if he didn't
10 initiate the contact, there could be no further contact but
11 he wasn't in custody. And the clear issue, not being in
12 custody, is he didn't go to jail.

13 He went to the Richland Hospital. From there he went
14 to MUSC. He wasn't arrested until March of 2013. So, he
15 was, he was never in custody at that time. I'm not even
16 sure Miranda was required, required under those
17 circumstances cause it's in custodial interrogation.

18 He voluntarily went to West Columbia Police Department.
19 He did arrive in a patrol car but he voluntarily got in that
20 patrol car and he voluntarily went to West Columbia Police
21 Department.

22 I find the testimony that I've heard about the death
23 penalty, threatened not to see his child, such as that, I
24 find, I find that not credible. I just find that not
25 credible.

1 So, the statements are admissible in the case in chief.
2 As far as Aiken, and I believe a part of that yes, perhaps
3 before the attorney request is impeachment, and I believe,
4 solicitor, the West Columbia, you wanted me to just rule --
5 wanted me to rule your motion was that you just offered for
6 impeachment purposes.

7 Is that correct?

8 SOLICITOR GRAHAM: Yes, Your Honor. My, my concern
9 was, because of his indication of wanting an attorney, that
10 my understanding that there had to be -- the case I found
11 said there had be like a 14 day break in custody before
12 police could reinitiate contact. So, my, my request was to
13 only use the West Columbia for impeachment purposes.

14 THE COURT: All right. Well, I, I would, I would
15 comply with that request although I think -- I would comply
16 with that request.

17 All right. So, it would be used for impeachment
18 purposes only.

19 So, whatever those statements, I then go to the Stand
20 Your Ground under 16-11-440. There were a number of
21 witnesses presented in that case. That motion --
22 Mr. Walker, Mr. Banty, Lieutenant Smith to Officer Wharton,
23 Doctor Maddox, Deputy Kostyk, although he didn't testify in
24 full, Mr. Walker, Senior, Mr. Kyle Walker, for the State,
25 Ms. Banty, Mr. Hines, and Doctor Ross.

1 I listened very closely, intently to the testimony of
2 the defendant. There is no corroboration by a single
3 witness called as to any aspect of the defendant's
4 testimony. Says she came home drinking, using drugs. She
5 was a drug addict.

6 MR. WALKER: Objection, Your Honor.

7 THE COURT: Don't, don't object to me. You can object
8 to him. Don't interrupt me.

9 Her toxicology was 0.016. She had no marijuana, no
10 cocaine, no amphetamines, or no other unlawful drugs in her
11 system. The prior call is not positive based on both -- not
12 positive for the defendant based on Wharton, Officer
13 Wharton's testimony and Kyle Walker's testimony. Carrie's
14 afraid he's gonna burn the house down.

15 Mr. Banty, the father, testified. Saw no abuse as far
16 as his daughter towards his granddaughter whatsoever as did
17 Mr. Walker, Senior and Kyle Walker. They, they identified
18 Carrie as a good mother, a good mom. No, no, no physical
19 abuse or otherwise towards Cassidy. Ms. Banty also
20 testified to that. The testimony of Mr. Hines is --
21 certainly tracks cell phone wise inconsistent with the
22 statements of Mr., Mr. Walker.

23 And, further, if two people are involved in a fight in
24 which the victim, the ultimate deceased I should say,
25 strikes the named defendant or the other participant in the

1 fight for four or five times over a period of hours, she's
2 not gonna have what Doctor Ross described as clean hands, no
3 bruises on her hands, no cuts, no scrapes, no knuckles
4 swollen. It's all on her forearms and otherwise collarbone,
5 which indicated to Doctor Ross that those were defensive
6 wounds, defensive wounds.

7 And, of course, as far as the Stand Your Ground
8 hearing, the defendant has the burden of proving that he's
9 entitled to immunity by a preponderance of the evidence. I
10 find that he has failed to meet that burden based on the
11 totality of all of the evidence and the witnesses that have
12 testified during that particular hearing, and that his
13 motion for immunity under the Stand Your Ground statute is
14 denied.

15 All right. Solicitor, anything before we bring in our
16 jury?

17 SOLICITOR GRAHAM: No, Your Honor. The State's ready.

18 THE COURT: Don't, don't -- Mr., Mr. Walker, don't
19 raise your hand again. This is a courtroom. Not a
20 classroom.

21 MR. WALKER: Your Honor, I was advised by the Court
22 that I, I didn't have to stand. That's why I rose (sic) my
23 hand.

24 THE COURT: All right. Mr. Walker, what would you --
25 then you start raising your hand.

1 okay?

2 MR. WALKER: Thank you so much, Your Honor.

3 I have two issues, Your Honor, before trial starts.
4 The jury's a -- there's a person that was -- a person of
5 interest that was subpoenaed. Her name is Samantha
6 Gutknecht. I, I subpoenaed her to bring a CD-ROM of the
7 victim's accounts and them being a Gmail account and which
8 is an email account.

9 THE COURT: I can't hear you, Mr. Walker.

10 MR. WALKER: I'm sorry, Your Honor.

11 Your Honor, I've asked -- I've subpoenaed a person of
12 interest. Her name is Samantha Gutknecht. I've asked her
13 to bring some Gmail and some email stuff and also the
14 forensic, forensic records over Cassidy [REDACTED]. She
15 has authority over all these records and she is failing to
16 produce them stating that she has no authority to get them.

17 THE COURT: Why am I taking this up now?

18 When are you gonna call her?

19 When are you gonna have her here to take that up with
20 the Court if she's been subpoenaed?

21 MR. WALKER: I, I thought documents and objects were
22 pretrial before, before the---

23 THE COURT: No, sir, you -- if you -- she, she been
24 served with a subpoena?

25 MR. WALKER: Yes, sir, she has.

1 THE COURT: Then tell her to be here at 9:30 in the
2 morning.

3 MR. WALKER: I---

4 THE COURT: You have an investigator.

5 MR. WALKER: I, I, I don't know if she's here, Your
6 Honor, but she may be able to testify now if that's
7 relevant.

8 THE COURT: This -- what, what are y'all talking about
9 now please?

10 SOLICITOR GRAHAM: He filed -- the person is the
11 victim's sister. He sent a subpoena to her asking her for
12 forensic records related to Cassidy's counseling and
13 interviews for the child. She also -- he also requested
14 access to two of the victim's -- a Gmail account and a Yahoo
15 account and also her Facebook account.

16 I know her investigator -- excuse me. The defendant's
17 investigator has met with Sam and discussed that. My
18 understanding is the only thing that she might even have
19 access to is the Facebook. It's not her Facebook account
20 though. It's the victim's Facebook account and she had no
21 way of copying it nor she does -- she really know whether
22 she has the authority to go in and look at it.

23 MR. WALKER: Your Honor, if I may?

24 THE COURT: And you have not subpoenaed the custodian
25 of the records?

1 MR. WALKER: Yes, I have, Your Honor.

2 would you like to review the subpoena?

3 THE COURT: I would like to start the trial,
4 Mr. Walker.

5 MR. WALKER: I'm trying to get this ready before the
6 trial, Your Honor, and I have one more issue and that, that
7 issue would be the psychology records of the victim. That
8 was an issue with Judge Griffith not -- and it was also
9 brought to your attention.

10 THE COURT: I've reviewed those records.

11 Do you have any objection to him having those records,
12 solicitor?

13 SOLICITOR GRAHAM: Can I have a copy of them, Your
14 Honor?

15 THE COURT: Of course.

16 SOLICITOR GRAHAM: No, sir.

17 THE COURT: Either side have an objection?

18 MR. WALKER: No. No, sir.

19 THE COURT: Madam Clerk?

20 THE CLERK: Yes, sir.

21 THE COURT: Make two copies of these records please.

22 THE CLERK: Yes, sir.

23 THE COURT: All that's been provided.

24 (Pause.)

25 THE COURT: Now, whoever -- if you subpoenaed the

1 sister of the victim, she is not the custodian of the
2 records.

3 MR. WALKER: She is by authority, Your Honor.

4 THE COURT: Sir?

5 MR. WALKER: She is by authority.

6 THE COURT: She's not the custodian of the records.

7 She can not certify those are business records kept in the
8 normal course of business under the appropriate subsection
9 of Rule 803.

10 MR. WALKER: But she's been subpoenaed to provide them.
11 So, therefore, she's obligated to provide them.

12 THE COURT: She's not the custodian of the records.

13 You subpoena the custodian of the records.

14 MR. WALKER: Then I mean -- I just, just relevant, Your
15 Honor, if I may?

16 I -- it seems to me that it's -- she has, she has the
17 records. She has authority to the records. Therefore---

18 THE COURT: She's not the custodian of the records.

19 I'm not gonna sit up here, Mr. Walker, and explain that law
20 to you. You have chosen to represent yourself. Look at
21 Rule 803. I think it's Subsection 6. I'm not sure right at
22 this moment. And look at Kershaw County versus McCaskill.

23 If you want to try, if they are relevant, to get these
24 records into evidence, it is 803(6), records of regularly
25 conducted activity. A memorandum, report, record, or data

1 compilation, in any form, of acts, events, conditions, or
2 diagnosis made at or near the time by or from information
3 transmitted by a person with knowledge, if kept in the
4 regular conducted business activity, and if it was the
5 regular practice of that business activity to make the
6 memorandum, report, record, or data, data compilation, all
7 as shown by the testimony of the custodian or other
8 qualified witness unless the source of the information or
9 the method or circumstance, circumstances of preparation
10 indicate the lack of trustworthiness.

11 will she provide whatever record she has, solicitor?

12 SOLICITOR GRAHAM: I'm sorry, Your Honor?

13 THE COURT: will she provide whatever she has, which is
14 the Facebook account?

15 SOLICITOR GRAHAM: My understanding is that she has
16 access to the Facebook account but she had no way of copying
17 what was on there out.

18 MR. WALKER: Your Honor, if I may?

19 THE COURT: Does the -- do you have -- does the State
20 have any technology that can copy it out?

21 SOLICITOR GRAHAM: I don't know, Your Honor. I know --
22 I assume we could print page by page by page, but other than
23 that, I don't know how to retrieve that information.

24 THE COURT: Yes, sir, Mr. Walker.

25 MR. WALKER: Your Honor, I've, I've -- Facebook has a

1 general what they call -- I'm not sure the name of it but
2 it's a -- basically if they look in, inside of Facebook, it
3 is -- there's a -- it's a button that you can push on the,
4 on there and it will produce all that Facebook contents.
5 All you have to do is have access to it. It's a, it's a,
6 it's an accessible -- it's very easy to do, Your Honor, to
7 produce some records.

8 THE COURT: It's not easy for me cause I'm faceless. I
9 don't do Facebook. I'm asking if there's somebody that can
10 do it. If there's somebody that can do it, and they don't
11 have objections to doing it, print it out. You haven't
12 subpoenaed the custodian of the records.

13 MR. WALKER: I, I -- they have the records, Your Honor.
14 It's -- if, if they're gonna be printed, may I have them?

15 THE COURT: solicitor, will you check in to see if, A,
16 she will provide them and if, B, they can be printed out.

17 That's, that's what I'm trying to do, Mr. Walker.

18 MR. WALKER: I thank you so much, Your Honor.

19 SOLICITOR GRAHAM: Yes, Your Honor.

20 THE COURT: will you look into that for me please?

21 SOLICITOR GRAHAM: I will, sir.

22 THE COURT: Thank you.

23 And as far as the other, if she doesn't have the
24 records, there's nothing for her to produce.

25 MR. WALKER: Thank you so much, Your Honor.

1 THE COURT: Anything else before I bring in the jury?

2 MR. WALKER: I -- can I have the psychology records as
3 soon as possible?

4 THE COURT: You made copies?

5 THE CLERK: I apologize. It's still making. It's so
6 many pages front and back. So, it's gonna take some time.

7 THE COURT: All right.

8 THE CLERK: Your Honor, may I approach for just a
9 moment?

10 THE COURT: Yes, ma'am.

11 (Pause.)

12 THE COURT: Yes, sir, Mr. Walker.

13 MR. WALKER: Your Honor, I'd like to put the subpoena
14 in exhibit and be provided a copy.

15 THE COURT: All right. I don't know what you're
16 talking about.

17 MR. WALKER: I would just like to add this -- the
18 Samantha Gutknecht subpoena into exhibit cause that was the
19 basis of---

20 THE COURT: Into what exhibit?

21 MR. WALKER: The Court's Exhibits.

22 THE COURT: What Court's Exhibit?

23 MR. WALKER: I -- on the Defense's Exhibits to the
24 Court.

25 THE COURT: Madam Clerk, will you show me what he's

1 looking at please?

2 THE CLERK: Yes, sir.

3 (Pause.)

4 THE COURT: Thank you.

5 THE CLERK: You welcome, sir.

6 THE COURT: And I don't know what you mean by any and
7 all forensic records of Cassidy [REDACTED] but I would
8 advise that that could be -- that, that would not be
9 provided and that would not be appropriate to be provided by
10 this witness. You have to, you have to subpoena the proper
11 witness and I'll have this marked as a Court's Exhibit.

12 MR. WALKER: Yes, sir. Thank you so much, Your Honor.

13 (WHEREUPON, the subpoena was marked as Court's Exhibit
14 No. 8 and received into evidence at this time.)

15 MR. WALKER: May I have a copy of that, Your Honor?

16 THE COURT: May you what?

17 MR. WALKER: Have a copy of that exhibit? I only
18 want---

19 THE COURT: You just wanted me to mark it.

20 MR. WALKER: I -- can I have---

21 THE COURT: That's what I just did.

22 MR. WALKER: Very well. Very well, Your Honor. Very
23 well.

24 THE COURT: What do you want me to do?

25 MR. WALKER: I just wanted a copy before it was an

1 exhibit.

2 THE COURT: All right. We'll have the clerk make you a
3 copy.

4 THE CLERK: One copy?

5 THE COURT: Anything before we bring in the jury from
6 the State?

7 SOLICITOR GRAHAM: No, Your Honor.

8 THE COURT: Anything further from the defense?

9 MR. WALKER: Not at this time, Your Honor.

10 THE COURT: Anything else you need, Mr. Walker?

11 MR. WALKER: Yes, sir, Your Honor, if I may.

12 My private investigator is suppose to be giving me some
13 photos and I've give him abundant amount of time to produce
14 them and he's not producing some of the stuff I've asked.
15 And we're about to be opening, Your Honor, and I was gonna
16 use them in opening, and, therefore, I haven't gotten a
17 chance. I've asked him for a few things and he's produced
18 basically nothing.

19 And so, that's the issue on the defense if the Court
20 may.

21 THE COURT: I have no control over your defense team,
22 Mr. Walker.

23 MR. WALKER: As he was appointed by the Court, Your
24 Honor, that's it.

25 THE COURT: I, I sign orders for funding. I have no

1 control, no direction over your defense team.

2 MR. WALKER: All right. And I'm just saying he was,
3 from my understanding, he was appointed. I didn't have any
4 discretion.

5 THE COURT: He was funded.

6 MR. WALKER: I---

7 THE COURT: That's funded.

8 MR. WALKER: I, I do understand that, Your Honor, but
9 what I'm getting at it is that I had no during -- I had
10 no -- I didn't make a choice of who I got. He was provided
11 me by the Court. Judge Griffith told me he was provided and
12 appointed by the Court.

13 THE COURT: All right. I'm not directing your defense.
14 You have been qualified, found competent to represent
15 yourself under Faretta versus California. That has been
16 your choice.

17 We all have the right to make our own choices, the
18 right to make the right choices and the right to make unwise
19 choices, but we have our right because of the sanctity of
20 each and every human being.

21 (Pause.)

22 THE COURT: You provided, Madam Clerk, Mr. Walker
23 copies of those records?

24 THE CLERK: Oh, yes, sir.

25 THE COURT: And the solicitor?

1 THE CLERK: Yes, sir.

2 THE COURT: Thank you.

3 All right. Anything further, Mr. Walker, before we
4 bring in our jury?

5 MR. WALKER: Yes, sir, Your Honor.

6 We -- I'm discussing with my, with my standby on issues
7 of private -- an additional private investigator or another
8 private investigator to try to solve the problems that we're
9 having, and she's telling me I need to address it to the
10 Court. I'm telling her in a negative sense.

11 THE COURT: Do you have another motion before I bring
12 in the jury, Mr. Walker?

13 MR. WALKER: That was my motion, Your Honor.

14 THE COURT: I, I don't know what your motion was.

15 MR. WALKER: Right now, my motion is to give me about
16 three minutes of with my P -- I mean with my standby counsel
17 and then I may make a motion on, on an additional private
18 investigator if it's at the Court's discretion, and you rule
19 now that it's not, then that will answer my question but I
20 still have the, the, the --.

21 THE COURT: How long has Mr. Watkins been your
22 investigator, Mr. Walker?

23 MR. WALKER: If he may give that testimony, Your Honor,
24 it'd be more---

25 THE COURT: I asked you, Mr. Walker.

1 How long has Mr. Watkins been your investigator?

2 You say you know more about this case than anybody.

3 How long has he been your investigator?

4 MR. WALKER: Your Honor, that was radicated from that
5 report that it was produced, and I asked it be radicated
6 from the solicitor and, therefore, it was not.

7 THE COURT: And I overruled that because Doctor Maddox
8 testified to it.

9 MR. WALKER: Not on that---

10 THE COURT: In open -- in in camera hearing.

11 How long has Mr. Watkins been your investigator?

12 MR. WALKER: From January the 26th of this year, Your
13 Honor.

14 THE COURT: From January 26th when?

15 MR. WALKER: Of this year.

16 THE COURT: So, you didn't have another one before
17 then?

18 MR. WALKER: I had one a long time ago.

19 THE COURT: well, who was that?

20 MR. WALKER: His name was James Richardson.

21 THE COURT: And what happened with him?

22 MR. WALKER: He was extremely defective and I've
23 addressed it to the Court numerous of times.

24 THE COURT: And then Judge Griffith appointed
25 Mr. Watkins---

1 MR. WALKER: Yes, sir.

2 THE COURT: ---as you say?

3 MR. WALKER: That's correct, and, during that time,
4 Your Honor, if I may, I asked for a private investigator
5 numerous times but I was blocked by standby counsel.

6 THE COURT: Well, I'm not going to relieve Mr. Watkins
7 from his responsibilities as your private investigator.

8 MR. WALKER: Now that you have jurisdiction over it or
9 that you've looked into it, Your Honor, can you provide---

10 THE COURT: I can't understand what you're saying.

11 MR. WALKER: Now that the Court is looked into it, can
12 it either provide an additional private investigator?

13 THE COURT: No, sir.

14 MR. WALKER: And the issues that I'm having is
15 irrelevant to the Court?

16 THE COURT: I'm not appointing another private
17 investigator. I'm familiar with Mr. Watkins. He's
18 testified in front of me in Courts in both -- in other
19 jurisdictions and in this state. I've always found him to
20 be professional and competent in the services that he
21 provides and in his testimonies before the Court.

22 That motion is denied.

23 MR. WALKER: Your Honor, I was just asking the Court
24 to -- the Court to make a, a -- and I'm -- a ruling as to
25 the relevancy of this issue.

1 Does it -- does the Court---

2 THE COURT: I didn't bring the issue up.

3 MR. WALKER: Right. I did.

4 THE COURT: You brought it up---

5 MR. WALKER: Yes, sir.

6 THE COURT: ---and I'm ruling on it.

7 MR. WALKER: And what was your ruling on the relevancy?

8 THE COURT: I have denied to appoint you another
9 private investigator.

10 MR. WALKER: But the issue that I'm having with this is
11 irrelevant to the Court.

12 THE COURT: I've just ruled. I've given you my factual
13 history with Mr. Watkins and that's my ruling.

14 MR. WALKER: If I may, Your Honor, I'm going to further
15 points and then I'm gonna rest, and that, that further is
16 that -- it is contradiction of my defense for not being
17 produced therein, and it's not, not providing my, my
18 amendment rights to have a fair defense and---

19 THE COURT: I think what you're doing is trying to
20 avoid trying this case, Mr. Walker.

21 MR. WALKER: Your Honor---

22 THE COURT: You don't---

23 MR. WALKER: ---may I---

24 THE COURT: Don't interrupt me.

25 I think you're doing a little misdirection and I'm not

1 gonna be blinded by that. You've got a good private
2 investigator. You've got an excellent standby counsel. And
3 I'm not gonna be -- I'm not gonna be misdirected by these
4 tactics. I am not gonna appoint you another private
5 investigator. You have chosen to represent yourself.
6 You've been found to be competent to stand trial and
7 competent in understanding the dangers of
8 self-representation by more than one judge. I think by both
9 Judge Russo and Judge Griffith.

10 Do you have anything else you would like me to address
11 before I bring in the jury, Mr. Walker?

12 MR. WALKER: Your Honor, there's one other thing, and
13 then I understand your time is, is available, but I would --
14 I'm under the impression with these photos right here,
15 you've already made a ruling on it, and if I, if I may---

16 THE COURT: If they're not in evidence you can't use
17 them in opening.

18 MR. WALKER: But from my understanding---

19 THE COURT: Photographs can not be used in this
20 Court---

21 MR. WALKER: Yes, sir.

22 THE COURT: ---in front of me in openings---

23 MR. WALKER: Right.

24 THE COURT: ---if they're not in evidence.

25 MR. WALKER: Right, Your Honor. But when they're

1 produced to me, I'm asking the -- I asked the State to
2 either give me a description of each photo or a number to
3 each photo and they---

4 THE COURT: And I have already addressed that.

5 MR. WALKER: That's all I ask you.

6 THE COURT: The court reporter puts the numbers on the
7 photographs.

8 MR. WALKER: I'm not talking about exhibits, Your
9 Honor. I'm talking about for reference.

10 THE COURT: I'm not gonna direct nor -- I'm not gonna
11 direct the prosecution no more than I direct the defense.

12 MR. WALKER: Thank you so much, Your Honor. I'm,
13 I'm -- the defense rests.

14 THE COURT: Bring us the jury please.

15 THE OFFICER: Yes, sir, Your Honor.

16 THE COURT: Recall what an opening is. It's a brief
17 statement of the case and what one intends to prove, what
18 one thinks the issues are in the case.

19 Indictment, Madam Clerk.

20 THE CLERK: Yes, sir, Your Honor.

21 (WHEREUPON, the following takes place within the
22 presence of the jury.)

23 THE COURT: Madam Clerk, will you swear our jury
24 please?

25 THE CLERK: Yes, sir, Your Honor.

1 (WHEREUPON, the jury was placed under oath at this
2 time.)

3 THE COURT: Good afternoon, ladies and gentlemen.

4 Thank you, again, for your patience with the Court.
5 Your time is very valuable to me and I will try to use it
6 more efficiently. I assure you any delay was not on the
7 part of anybody. I shouldn't say anybody. The delay is not
8 the fault of either of the parties in this case. They have
9 been working very hard, very diligently in anticipation of
10 beginning the trial of this case.

11 The case we're about to try is the case of the State
12 versus David Richard Walker, Junior, the defendant, seated
13 to my front left.

14 What I will now say is intended to serve as an
15 introduction to the trial of this case. These remarks are
16 not a total instruction on the law in this case. I will
17 fully instruct you on the law applicable to this case at the
18 end of the trial before you retire to consider your verdict.
19 This is merely an explanation of the procedure that we will
20 follow in the trial of this case so that you may better
21 understand what may be happening.

22 The defendant is charged by an indictment filed in this
23 Court with the crime of murder. The elements of which will
24 be explained to you later.

25 Again, ladies and gentlemen, this, this indictment is

1 simply the formal charging document by which this case is
2 brought before the Court, and it is not, in any sense,
3 evidence of any of the allegations it contains.

4 The defendant has pled not guilty to the indictment.
5 The State, the party to my front right, therefore, has the
6 burden of proving each of the elements of the indictment
7 beyond a reasonable doubt and it will be your duty, ladies
8 and gentlemen, to decide whether or not the State met or
9 meets that burden.

10 Your purpose, as jurors, is to find and determine the
11 facts. You, ladies and gentlemen, are the sole judge of the
12 facts. If, at anytime, I make any comment regarding the
13 facts, you must disregard it. You are to determine the
14 facts from the testimony that you hear from this witness
15 stand and the other evidence that may be introduced into
16 Court, physical items of evidence or the like.

17 It will further be up to you to determine what
18 inferences you feel may properly be drawn from the evidence.
19 It is especially important that you perform your duty of
20 determining the facts diligently and conscientiously
21 because, ordinarily, there is no way to correct an erroneous
22 determination of the facts by a jury.

23 On the other hand, and with equal emphasis, the same
24 law that makes you the judges of the facts make me the judge
25 of the law. The law, as given by the Court, is the only law

1 you may consider. You must accept it and follow it even
2 though you may disagree with it.

3 I can not tell you what the facts are. You can not
4 disagree with me about what the law is or what the law
5 should be. Your job is to take the law as I give it to you,
6 apply it to the facts as you find them from the testimony,
7 from the evidence, that is introduced. After doing that,
8 you will render your verdict, a verdict under the solemn
9 oath that you have just taken as jurors.

10 Ladies and gentlemen, it is always important that you
11 keep an open mind and not decide any issue in the case until
12 all of the evidence has been presented, the parties have
13 made their closing arguments, and I have instructed you on
14 the law in the case. It is your solemn responsibility to
15 determine the guilt or innocence of the defendant, and your
16 verdict must be based solely on the evidence that is
17 presented in this trial, and on the law that I instruct you
18 during and at the close of the trial.

19 Now, in just a moment, the solicitor will make what is
20 called an opening statement in which the solicitor will
21 explain to you the issues in the case or at least what the
22 solicitor thinks the issues are in the case. Mr. Walker,
23 the defendant, may also make an opening statement although
24 he is not required to do so.

25 A criminal defendant, in South Carolina, is always

1 presumed to be innocent regardless of the seriousness of
2 whatever the charge may be. A criminal defendant bears no
3 burden of proving himself or herself innocent. The State
4 always bears the burden of proving its case beyond a
5 reasonable doubt.

6 Now, what the solicitor may tell you or what Mr. Walker
7 may tell you, in their opening statements, is not evidence
8 in the case. It is only their contention of what the issues
9 are. The questioning of the witnesses on the stand, the
10 questioning by the attorney, by the solicitor, or the
11 questioning by Mr. Walker is not evidence in the case.
12 It's, it's the responses from the witnesses that's the
13 evidence in the case. They're sworn to testify. That's
14 just a framework we use in Court, the question/answer. So,
15 it's the responses. The closing arguments by the solicitor,
16 by Mr. Walker are not evidence in the case.

17 So, please, please keep that in mind. That's how the
18 evidence will be presented to you from sworn witnesses
19 testifying under oath and any exhibits that may be
20 introduced.

21 From time to time, during the trial, you may hear one
22 of the lawyers say something like I believe we have a
23 question of law or one of the, one of the lawyers for the
24 solicitor or Mr. Walker say I believe we have a question of
25 law or a matter of law to discuss with you. Sometime they

1 may say may we approach the bench although I have advised
2 the parties I will have no bench conferences during the
3 course of this trial or sometime I, myself, might find it
4 necessary to excuse you from the courtroom for a short while
5 so that the solicitor and Mr. Walker and I can discuss a
6 matter of law.

7 The reason for this is because you are the judges of
8 the facts in the case, and sometimes, when I am discussing
9 matters of law, it may be necessary for me to make some
10 comment as to the facts in connection with ruling on whether
11 or not a particular law applies. I am not suppose to tell
12 you what I think the facts are. So, I will excuse you from
13 the courtroom while these discussions take place so that, in
14 no way, will you be influenced by anything that I might say
15 or do in connections with the facts.

16 In determining what the facts are in this case, ladies
17 and gentlemen, you must decide whether or not the testimony
18 of the witness or witnesses is believable. It will be my
19 responsibility to rule, as a matter of law, whether certain
20 testimony is admissible at all or not. In other words,
21 comply with our Rules of Evidence, if you get to hear it or
22 not. But once the testimony is admitted, whether or not you
23 believe it is solely for you, the jury, to determine.

24 In deciding whether to believe a witness, against that
25 backdrop of your individual and collective good judgment and

1 common sense, you have a right to consider the interest of
2 any witness, the bias, if any, of any witness, the
3 prejudice, if any, of any witness, the opportunity for the
4 witness to have seen the matters and things about which the
5 witness may testify, and the demeanor, the, the, the way the
6 witness acts on the witness stand. You have the right to
7 consider anything that is in the record that will help you
8 evaluate the testimony, the credibility of the testimony of
9 the witnesses.

10 That means it will be your duty to pay close attention
11 to these witnesses, to observe them, to listen to them, to
12 pay close attention to the attorneys, to Mr. Walker. Don't
13 let your thoughts wonder but give strict attention to the
14 testimony in this case so that, at the end of the testimony
15 after the closing argument, and the instruction on the law,
16 you will then be in that position to determine what the
17 facts are, apply the facts to the law as I tell you, and
18 render your verdict.

19 It will be your added responsibility, Mr. Foreman, to
20 preside in the jury room and be, be the jury spokesperson
21 here in Court. It will also be your duty to write the
22 verdict but I will give you further instructions on that at
23 the conclusion of the case.

24 And just state a few administrative issues, ladies and
25 gentlemen. Although we have a speaker system in the

1 courtroom, if you can not hear or properly see a particular
2 witness, please get my attention, the attention of the
3 clerk, or one of these fine bailiffs. We'll have them
4 hopefully sit up, speak up, such as that.

5 From time to time, although technology have passed by
6 me, they would hand and may offer a particular photograph or
7 the like into evidence. Hand it to the foreperson while
8 you're out here in the courtroom in your jury box. It can
9 be passed among, among the members of the jury panel out
10 here. As I say, the technology that has screens a lot of
11 time and display them in that manner. If you're having a
12 particular item of evidence, and you pass it along,
13 remember, file that into evidence. You'll also have it with
14 you in your jury room at the time you go to deliberations.

15 Look at it all you wish after the fact. Take whatever
16 time you deem appropriate and need. Keep it in mind. That
17 won't be the only time, the last time you have an
18 opportunity to review those items of evidence.

19 Next, I tell you this, cause some juror complained on
20 me. Imagine that. Surprising. You'll see me, from time to
21 time, on my computer. I don't tweet. I don't repeat. I'm
22 faceless. I don't have face -- I don't have a Facebook
23 account. Nothing. I'm totally anonymous. I do research.
24 I stay focused on the case. If there's heavy research, Miss
25 Poole, my law clerk, will do that for me.

1 That's all I do. I don't email or anything. If that
2 does distract you, which it did this juror, please let me
3 know and I'll get out of having to do any research and Miss
4 Poole can, can then do it all. Cases, I look down at that
5 road and it's kind of bumpy and dusty and I'll see what I
6 think is the legal issue may be coming around the corner,
7 that, that's what I'm doing.

8 Seat. We've already lost one juror, of course, because
9 of a medical issue, family medical issue. That's why I get
10 alternates and you can be called up for service at anytime.
11 I, I hope you don't have to because I hope everybody stays
12 with us and remains very good and healthy and well and has
13 no other issues. I have to keep up with our foreperson and
14 14 people.

15 If, if you'd maintain that seat, Mr., Mr. Foreman, and
16 the two alternates.

17 The other of you may sit wherever you'd like in the
18 jury box. I have observed, over the course of decades,
19 however, that jurors are very territorial. They want to sit
20 in the same seat each and every time. I don't blame them.
21 I like it. I sit in the same seat each and every time.

22 So, you may sit wherever you'd like. The other, let me
23 do my math, 11, you may sit wherever you like or you may
24 maintain the same seat, whichever, whichever you prefer.

25 Finally, what am I really in charge of?

1 I'm in charge of taking breaks. That's what I'm in
2 charge of and I have a real simple rule. When I want to
3 take a break, I take a break. It works out perfect.
4 Perfect.

5 I've told -- and this, truly, this is not a judicial
6 marathon. This is an important case. It's important to
7 Mr. Walker. It's important to the State. If you sit out
8 here too long, your thoughts get to wondering, you're not
9 gonna listen. Raise your hand. Y'all will take y'all's
10 break. We will take our break.

11 All right. With that being said, any objections to
12 anything I've told the jury from the State, solicitor?

13 SOLICITOR GRAHAM: No, Your Honor.

14 THE COURT: From the defense, Mr. Walker?

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

16 THE COURT: All right. Solicitor, you may address the
17 jury.

18 SOLICITOR DAVIS: Thank you, Your Honor.

19 May it please the Court?

20 THE COURT: Yes, ma'am.

21 SOLICITOR DAVIS: The last face that 25-year old Carrie
22 Banty ever saw was the face of that man, the defendant,
23 David Richard Walker, Junior. And she saw it when he had
24 his hands around her neck and was strangling the life out of
25 her.

1 MR. WALKER: Objection, Your Honor.

2 THE COURT: Overruled.

3 SOLICITOR DAVIS: On December 10th of 2012, the man
4 that Carrie loved, shared a child with, shared a home with,
5 brutally killed her and he did it while their three year old
6 daughter was in the house.

7 Now, during this trial, you will hear that
8 strangulation is an intimate and personal crime. It takes
9 continuous pressure. It takes substantial pressure and it
10 takes time. Minutes.

11 MR. WALKER: Objection, Your Honor.

12 THE COURT: Overruled.

13 SOLICITOR DAVIS: It takes minutes. Plenty of time for
14 someone to change their mind, someone not to go through with
15 the terrible act but, in this case, he didn't stop. He
16 didn't take his hands off her neck. He kept them there till
17 he felt her life slip away, the mother of his child, and he
18 did that cause he wanted her dead. He wanted to be done
19 with her.

20 MR. WALKER: Objection again, Your Honor.

21 THE COURT: Overruled.

22 SOLICITOR DAVIS: Ladies and gentlemen, after murdering
23 Carrie, he decided he needed to cover it up. So, he decided
24 what would be a good story.

25 So, he tried to make it look like Carrie overdosed on

1 drugs but you're gonna hear from a SLED agent that, after
2 the autopsy, Carrie's tox came back clean. No drugs in her
3 system and then he did the unspeakable thing.

4 He ran and left his three year old daughter, Cassidy,
5 alone in the home with her dead mother's body. You will
6 hear from witnesses that Cassidy tried to wake up her mom by
7 coloring on her with markers. You'll get to see pictures of
8 that, and when Cassidy---

9 MR. WALKER: Objection, Your Honor.

10 THE COURT: Overruled.

11 SOLICITOR DAVIS: And when Cassidy couldn't get her mom
12 to wake up, she got scared. She decided she was gonna try
13 to walk down the street by herself to grandma's house.

14 Luckily, there was a nice friendly neighbor, Mr. Eugene
15 Ray, and you'll hear from him. He saw three year old
16 Cassidy walking down the street and crying hysterically all
17 by herself, and he knew something had to be terribly wrong.

18 So, he went and talked to little Cassidy and got him --
19 got her to show him where he -- where she lived. So, he
20 goes into the house, walks into the bedroom, and finds
21 Carrie Banty's lifeless body face down on the floor.

22 As soon as he saw that, as typical people will do, they
23 run out and call the police. That's exactly what he did.

24 So, law enforcement shows up and they determine that
25 the defendant lives in that house. He's no where to be

1 found. So, they start their search. They put out a BOLO,
2 be on the lookout, to other agencies in case they find him.
3 They put him in NCIC as a missing person cause no one knew
4 where he was. His own parents didn't know where he was.

5 Thankfully, their efforts paid off, because eight days
6 after he killed Carrie, the defendant was found by officers
7 in Aiken County. He went all the way to Aiken and the
8 officer there saw him loitering around a business at night
9 and stopped and asked him if he had any warrants. He said
10 yeah, for murder.

11 And, ladies and gentlemen, that's exactly what he did.
12 He murdered Carrie Banty. He strangled the mother of his
13 child and then tried to stage it to look like she overdosed
14 on drugs. Tried to make her look bad in death.

15 MR. WALKER: Objection, Your Honor.

16 THE COURT: Overruled.

17 SOLICITOR DAVIS: He abandoned his three year old
18 daughter with the body of her dead mother and took off.

19 Now, ladies and gentlemen, at the end of this trial, I
20 know y'all've waited a long time to get it started, we're
21 gonna come back before you and we're gonna ask you to hold
22 David Richard Walker, Junior accountable for his actions and
23 find him guilty of the senseless murder of 25-year old
24 Carrie Banty.

25 Thank you for your attention.

1 THE COURT: Thank you. Thank you, solicitor.

2 Mr. Walker, you may address the jury.

3 MR. WALKER: Thank you so much, Your Honor.

4 How you doing, ladies and gentlemen of the jury?

5 As the Court has addressed y'all, my name's David
6 Walker. I understand that the State has produced argument
7 to you that I, that I murdered someone and all.

8 The reality, I, I didn't murder anybody and, by law,
9 the, the judge is instructed that there's -- they're certain
10 stipulations by law that deal with murder. And as he's,
11 he's instructed also that, as you was -- as you, as ladies
12 and gentlemen of the jury, you have to deal with the law,
13 and the law -- you know, even if you don't agree with
14 something, you have to do it when it comes to the law.

15 Now, murder is the killing of a person with malice
16 aforethought either express or implied. Therefore, the, the
17 state has addressed this and, therefore, they, they've
18 stated nothing that meets them clauses.

19 Everything that they have just told you is alleged.
20 That means they produced it in a legible manner. That's,
21 that's like an artistic view. It's their artistic view of
22 the facts.

23 They've produced no evidence to y'all that, that state
24 murder, and, again, when I say I murder, I want you to,
25 every time someone says murder, if y'all may, for your

1 consideration, think of the law cause the law is what you're
2 here for.

3 You're not here for your personal opinions. You're not
4 here for anything and I hope that you, ladies, ladies and
5 gentlemen of the jury, don't take that the wrong way.

6 Also, when you're dealing with murder, you have to do
7 with what they call malice. Malice is -- malice is either
8 expressed or implied. You may, you may know what that is or
9 you may not know what that is.

10 Also, I -- to, to do malice, malice is, is the, is
11 the -- is basically the wickedness of the heart. And,
12 again, I say by the law. So, you have to take that into
13 consideration by the law because malice is actually a
14 wickedness of the heart. And, and, by law, the law
15 stipulates and says that, to have malice, there is only one
16 way to produce malice and that is with a wicked or deprived
17 heart or spirit. That means somebody has the evil to do
18 that and that stipulates facts of murder.

19 And I'll let you know ahead of time that I plan, I plan
20 to produce basically defense of incident. That is a law.
21 And the defense of incident, a defendant, as I am, must seek
22 and raise the defense of incident. I may or may not do that
23 and the judge may or may not allow that, but, for your
24 consideration, I'm here to address it to you.

25 To, to, to have the incident of -- the defense of

1 incident, there's, there's three factors that you must meet.
2 That's the killing was unintentional, the defendant was
3 acting lawful, and due care was exercised in the entering of
4 the weapons.

5 Upon that, I will guarantee to you, ladies and
6 gentlemen of the jury, that I had no part or did not partake
7 in murdering the victim as they have alleged.

8 what is happened is Miss Banty was a very aggressive, a
9 very psycholigible (phonetic) person. She was very far out.
10 She had her own issues. She had her own thoughts and she
11 kept them in her own world.

12 And I met Miss Banty at a hospital. Upon that
13 hospital, she told me that she never -- she didn't have a
14 place to stay. She was homeless. Someone had give me -- my
15 grandmother had given me a place to stay along with my
16 mother. I, I, I relocated to there, and due to her
17 circumstances, I invited her into the home, my home, out the
18 kindness of my heart.

19 Due to her stipulations, she, she lied. She, she
20 forcefully tried to hit me and she alleged many things on
21 me. Therefore, I had -- I asked her to leave. But when I
22 asked her to leave, she basically called the police on me
23 and she asked that I be arrested. The police illegally
24 arrested me and also my neighbor illegally personally
25 arrested me. But that may be relevant for your

1 consideration. It may not.

2 But upon that, she left. I never had any contact with
3 Miss Banty for numerous years besides just brief contact
4 with her and, and relations to our daughter. We have a
5 biological daughter. Within that biological, within that
6 biological daughter, we held a few conversations.

7 I will, I will say that I relocated to North Carolina.
8 Upon that time, due to certain circumstances, I could not
9 get back to South Carolina. I was away from my daughter for
10 numerous years and also Miss Banty. I had no contacts.

11 I do come back to South Carolina. And, upon that
12 contact, she extremely tells me that she's in a very bad
13 predicament, and with, with the sense of my daughter in
14 consideration, she wants to move in together with me. I, I
15 object to this. Numerous times I tell her I do not want to
16 be anywhere near her due to her personality.

17 She, she progresses to get me to relocate with her to
18 West Columbia. I'm originally from Charleston or
19 Walterboro. You may or may not heard that. I was staying
20 in Walterboro at this time. Upon that, upon that, my father
21 had enticed the situation a little because I was living with
22 my father.

23 My father had me go to West Columbia. Upon going to
24 West Columbia, I was with Miss Banty probably 30 days. At
25 that time, Miss Banty become super aggressive. She abused

1 our child numerous times. And on the night of her death,
2 she, she had come home later than her normal time. My child
3 was in her car coming from her baby-sitters with her.

4 Upon that, as I opened the door and unlocked the door,
5 I noticed that Miss Banty was abusing my child. The child
6 was red. The child was white all over and markings all over
7 here and very faint. She was very far and very far from
8 reality. I think she had been abused very seriously.

9 Upon that, me and Miss Banty kind of argue a little.
10 Not necessarily arguing. We just say a few words. Miss
11 Banty goes into the home. I try to tend to my daughter.

12 We had -- upon that, upon that time, Miss Banty is
13 basically -- she, she had -- there's an incident that she
14 extremely abuses the child. She spansks her. She pops her.
15 She hits her in the face. She hits her in the side. She
16 hits her in the legs.

17 Upon that, I, I tried to get my child taken (sic) care
18 of. As, as this progresses, I have no, no -- I have no way
19 to get out of West Columbia. I have no way to leave, to
20 leave this residence due to the fact that, if I left, I'm
21 not from West Columbia. I don't know anybody from West
22 Columbia. So, I have to take a hundred, a 150 mile act, and
23 also, with my child being abused, I don't want to leave my
24 child there with, with her victim.

25 So, upon that, it progresses that Miss Banty attacks

1 me. When, when Miss Banty attacks me, she, she attacked me
2 numerous times. And, during this time, I had to place Miss
3 Banty in a chokehold, and when I did, I did it in a
4 self-defense manner and nothing outside of ordinary besides
5 a self-defense tactic where I place my arm around her and in
6 this area right here. Very few times did I have to apply
7 pressure to her throat.

8 I did so. I applied pressure. I did this in five
9 times in that night and the reason so is because, as we
10 progressed through the night, and these holds lasted for
11 approximately 30 seconds each, as we progressed through that
12 night, the -- it, it become to the extent that me and Miss
13 Banty was physically fighting. We was physically fighting
14 on cinderblocks, which was on the steps. We was physically
15 fighting in very grass yard. A very, a very rough area.
16 Outside near her vehicle, which is -- has white rocks and it
17 has sand and it also has -- it also has -- it's, it's a very
18 terrianing (phonetic). It has another future (sic) to it.
19 Some type of soil.

20 And with that being said, at the end of the thing, that
21 was four times that me and Miss Banty fought and then four
22 times was over my child. And as time progressed, basically
23 it got to the end where me and Miss Banty was trying to work
24 things out and we was in our bedroom. And, at the end, Miss
25 Banty was sitting there talking and we was having a

1 conversation trying to work this out.

2 And due to the strangulation that was produced before
3 when I was fighting with Miss Banty, then -- and, and
4 basically she was standing beside a chest of drawers and
5 this chest of drawers was about yay high and probably about
6 as long as my foot from that table there, and she was
7 standing there talking as I'm talking to you, and all of a
8 sudden she rares back, and she rares her head straight back.
9 And once she does, she rares straight down very forcefully.
10 She hits her head on the chest of drawers directly.

11 Now, Miss Banty is a very psychogic (phonetic) person.
12 She's very far and near if that may be. She, she may of did
13 that on psychology but my predicaments on the situation is
14 her throat swole due to strangulation, and, once it swole,
15 it basically -- it, it basically -- she had drunk water like
16 30 minutes before -- I mean about 30 seconds to, to --
17 anywhere from 30 seconds to two and a half minutes
18 beforehand. And upon that, upon that time, she -- upon that
19 time, she, she -- excuse me.

20 She -- upon that time, when she drunk that water,
21 within a very short time after that, she basically
22 immediately hit her head. She may of did it on her own or
23 she may of did it because her throat was swollen. I think,
24 therefore, her throat immediately collapsed, her larnax or
25 whatnot. Upon that, she attacked me. She come near me, and

1 as she come near me again, she, she rared. And underneath
2 that chest of drawers I was telling you about all the way at
3 the end, there was a metal rod that was about this long.

4 She went for that metal rod, and, as she did, I went to
5 try to help myself and also protect my child. And upon
6 that, I basically -- I, I lunged to her, and when I lunged
7 to her, I went to choke her again in a self-defense manner.
8 And upon that self-defense manner and basics, and basics,
9 it, it -- excuse me. Y'all bear with me. I'm gonna get
10 back on that.

11 But I, I am -- I have neurogic (phonetic) problems. I
12 have -- I've been diagnosed with brain damage. Also have
13 pulmonary embollmism (phonetic), which is blood clots to the
14 lungs. I also have DVTs, deep vein trimbosis (phonetic).
15 I have very low circulation. I have very low oxygen to the
16 brain and I already have brain damage. And I, I incurred
17 brain damage before these things. Therefore, you might know
18 I stutter or you might know I, I kind of go forward far from
19 the subject sometimes. That is due to my medical conditions
20 and I ask for y'all to take that into consideration when I'm
21 giving y'all testimony.

22 But to finish up, in basics, she, she attacked me. She
23 went the other way. She went for the metal rod. I went to
24 choke her. When I went to choke her, she basically, she
25 basically -- I, I realized, at that point in time, that she

1 was already choked and I, I immediately released her, and,
2 upon that time, I was right near her bed. I sat back on the
3 bed because I was, I was scared or whatnot.

4 But a long story short, she -- I heard a pop, you know,
5 and when I heard a pop, I realized she was dead. And
6 that -- that's the situation.

7 My word state this whatever -- you know, whatever the
8 State just told you is, is not so. There was a -- there was
9 a -- it was an accident. It was me defending myself. And I
10 wish I could of produced a better testimony to tell y'all
11 that. But, again, to my conditions, as we're all familiar
12 to produce certain things to y'all, and I, I hope -- I
13 probably will not give a lot of testimony in this trial, and
14 I probably won't be very active in this trial due to
15 different certain strategies in my defense and, and that may
16 be basically because I -- I'm not wishing to because I think
17 the State is falsely accusing me of what they have, and the
18 law allows me my amendment right to remain silent all
19 through this, all through this trial. And I may or may not
20 do that.

21 And I just would like to let y'all know that I'm doing
22 that for my own sake, in my own defense, and I'm gonna let
23 the State have that.

24 Sorry for y'all having to be here and I thank y'all so
25 very much.

1 You may, Your Honor.

2 THE COURT: Thank you, Mr. Walker.

3 Solicitor, you may call your first witness.

4 SOLICITOR DAVIS: Thank you, Your Honor.

5 May it please the Court.

6 The State calls Eugene Ray.

7 And, Your Honor, I beg the Court's indulgence while we
8 hook that up as well.

9 THE COURT: All right. Yes, ma'am.

10 SOLICITOR DAVIS: Mr. Ray has a walker. So, he might
11 be a little bit slow.

12 THE COURT: All right. Thank you.

13 THE CLERK: Right here, Mr. Ray.

14 THE WITNESS: All right. How are you, sir?

15 THE COURT: All right.

16 EUGENE RAY, being first duly
17 sworn, testified as follows:

18 THE CLERK: All right, sir. Go over there with the
19 bailiff. He'll help you get up.

20 THE WITNESS: All right.

21 THE COURT: Is this a sitting type walker?

22 THE WITNESS: Sir?

23 THE COURT: Is the walker sitting?

24 THE CLERK: Yes, sir.

25 THE WITNESS: Yes, sir.

1 THE CLERK: It is a sitting walker.

2 THE COURT: Do you want to sit there?

3 THE WITNESS: It doesn't matter. Wherever you need me,
4 sir.

5 THE COURT: Wherever---

6 THE WITNESS: Wherever I'm comfortable?

7 THE COURT: Wherever you're comfortable.

8 THE WITNESS: I'm gonna do this thing the right way,
9 sir.

10 THE COURT: All right. Yes, sir.

11 THE WITNESS: I can get up that little bit of steps
12 right there.

13 THE COURT: All right. Yes, sir. Appreciate you being
14 here.

15 THE OFFICER: We want you to have an elevator.

16 Would you like to use the elevator?

17 THE WITNESS: No, sir, I can still walk I think pretty
18 good.

19 THE COURT: All right.

20 THE OFFICER: That chair swivels.

21 THE WITNESS: All right, sir. Okay. Thank you, sir.

22 THE COURT: Yes, sir.

23 Would you like some water?

24 THE WITNESS: Please. If you don't mind.

25 THE CLERK: Mr. Ray, if you would, please state your

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1 full name spelling your last.

2 THE WITNESS: Eugene Winston Ray. R-A-Y.

3 THE COURT: All right.

4 THE WITNESS: Thank you, sir.

5 (WHEREUPON, four photographs were marked as State's
6 Exhibits Nos. 4 through 7. All exhibits were for
7 identification purposes only at this time.)

8 THE COURT: I think they're getting some technology
9 ready for us, Mr. Ray.

10 THE WITNESS: Yes, sir.

11 THE COURT: Do you want me and you to go down there and
12 get it fixed up?

13 THE WITNESS: I'll just let them handle that.

14 DIRECT EXAMINATION

15 BY SOLICITOR DAVIS:

16 Q Good afternoon, Mr. Ray.

17 A Good afternoon, ma'am.

18 Q Where do you live?

19 A Currently I reside in Morganton, North Carolina but
20 originally I was from [REDACTED] Alexandria Street in West
21 Columbia.

22 Q Okay. How far away is it -- what did you say, North
23 Carolina?

24 where?

25 A Morganton, North Carolina.

Eugene Ray - Direct examination
by Solicitor Davis

- 1 Q How far away is that from here?
- 2 A From here, it's approximately 177 miles.
- 3 Q So, it took you a couple hours to get here?
- 4 A Generally about three hours, yes, ma'am.
- 5 Q And you said that you grew up on Alexandria Street?
- 6 A Yes, ma'am.
- 7 Q Where is that?
- 8 A Yes, ma'am, it's at the corner of D Avenue, Avenue and
- 9 Alexandria's off of U.S. 1. Borders on the backside by
- 10 Dreher Road and on the right side by Platt Springs Road.
- 11 Q So, that would be in West Columbia?
- 12 A West Columbia address, yes, ma'am.
- 13 Q And that's in Lexington County?
- 14 A Yes, ma'am.
- 15 Q And you said you grew up there.
- 16 How long did you live there?
- 17 A Oh, Lord, since I was in the fourth grade. So, I'm 65.
- 18 So, I'd say probably, off and on, maybe 35, 40 years.
- 19 Q So, a long time?
- 20 A Yes.
- 21 Q You're---
- 22 A Yes.
- 23 Q ---familiar with the area?
- 24 A Oh, yes, ma'am. Grew up there, yes, ma'am.
- 25 Q So, I assume you were living there on December 11th

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1 of 2012?

2 A Yes, ma'am, I was there taking care of my mother.

3 Q Okay. Again, so, you were living with your mother?

4 A Yes, ma'am.

5 Q Anyone else living with you there?

6 A No, ma'am, just me and my mother.

7 Q Okay. And, at that time, were you working?

8 A I had been working in the Federal Building downtown but
9 had injury to back and had undergone some surgery. So, I
10 was not working at that time.

11 Q Out of pocket for that time?

12 A Yes, ma'am.

13 Q Okay. I want you to recall that day.

14 Do you remember December 11th, 2012?

15 A Yes, ma'am, I do.

16 Q Tell us what you remember about that day.

17 A I was going to get my mother -- my mother needed some
18 money from the bank. So, I was going to the bank. We were
19 on general account. I was going to get her some money from
20 the bank for her pocket and then some supper or dinner.
21 And, matter of fact, she wanted Church's Chicken. So,
22 that's what I was gonna do for her and, and I was going to
23 the bank, and as I went out into the driveway, I noticed the
24 little girl walking down the side of the road in my -- in
25 our yard and I was concerned about her.

Eugene Ray - Direct examination
by Solicitor Davis

1 She was crying and ringing her hands. I was concerned
2 because the neighborhood, over the years, had gotten an
3 influx of sexual predators, sexual problems there. So, they
4 were all in the neighborhood and I was concerned for her
5 safety. Especially her walking down the street like that.

6 Q Yes, sir.

7 Let me stop you. What, what time of day was this?

8 A Around 12:00, 12:30 in the afternoon. About noontime.

9 Q Noontime.

10 Okay.

11 A Yes, ma'am.

12 Q Okay. So, it would of been light out?

13 A Yes, ma'am.

14 Q And you were able to see a little girl walking down the
15 street?

16 A Yes, ma'am.

17 Q Did you know her -- know who she was?

18 A No, ma'am, I didn't know who she was. I hadn't -- you
19 know, I'd seen -- you know, you notice children around the
20 neighborhood but I really hadn't noticed her before.

21 Q So, you -- did you know where she lived?

22 A I had seen her coming from up at the top of the hill
23 where the trailers were. You know, I didn't know which
24 trailer she lived in, no, ma'am.

25 Q Okay. And did you end up speaking with---

Eugene Ray - Direct examination
by Solicitor Davis

- 1 A Yes, ma'am.
- 2 Q ---Miss Cassidy?
- 3 A I went -- our eyes met and I stopped my truck so she
4 could go in front of me. You know, I didn't want to take no
5 chance with something that small and me hitting it or
6 running over it, you know. So, I stopped. And when she
7 went by, she stopped, turned around, and looked at me, and,
8 you know, just -- I don't know. I stopped the truck and got
9 out and told her. I said come here, baby girl. I'm
10 Mr. Gene. What's wrong? Why are you crying?
- 11 Q And what did she tell you?
- 12 A She told me take me to my grandmother's.
- 13 Q Okay. And what did you do?
- 14 A I told her, I said, well, let's -- you know. Let's go
15 ask your mama. Where's mommy at, you know?
- 16 Q Where did she say her mama was?
- 17 A She said mommy was asleep and I said where do you live
18 and she pointed up to the trailers.
- 19 Q Did you take her back to the trailers?
- 20 A Yes, ma'am, I did.
- 21 Q Okay.
- 22 A I told her we needed to go ask her mommy.
- 23 Q Okay. And where did you end up going?
- 24 A I went to the first trailer as you pull into the lot.
25 It's the first trailer on the right.

Eugene Ray - Direct examination
by Solicitor Davis

- 1 Q Okay.
- 2 A She pointed it out that that's where she lived.
- 3 Q Cassidy told you that's---
- 4 A Yes, ma'am.
- 5 Q ---where I live?
- 6 A Yes, ma'am.
- 7 Q Okay. And then what did you do when you got there?
- 8 A Well, she spoke to me and, you know, I was a little
- 9 concerned in what she said that -- she says I think my
- 10 mommy's dead. I said darling, why do you say that? She
- 11 said because she's cold. I said oh, Lord, I'm not going to
- 12 do this. So, I went to the door and took two fingers and
- 13 opened the door, the front door, and I yelled pretty loud in
- 14 the trailer.
- 15 Q Was it unlocked?
- 16 A Yes, ma'am, the front door was unlocked.
- 17 Q Did you try knocking on it first?
- 18 A Oh, yes, I beat hard and I found -- I just don't go up
- 19 in somebody's house. You get shot.
- 20 Q That's right.
- 21 A So, after no response, I opened the door and yelled
- 22 real loud, you know, and let (sic) know I was there.
- 23 Q Did you get a response?
- 24 A No, ma'am, I did not.
- 25 Q And then what did you do?

Eugene Ray - Direct examination
by Solicitor Davis

1 A I went inside and Cassidy was behind me, and I said
2 well, maybe you better go to the truck. I got a Mountain
3 Dew. You sit up there in my big red truck and, and I'll see
4 if I can wake mommy up for you.

5 Q You had a big red truck?

6 A Yes, ma'am, I had a big GMC four wheel drive.

7 Q Did Cassidy like sitting in that?

8 A Oh, yes. She loved it.

9 Q So, you took Cassidy back outside, put her in your
10 truck---

11 A Yes, ma'am.

12 Q ---gave her a drink.

13 Then what did you do?

14 A Went to the hall. Looked down the hall as I was still
15 yelling is anyone home, is anyone home. And I locked down
16 the hall and there's a -- the -- you know, the young lady at
17 the end of the bed.

18 Q Okay. Tell me what -- if you're standing at the door
19 of the room where she was, tell me, tell me what you saw.

20 A Standing in the room with the door, she was laying on
21 the floor facing out towards the door coming out of the
22 bedroom face down, arm up led to the bed.

23 Q Okay. Did you go touch her?

24 A Yes, ma'am, I did. I was, at that time, I, I had been
25 a CNA for quite a few years. Still -- I was still a

Eugene Ray - Direct examination
by Solicitor Davis

1 licensed CNA. So, I went and checked her carotid artery to
2 see if she had a pulse. Didn't like the way that felt cause
3 I found nothing. So, I went to take the pulse in her hand
4 and she was cold.

5 Q She was cold.

6 Was she stiff?

7 A Yes, ma'am, cold and stiff. I knew then that I just
8 needed to go call the police.

9 Q And did you do that?

10 A Yes, ma'am, I did.

11 Q Did you do that with Cassidy in front of you?

12 A No, I stepped to the back of the truck. You know,
13 while she was taking a drink, I just stepped to the back of
14 the truck and called 9-1-1. Called the local West Columbia
15 Police Department. I didn't dial 9-1-1 per se but I talked
16 to the dispatcher and --.

17 Q You told them what you found?

18 A Yes, ma'am, I had the phone number programmed in my
19 phone because we had some much trouble there and just I
20 wanted to be able to dial them fast if I ever needed them.

21 Q Yes, sir.

22 Did you stay there till law enforcement got there?

23 A Oh, yes, ma'am. Yes, ma'am, I stayed there and talked
24 with Cassidy and tried to put her at ease, and, you know,
25 just, you know, just chatting what -- about whatever.

Eugene Ray - Direct examination
by Solicitor Davis

1 Q Keep her entertained?

2 A Yes, ma'am. Excuse me.

3 Q Go right ahead.

4 were you able to see who all showed up on the scene?

5 A Yes, they come pretty fast, yes, ma'am. They were,
6 they were -- first started out as just one and then two and
7 then, next thing you know, the whole place was packed.

8 Q So, you got law enforcement?

9 A Pretty much just---

10 Q who all showed up?

11 A Law enforcement was there and then, yeah, I was talking
12 with them first and this wanted a statement and that one
13 wanted a statement and then the chief showed up and then the
14 chaplain showed up. And, you know, I was kind of just
15 making my rounds with them, you know, telling them, you
16 know, pretty enough the same thing over and over again. I
17 said gee whiz, guys, you know, I mean how many more times
18 you want me to say it---

19 Q They were---

20 A ---you know.

21 Q They were passing you around?

22 A Oh, yeah, I was like a dollar bill doing like that.

23 Q Okay. You were telling them exactly what you're
24 telling us today?

25 A Yes, ma'am. Yes, ma'am.

Eugene Ray - Direct examination
by Solicitor Davis

1 Q Okay. Had you ever been in that trailer before?

2 A No, ma'am, I never went up that way.

3 Q And did you know who all had lived in there, the woman
4 that you saw deceased?

5 A No, I didn't know. Like I said, I didn't know anyone
6 who lived there. I see -- you see people. You know, I sit
7 on the porch with my mother in the rocker a lot and you see
8 people come out and go in. Whenever a truck had previously
9 moved up in there and I figured someone had moved in the
10 trailer but I never really seen "the family" or, you know,
11 pretty much stayed to ourself, my mother and I did.

12 Q Okay. So, you don't know how long they had been there?

13 A No. No, ma'am, I don't.

14 (Pause.)

15 Q Mr. Gene, while we get this set up cause I don't know
16 how to work it --

17 A Yes, ma'am.

18 Q -- I'll go ahead and show you some, some pictures and
19 see if you can tell me if you recognize them.

20 A Yes, ma'am.

21 Q And, for the record, these have been marked as State's
22 No. 4, 5, 6, and 7.

23 A Yes, ma'am, I do. I believe this is coming into the
24 neighborhood where, where I lived and where this happened.

25 Q Okay. And you're referring to State's No. 4?

Eugene Ray - Direct examination
by Solicitor Davis

1 A State's No. 4, yes, ma'am.

2 Q Okay. So, you recognize this one?

3 A Yes, ma'am.

4 Q All right. How about No. 5?

5 A Yes, ma'am, No. 5 is a frame view of the house that I
6 lived in with my mother. State's Exhibit No. 5.

7 Q All right. How about six?

8 A State's No. 6 was the mobile home in which Cassidy and
9 her mother, Carrie, had -- were living, I'm assuming, cause
10 that's where she took me to.

11 Q Okay. And how about No. 7?

12 A Yes, ma'am, No. 7 is a view of -- coming down D Avenue.
13 D Avenue and Alexandria dead end together. That's a view
14 coming down going into the mobile home park where, where
15 they lived.

16 Q Okay. Are all the photos that I showed you true and
17 accurate representations of the things that you just
18 explained?

19 A Yes, ma'am.

20 SOLICITOR DAVIS: Your Honor, at this time, the State
21 would move Exhibits 4 through 7 into evidence.

22 THE COURT: Mr. Walker, any objection?

23 MR. WALKER: Yes, Your Honor.

24 THE COURT: All right. What's the, what's the basis of
25 your objection citing the rule number?

Eugene Ray - Direct examination
by Solicitor Davis

1 MR. WALKER: No rule number, Your Honor.

2 THE COURT: What's the---

3 MR. WALKER: May I proceed?

4 THE COURT: What's the basis of your objection?

5 MR. WALKER: I -- law enforcement presence.

6 THE COURT: Sir?

7 MR. WALKER: Law enforcement presence.

8 THE COURT: All right. May I see them?

9 SOLICITOR DAVIS: May I approach?

10 THE COURT: Yes, ma'am.

11 (Pause.)

12 THE COURT: So, you would have no objections to State's
13 4, 5, or 7 because there does not appear to be any law
14 enforcement present that I can see in State's 4, 5, or 7?

15 Is that correct?

16 MR. WALKER: That's correct, Your Honor. I, I --.

17 THE COURT: So, it's just State's 6 because law
18 enforcement present?

19 MR. WALKER: That's correct, Your Honor.

20 THE COURT: All right. Thank you.

21 That objection's overruled. State's 4, 5, and 7 is in
22 evidence without objection. State's 6 in evidence
23 subjection to defense objection.

24 (WHEREUPON, State's Exhibit Nos. 4 through 8 were
25 received into evidence at this time.)

Eugene Ray - Direct examination
by Solicitor Davis

1 SOLICITOR DAVIS: May I approach, Your Honor?

2 THE COURT: Yes, ma'am.

3 SOLICITOR DAVIS: Thank you.

4 Q All right. Mr. Gene, I'm gonna put these up over on
5 the overhead so that the jury can see them too and get you
6 to talk about --

7 A All right.

8 Q -- where things are.

9 All right. I'm gonna give you a pointer so that you
10 can point out the places for us.

11 A Okay.

12 Q And you press that button.

13 A Okay.

14 Q You got it?

15 A Yes, ma'am.

16 Q All right. Okay. So, on State's Exhibit No. 4, can
17 you show us where your house is?

18 A Yes, ma'am, our, our house is right there.

19 Q Okay. And where is the trailer that you found the
20 deceased?

21 A Right, right there.

22 Q Okay. And where is it that you saw Cassidy walking
23 down the street?

24 A She was walking, as I was -- as I was coming out the
25 driveway here, she was coming down across the front of our

Eugene Ray - Direct examination
by Solicitor Davis

1 yard right there at the edge of the road.

2 Q Okay. And where did you stop and get out?

3 A There's a dogwood tree right there.

4 Q Okay. And once you got her in the car, did you drive
5 that same route back to the trailer?

6 A Yes, ma'am, I drove back up here to the, to the mobile
7 home and pulled in right there.

8 Q Okay. And is that where you parked your truck?

9 A Yes, ma'am, it's in one of the pictures. You'll see
10 it.

11 Q Okay. All right. Now, State's Exhibit No. 5, tell us
12 about that.

13 A This location right here is the front of our house on
14 ■ Alexandria driveway coming out right here and that being
15 the dogwood tree I'm referring to.

16 Q So, that would of been where you stopped to pick
17 Cassidy---

18 A Yes, ma'am, she was coming -- she was coming down the
19 road right there at the edge right off the edge of the road.

20 Q Okay. So, this would just be a closer view of the --

21 A Yes, ma'am.

22 Q -- driveway from State's Exhibit No. 4?

23 A Yes, ma'am, that's a frontal view down pretty close to
24 the road there.

25 Q And State's No. 7, tell us what that is.

Eugene Ray - Direct examination
by Solicitor Davis

1 A This is the Alexandria Street with D Avenue this way.
2 This is a dead end. This was the frontal going into the
3 trailer park right there with their trailer being just
4 behind that tree.

5 Q Okay. So, if I go back to State's No. 4---

6 A Yes, ma'am.

7 Q ---that would be the area right here?

8 A Yes, ma'am, this is -- this is Alexandria. This is D
9 right there. As you look in, you see in the curve of the
10 driveway right there and that was, like I said, the trailer
11 was behind the tree.

12 Q Okay. And State's Exhibit No. 6, tell us about that
13 one.

14 A This is the mobile home in which the, the child lived.
15 That front door is the one that I knocked on pretty hard.
16 Then I took two fingers and opened the door. That is my
17 truck right there in the road I was telling you about.

18 Q Were there any other vehicles at -- parked there when
19 you got there?

20 A There was a little white car parked there, white or
21 silver car, parked to the right there.

22 Q Did you recognize that car?

23 A No, I don't, I don't pay much attention to those things
24 other than the fact, when I drove up, I had to move the --
25 to the side to get beyond it.

Eugene Ray - Direct examination
by Solicitor Davis

1 Q You just remember it was there?

2 A Oh, yes, ma'am. Yes, ma'am.

3 Q Now, Mr. Gene, when you saw Cassidy walking down the
4 street crying, do you remember what she was wearing?

5 A I'm not exactly sure you know. I'm -- it, it appeared
6 to be some sort of pajamas --

7 Q Okay.

8 A -- or, you know, children, in my days, wear just about
9 anything.

10 Q That's right.

11 Did you happen to see any injuries on Cassidy?

12 A No, ma'am.

13 Q Did you look for any?

14 A I -- well, no, I really didn't because I'm just -- you
15 know, she was so upset that I just was trying to figure out
16 what was wrong with her.

17 Q So, there were none apparent to you --

18 A No. No.

19 Q -- from what you saw?

20 A No, I did not -- I did not see any physical, you know,
21 any appearance of anything on her that would of said that
22 anything had happened with her.

23 Q If you had, what---

24 A She---

25 Q ---would you have done?

Eugene Ray - Direct examination
by Solicitor Davis

1 A Well, I would of called 9-1-1 right there before I ever
2 took her up there, you know.

3 Q Yes, sir.

4 Did Cassidy complain to you about any injuries or
5 anything hurting?

6 A No, she didn't complain about anything. She was just
7 worried about her mother.

8 (WHEREUPON, a CD was marked as State's Exhibit No. 8
9 for identification purposes only at this time.)

10 SOLICITOR DAVIS: And, Your Honor, I am showing the
11 witness what is marked as State's Exhibit 8 for
12 identification.

13 Mr. Gene, would you look at that and see if you
14 recognize that?

15 A Yes, ma'am, that's the copy of the call of the 9-1-1 or
16 the call to the police department and it has -- it bears my
17 initials on it.

18 Q So, this is the one that you listened to?

19 A Yes, ma'am.

20 Q And you wrote your initials on it?

21 A Yes, ma'am, I did.

22 Q And is the 9-1-1 call that you've listened to from this
23 CD a fair and accurate representation --

24 A Yes, ma'am.

25 Q -- of the call you made that night?

Eugene Ray - Direct examination
by Solicitor Davis

1 A Yes, ma'am.

2 SOLICITOR DAVIS: Your Honor, at this time, the State
3 would move Exhibit 8 into the record.

4 THE COURT: Mr. Walker.

5 MR. WALKER: Yes, Your Honor.

6 THE COURT: State's 8, they've offered State's 8 into
7 the record.

8 MR. WALKER: I don't have -- again, Your Honor, I don't
9 have a list of numbers of what she's referencing.

10 THE COURT: I'm sorry. I can't hear you.

11 MR. WALKER: I don't have a list of what she's
12 referencing.

13 THE COURT: It's a 9-1-1 call made by Mr., Mr.---

14 THE WITNESS: Ray.

15 THE COURT: Mr. Gene. Mr. Ray. Mr. Ray to the West
16 Columbia Police Department on the day of 11 December '12.

17 MR. WALKER: Yes, sir, I would like to view it, Your
18 Honor, and then I have no objections.

19 SOLICITOR DAVIS: Your Honor---

20 THE COURT: Is---

21 SOLICITOR DAVIS: ---it's been provided in discovery.

22 MR. WALKER: I would like to review the actual CD.

23 THE COURT: It's an audio.

24 MR. WALKER: I would -- I just like to review the
25 original evidence, Your Honor, and then I have no objection.

Eugene Ray - Direct examination
by Solicitor Davis

1 THE COURT: Well, I'm allowing it in evidence at this
2 time, State's 8, and it may be published.

3 SOLICITOR DAVIS: Thank you, Your Honor.

4 THE COURT: Subject to defense objection.

5 (WHEREUPON, State's Exhibit No. 8 was received into
6 evidence and published to the jury at this time.)

7 Q Mr. Gene, is that the call that you made that day?

8 A Yes, ma'am, that is me.

9 Q And I believe, on the call, Cassidy told you she was
10 five.

11 Did you find out how old she really was?

12 A Not until I spoke with her grandmother and found out
13 she was three.

14 Q She was three?

15 A Yes, ma'am.

16 Q When you went into the house and saw who we now know is
17 Miss Carrie Banty dead on the ground, tell me about what, if
18 any, injuries you saw on Miss Banty.

19 A She had some bruising on her arm. I rolled her back
20 and she was beaten. She was laying there on her side or
21 more or less this way and I noticed, from previous years of
22 working in, in the, you know, healthcare, that, when the
23 patient passes, the blood muddles -- mottles or, you know,
24 to the bottom side of the body, the lowest point of the
25 body.

Eugene Ray - Direct examination
by Solicitor Davis

1 Q Right.

2 A And she had some of that on her, on her side, you know.

3 Q where was the bruises that you saw?

4 A On her arms and around her face.

5 Q But you didn't see any bruises or anything on Cassidy?

6 A No. No, ma'am.

7 SOLICITOR DAVIS: Beg the Court's indulgence, judge.

8 THE COURT: Yes, ma'am.

9 (Pause.)

10 Q Mr. Gene, we have no further questions for you. Please
11 answer any the defense has.

12 A Thank you, ma'am.

13 THE COURT: Thank you, solicitor.

14 Mr. Walker.

15 CROSS-EXAMINATION

16 BY MR. WALKER:

17 Q All right. Ladies and gentlemen of the jury.

18 Mr. Ray, how you doing today?

19 A Doing good.

20 Q All right. You know who I am?

21 A Do what?

22 Q Do you know who I am?

23 A I do now.

24 Q I'm the defendant in this case.

25 Do you -- my name is David walker.

Eugene Ray - Cross-examination
by Mr. Walker

1 Did you realize that?

2 A I do now.

3 Q You do now. That's very good, sir. Very good.

4 My, my, my question is, to you, if, if I may, you say
5 you spoke---

6 A Can you speak up please, sir?

7 Q I don't have a microphone on me.

8 A Okay. Raise your voice a little bit. I can't hardly
9 hear you.

10 Q I'll try. I have a sore throat.

11 A Oh, all right.

12 Q Yes.

13 You, you give -- you give a statement to Page Moore.
14 Is that not correct?

15 THE COURT: Mr., Mr. Walker, there's a microphone over
16 here.

17 MR. WALKER: Can I put it over here, Your Honor, or can
18 I move this---

19 THE COURT: I don't know.

20 MR. WALKER: Can I move the---

21 THE COURT: You can go over to that podium.

22 MR. WALKER: I don't think that's gonna work.

23 SOLICITOR DAVIS: Judge, we can move the computer so he
24 can put his notes there.

25 THE COURT: All right. Please do. Thank you,

Eugene Ray - Cross-examination
by Mr. Walker

1 solicitor.

2 MR. WALKER: Your Honor, is it all right if I just try
3 to speak up a little louder cause that may be, but they may
4 be---

5 THE COURT: I would be delighted if you'd speak a
6 little louder.

7 MR. WALKER: On their next witness, I, I may use this
8 combination.

9 THE COURT: Mr., Mr. Ray, if you're able -- if he can't
10 hear the questions, he's not gonna be able to answer you.
11 So, please speak up.

12 MR. WALKER: Yes, sir, I'm gonna try.

13 THE COURT: Thank you.

14 Q Yes, sir, Mr. Eugene.

15 Again, you give testimony to Ms. Page Moore that you
16 said when you found -- that, that you picked up the little
17 girl. In one, one testimony -- in one statement to Ms. Page
18 Moore, you tell her that she's at -- you are -- you say you
19 never met them. I'm guessing you're referencing me.

20 By, by chance, did you observe me at any chance?

21 I just asked you if---

22 A I don't even know you. So, I don't, I don't know.
23 whether you was there, whether you wasn't there. I don't
24 know you.

25 Q All right. well, well, at this time, how did you know

Eugene Ray - Cross-examination
by Mr. Walker

1 I -- that -- where did you come to the conclusion that it
2 was them?

3 I mean what are you referencing in that statement?

4 A When you got a mother and daughter, that's a them,
5 isn't it?

6 Q All right. I understand.

7 A Okay.

8 Q All right. In your statement, you say she was going
9 past this drive crying and then, in another statement, if I
10 may, you say that I believe, I believe that you say that she
11 was at your mailbox.

12 And, and which one is it?

13 It is your mailbox or is it her mailbox?

14 Are you saying---

15 A She come by, she come by my mailbox. She come across
16 the front of my yard down by my mailbox. I stopped. She
17 crossed my driveway. She crossed my driveway, I stopped,
18 and got out.

19 Q Now, now, you said earlier that, that you, you met her
20 grandmother, Miss Cassidy's grandmother.

21 Is that correct?

22 A Yes, I did.

23 Q All right. Are you familiar or relevant with where
24 Mrs. -- where her grandmother lives?

25 A I do now. I didn't know at that time.

Eugene Ray - Cross-examination
by Mr. Walker

1 Q All right. Do you live in-between the, the residence
2 that you found the victim in or the alleged victim and -- or
3 in-between your residence?

4 Is, is her grandmother's residence in-between or
5 farther?

6 A Her grandmama lives on farther down Alexandria Street.

7 Q So, she has to cross your home to get to her
8 grandmother's.

9 Is that correct?

10 A Yes.

11 Q Okay. All right. All right. And, and, of course,
12 then you give another statement to, to someone named L.
13 Smith.

14 Are you familiar with that name?

15 Maybe that was an officer on the scene. The State
16 asked you if it was a lot of people.

17 A I don't know who L. Smith is.

18 Q All right. You give a statement that Cassidy told you
19 she drunk the nasty juice or nasty stuff.

20 A Yes, sir, that's what she told me.

21 Q All right. When, in your conversation with her, did
22 she state that?

23 A While he was waiting on the police to come, sir.

24 Q All right. And, and, upon that time, did -- she didn't
25 reference any, any time of crying or look abused or any of

Eugene Ray - Cross-examination
by Mr. Walker

1 that nature?

2 How, how was her appearance and her description at this
3 time?

4 A what do you mean?

5 Q How did the child look whenever -- when you found her
6 and when she give you this statement?

7 A She was crying.

8 Q She was crying?

9 A Yes.

10 Q And was it like a fearful crying or was it---

11 A well, yeah, she was ringing her hands and she was
12 crying.

13 Q Crying. I, I -- you said ringing her hands.

14 what do you mean by this?

15 A well, if someone's anxious, they ring their hands. She
16 was ringing her hands and crying.

17 Q Do, do people normally get anxious and sad at the same
18 time?

19 A I'd say yeah. A lot of people get that way.

20 Q Okay. I was just asking you then.

21 And you said, you said she drunk a nasty stuff, a nasty
22 juice, and you said you -- she showed you where she lived.

23 Did she show you anything further?

24 A I'm not following what you mean.

25 Q Did, did she give you any description or, or point or

Eugene Ray - Cross-examination
by Mr. Walker

1 view at any object or any substance in the house that
2 would---

3 A No. No.

4 Q ---be nasty juice?

5 A No. No, I wasn't looking for that.

6 Q And she never relevantly asked you or told you anything
7 to description?

8 She just made that comment to you?

9 A She made the comment, yes.

10 Q Was there any comments in-between or before or after
11 that comment that may be relevant to that?

12 A Was there any -- hold up now. You gonna have to slow
13 down.

14 What, what do you mean?

15 Q Did she say anything, anything near that, that
16 statement?

17 A What do you mean anywhere near it?

18 Q Did she say something before or after that statement?

19 THE COURT: You, you, you have to -- you have to -- you
20 have to answer---

21 MR. WALKER: I'll---

22 THE COURT: You have to ask the witness the specific
23 question, Mr. Walker.

24 Q Okay. Did she say anything to you---

25 THE COURT: You're gonna have to speak up, Mr. Walker.

Eugene Ray - Cross-examination
by Mr. Walker

1 Q Did she say anything---

2 THE COURT: The jury needs, the jury needs to hear you.
3 They -- this is, this is, this is your day in Court. The
4 jury needs to hear you, Mr. Walker. Please speak up.

5 MR. WALKER: Yes, sir.

6 I'm gonna ask you again, Mr. Eugene Ray, Mr. Eugene
7 Ray.

8 whatever she said, when she addressed the nasty juice
9 or nasty stuff, with any -- at the time of 30 seconds to two
10 and a half minutes, did she say something in that timeframe
11 before she stated that to you?

12 A Well, she just told me that, that, you know, she
13 thinks, you know, there was something nasty cause I don't
14 know how she knew that. I mean I wasn't asking her that
15 question. It's just something she just told me.

16 Q Okay. So, basically you said, within that timeframe,
17 she didn't give any comment in that timeframe?

18 Is that what your statement is?

19 A I'm just saying she talked too while we were waiting on
20 the police. I don't know what you're asking but that's, you
21 know --.

22 Q So, so, what you're stating is you do not, you do not
23 have recollection exactly of that timeframe that I'm
24 referencing?

25 A So, you're asking me---

Eugene Ray - Cross-examination
by Mr. Walker

1 Q Also the timeframe---

2 A Are you asking me what time she drank or what time she
3 told me she drank?

4 Q I'm asking you to comment -- if, if she made a comment
5 and near the comment of nasty juice. Comment being speech.

6 A She just told me about the nasty juice, sir.

7 Q I understand that but did she make anything -- any
8 issues -- I want to say issues than rather statements before
9 or after this?

10 A I don't know what you're talking about, no.

11 MR. WALKER: I'm moving on, Your Honor. I have no
12 questions -- no further questions.

13 THE COURT: Thank you. Thank you, Mr. Walker.
14 Redirect, solicitor?

15 SOLICITOR DAVIS: No, sir, Your Honor.

16 May Mr. Eugene Ray be excused please?

17 THE COURT: Yes, he may and it may be, it may be better
18 for him, Mr. Williams---

19 THE OFFICER: You want to use the elevator?

20 THE WITNESS: Oh, I can walk down.

21 THE COURT: Just go around here.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Do we have a -- Madam Clerk, do we have a,
24 a body mic?

25 THE CLERK: No, sir, we don't.

1 THE COURT: We don't have a body mic?

2 THE CLERK: No, sir.

3 THE COURT: And I know what it is and we don't have
4 one?

5 THE CLERK: You know what it is and we don't have one.

6 THE COURT: Yes, sir, Mr. Walker.

7 MR. WALKER: Your Honor, may you have a bailiff or
8 someone that can go to Radio Shack and grant that wish of
9 the Court?

10 THE COURT: I'm gonna take care of it. Thank you.

11 MR. WALKER: Yes, sir.

12 THE COURT: Y'all have a body mic. We use to, we use
13 to use them on witnesses -- with witnesses.

14 SOLICITOR GRAHAM: I don't know if we do, Your Honor.
15 We can look and see. I bet that cord's probably longer than
16 you're standing right there.

17 THE COURT: Well, I'm having -- members of the jury are
18 having some difficulty hearing you, Mr. Walker. I'll get,
19 I'll get a body mic this afternoon somehow, but until I do,
20 I'm gonna ask you to please conduct your examination from
21 the middle podium where the microphone is at.

22 Okay?

23 MR. WALKER: Thank you so much, Your Honor. I --.

24 THE COURT: All right. Thank you.

25 THE CLERK: Your Honor, may I approach?

1 THE COURT: Yes, ma'am.

2 (Pause.)

3 THE COURT: Thank you, Madam Clerk.

4 All right. You may call your next witness.

5 SOLICITOR DAVIS: Your Honor, before I do that, I think
6 that Mr. Ray wanted to continue to watch the trial but I
7 know we usually lock the doors.

8 would you give permission for him to come in through
9 the back-door?

10 THE COURT: Sure. Of course..

11 SOLICITOR DAVIS: Thank you, judge.

12 THE COURT: Yes, ma'am. I didn't know I locked the
13 doors.

14 SOLICITOR DAVIS: I think, I think they keep them
15 locked for you, judge.

16 THE COURT: Thank you. Y'all are trying to lock me in.
17 That's what you're doing.

18 SOLICITOR DAVIS: Us too.

19 Your Honor, at this time, the State calls James
20 Sullivan.

21 THE COURT: All right. Mr. Sullivan, come around and
22 join us please.

23 JAMES SULLIVAN, being first duly
24 sworn, testified as follows:

25 THE CLERK: Have a seat. Once you're seated, state

James Sullivan - Direct examination
by Solicitor Davis

1 your full name. Spell your last on the record.

2 THE WITNESS: James Patrick Sullivan. S-U-L-L-I-V-A-N.

3 DIRECT EXAMINATION

4 BY SOLICITOR DAVIS:

5 Q Investigator Sullivan, where do you work?

6 A I'm currently employed with the Eleventh Judicial
7 Circuit. I work for the Solicitor's Office.

8 Q So, you work at our office?

9 A Yes, ma'am.

10 Q Do you report to me or Shawn Graham?

11 A No, ma'am, I report directly to Chief Investigator Matt
12 Marter.

13 Q Where were you working in December of 2012?

14 A Yes, ma'am, I was employed at the City of West Columbia
15 Police Department as a crime scene investigator and act as
16 custodian.

17 Q How long had you been at West Columbia?

18 A At that time, I'd been there approximately four years.

19 Q Where -- did you have any other prior law enforcement
20 experience before West Columbia?

21 A Yes, ma'am, in 1998, I joined -- enlisted in the United
22 States Marine Corp and became a military police officer. In
23 April, 2001, I was sent to and graduated from the Criminal
24 Investigation Division. I became a CID agent working with
25 the NCIS. After I got out of the Marine Corp in 2006, I

James Sullivan - Direct examination
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1 gained employment with the City of West Columbia.

2 Q And you stated that, while you were at West Columbia,
3 were a CSI and evidence custodian?

4 A Yes, ma'am.

5 Q Is that correct?

6 what are the duties of a CSI?

7 A Yes, ma'am, a crime scene investigator is responsible
8 for going to any scene where a crime has been committed and
9 collecting items of evidence and documenting the scene for,
10 for further inquiry. We are especially trained to gather,
11 document, send items off for further forensic examination,
12 and generally work with the, the team as a whole to solve
13 the crime.

14 Q On December 11th of 2012, were you called to the --
15 were you called out to a scene?

16 A Yes, ma'am.

17 May I refer to my notes?

18 Q Absolutely.

19 THE COURT: Yes, sir.

20 A Yes, ma'am, at 13:55, I was told to report to [REDACTED]
21 Alexandria Street, [REDACTED] which is in the City of West
22 Columbia in Lexington County.

23 Q And you said 13 what time?

24 A I'm sorry, ma'am. That's 1:55 in the afternoon. I was
25 using military time. I apologize.

James Sullivan - Direct examination
by Solicitor Davis

1 Q Sorry.

2 So, one -- around 1:00, almost 2:00 in the afternoon --

3 A Yes, ma'am.

4 Q -- you were called out to [REDACTED] Alexandria Street?

5 A Yes, ma'am.

6 Q And what was the purpose of the call?

7 A I was told to report out there because there was a dead
8 body in a trailer.

9 Q Okay. And when you arrived on scene, was anyone else
10 there?

11 A Yes, ma'am, Investigator Chuck Bramlett was on scene.
12 He was the lead CSI on the case as well as numerous West
13 Columbia officers and my supervisor.

14 Q When you arrived, what did you do?

15 A First thing we do, when we arrive on scene, is I get my
16 marching orders, as they were, to get in my instructions.
17 In this case, my instructions were to gather information to
18 procure a search warrant. In this case, I looked at the
19 crime scene. I started documenting what the dwelling looked
20 like and the particulars, why we were there, why we were
21 seeking a search warrant.

22 In this case, we have a deceased inside this mobile
23 home. So, I documented her location, the information
24 surrounding that, and the general description of the area so
25 I could take it to a judge to get a search warrant.

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1 Q Were you, in fact, able to get a search warrant for [REDACTED]
2 Alexandria Street?

3 A Yes, ma'am.

4 Q And was that done the same day?

5 A Yes, ma'am.

6 Q Okay. And what did you do once you got the search
7 warrant?

8 A I returned to the scene and gave the search warrant to
9 my partner, at the time, Investigator Bramlett and he
10 initiated the search warrant, which means we began
11 processing the crime scene.

12 Q And, and tell me what the procedure, if there is a
13 specific procedure, for when you are executing a search
14 warrant in a situation like this?

15 A The first thing we want to do is limit
16 cross-contamination. That means we want to document the
17 scene as it was before we start conducting investigative
18 endeavors.

19 So, in this case, we start by taking photographs. We
20 work from the outside in. We take external photographs,
21 intermediate photographs, and then close-ups. So, we
22 photograph the outside of the house, the entry/exits, so
23 your front doors, back doors, all the rooms, and any, you
24 know, close-up items that might be evidentiary value. And
25 then we began collecting items that we might feel that might

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1 be pertinent to the case for further investigative
2 endeavors.

3 Q Tell me about the trailer in this case.

4 A Yes, ma'am, in this case, the trailer was a tan in
5 color single wide mobile home with like a brick
6 underpinning. It had a car, silver in colored Pontiac,
7 outside of it and it has a Dempsey Dumpster like a Curby --
8 Herby Curby on the end of it. I documented that.

9 When we were going through, noticed that there was no
10 signs of forced entry. Whenever we start a crime scene,
11 that's the first thing we look for. Was there any signs of
12 forced entry? Both the doors seemed well in tact. No signs
13 of damage, forced entry.

14 And the trailer was, for the inside, was fairly clean
15 except for some food stuff in the little young lady's room
16 and some things that are disheveled in the master bedroom.

17 Q So, it was a two bedroom?

18 A Yes, ma'am, two bedroom.

19 Q Okay. How many baths?

20 A I believe they had one bath.

21 Q Okay. And tell me what you did once you got inside the
22 trailer.

23 A Like I said, ma'am, we, we photographed all the areas
24 and begin processing, and, at that point in time, we, we
25 started in the master bedroom where the deceased was and

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1 then we worked our way out towards the kitchen, which is on
2 the other side of the house.

3 Q Okay. Describe to me how the deceased was in the
4 master bedroom.

5 A Yes, ma'am, the deceased was laying at the foot of the
6 bed. Her arms were kind of extended and her legs were up
7 against a set of chest of drawers or a dresser. It was
8 opposite of the bed. She was laying face down and she had a
9 blanket partially covering her torso and, on her skin, was
10 Crayola like markers and then, in the room, we found
11 markers.

12 Q Okay.

13 A Looks like somebody had been coloring some on her.

14 Q And, as a CSI, do you just take one picture of the
15 room?

16 A No, ma'am, what we do is we---

17 Q Tell me how that works.

18 A We photographs 360s. We try to gather a complete
19 overview of the room before we start disturbing it. So that
20 way, when we go back through, we can kind of get an accurate
21 idea of what that room was like before we start dusting or
22 gathering the evidence. So, we know that's where it was
23 before we disturbed it.

24 Q So, the photographs that you would of taken would be
25 before anybody touched anything?

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1 A Yes, ma'am, before the law enforcement got involved.

2 Q Okay. How it was when you arrived?

3 A Yes, ma'am.

4 SOLICITOR DAVIS: Beg the Court's indulgence, judge.

5 THE COURT: Yes, ma'am.

6 (Pause.)

7 (WHEREUPON, 11 photographs were marked as State's
8 Exhibit Nos. 9 through 19. A diagram was marked as State's
9 Exhibit No. 20. Seventeen photographs were marked as
10 State's Exhibit Nos. 21 through 37. All of the above
11 exhibits were for identification purposes only at this
12 time.)

13 MR. WALKER: Your Honor, if the Court will bear with
14 me. I think I just been provided about ten photos. I need
15 the description, description.

16 SOLICITOR DAVIS: Your Honor, for the record, those
17 photos were produced in discovery.

18 MR. WALKER: Again, Your Honor, I didn't know what the
19 State was gonna produce into evidence. That's not my---

20 THE COURT: I don't want to hear argument about it in
21 front of the jury.

22 (Pause.)

23 MR. WALKER: Your Honor, if I, if I may?

24 I would like to ask the Court if I can have -- if I can
25 use all the state's Exhibits throughout and be provided a

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1 copy with each and every one of the exhibits that is
2 produced?

3 THE COURT: Can y'all do that, solicitor?

4 SOLICITOR DAVIS: Your Honor, he's welcome to use our
5 exhibits once they're in evidence --

6 MR. WALKER: May I---

7 SOLICITOR DAVIS: -- for whatever he wants in his case.

8 MR. WALKER: I ask you for a copy if they---

9 THE COURT: Sir?

10 MR. WALKER: I'm asking for a copy if they are
11 produced.

12 SOLICITOR DAVIS: And, Your Honor, we did give him a
13 copy of all the photographs I'm having marked now, and
14 they're just in black and white. He's just gonna have to
15 number them. So, he has those, judge.

16 MR. WALKER: Your Honor?

17 THE COURT: Well, we can discuss this outside the
18 presence of the jury.

19 MR. WALKER: Thank you, Your Honor.

20 THE COURT: All right. And we'll do that at the end of
21 the day.

22 MR. WALKER: If I may, Your Honor, I'd rather do it
23 now.

24 THE COURT: Are you offering evidence, solicitor?

25 SOLICITOR DAVIS: After I have Mr. Sullivan lay the

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1 foundation I will be, judge.

2 THE COURT: All right. Do you have objections?

3 MR. WALKER: Objections to what, Your Honor?
4 what term?

5 THE COURT: Those photographs.

6 MR. WALKER: Yes, I do.

7 THE COURT: Well, let, let me see them a moment please.

8 SOLICITOR DAVIS: May I approach?

9 THE COURT: Yes, ma'am.

10 (Pause.)

11 THE COURT: All right. Step out momentarily, ladies
12 and gentlemen.

13 why don't y'all take about a 15 minutes recess? Give
14 me just a minute.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. we'll take about a 15-minute
18 recess.

19 You may step down, Detective Sullivan.

20 THE WITNESS: Yes, sir.

21 THE COURT: Do not discuss your testimony during the
22 break.

23 Thank you.

24 (WHEREUPON, a short recess was taken at this time.)

25 THE COURT: All right. If there are objections to the

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1 photographs, solicitor, why don't you go ahead and lay a
2 foundation now and let me review them --

3 SOLICITOR DAVIS: Yes, sir, Your Honor.

4 THE COURT: -- and rule on his objections before the
5 jury comes back in?

6 SOLICITOR DAVIS: Yes, sir, Your Honor. Right now I
7 there are -- we have two more sets. I was letting the
8 defendant go through -- cause we've given him black and
9 white copies. He's putting the numbers on those, I guess,
10 to determine which ones he has objections to.

11 THE COURT: Is those -- those all with Detective
12 Sullivan?

13 SOLICITOR DAVIS: Yes, sir, Your Honor.

14 All right. I think he only has five or six left.

15 THE COURT: Madam Clerk, I understand the jury wants to
16 make notes. I'm not---

17 THE CLERK: Oh, they do?

18 All right, sir.

19 THE COURT: Give them some paper.

20 THE CLERK: I did not know that, Your Honor. Let me
21 get them sheets.

22 SOLICITOR DAVIS: Judge, I can go ahead and start doing
23 sets of them if you'd would like me to do that while he's
24 still going through.

25 (Pause.)

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1 SOLICITOR DAVIS: Judge, I believe he's reviewed all of
2 them.

3 Would you like me to go ahead and proffer testimony?

4 THE COURT: Yes, ma'am.

5 MR. WALKER: Your Honor, if I may?

6 I still have two photos. I'm not sure what number they
7 are. I don't guess I was provided an exhibit for them.

8 THE COURT: I didn't hear anything you said,
9 Mr. Walker.

10 MR. WALKER: I still have two photos without a number.
11 I don't believe that I was provided exhibit number for them
12 or exhibit to review to place a number on them. I --.

13 SOLICITOR DAVIS: Which two pictures?

14 MR. WALKER: I can allow the State to view them.

15 (Pause.)

16 THE COURT: You ready to proceed, Mr. Walker?

17 MR. WALKER: I -- momentarily, Your Honor. In about
18 one minute, if you may, 60 seconds.

19 SOLICITOR DAVIS: Your Honor, while he's doing that,
20 may I have the witness go ahead and review these photos?

21 THE COURT: Yes, ma'am.

22 (WHEREUPON, the defendant's identification and a
23 toxicology report were marked as Defendant's Exhibit Nos. 38
24 and 39 for identification purposes only at this time.)

25 SOLICITOR DAVIS: Your Honor, in addition to the

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1 photographs that he's reviewed, I'm also planning on
2 attempting to enter two other pieces of evidence with this
3 witness.

4 Do you want to go ahead and do in the proffer as well?

5 THE COURT: Yes, ma'am.

6 (Pause.)

7 THE COURT: All right. Are you ready to proceed,
8 Mr. Walker?

9 MR. WALKER: Yes, sir.

10 THE COURT: All right. Solicitor, you may proceed.

11 CONTINUED DIRECT EXAMINATION

12 BY SOLICITOR DAVIS:

13 Q Mr. Sullivan, did you have time to look at all the
14 photographs that I provided to you?

15 A Yes, ma'am.

16 Q And I believe they would be the State's No. 9 through
17 19 and 21 through 37.

18 Do you recognize those photographs?

19 A Yes, ma'am.

20 Q And what are those photographs?

21 A Those are photographs of the crime scene.

22 Q Are those photographs fairly and accurately depict the
23 scene as it was that night?

24 A Yes, ma'am.

25 Q Have they been altered or changed in anyway?

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1 A No, ma'am.

2 Q I'm gonna also show you what's been marked as State's
3 Exhibit No. 20.

4 Do you recognize this?

5 A Yes, ma'am.

6 Q And what is that?

7 A That is a crime scene diagram that I did for -- in
8 preparation for this.

9 Q And this is something you created?

10 A Yes, ma'am.

11 Q And it was provided in discovery?

12 A Yes, ma'am.

13 Q Is it just a blown-up version?

14 A Yes, ma'am, it is.

15 Q Has it been altered or changed in anyway other than
16 making it bigger?

17 A No, ma'am.

18 Q Investigator Sullivan, I'm showing you what is been
19 marked as State's Exhibit 38 and 39 for ID.

20 Do you recognize those?

21 A Yes, ma'am.

22 Q And how are you able to recognize them?

23 A On State's 38, it's got my handwriting on it and it's
24 an ID for David Walker and---

25 Q would that have been something you collected at the

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1 scene?

2 A Yes, ma'am.

3 Q Okay.

4 A And on State's 39, this is -- it contains a meal from
5 the trash can with, again, my name. It was recovered from
6 the Dempsey Dumpster outside the incident location. It's an
7 autopsy packet, which I filed out and turned in to SLED, and
8 it's got, again, it's got my handwriting on it.

9 Q Okay. So, you recognize your handwriting on both of
10 those, 38 and 39?

11 A Yes, ma'am.

12 Q Can you tell me what all would you have taken with
13 regard to the victim's toxicology packet, which is marked as
14 Exhibit 39?

15 A Yes, ma'am, in this case, I took whatever was in the
16 autopsy packet that Investigator Bramlett brought back as
17 well as a syringe cover from the crime scene. Chief Sutton
18 had entered it. I dropped it off at SLED on 12/13/12.

19 Q And was that sealed in your presence at SLED?

20 A Yes, ma'am, and my initials and date and time of where
21 the initial seal was.

22 Q Do you have a list of each specific thing from the
23 victim's toxicology that was taken to SLED as part of the
24 packet or do you just have it as a packet?

25 A I just have it in a packet, ma'am.

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1 SOLICITOR DAVIS: Okay. Your Honor, at this time, the
2 State would move State's No. 9 through 39 into evidence.

3 THE COURT: All right. Mr. Walker.

4 MR. WALKER: Yes, sir, Your Honor. I'm gonna object to
5 that too.

6 THE COURT: All right. Which ones specifically you
7 object to?

8 MR. WALKER: I -- can she repeat the exhibit numbers
9 one more time?

10 THE COURT: No, I want to know each one you object to.

11 MR. WALKER: Can she repeat the exhibit numbers one
12 more time, Your Honor --

13 SOLICITOR DAVIS: Your Honor, he---

14 MR. WALKER: -- the one she wishes to introduce.

15 THE COURT: State's 9 through 39.

16 MR. WALKER: Yes, sir.

17 For, for one thing, Your Honor, to start with, it's
18 irrelevant for the State to introduce so many photographs at
19 one time. There's no way---

20 THE COURT: Relevancy is not -- relevancy, under 401,
21 is whether or not a fact---

22 MR. WALKER: I'm not---

23 THE COURT: It goes to the issue of the guilt or
24 innocence in the trial of the case.

25 MR. WALKER: Yes, sir, Your Honor. I'm not getting a

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1 relevancy. I'm getting at there's, there's---

2 THE COURT: You said it was irrelevant.

3 SOLICITOR DAVIS: Your Honor, may I approach?

4 MR. WALKER: Your Honor, if it may, I would of started
5 at No. 9.

6 THE COURT: All right. Thank you.

7 And what is your objection?

8 MR. WALKER: First of all, it's a dead body. The
9 second, the second is there's no relevancy to it, and the
10 third is there's no relevancy to the wounds on the body.
11 Therefore, there, there are irrelevant to the admission and,
12 therefore, are admissible (sic).

13 THE COURT: All right. Cite me a case that says it's
14 irrelevant because A, it's a dead body.

15 MR. WALKER: I'm saying that, I'm saying that, when
16 you, when you're dealing with photos of the dead bodies,
17 you, you actually -- Your Honor, I do have that case law but
18 I did not bring that folder with me, which is my -- on my
19 own discretion. Not the Court's. I don't choose to bring
20 that into the Court.

21 But what I'm, what I'm saying, I do not have a case law
22 but I do know rule of thumb or rule of basis that to enter a
23 dead body it must be relevant and the State has produced no
24 evidence that makes it relevant and also it's kind of
25 gruesome and the photos are very gruesome. They're not

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1 gruesome necessarily to -- necessarily of blood but it's,
2 it's a dead body and there's no relevancy to it.

3 THE COURT: All right. Thank you.
4 Solicitor.

5 SOLICITOR DAVIS: Your Honor, this is a homicide case.
6 So, I believe the body, and especially since he's arguing
7 self-defense, the, the nature of the body and the injuries
8 sustained to the body are absolutely relevant to this case.

9 MR. WALKER: Your Honor, I never gave testimony that I
10 was---

11 THE COURT: And---

12 MR. WALKER: ---pleading---

13 THE COURT: I didn't, I didn't ask -- I'm not through
14 with the solicitor please, Mr. Walker.

15 MR. WALKER: When you may, when you may, Your Honor, I
16 object.

17 THE COURT: All right. And -- all right. Mr. Walker.

18 MR. WALKER: Yes, sir, I never give testimony at this
19 trial. I may of given it prior that I was take a
20 self-defense but, at this point in time, I, I do not choose
21 for a self-defense and I have not addressed the jury on
22 self-defense. I did address the jury on defense of
23 accident.

24 THE COURT: All right. I find State's 9 appears to be
25 a body laying on -- a floor by a bed face down. I see no

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1 blood. I do see a bruise on the right forearm it appears
2 beginning at the elbow and running down towards the wrist.
3 I see no other injuries. The body appears to be clothed.
4 It does not appear to be gruesome in any manner whatsoever.
5 I've seen worst injuries on little league baseball fields.

6 MR. WALKER: What is the relevant---

7 THE COURT: Don't interrupt me.

8 MR. WALKER: I didn't know you was speaking, Your
9 Honor.

10 THE COURT: State's 9 is relevant. It shows the
11 condition of the crime scene at the time of the arrival of
12 the crime scene officer. It also corroborates the testimony
13 of Mr. Ray in what his vision was and the mannerism and the
14 movement he made and the descriptions of how the body
15 appeared to him.

16 State's 9 is in evidence subject to relevancy and it's
17 a dead body.

18 (WHEREUPON, State's Exhibit No. 9 was received into
19 evidence at this time.)

20 MR. WALKER: Your Honor?

21 THE COURT: What's the next one, Mr. Walker?

22 MR. WALKER: Your Honor, if I can go back to 9 and
23 offer---

24 THE COURT: No, sir, I've ruled on 9.

25 MR. WALKER: All right.

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1 THE COURT: I told you, once I've ruled---

2 MR. WALKER: All right.

3 THE COURT: ---I don't want to hear any more argument.

4 MR. WALKER: Sorry, Your Honor.

5 THE COURT: State's -- what's the next one, Mr. Walker?

6 MR. WALKER: Your Honor, Mr. Eugene Ray has, has
7 subject (sic) that he has moved his body and, therefore,
8 position.

9 THE COURT: Mr.---

10 MR. WALKER: If I may?

11 THE COURT: Mr. Walker?

12 MR. WALKER: Yes, sir.

13 THE COURT: I don't want to hear any more argument
14 about State's 9. What is it---

15 MR. WALKER: I'm on, I'm on No. 10, Your Honor.

16 THE COURT: You didn't say that.

17 MR. WALKER: I did, Your Honor. I said I move to form
18 No. 10.

19 THE COURT: Do you object to No. 10?

20 MR. WALKER: Yes, sir.

21 THE COURT: What's your objection?

22 MR. WALKER: I, I object that Eugene Ray has moved the
23 body and---

24 THE COURT: All right.

25 MR. WALKER: ---and, therefore, the relevancy is --

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1 there's no relevancy in there and the solicitor has not
2 produced any type of statement that makes these photos
3 relevant besides I plead in self-defense and she -- I, I
4 have not addressed self-defense. Therefore, that, that
5 conclusion is not correct.

6 Again, the, the arm is swollen. It's very swollen.
7 So -- and is very red, very marked, very deeply, and,
8 therefore, I think it's -- it may be a very minimal subject
9 of gruesome, grew -- or grossome (phonetic) but it is gross.

10 THE COURT: All right. Solicitor.

11 SOLICITOR DAVIS: Your Honor, the State has the burden
12 of proving the cause and manner of death. This is how the
13 body was when law enforcement arrived. This is, this is to
14 show the jury the condition of the incident location as well
15 as the body.

16 THE COURT: All right. Thank you.

17 State 10's in evidence subject to objection. I find
18 that it is not gruesome whatsoever. It does show other
19 injuries to the upper right arm as far as some reddening and
20 some bruises. I find that it is not gruesome. It is
21 relevant. It is admissible.

22 (WHEREUPON, State's Exhibit No. 10 was received into
23 evidence at this time.)

24 THE COURT: What's your next objection, Mr. Walker?

25 MR. WALKER: Yes. Yes, sir.

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1 Your Honor, I object, again, Your Honor, to No. 11 as
2 it's not relevant. There's no relevancy for it. The State,
3 the State has not produced any testimony that it's relevant.
4 And also, again, it is a dead body and I -- it's also
5 similar to gruesome. Therefore, I would like the Court to
6 take that into consideration.

7 And also the fact that the body was relocated,
8 relocated and, therefore, the, the posture and the body
9 would, would deter the jury as into what happened and
10 effects and of what the State has alleged.

11 THE COURT: All right. What's the next one you object
12 to, Mr. Walker?

13 MR. WALKER: No. 12. Your Honor, I object to that---

14 THE COURT: For the same reasons?

15 MR. WALKER: Necessarily, yes, sir, Your Honor.

16 THE COURT: What's the next one you object to?

17 MR. WALKER: No. 13.

18 THE COURT: For the same reasons?

19 MR. WALKER: Yes, that's correct.

20 THE COURT: What's the next one you object to?

21 MR. WALKER: No. 14.

22 THE COURT: Same reasons?

23 MR. WALKER: Yes, sir.

24 THE COURT: What's the next one you object to?

25 MR. WALKER: I direct the Court on No. 15 and I object

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1 to it due to the fact that it is extremely gruesome.

2 Especially the fingers.

3 THE COURT: Strangulation is gruesome.

4 Okay.

5 MR. WALKER: To me, I have -- I'm entitled to opinion,
6 Your Honor.

7 THE COURT: All right. What's the next one you object
8 to?

9 MR. WALKER: No. 16 is definitely not relevant but as,
10 as we carry on, I'm, I'm objecting with the same objections
11 that we left, and I would like to -- the Court to consider
12 the relevancy in that a little bit more extreme than the
13 others. There's no relevancy there.

14 THE COURT: What's the next one you object to?

15 MR. WALKER: No. 17, Your Honor. No. 17 is extremely
16 gruesome to me. There's blood in there and any time a scab
17 is dark and it, it's post, post blood.

18 THE COURT: What's the next one you object to?

19 MR. WALKER: No. 18. Again, it's scabs, Your Honor,
20 and that, that is blood. Therefore, it's relevant to
21 gruesome when the blood is outside the skin.

22 No. 19, Your Honor, I---

23 THE COURT: I didn't ask you for the next one.

24 MR. WALKER: Sorry, Your Honor.

25 THE COURT: Solicitor, would you please address 11

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1 through 18.

2 SOLICITOR DAVIS: Your Honor, if I may approach to see
3 exactly which ones those are.

4 (Pause.)

5 SOLICITOR DAVIS: Your Honor, Nos. 11 through I believe
6 17 or 18, these are all, again, different -- showing
7 different areas of the room where the defendant -- where the
8 decedent was found showing other evidence of items that were
9 near the body. And, again, it's the State's burden to
10 prove. These are not overly gruesome. It shows bruises and
11 I think that that is gonna be relevant in the event he does
12 put in evidence of self-defense has -- as he already has or
13 he's already said something about a defense of accident. I
14 believe Doctor Ross is gonna testify regarding these
15 injuries, and I believe that they are relevant to the nature
16 and cause of death.

17 THE COURT: Thank you.

18 MR. WALKER: Your Honor, if I may?

19 THE COURT: I don't want to hear any more arguments.

20 (Pause.)

21 THE COURT: All right. As to 11 through 18, I'm going
22 to allow -- I'm going to allow 14, 15, 16, and 18 in
23 evidence subject to, subject to defense objections. I find
24 none of them are gruesome. Fifteen -- 15 is not extremely
25 gruesome.

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1 I also think that 13 and 14, which I've allowed into
2 evidence, I think they're cumulative. So, I'm not gonna
3 allow 13. I also find that 18 shows the wound from a
4 distance that is shown in 17. So, I'm not going to allow
5 that. I find that 11 is a closer photograph that is also
6 cumulative from a closer in angle as to both 9 and perhaps
7 10 also. So, I'm not going to allow that and I think 12 is
8 also cumulative to 14.

9 So, so far, I've allowed 9, 10, 14, 15, and 16, and 18
10 in evidence subject to objections. I have excluded 11, 12,
11 13, and 17 based on cumulative grounds.

12 (WHEREUPON, State's Exhibit Nos. 14, 15, 16, and 18
13 were received into evidence at this time.)

14 THE COURT: All right. What is your next -- what's
15 your next objection, Mr. Walker?

16 MR. WALKER: I -- Your Honor, I believe No. 18, I mean
17 the last---

18 THE COURT: I think we're at 19.

19 MR. WALKER: Thank you so much, Your Honor.

20 THE COURT: I think I ruled on 18.

21 MR. WALKER: Your Honor?

22 THE COURT: I allowed 18 in evidence.

23 MR. WALKER: Are, are we still on the basis of the
24 other objections that we was carrying on?

25 THE COURT: I'm not gonna allow 19 in evidence. It's a

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1 close-up of the injuries also shown in 18 along with the
2 knee injury. Eight -- nineteen doesn't show the knee
3 injury. But 18 shows both the injuries to the feet and to
4 the right knee. So, 19 is not in evidence. It's
5 cumulative.

6 All right. Next, Mr., Mr. Walker.

7 MR. WALKER: Yes, sir, I only objected to No. 20 but
8 the only thing I object to is the picture of the mobile
9 home. I---

10 THE COURT: Well, what is 20?

11 MR. WALKER: I believe it's irrelevant. I, I just
12 believe it's -- the, the whole map is not relevant, Your
13 Honor.

14 THE COURT: All right. Well, I'm -- bring it a little
15 closer up here.

16 It appears to be, from the officer's testimony, a
17 diagram he prepared of it showing just a schematic, so to
18 speak, of the interior of the residence. It's indicated not
19 to scale. I'm gonna allow State's 20 in evidence subject to
20 objections.

21 (WHEREUPON, State's Exhibit No. 20 was received into
22 evidence at this time.)

23 THE COURT: All right. What about these others,
24 Mr. Walker?

25 MR. WALKER: Solicitor, before we move forward, may,

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1 may you just flip it so I can see?

2 I'm just looking to see if there's still something.

3 THE COURT: What's your next objection, Mr. Walker?

4 MR. WALKER: Nothing, Your Honor.

5 My, my next objection to 21 and 22 is relevancy.

6 They're just photos of a door and, and the -- a room that
7 has no relevancy to a homicide or no relevancy to breaking
8 and entering or anything and natures.

9 THE COURT: Is that the same with 20---

10 MR. WALKER: Three.

11 THE COURT: Twenty-one -- excuse me, 20, 20 -- no,
12 excuse me. 21, 22, 23.

13 How, how far does that go up?

14 MR. WALKER: Twenty-five, Your Honor.

15 THE COURT: Sir?

16 MR. WALKER: All the way up to 21 through 25.

17 THE COURT: 24, 25.

18 All right. What about that, solicitor?

19 SOLICITOR DAVIS: Your Honor, may I approach?

20 THE COURT: Yes. Yes, ma'am, I'm sorry.

21 SOLICITOR DAVIS: That's okay. We don't have extra
22 copies.

23 Your Honor, with regard to No. 21, that is showing that
24 to corroborate Investigator Sullivan's testimony that there
25 was no forced entry. Also to corroborate Mr. Eugene Ray's

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1 testimony that the door was unlocked and that he, he didn't
2 see it pried open or anything like that.

3 No. 22, 23 -- 21 and 23 show the condition of the home
4 as it was that day.

5 24 and 25 are photographs of Cassidy's room with food
6 items laid out, which we would argue corroborates Mr. Eugene
7 Ray's story that the, the victim -- that Miss Cassidy was
8 there by herself.

9 THE COURT: All right. Thank you.

10 MR. WALKER: If I may, Your Honor?

11 THE COURT: Yes, sir.

12 MR. WALKER: Your Honor, I'd like to start with 24.

13 There's, there's -- there's no -- there's nothing
14 corroborated that Cassidy was left alone. There's been no
15 testimony that she was left alone other than Mr. Eugene Ray
16 and, therefore, nobody has contradicted that. His testimony
17 was given and the jury has heard that. There's nothing more
18 to it. Nobody has objected or wishes to contradict what
19 Mr. Eugene Ray said on the presence of the child being home.

20 And plus, so, if you -- if I may, back to 21, Your
21 Honor, 21 shows nothing but a door. This, this crime is not
22 a burglary crime. Therefore, it has no posturous
23 (phonetic), posturous (phonetic) evidence toward a homicide
24 or no relevancy. Nobody has given introduction that there
25 was a burglary at no time, and the fact of a discovery has

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1 as a burglary been said anything, anything about a burglary.
2 And the door, it doesn't show -- there's not enough --
3 there's, there's -- force of injury (sic) could of been all
4 the way around the door and, and it also could of been in
5 the -- on the house and that picture does not have a full
6 view of the door. And it's also -- there is no view of the
7 inner mechanisms of the door. Therefore, it's irrelevant to
8 forced entry.

9 THE COURT: All right. 21, 22, 23, 24, 25, they're in
10 evidence subject to defense objections.

11 MR. WALKER: Yes, sir.

12 THE COURT: They -- that would go to the weight and not
13 their admissibility. They're two types of evidence, direct
14 and circumstantial. Whether you see the entire door or part
15 of the door, the jury could draw inference thereafter as to
16 no forced entry.

17 Also, it appears to me, from the trim of the door, and
18 the way the door is sitting there, it appears to be opened
19 regardless of the condition of the lock, and the jury could
20 also draw that reference or that inference I guess.

21 Further, there is a case out of Orangeburg, I'll find
22 it shortly, that statements made in opening arguments may be
23 addressed by the opposing parties. And based on opening
24 statement, based on your opening statements of the abuse of
25 your child or of Miss Banty's child and your child by Miss

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1 Banty and also of these various opening statement comments
2 you made concerning the course of the struggle or struggles,
3 the residence does not appear to be in a disarray whatsoever
4 to me. There may be a few things perhaps out of place.

5 The TV's not turned over. Chairs aren't turned over.
6 The kitchen doesn't appear to be in disarray. There appears
7 to be, if that's the child's room, items -- I don't know
8 what to call that, fruit blocks or something, I'm not sure,
9 some other items there and that appears to be a McDonald's
10 bottle. So, that would go to the weight and not the
11 admissibility.

12 (WHEREUPON, State's Exhibit Nos. 21 through 25 were
13 received into evidence at this time.)

14 MR. WALKER: Your Honor?

15 THE COURT: All right. Next -- your next objection,
16 Mr. walker.

17 MR. WALKER: I would just like to put on the record,
18 Your Honor, that I was---

19 THE COURT: I want your next objection. Once I rule---

20 MR. WALKER: Okay, Your Honor.

21 THE COURT: ---I don't want to hear any more argument.
22 You're, you're, you're protected on the record.

23 MR. WALKER: The, the---

24 THE COURT: I've directed you to that Rule of Criminal
25 Procedure several times.

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1 MR. WALKER: Yes, sir, Your Honor.

2 May, may I address to you the problem that I'm having
3 with that?

4 THE COURT: I don't care what problem you have with the
5 rules --

6 MR. WALKER: Or the situation.

7 THE COURT: -- except that you need to follow them.

8 MR. WALKER: I'm, I'm correcting myself, Your Honor,
9 and I'm running into an issue on that.

10 THE COURT: All right. What's your next objections,
11 Mr. Walker?

12 MR. WALKER: Your Honor, I, I -- No. 26 is relatively
13 gruesome due to the fact that -- the fact that it's, it's
14 gruesome. There's, there's blood underneath the skin. The
15 fingers are very tainted. They're very -- it's -- the
16 fingers are very gruesome and there's, there's no relevant
17 (sic) also back to the dead body.

18 THE COURT: All right. Twenty -- twenty-six was it?

19 MR. WALKER: That's correct.

20 THE COURT: What's gruesome about it?

21 MR. WALKER: The, the hand, the fingers, and the,
22 the -- around the risker (sic) area.

23 THE COURT: All right. Investigator -- so, that's all
24 that's gruesome?

25 MR. WALKER: From my -- also, Your Honor, I'm, I'm

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1 objecting right now to the black and white photos. I
2 understand that that's the only thing that is admissible
3 and---

4 THE COURT: No, sir, I'm ruling on what's in front of
5 me. I don't have black and white photos in front of me.

6 MR. WALKER: Exactly, Your Honor, and, in
7 consideration, I'd ask the Court to consider that and make
8 all photos that is being produced that has skin in it to be
9 black and white.

10 THE COURT: No, sir, I'm not, I'm not doing that.

11 Now, what's your objection on 26?

12 Tell me -- twenty---

13 MR. WALKER: Twenty-six, Your Honor?

14 THE COURT: Twenty-six.

15 MR. WALKER: Yes, sir.

16 With that being said, Your Honor, the fingers are very,
17 very -- I would use the word tainted because they're,
18 they're, they're, they're, they're inconsistent of what
19 normal -- a normal hand looks like and they have no
20 relevancy, and it's also -- it's, it's minorly (phonetic)
21 gruesome but I would say that it meets gruesome standard.

22 THE COURT: All right. Solicitor.

23 SOLICITOR DAVIS: Your Honor, in the defendant's
24 opening, he said that the victim attacked him and I believe
25 photographs of her hands to show that she has no injuries is

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1 relevant.

2 MR. WALKER: Did, did --.

3 THE COURT: I don't think any of the photographs, from
4 State's 9 through 18 or 19, appear to be, 18, those that I
5 allowed in, show the hand in this position. It is not
6 gruesome. There is some testimony as to if that is
7 morbidity from Mr. Ray also.

8 Twenty-six in evidence subject to previous objections.

9 (WHEREUPON, State's Exhibit No. 26 was received into
10 evidence at this time.)

11 THE COURT: All right. Mr. Walker.

12 MR. WALKER: Twenty-seven has no relevancy, Your Honor.
13 It's, it's a faltered grounds. The body was -- did have
14 coloring in it and it just admits number -- I missed No. 26
15 as, as relevant but I see no relevancy in the actual picture
16 and markings when, when the markers is on the skin. I mean
17 there's, of course, there's gonna be markers. There's --
18 than -- I mean a laying (sic) person can know that markers
19 mark.

20 THE COURT: Solicitor.

21 You're talking about 27?

22 MR. WALKER: That's correct, Your Honor.

23 THE COURT: Solicitor.

24 SOLICITOR DAVIS: Your Honor, is that the photograph
25 with -- Your Honor, that's to corroborate of how she got the

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1 marks on her arms. That there's markers sitting right by
2 the dead body and it goes to res gestae, Your Honor.

3 MR. WALKER: If I may further, Your Honor?

4 THE COURT: Sir?

5 MR. WALKER: If I may further?

6 I further my objection cause there's no map that shows
7 that these, these markers are within the proximity of the
8 body.

9 THE COURT: Well, you can't prove everything on the
10 pinpoint. Somebody testifies to that, of course. The
11 testimony is going to be this is the photograph within the
12 residence where the body was found. I don't have those
13 other photographs but I can see clearly that the bedspread,
14 or what have you, that's over the body appears to be the
15 same bedspread that's rubbed right up against the cardboard
16 box that the markers are in. It's unique.

17 MR. WALKER: What number are you reference in the
18 comfort?

19 THE COURT: I'm just going from my memory.

20 MR. WALKER: No.

21 THE COURT: It appeared that that was the color -- that
22 was the color of the bedspread that was covering the body.
23 I don't, I don't recall necessary -- well, I don't recall
24 necessarily the color of the rug.

25 At any rate, 27 is in evidence subject to objections.

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1 (WHEREUPON, State's Exhibit No. 27 was received into
2 evidence at this time.)

3 THE COURT: Twenty-eight?

4 MR. WALKER: Yes, sir, Your Honor.

5 THE COURT: Do you object to 28?

6 MR. WALKER: That's correct, Your Honor.

7 THE COURT: What's your objection?

8 MR. WALKER: There's no relevancy and it's just a cell
9 phone. It's just, again, a photo of, of -- it looks like a
10 t-shirt and, at this point, at this point, Your Honor, I'm
11 objecting to the photos that I'm provided and I, I needed to
12 just---

13 THE COURT: I'm not, I'm not taking a general
14 objections as to the photos. You have to, if you want to
15 say I object to 28 and then I object to 29 on the same
16 grounds but I want to be -- but I want to know what I'm
17 looking at.

18 MR. WALKER: I, I, I object to 28 through 37, and, if
19 relevant, all other pictures due to the fact that they're in
20 black and white. The photos that I have is black and white
21 and they're very far from what the exhibits showed. They're
22 very, very lame in term. I can't see, Your Honor, is what
23 I'm trying to say. These pictures are---

24 THE COURT: What are you asking me to do, Mr. Walker?

25 MR. WALKER: They're very dark in contrast. I need---

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1 THE COURT: What are you asking me to do?

2 MR. WALKER: Color photo -- clear color photos for my
3 view, Your Honor---

4 THE COURT: All right.

5 MR. WALKER: ---so I can---

6 THE COURT: Hand me those color -- well, first off,
7 bring me the jury. I'm gonna release the jury for the day.

8 THE OFFICER: Yes, sir, Your Honor.

9 THE COURT: You can step down.

10 THE WITNESS: Thank you, Your Honor.

11 (WHEREUPON, the following takes place within the
12 presence of the jury.)

13 THE COURT: All right. I apologize for the delay,
14 ladies and gentlemen. I have still not finished with this
15 in camera hearing. So, I'm gonna release you from your jury
16 service for the remainder of the day rather than hold you
17 captive any further. I would like to address several issues
18 before I release you today.

19 First, I understand we -- at least one of your number
20 had asked about taking notes. You may take notes during the
21 trial of this case. Please remember that some people are
22 better note takers than others.

23 Juror notes should not be given any greater weight than
24 the recollection of other jurors. The recollections of
25 individual jurors should be considered as relied as notes

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1 taken by any other juror.

2 I would also remind you, as you know, when you're
3 taking notes and looking down and such to write, you may not
4 notice the body language or the demeanor of, of a particular
5 witness, which can also be used in helping you decide
6 credibility.

7 Typically, what I do, what most of us do, judges do, is
8 we -- the clerk will provide you with notepads and pencils
9 and such like that. Put your juror number on it. You can't
10 have them in your jury room with you until the time of your
11 deliberations. Just turn them upside down in the chair
12 during your breaks. It will be secured, and over the
13 evening hours, the clerk locks them in the vault and hands
14 them back out the next day. And so, we'll do that, we'll do
15 that in the morning.

16 I, I will tell you now, ladies and gentlemen, I would
17 preface my remarks by saying I need each and every one of
18 you. However, I'm sure you figured out by now, we're not
19 going to finish the trial, finish the trial of this case
20 this week. That does not, I'm sure, doesn't come to a
21 shock, it is shock to any of you but we're not.

22 So, it will go into next week. I, I will work Saturday
23 if you, if you prefer. I, I usually work a half a day
24 Sunday. I don't prefer to do that anymore personally.
25 Don't personally, you know, put people's lives also. I have

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1 done that in the past. I'll not work at all Saturday or
2 Sunday and just start back Monday morning. I'd like to get
3 a full day in tomorrow. It's a short week this week
4 obviously. This week's been a short week because of the
5 holiday.

6 So, I do have two alternates. If, if anybody has an
7 issue, scheduling issue about next week, just write me a
8 note. I'll talk with you tomorrow in that regard.

9 That's why I always tell juror panels, panels that your
10 jury service should conclude by this Friday. I'm not trying
11 to be underhanded. That's just what it happens. But,
12 anyway, if anybody has any issues with that, please let me,
13 let me know tomorrow and know and we'll discuss that.

14 Okay?

15 All right. Please remember do not discuss this case
16 with others, your family members, or fellow jurors, or
17 anyone else. Do not read, watch, or listen to any news
18 accounts about the case. Do not do any independent research
19 or any research on the Internet on those occasions which I
20 have replied to you.

21 Thank you again for your time and patience with the
22 Court. Hope y'all have a pleasant evening, and if you'll
23 report back promptly at 9:30 in the morning. Promptly at
24 9:30.

25 Thank you. Thank you very much.

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1 (WHEREUPON, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right. Mr. Walker, you do not have
4 color photographs?

5 MR. WALKER: That's correct, Your Honor.

6 SOLICITOR DAVIS: Your Honor, if I may be heard?

7 THE COURT: Yes, ma'am.

8 SOLICITOR DAVIS: The defendant was provided color
9 photos via CD in discovery numerous times, and Judge
10 Griffith also allowed for him to have a hundred dollars for
11 his PI to go print them out in color at Kinkos. So, he's
12 had the chance to get the color photos and has been provided
13 with the ability to do so, judge.

14 THE COURT: And you do not have color photos?

15 MR. WALKER: No, sir, Your Honor. I---

16 THE COURT: Why not?

17 MR. WALKER: ---I addressed it with the PI. The PI
18 keeps running into situations that, that is -- doesn't seem
19 revelent (phonetic) to my needs, Your Honor.

20 THE COURT: Well, that's between you and your---

21 MR. WALKER: But---

22 THE COURT: ---private investigator.

23 MR. WALKER: But he's been provided the funds---

24 THE COURT: Any wound that's been inflicted is
25 self-inflicted, Mr. Walker. I'm not gonna require the State

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1 to provide you color photographs when you've already been
2 provided them on the CD and the Honorable Eugene Griffith
3 has signed an order giving you funds to get color
4 photographs.

5 MR. WALKER: Is, is -- I mean I'm under arrest today,
6 Your Honor, but it seems relevant to me within my defense
7 under my constitutional rights.

8 THE COURT: Yes, sir, and you have color on CD, and, as
9 I understand it, money has been provided for you to get
10 color prints.

11 MR. WALKER: That, that is correct but it was not
12 produced to me by Court appointed PI and I'm gonna---

13 THE COURT: Whatever wound you have is self-inflicted,
14 Mr. Walker.

15 MR. WALKER: Thank you, Your Honor. I do understand.

16 THE COURT: All right. So, we're gonna press on. If
17 you don't have color photographs, it's your own fault. I
18 don't know how better to explain it to you.

19 MR. WALKER: All right. Thank you. I also --.

20 THE COURT: All right. Let's press on then.

21 All right. State's 28, Mr. Walker. You have any
22 objection to State's 28?

23 MR. WALKER: Yes, Your Honor. I'm sorry. I've lost,
24 I've lost -- I'm back at 28, Your Honor. Twenty-eight is
25 highly irrelevant. It just shows a photo of what looks

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1 Happy -- of what looks to me to be a Happy Meal, a cell
2 phone, and a cup. I don't believe that is relevant.

3 THE COURT: All right. Solicitor.

4 SOLICITOR DAVIS: Your Honor, may I see that photo?

5 THE COURT: Yes, ma'am.

6 SOLICITOR DAVIS: I'm sorry.

7 THE COURT: Of course.

8 (Pause.)

9 SOLICITOR DAVIS: Your Honor, this is relevant because
10 this was near the body. Also it shows a cell phone that was
11 collected as well as there -- the defendant's ID was found
12 in a pair of khaki pants near the body, which puts him
13 living at the house, Your Honor.

14 MR. WALKER: Your Honor, there's no witness on the
15 stand that has collected that cell phone.

16 THE COURT: Well, yes, this witness is gonna testify to
17 it I understand. If he doesn't, I'll, I'll strike it. I
18 mean she's got to lay the foundation in front of the jury
19 also.

20 State's Exhibit No. 29, is that the identification
21 you're referring to?

22 SOLICITOR DAVIS: That is, Your Honor, and we have the
23 actual -- the -- I believe State's No. 30.

24 If I may approach?

25 THE COURT: You have objection to 29, your

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1 identification?

2 MR. WALKER: Yes, sir, it's an, it's an identification
3 and that's why I object.

4 SOLICITOR DAVIS: And, Your Honor, it---

5 THE COURT: You object to your identification because
6 it's an identification?

7 MR. WALKER: Correct.

8 THE COURT: Track that, track that for me, Mr. Walker.

9 MR. WALKER: I'm not sure of stipulations at all, Your
10 Honor, but they say that identification is not relevant.
11 Especially state issued identification because it need be --
12 it can -- I'm, I'm here and I'm here and there's no
13 testimony as to who I am, what I am, or any information that
14 that ID holds.

15 THE COURT: All right. State's 28 and 29 is in
16 evidence subject to objections, and, of course, all of these
17 rulings are subject to Detective Sullivan's testimony in
18 front of the jury.

19 (WHEREUPON, State's Exhibit Nos. 28 and 29 were
20 received into evidence at this time.)

21 SOLICITOR DAVIS: Your Honor, State's No. 38 is the
22 actual ID that was collected. It's right here, judge. This
23 one.

24 THE COURT: Oh.

25 SOLICITOR DAVIS: Sorry.

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by Solicitor Davis

1 THE COURT: Yes, ma'am.

2 And what about the ID itself then, Mr. -- 38, what
3 about that, Mr. Walker?

4 MR. WALKER: Yes, sir, it has no probable value. It's,
5 it's irrelevant. It's, it's identification. There's,
6 there's, there's no need to identify me with a picture. I'm
7 pending here and have bringing into my character at issue or
8 whatnot and---

9 THE COURT: I -- go ahead. I didn't mean to interrupt
10 you.

11 MR. WALKER: Sorry, Your Honor, and it's, it's highly
12 irrelevant. There's no need to produce an identification
13 for anything necessary that I can see fit in this trial or
14 any other homicide trial. It is generally on the same
15 standards.

16 THE COURT: I think it's highly relevant anytime an
17 identification card is found at the scene of a homicide
18 that's not the victim's.

19 MR. WALKER: Your Honor, there's no, there's, there's
20 no liberation (phonetic). There's been no corroboration
21 testimony, testimony that I lived there and there's been no
22 corroborated testimony that I haven't lived there.
23 Therefore, it's irrelevant. It -- it's mental (phonetic)
24 me -- it's mental (phonetic) margins. It's not relevant.

25 THE COURT: All right. Thirty-eight's in evidence

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1 subject to objection and subject to Detective Sullivan's
2 testimony in front of the jury panel.

3 (WHEREUPON, State's Exhibit No. 38 was received into
4 evidence at this time.)

5 THE COURT: Now, what about State's 30?

6 It appears to be a drawer pulled out in a chest of
7 drawers. It appears to be some shorts and socks and, I
8 guess, that's underwear. I guess it's male.

9 MR. WALKER: Yes. Yes, sir, Your Honor.

10 If I, if I may?

11 THE COURT: Thirty-one appears to be a pair of black
12 tennis shoes that looked like they're on a, on a shelf
13 perhaps in a closet.

14 And then what about those two?

15 You object to those?

16 MR. WALKER: I do, Your Honor, but I would like to
17 correct the Court for the reporter sake that you, you said
18 that that, that No. 29 was 38 and it was actually 29.

19 THE COURT: I have -- I'm looking at 30 and 31.

20 MR. WALKER: Yes, sir, on that last ruling, Your Honor,
21 you, you, you listed identification as Exhibit No. -- as 38
22 rather than actually 29 and---

23 THE COURT: This is 38, the identification card --

24 MR. WALKER: Okay.

25 THE COURT: -- itself. The two photographs are 28 and

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1 29 and I'm now looking at 30 and 31.

2 MR. WALKER: Yes, sir.

3 If I may ask Your Honor if I may?

4 THE COURT: (Nods affirmatively.)

5 MR. WALKER: Did you, did you just allow 38 in?

6 Is that correct?

7 THE COURT: Subject to---

8 MR. WALKER: To Mr.---

9 THE COURT: ---testimony of Detective Sullivan.

10 MR. WALKER: All right. Thank you, Your Honor.

11 Thirty is highly irrelevant. There's clothes. I'm
12 pretty sure the State is gonna say it's male, male, male
13 apparel. I mean there's no stipulations of that. I don't
14 think Miss Banty was a cross-dresser but she may have been.
15 But I'm just saying they're, they're irrelevant. There's,
16 there's no need and the data brings back the, the fact that,
17 that someone had been, been living with Miss Banty but I
18 mean there's been no testimony to that.

19 THE COURT: All right. 30 and 31, solicitor, which is
20 the drawer pulled out, appears to be underwear, socks,
21 perhaps shorts, and t-shirt.

22 SOLICITOR DAVIS: Your Honor, the defendant is correct.
23 The State is offering that to show that a male lived at the
24 house, which I think is circumstantial evidence that we
25 could argue he lived there. His clothes -- there's clothes

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1 there that are male and his ID was found at the scene.

2 THE COURT: All right. 30 and 31 in evidence subject
3 to objection, subject to Detective Sullivan's testimony.

4 (WHEREUPON, State's Exhibit Nos. 30 and 31 were
5 received into evidence at this time.)

6 THE COURT: Now, what about 32---

7 MR. WALKER: If I may, Your Honor.

8 THE COURT: ---and 33?

9 MR. WALKER: I was trying to give the Court time, time
10 to speak but she stated that -- she was keep trying---

11 THE COURT: Sir, I've already ruled.

12 MR. WALKER: I, I---

13 THE COURT: We've already ruled. I already ruled.

14 MR. WALKER: I was trying to give the State time to
15 talk. You say we're---

16 THE COURT: I've already ruled. I don't want to hear
17 any more argument, Mr. Walker.

18 MR. WALKER: And your ruling on No. 30 was?

19 THE COURT: I've already ruled. If you didn't hear it,
20 again, that wound is self-inflicted. You wasn't listening.

21 MR. WALKER: Correct me if I'm wrong, Your Honor?

22 All right. All right. Your Honor, if I may?

23 THE COURT: Well, wait just a minute, Mr. Walker. I'm
24 going to somehow try to refresh your memory based on the
25 South Carolina Rules of Criminal Procedure.

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1 (Pause.)

2 THE COURT: Rule 18, argument on objections. Counsel
3 shall not attempt to further argue any matter after he has
4 been heard and the ruling of the Court has been announced.
5 Once I rule, I don't want to hear any more argument.

6 MR. WALKER: Correct, Your Honor.

7 THE COURT: That goes for the State. They have to
8 comply with the rules and that goes to a pro se defendant.

9 MR. WALKER: Thank you so much, Your Honor.

10 THE COURT: Once I've ruled, I don't want to hear any
11 more argument. I'm not going to entertain it. I have, I
12 have a duty to follow the rules and maintain the decorum of
13 the courtroom, and I'm not gonna allow the State nor defense
14 or pro se defendant to violate the Rules of Criminal
15 Procedure or the Rules of Evidence.

16 what about 32 and 33?

17 Do you object -- do you object to those, Mr. Walker?

18 MR. WALKER: Your Honor, I'm at No. 31.

19 Did you make a ruling?

20 THE COURT: Yes, sir, I've already ruled on it.

21 MR. WALKER: I did not have the opportunity to object
22 or argue to 31, Your Honor.

23 THE COURT: Yes, sir, I ruled on 30 and 31 jointly.
24 They were about the male, a male living there, male clothes,
25 appeared male tennis shoes.

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1 Now, I'm addressing 32 and 33, Mr. Walker.

2 MR. WALKER: Yes, sir, 32 is highly irrelevant. There
3 also is a, a belt in there. It's, it's no need for a belt.
4 There's a towel in there. There's no need for a towel, and,
5 if I will, I'm gonna object to 32.

6 THE COURT: I've already ruled on -- oh, excuse me. Go
7 right ahead on 32.

8 MR. WALKER: I'm gonna object to 32 and 33 at the same
9 time on the stipulations of a belt. I'm pretty sure the
10 State is showing something with a belt because they've
11 produced to testimony or two pictures of a belt. So,
12 therefore, I object to the belt under, under the
13 stipulations and the circumstances that they're trying to
14 say that the article was used in a manner of the homicide
15 and I object to that article by being, being relevant to, to
16 the jury because there's no value to that. And the value
17 is -- I believe that it would outweigh and the rule, the --
18 I believe the probative value, the probative value will
19 outweigh the, the other stipulations in that rule, Your
20 Honor, due to the fact that, that, that this belt -- I, I
21 motioned in line for this belt to be taken (sic) out in all
22 photographs. I don't think Judge Griffith made this---

23 THE COURT: All of this is a motion in limine. The
24 jury's not in here. It's in camera.

25 MR. WALKER: Right, Your Honor, but that---

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1 THE COURT: All right. Do you have any other
2 objections to 32 and 33?

3 MR. WALKER: If I may finish my objection, Your Honor?

4 THE COURT: I wish you would, Mr. Walker.

5 MR. WALKER: I am. I'm trying to, Your Honor.

6 My, my objection is that, that the belt is -- it has --
7 it's -- when it's produced, I was planning to -- plan to
8 test this belt. I did not have the opportunity to test this
9 belt because this belt went to the coroner and the coroner
10 had touched it to the skin.

11 My argument on that is that, once the coroner touched
12 the skin -- I wished to skin cell, it -- to produce that it
13 never touched the, the victim's body as the State is getting
14 at. Therefore, therefore, it makes it, it -- it makes it,
15 if you may, Your Honor, I -- if you may, Your Honor, I, I
16 have a, I have a motion written on this but I have no idea
17 where it's at. It's, it's, it's basically innocence. It,
18 it prolubes (phonetic) my innocence. It determines my
19 innocence, Your Honor.

20 THE COURT: All right. Solicitor, 32, 33.

21 SOLICITOR DAVIS: Your Honor, if those are the pictures
22 of the, of the black belt?

23 THE COURT: Yes, ma'am.

24 SOLICITOR DAVIS: Those are to show staging and we have
25 to prove malice and that goes to the malice elements of the

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1 murder.

2 MR. WALKER: what malice got to do with a belt?

3 THE COURT: Please, Mr. Walker. Unless I come back to
4 you, I don't want to hear from you.

5 MR. WALKER: Thank you, Your Honor.

6 THE COURT: 32 and 33, is this the same belt that was
7 subject to some testimony by Doctor Ross?

8 SOLICITOR DAVIS: Yes, sir, Your Honor.

9 THE COURT: All right. I'm going to mark 32 and 33 for
10 identification purposes only. Also subject to Mr.
11 Sullivan's testimony and Doctor Ross's testimony. That's 32
12 and 33.

13 All right. Thirty-four, Mr. Walker, do you have any
14 objections to 34?

15 MR. WALKER: I have no idea why the State would like to
16 produce trashcans.

17 THE COURT: I don't know that that's a valid objection
18 that you have no idea why the State. Just cause you may not
19 have an idea, the State may.

20 what is your objections?

21 MR. WALKER: It's irrelevant, Your Honor.

22 THE COURT: All right. Solicitor.

23 SOLICITOR DAVIS: Your Honor, the syringe that I
24 believe is in the photograph following, it was found in that
25 trashcan. So, it's to show location and, again, goes to

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1 malice.

2 THE COURT: So, you go from 34---

3 MR. WALKER: Exactly.

4 THE COURT: ---to the next and that's in the interior
5 of or a trash bag that's in one of the -- in the Herby
6 curby?

7 SOLICITOR DAVIS: That's correct, Your Honor.

8 THE COURT: All right. Do you have an idea now,
9 Mr. Walker?

10 MR. WALKER: I, first of all, Your Honor, if, if 35 is
11 relevant, 34, then 35 should come before 34 if that's, if
12 it's in order. I'm thinking that would be the rule of
13 thumb, would it not?

14 THE COURT: I don't know what rule of what digit it
15 would be.

16 What is your objections?

17 MR. WALKER: It's irrelevant, Your Honor.

18 THE COURT: All right. 34 and 35 I will find are
19 relevant but it will be in evidence subject to Detective
20 Smith's testimony in front of the jury.

21 (WHEREUPON, State's Exhibit Nos. 34 and 35 were
22 received into evidence at this time.)

23 THE COURT: All right. 36 and 37. It appears to be
24 interior view of an automobile, front passenger seat
25 perhaps, and then a closer-up view of the automobile.

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1 MR. WALKER: That's---

2 THE COURT: Do you object to those, Mr. Walker?

3 MR. WALKER: Yes, sir, they have no relevancy.

4 THE COURT: All right. Solicitor.

5 SOLICITOR DAVIS: Your Honor, the -- yes, sir, I know
6 what those are.

7 Those -- the car was also part of the search warrant
8 that Investigator Sullivan executed. Those show the
9 contents of the vehicle. It was at the scene with the
10 victim dead and I believe there will be testimony that there
11 was a male wallet and a female wallet found in the front
12 seat as well as the victim's purse in the floorboard of the
13 car.

14 THE COURT: Subject, subject to that testimony, as far
15 as the wallets are concerned, 36 and 37 will be in evidence.

16 (WHEREUPON, State's Exhibit Nos. 36 and 37 were
17 received into evidence at this time.)

18 THE COURT: All right. I also have -- I'm not sure
19 what 39 is. Let's see. It appears to be samples that were
20 picked up by Detective Sullivan, Sullivan.

21 SOLICITOR DAVIS: Your Honor, those are samples that
22 were collected at the autopsy of the victim that were taken
23 for testing to SLED as well as the actual syringe that's
24 also included in that packet that was taken for SLED,
25 testing for SLED that it's in the pictures that were already

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1 discussed.

2 THE COURT: What about that, Mr. Walker?

3 MR. WALKER: I did not hear her testimony. I was
4 trying to speak with my standby.

5 THE COURT: What is your position as to State's 39,
6 Mr. Walker?

7 MR. WALKER: Thirty-nine, is that a photo?

8 THE COURT: State's 39 is what the solicitor just said
9 it was.

10 MR. WALKER: I wasn't -- again, Your Honor, I was
11 trying to talk to my standby. Plus I haven't had an
12 opportunity to view it. I have no idea what it is.

13 THE COURT: All right. Well, then I guess you don't
14 object to it if you have no idea what it is.

15 What is it, solicitor?

16 SOLICITOR DAVIS: Your Honor, again, it is the
17 toxicology packet that was collected at the autopsy of the
18 victim that was taken to SLED for testing as well as the
19 syringe that was found in the trashcan that is shown in the
20 prior pictures. I did give that, that to Ms. Mauldin to
21 show him that I was planning on introducing that, and I
22 believe it will just be for identification purposes with
23 Investigator Sullivan as we'll have the toxicologist here to
24 testify regarding the results.

25 THE COURT: That will be Lieutenant Smith that

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1 testified --

2 SOLICITOR DAVIS: Yes, sir.

3 THE COURT: -- testified on Mr., in Mr. Walker's case,
4 in camera case in chief on Stand Your Ground?

5 SOLICITOR DAVIS: That's correct, Your Honor.

6 THE COURT: All right. Mr. Walker.

7 MR. WALKER: Yes, sir, Your Honor.

8 THE COURT: Sir?

9 MR. WALKER: Yes, sir, is it true that that's a blood
10 sample?

11 I'm not exactly getting what, what the thing is?

12 Is it an actual vile of blood?

13 Is that what it is?

14 May I view it, Your Honor, and then I will proceed with
15 my argument?

16 Is that irrelevant?

17 THE COURT: Can you what?

18 MR. WALKER: May I view the item?

19 May I look -- may I view the item so I can see its
20 relevancy, see what it is, and I can also expect (phonetic)
21 it for tampering and whatnot and then I will---

22 THE COURT: You are expecting it was tampered with?

23 MR. WALKER: I'm saying expect (phonetic) it for
24 tampering like a house exspector (phonetic) exspects
25 (phonetic) something. I'm exspecting (phonetic) it for

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1 tampering.

2 THE COURT: All right.

3 MR. WALKER: Thank you.

4 SOLICITOR DAVIS: Your Honor, just for the record, the
5 evidence has been held by West Columbia Police Department.
6 and we have received no request by the defendant, his
7 standby counsel, or his public -- PI to view the evidence.
8 He's had the opportunity for four years to do that and
9 hasn't done it.

10 MR. WALKER: If I---

11 THE COURT: Sir?

12 MR. WALKER: If I may, Your Honor?

13 How did I have the opportunity to, to, to view it when
14 I didn't know it existed?

15 THE COURT: Well, you must have known it existed. You
16 called Lieutenant Smith in the Stand Your Ground hearing to
17 question him about her toxicology, and blood, and blood
18 alcohol, and the ocular fluid.

19 How, how did you not know it existed and yet knew to
20 call Lieutenant Smith?

21 MR. WALKER: Your Honor, I, I -- I'm one -- I'm not
22 real familiar with the chain of evidence on a vile of blood.
23 I don't know if there's (sic) destroyed. I don't know if
24 the coroner keeps it. I don't know if it goes to someone's
25 home or outside. I don't know where it goes, Your Honor,

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1 and I'd like, for them reasons, I'd like to---

2 THE COURT: The question was how did you not know it
3 existed but you knew to call Lieutenant Smith?

4 MR. WALKER: I, I called Lieutenant Smith on different
5 grounds to that, Your Honor.

6 THE COURT: May I see the toxicology report from
7 Lieutenant Smith?

8 SOLICITOR DAVIS: Yes, sir, Your Honor.

9 Beg the Court's indulgence.

10 (Pause.)

11 SOLICITOR DAVIS: Your Honor, may I approach?

12 THE COURT: Yes, ma'am.

13 SOLICITOR DAVIS: For the record, the defendant has
14 been provided, in discovery, this toxicology report as well
15 as the list of evidence that West Columbia has in their
16 possession.

17 THE COURT: Well, let me see that list please,
18 solicitor.

19 Now, did you -- would you mind having standby counsel,
20 Ms. Mauldin, show that item---

21 MS. MAULDIN: Yes, sir.

22 THE COURT: ---those items, State's 39---

23 MS. MAULDIN: Yes, sir.

24 THE COURT: ---to Mr. Walker?

25 MR. WALKER: Yes, sir, Your Honor.

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1 The only thing I, I -- upon inspection, I'd like to put
2 on the record that it, it, it looks to be cut in various,
3 numerous and it seems to be heat shrunk a few times. And
4 then it may, it may have been tampered. I'm not saying that
5 it has been but the view of it maybe looks like it's been
6 tampered with.

7 THE COURT: All right. That's your objection.

8 Well, I'll make it identification purposes only subject
9 to testimony of Detective Sullivan.

10 SOLICITOR DAVIS: Your Honor, may I approach?

11 THE COURT: Yes, ma'am.

12 And you had the opportunity to see State's 39, correct,
13 Mr. Walker?

14 MR. WALKER: That is that, Your Honor?

15 That is that vile of blood?

16 Is that correct?

17 THE COURT: No, State's 39. You've had the opportunity
18 to view State's 39.

19 MR. WALKER: I'm not -- yeah. Yeah, I did, Your Honor.

20 I would like to further my objection if I may?

21 (Pause.)

22 THE COURT: What is your position again as to State's
23 39 again, Mr. Walker?

24 MR. WALKER: Your Honor, I'm objecting to the
25 toxicology. As, as you said earlier, I'm allowed to object

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1 to opening statements.

2 In the opening statement of the State, the -- they
3 produced that it was a, a, a, I'm not sure the word, enticed
4 or induced scheme, that I schemed to, that I schemed to made
5 Miss Banty's death look as a, as, as a overdose on drugs,
6 and that wouldn't even been relevant, Your Honor, because
7 the toxicologist have come back---

8 THE COURT: Mr. Walker, I didn't ask you for any
9 argument on that.

10 Do you have any other objections as -- well, there's no
11 other items of evidence offered through this witness?

12 SOLICITOR DAVIS: That's correct, Your Honor.

13 THE COURT: Thank you. Thank you very much.

14 All right. Court will be in recess until 9:00 -- let's
15 see.

16 Do you have any pretrial matter with this witness that
17 I haven't addressed?

18 SOLICITOR DAVIS: Not to my knowledge, Your Honor.

19 THE COURT: All right. 9:30 in the morning. Thank you
20 very much.

21 SOLICITOR DAVIS: Thank you, Your Honor.

22 May I approach?

23 THE COURT: Yes, ma'am.

24

25

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1 (WHEREUPON, Court was in recess for the evening.)
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1 Friday, February 24th, 2017

2

3 THE COURT: All right. Anything before we bring in our
4 jury from the defense, Mr. Walker?

5 MR. WALKER: Yes, sir, there, there is a issue on
6 competency. I'd like to talk to Donna Swartz-Watts. The
7 defense has contacted Donna Swartz-Watts. As she said,
8 basically she can't be here to come and speak with me, and
9 as the -- as to -- if -- I would motion to the judge for a
10 phone conversation sometime in the near future.

11 THE COURT: Of course, I will allow that. Perhaps we
12 can do that at the luncheon recess.

13 would that be timely for you, Mr. Walker?

14 MR. WALKER: That would be correct, Your Honor.

15 THE COURT: All right. Let's, let's make sure we make
16 arrangements for that, sheriff.

17 Do you have all her contact information, Mr. Walker,
18 Mr. Watkins?

19 One of y'all have all her contact information?

20 MR. WALKER: The defense should, Your Honor.

21 THE OFFICER: Yes, sir.

22 MR. WALKER: The defense should. If I don't have it,
23 Ms. Mauldin has it or someone else.

24 THE COURT: All right. Thank you.

25 Anything further?

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1 (No response.)

2 THE COURT: Anything further, Mr. Walker?

3 MR. WALKER: Not at this time, Your Honor.

4 THE COURT: Yes, sir.

5 All right. Let's see. We'll do it after. I'm just
6 checking.

7 (Pause.)

8 THE COURT: I understand the jury does not want to work
9 over the weekend but all of them are fine with next week.
10 All right.

11 MR. WALKER: Thank you, Your Honor.

12 THE COURT: And I had, I hadn't had a conversation with
13 them. They just relayed that to me through the bailiff.
14 Every time I talk to them is in the courtroom.

15 (WHEREUPON, the following takes place within the
16 presence of the jury.)

17 THE COURT: I'm gonna take a shot at this.

18 With a show of hands, I don't think anybody changed
19 seats, did they?

20 (WHEREUPON, the jurors respond.)

21 THE COURT: I told you the jurors are territorial.

22 Good morning, ladies and gentlemen. Hope y'all had a
23 pleasant evening.

24 I got your message, through the bailiff, that you did
25 not want to work Saturday or Sunday, and I, I concur in that

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1 decision, of course. And you are -- all had no issues
2 starting back the first of next week. Of course, if, any
3 time anything comes up as it did with our previous juror
4 that was excused, please, please, please let me know and
5 I'll certainly address it.

6 We're continuing the trial of the case by the
7 presentation of evidence and testimony by the State in its
8 case in chief.

9 Detective Sullivan, Sullivan, is that correct, if you'd
10 come back around and join us?

11 If you recall, he was already under oath in the midst
12 of his testimony. If you would please give the parties your
13 complete and undivided attention as you have done throughout
14 the trial in this case.

15 And you're still under oath today.

16 THE WITNESS: Yes, sir.

17 THE COURT: Thank you.

18 Solicitor.

19 SOLICITOR DAVIS: May it please the Court, Your Honor?

20 THE COURT: Yes, ma'am.

21 CONTINUED DIRECT EXAMINATION

22 BY SOLICITOR DAVIS:

23 Q Good morning, Investigator Sullivan.

24 A Good morning, ma'am.

25 Q I think yesterday we left off where you were talking

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1 about executing the search warrant at [REDACTED] Alexandria Street.

2 Is that correct?

3 A Yes, ma'am.

4 Q Okay. And you were the crime scene investigator on the
5 case, correct?

6 A Yes, ma'am, one of them.

7 Q Okay. I'm gonna show you what has been marked as
8 State's Exhibit 20 and I believe entered into evidence.

9 Do you recognize this?

10 A Yes, ma'am, that's a crime scene diagram I prepared
11 after we worked the scene.

12 Q And what does this depict?

13 A This depicts the interior rough layout of the single
14 wide trailer, the front door, rear door, and then how it was
15 that day. It's not to scale and I imported a picture of the
16 front of the trailer just to give you a reference.

17 Q Okay. And where did you find the deceased?

18 A She was located right here.

19 Q In the master bedroom?

20 A Yes, ma'am.

21 SOLICITOR DAVIS: Beg the Court's indulgence, judge.
22 we're having technical difficulties.

23 THE COURT: You need, you need me to fix that for you?

24 SOLICITOR DAVIS: We really might. We'll see if that
25 will hold it.

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1 Q Investigator Sullivan, I'm going to show you some
2 photographs that have been marked as State's Exhibits 9, 10,
3 11, 12, 13, 17, 19, 14, 15, 16, and 18.

4 Tell me if you recognize those photographs.

5 A Yes, ma'am.

6 Q And what do those photographs depict?

7 A Those are photographs of -- that we took that day of
8 the interior of the incident location.

9 Q Do they accurately depict what you saw that day?

10 A Yes, ma'am.

11 Q Have they been altered or changed in anyway?

12 A No, ma'am.

13 SOLICITOR DAVIS: Your Honor, at this time the State
14 would offer 9, 10, 11, 12, 13, 17, 19, 14, 16, and 18 in
15 evidence.

16 THE COURT: All right. Mr. Walker.

17 MR. WALKER: Again, Your Honor, I object.

18 THE COURT: Sir?

19 MR. WALKER: Just one second.

20 THE COURT: Yes, sir.

21 (Pause.)

22 MR. WALKER: Subject to my prior objections, Your
23 Honor.

24 THE COURT: All right. Those photographs, as
25 enumerated by the solicitor, are in evidence subject to

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1 previous defense objections.

2 (WHEREUPON, State's Exhibit Nos. 9, 10, 14, 15, 16, and
3 18 were previously admitted into evidence.)

4 THE COURT: You're gonna use those over here,
5 solicitor?

6 SOLICITOR DAVIS: No, Your Honor, I'm gonna put them on
7 the overhead.

8 THE COURT: All right. Thank you.

9 SOLICITOR DAVIS: Your Honor, I apologize. Based on
10 your rulings yesterday, I believe some of the exhibits that
11 I just announced you had already excluded.

12 THE COURT: You, you, you didn't have a list?

13 SOLICITOR DAVIS: I did but I got the pictures mixed up
14 in there.

15 THE COURT: May, may I see them please?

16 SOLICITOR DAVIS: Yes, sir, you have the correct ones.
17 These are the ones that are in evidence, judge. I
18 apologize.

19 SOLICITOR GRAHAM: Your Honor, I believe these are the
20 ones that were --.

21 THE COURT: Step out, ladies and gentlemen, please. Do
22 not discuss the case during this brief recess.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. It appears, checking the list,

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1 nine, State's 9, and 10, 14, 15, 16, and 18 I ruled subject
2 to your proper foundation. They would be in evidence
3 subject to Mr. Walker's objections.

4 In that stack, you also handed me up 19. Nineteen's
5 not in evidence. I've got 11, 12, 13, 17, and 19 for
6 identification purposes only. I don't -- thank you.

7 Bring the jury back in please. Bring us the jury
8 please.

9 THE BAILIFF: Yes, sir.

10 SOLICITOR DAVIS: May I approach, Your Honor?

11 THE COURT: Yes, ma'am.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE COURT: All right. Solicitor, you may ask your
15 next question.

16 SOLICITOR DAVIS: Thank you, Your Honor.

17 CONTINUED DIRECT EXAMINATION

18 BY SOLICITOR DAVIS:

19 Q Investigator Sullivan, State's Nos. 9, 10, 14, 15, and
20 18. Please review those for me.

21 A Yes, ma'am.

22 (Witness complies.)

23 Q Do you recognize those?

24 A Yes, ma'am.

25 Q Were they from the scene that night?

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1 A Yes, ma'am.

2 Q Do they fairly and accurately depict what you saw that
3 night?

4 A They do.

5 SOLICITOR DAVIS: Your Honor, permission to publish?

6 THE COURT: Yes, 9, 10, 14, 15, and 16, State's
7 Exhibit, photographs, are in evidence subject to previous
8 defense objections.

9 (WHEREUPON, the previously mentioned exhibits were
10 already received into evidence.)

11 THE COURT: You may publish.

12 SOLICITOR DAVIS: Thank you, Your Honor.

13 Q Investigator Sullivan, what does this depict?

14 A Yes, ma'am, this shows the deceased in the master
15 bedroom. This is the foot of the bed and this is the
16 dresser. This is her laying, laying there and there's the
17 cloth that's partially covering her torso and a box.

18 Q Is this how the deceased was when you arrived?

19 A Yes, ma'am.

20 Q Would that be a photograph from the bedroom door?

21 A Yes, ma'am, that's looking from the bedroom door into
22 the bedroom. There's only one way in.

23 Q State's No. 10.

24 A This is a different angle. This is stepping into the
25 room and kind of panning. So, you get just a different

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1 angle. Again, there's the deceased, foot of the bed, and
2 this kind of shows more of the back end of the room.

3 Q And what is this area right here?

4 A That is a closet -- the master bedroom closet.

5 There's -- it's got an accordion door, type door, where you
6 can see one of them is off the hinge. But it's -- there.

7 Q All right. State's No. 14.

8 A Yes, ma'am, that is the deceased right arm. You can
9 see here it appears to be an abrasion and then some
10 bruising.

11 Q And that was even at the incident location?

12 A Yes, ma'am.

13 Q State's No. 15.

14 A It's the inside of the deceased right arm, upper arm,
15 shoulder area, and, again, you see the bruising and
16 lividity.

17 Q This would be State's 16.

18 A This photograph, we've gone over the deceased and this
19 is how she's laying prone and that's her left leg and her
20 right leg is positioned as such, and you can see -- you
21 don't see any bruising but her feet were kind of dirty at
22 the time but that's how she was positioned when we got to
23 the room.

24 MR. WALKER: Objection, Your Honor.

25 THE COURT: Excuse me?

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1 MR. WALKER: Objection.

2 THE COURT: Is there a different -- is there a
3 different basis for your objection now as to this
4 photograph?

5 what number is it again, solicitor?

6 SOLICITOR DAVIS: It's 16, Your Honor.

7 THE COURT: State's 16 than those that you presented to
8 the Court yesterday afternoon?

9 MR. WALKER: Yes, Your Honor. It's -- the objection is
10 on his testimony.

11 THE COURT: Excuse me?

12 MR. WALKER: The objection is on his testimony, and if
13 the Court may, I don't see the presence of the jury being an
14 inconvenience.

15 THE COURT: No, what -- tell, tell me the basis of your
16 objection please, Mr. Walker.

17 MR. WALKER: He's, he's, he's just acknowledged to the
18 crime scene.

19 THE COURT: Do what?

20 I'm sorry.

21 MR. WALKER: His duties is -- his official duties and
22 his capacity is just to, to take these photos and, and
23 explain, explain the photos. He is given descriptive,
24 descriptive like the foot is dirty and whatnot and them are
25 irrelevant. There's, there's no need for that.

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1 THE COURT: All right. That goes to the weight and not
2 the admissibility. Objection is overruled.

3 MR. WALKER: Thank you.

4 THE COURT: You may continue.

5 Thank you, Mr. Walker.

6 SOLICITOR DAVIS: Thank you, Your Honor.

7 And State's 18, what would this show?

8 A This picture is after we rolled her over. You see what
9 appears to be abrasion and lividity in her feet, foot area
10 here and on her knee, this abrasion, bruising, and then some
11 lividity here as well.

12 Q why would you have turned the body over?

13 A Yes, ma'am, standard practice, after you take your
14 initial photographs, you rotate the body over and you
15 photograph that to look for any initial injuries or as they
16 present themselves. So, in this case, we always do a body
17 rollover after we take our initial photographs.

18 Q And that would be typical protocol?

19 A Yes, ma'am, it is.

20 Q Investigator Sullivan, I believe that you testified
21 that there was some markings on the victim. I'd ask that
22 you look at Exhibits 26 and 27.

23 Do you recognize those?

24 A Yes, ma'am.

25 Q And what are these photographs of?

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1 A Those photographs depict markings on the arm of the
2 deceased. Appears to be done by marker and there's another
3 picture of a box of markers near the deceased.

4 Q And was this how you found the victim and that box that
5 evening?

6 A Yes, ma'am.

7 SOLICITOR DAVIS: Your Honor, permission to publish 26
8 and 27?

9 THE COURT: Subject to previous objections, Mr. Walker?

10 MR. WALKER: That's correct, Your Honor.

11 THE COURT: All right. 26, 27 in evidence subject to
12 previous objections.

13 (WHEREUPON, State's Exhibit Nos. 26 and 27 were
14 previously received into evidence.)

15 THE COURT: You may publish.

16 SOLICITOR DAVIS: Thank you, Your Honor.

17 Investigator Sullivan, tell us what we see in State's
18 No. 26.

19 A This is the deceased arm. As you see, there's drawing
20 on it and this one lividity here but you see that pretty
21 much doodling on the arm.

22 Q Would that have been before or after the body was
23 rolled?

24 A That would of been after the body was rolled, ma'am.

25 Q That would of been the underneath part of her arm?

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1 A Yes, ma'am.

2 Q And State's No. 27.

3 MR. WALKER: Objection to that last comment, Your
4 Honor.

5 THE COURT: Excuse me?

6 MR. WALKER: Objection to his last comment, to his last
7 testimony.

8 THE COURT: All right. And, of course, Mr. Walker, you
9 have to object contemporaneously. However, I would rule on
10 the objection. I would overrule the objection. Thank you.
11 Solicitor, you may continue.

12 SOLICITOR DAVIS: Thank you, Your Honor.

13 Investigator Sullivan, this is State's No. 27.
14 what do you see in this photograph?

15 A This photograph shows the markers and then there's that
16 green blanket that you saw over the torso area of the
17 deceased and there's the different color markers.

18 Q So, would State's 27 also be depicted in State's No. 9?

19 A Yes, ma'am, it's right here.

20 Q In close proximity to the body?

21 A Yes, ma'am.

22 Q Investigator Sullivan, when you went through the house
23 to take photographs, were you able to determine who lived in
24 the house?

25 A One of the things we were trying to determine is who

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1 might of been present. We still didn't know the cause of
2 death at this point. So, naturally, we want to determine
3 who all lived in the residence. That means looking at
4 clothing, IDs, just figuring out who, who lived there. We
5 did find some male garments, male shoes, and an ID in the
6 house.

7 Q Okay. I'm going to show you what have been marked as
8 State's 28, 30, 31, and 29 and see if you recognize those
9 photographs.

10 A Yes, ma'am.

11 Q And are these photographs from the execution of the
12 search warrant you performed at [REDACTED] Alexandria?

13 A They are, ma'am.

14 Q Have they been altered or changed in anyway?

15 A They have not.

16 SOLICITOR DAVIS: Your Honor, at the stage -- at this
17 time, the State would move to publish State's 28, 29, 30,
18 and 31.

19 THE COURT: Subject to previous objections, Mr. Walker?

20 MR. WALKER: Correct, Your Honor.

21 THE COURT: All right. 28 -- State's 28, 29, 30, 31,
22 in evidence subject to previous objections.

23 SOLICITOR DAVIS: Thank you, Your Honor.

24 (WHEREUPON, State's Exhibit Nos. 28 through 31 were
25 received into evidence previously.)

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1 Q This would be State's 28.

2 Can you tell me what you see in that photograph?

3 A Yes, ma'am, this is a pair of pants we found on top of
4 the dresser right next to the deceased. There's a cell
5 phone, a McDonald's toy.

6 Q Did you locate anything -- did you go through these
7 pants?

8 A Yes, ma'am, we did and inside the pants we found the ID
9 of Mr. Walker.

10 Q And that would be Exhibit No. 29.

11 Is that correct?

12 A Yes, ma'am, this was pulled out of this -- that pair of
13 pants.

14 Q That would have been found in the pants near the
15 deceased on Exhibit 28?

16 A Yes, ma'am.

17 Q I believe you also testified that you found some male
18 clothing in the residence.

19 Is that correct?

20 A Yes, ma'am, we did.

21 Q This is State's No. 30.

22 would that be the -- some of the male clothing?

23 A Yes, ma'am.

24 Q And where was this located?

25 A That's that dresser. We opened the drawers and found

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1 the male clothing inside of it.

2 Q In the master bedroom?

3 A Yes, ma'am.

4 Q Was there also women's clothes in there too?

5 A Yes, ma'am.

6 Q Did it appear to you that a man and woman shared that
7 room?

8 A Yes, ma'am.

9 MR. WALKER: Objection.

10 THE COURT: Overruled.

11 Q And this is State's No. 31.

12 where were these shoes located?

13 A Those shoes are actually located in the washroom right
14 next to the master bedroom. It's a utility room right next
15 to it. They're on a shelf.

16 Q And do they appear to be men's shoes?

17 A Yes, ma'am, they do.

18 Q Investigator Sullivan, I'm gonna show you what has been
19 marked as State's 21 through 25.

20 If you'll review those.

21 A (Witness complies.)

22 Q Do you recognize those photographs?

23 A Yes, ma'am, they're in the interior of the house from
24 that day.

25 Q Have they been altered or changed in anyway?

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1 A No, ma'am, they have not.

2 SOLICITOR DAVIS: Your Honor, at this time, the State
3 would move to publish 21 through 25.

4 THE COURT: Subject to your previous objections,
5 Mr. Walker?

6 MR. WALKER: That's correct, Your Honor.

7 THE COURT: All right. Twenty-one -- State's 21 and 22
8 and 23, and 24, 25 is in evidence subject to defense
9 objections.

10 (WHEREUPON, State's Exhibit Nos. 21 through 25 were
11 previously received into evidence.)

12 SOLICITOR DAVIS: Thank you, Your Honor.

13 Mr. Sullivan, this would be State's 21.

14 Can you tell us what this is?

15 A That is a photograph of the front door. We commonly
16 photograph---

17 MR. WALKER: Objection.

18 THE COURT: What's the basis of your objection?

19 MR. WALKER: The basis of the objection is wrongful
20 description, false description.

21 THE COURT: Say, say that again please.

22 MR. WALKER: False description.

23 THE COURT: All right. That would, of course, go to
24 the weight and not the admissibility of the testimony and
25 that would be for the jury to determine the credibility of

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1 the witness. Objection's overruled.

2 MR. WALKER: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 SOLICITOR DAVIS: All right.

5 THE COURT: Solicitor.

6 Q Investigator Sullivan, why is it typical protocol for
7 you to take a photograph of the front door of a residence?

8 A You look for signs of tampering or forced entry but,
9 again, we didn't know the manner of death or, or did
10 somebody try to enter the residence. So, we photograph the
11 entry/exit point, front doors, and then see if there's any
12 damage.

13 Q Were you able to find any damage --

14 A No, ma'am.

15 Q -- or any evidence of forced entry in the house?

16 A No, ma'am.

17 Q And if you could refer with your pointer to State's
18 Exhibit 20?

19 If you could show us where the front door would be
20 located on your diagram?

21 A Right here. Front door.

22 Q And this would be State's 22. Tell us what we're
23 looking at here.

24 A This is the living room area as you -- you're standing
25 in the kitchen. So, if you're standing right here at the

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1 kitchen sink, this is looking into the living room area.

2 Q And you're referring to State's Exhibit No. 20?

3 A Yes, ma'am.

4 Q Will you show us again where that would be?

5 A If you're standing right here in front of the kitchen
6 sink, that's viewing this way into the living room and
7 that's heading back towards the master bedroom.

8 Q Okay. And this is typical for you to take photographs
9 of all of the rooms of the house?

10 A Yes, ma'am.

11 Q And why do you do that?

12 A To document the scene as it was that day prior to
13 performing investigative endeavors.

14 Q All right. This is State's No. 23.

15 What would that be?

16 A That is the kitchen. So, referring back to the State's
17 20. So, it will be looking here. There's the stove area.
18 I'm sort of photographing the stove and kitchen area.

19 Q State's No. 24.

20 A This is in the young lady's bedroom. This is a little
21 hutch.

22 MR. WALKER: Objection, Your Honor.

23 THE COURT: What's the basis of your objection,
24 Mr. Walker?

25 MR. WALKER: He is suppose to give the location. Not

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1 descriptions.

2 THE COURT: That would be overruled. It'd go to the
3 weight and not the admissibility.

4 You may proceed.

5 Q Investigator Sullivan, can you show us, on Exhibit 20,
6 where this would of been located?

7 A Yes, ma'am, it's right here in this area here. So, you
8 come into the little girl's bedroom and it's located right
9 here. It's a little hutch area.

10 Q Is the little girl's bedroom next to the master
11 bedroom?

12 A Yes, ma'am, the only thing that separates it is the,
13 the bathroom and the utility room. So, it's right around
14 the corner.

15 Q And State's No. 25, which room is that?

16 A That, again, is the little girl's bedroom. That's the
17 floor.

18 Q And that would be in the same place that you showed us
19 on Exhibit No. 20?

20 A Yes, ma'am.

21 Q Right next to the master bedroom?

22 A Yes, ma'am.

23 Q Where you found the body?

24 A Uh-huh. (Affirmative).

25 Q And that's a yes?

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1 A Yes, ma'am, I'm sorry.

2 Q That's okay.

3 I'm gonna show you what has been marked as State's
4 Exhibit 34 and 35.

5 Do you recognize those photographs?

6 A Yes, ma'am, I do.

7 Q And what are these photographs?

8 A One photograph is of the end of the trailer and the
9 Herby Curby and the other one is the interior of the Herby
10 Curby. They were taken that night.

11 Q Have they been altered or changed in anyway?

12 A No, ma'am.

13 SOLICITOR DAVIS: Your Honor, at this time the State
14 would move State's 34 and 35 and ask to publish.

15 THE COURT: Subject to previous objections, Mr. Walker?

16 MR. WALKER: That is correct, Your Honor.

17 THE COURT: State's 34 and 35 in evidence subject to
18 previous objections.

19 SOLICITOR DAVIS: Thank you, Your Honor.

20 (WHEREUPON, State's Exhibit Nos. 34 and 35 were
21 previously received into evidence.)

22 Q State's 34.

23 Can you tell us, on State's 20, where this -- which
24 side this would be located?

25 A This side right here inside the trailer on the right

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1 side as you're facing it.

2 Q And what is in the photograph?

3 A This Herby Curby right here. Little trashcan.

4 Q And why would you have taken this photograph?

5 A It's, again, it's an establishing photograph of the
6 side of the trailer so you know what it looks like when we
7 arrived on scene.

8 Q Is it typical protocol to look into the trash?

9 A Yes, ma'am, it is.

10 Q And did you do that in this case?

11 A We did.

12 Q And State's 35, what would this be looking at?

13 A When we opened the, the Herby Curby, we found this
14 syringe and the syringe was not filled with anything but it
15 was inside the Herby Curby right on top of the trash bag.

16 Q And did you collect that as evidence?

17 A Yes, ma'am.

18 Q Investigator Sullivan, I'm going to show you what's
19 been marked for ID as State's Exhibits 32 and 33.

20 Tell me if you recognize those.

21 A Yes, ma'am, I do.

22 Q Are these photographs from the night that you executed
23 a search warrant?

24 A They are, ma'am.

25 Q Have they been altered or changed in anyway?

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1 A No, ma'am.

2 SOLICITOR DAVIS: Your Honor, at this time, the State
3 would move and move to publish 32 and 33.

4 THE COURT: Subject to previous objections, Mr. Walker?

5 MR. WALKER: Correct, Your Honor.

6 THE COURT: State's 32 and 33 in evidence subject to
7 your previous defense objection.

8 (WHEREUPON, State's Exhibit Nos. 32 and 33 were
9 previously received into evidence.)

10 THE COURT: You may publish.

11 SOLICITOR DAVIS: Thank you, Your Honor.

12 State's No. 32, what does this show us?

13 A This is the floor of the master bedroom next to the bed
14 and what we found was a belt looped in a manner that's---

15 MR. WALKER: Objection, Your Honor. Excuse me.

16 Go ahead, sir. Go ahead. I'm sorry.

17 THE COURT: Sir?

18 MR. WALKER: Sorry.

19 THE COURT: All right. You may continue, detective.

20 THE WITNESS: Yes, sir.

21 We did, we did was we find this belt and it, you know,
22 brought to our attention because of the way it was looped.
23 It was in a manner consistent with the use of -- possible
24 use of illitic drugs or used as a tourniquet.

25 MR. WALKER: Objection.

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1 THE COURT: Overruled.

2 Q And then did you collect this as evidence?

3 A Yes, ma'am, we did.

4 Q And where was this located on Exhibit 20?

5 A Yes, ma'am, this corner right here of the bed.

6 Q Would that have been on the same side of the bed as the
7 deceased?

8 A Close to it, yes, ma'am.

9 Q And State's 33.

10 A This is just a close-up and you see how it's looped and
11 it's looped very small. So --.

12 Q And why would you have collected that as evidence?

13 A Because the -- it is a practice of using a belt if
14 you're going to self-inject a possible injection to use it
15 as a tourniquet, and the way it was looped, we felt that,
16 cause we didn't know the manner of death, go ahead and
17 collect it to compare -- for comparison in future sake.

18 Q So, at the time that you did your investigation, the
19 manner of death had not been determined?

20 A No, ma'am, we did not know.

21 Q Had an autopsy been performed at this time?

22 A No, ma'am.

23 Q So, is it your job to collect everything you can to --
24 so that everyone can make the right decision as to what
25 happened?

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1 A Yes, ma'am.

2 Q I believe you also testified that you searched the gray
3 car that was outside as part of execution of a search
4 warrant of the property.

5 Is that correct?

6 A Yes, ma'am.

7 Q I'm gonna show you what's been marked as State's
8 Exhibit 36 and 37.

9 A Yes, ma'am.

10 Q Do you recognize those?

11 A I do. Those are photographs taken that night of the
12 interior of the car.

13 Q Have they been altered or changed in anyway?

14 A No, ma'am.

15 SOLICITOR DAVIS: Your Honor, at this time, the State
16 would move Exhibits 36 and 37 into evidence and ask to
17 publish.

18 THE COURT: Subject to previous objections, Mr. Walker?

19 MR. WALKER: What number was that, Your Honor?

20 THE COURT: 36 and 37, the interior of the vehicle.

21 MR. WALKER: That's, that's correct, Your Honor. No
22 further objections.

23 THE COURT: All right. Thirty -- State's 36, 37, in
24 evidence subject to previous defense objections.

25 (WHEREUPON, State's Exhibit Nos. 36 and 37 were

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1 previously admitted into evidence.)

2 THE COURT: You may publish.

3 SOLICITOR DAVIS: Thank you, Your Honor.

4 All right. State's No. 36, tell us what we're looking
5 at, Investigator Sullivan.

6 A This is the front passenger side, front passenger seat
7 and floorboard of the silver in color vehicle we were -- had
8 the search warrant on and there's a purse and the -- bags.

9 Q Did you look -- locate any wallets in the vehicle?

10 A Yes, ma'am.

11 Q What type of wallets did you locate?

12 A Female wallet on Miss Banty.

13 Q Did you have a male wallet as well?

14 A Yes, ma'am, I believe we did.

15 MR. WALKER: Objection, Your Honor.

16 THE COURT: What's the basis of your objection?

17 MR. WALKER: Again, he's suppose to give testimony.

18 Not -- testimony on, on the location. Not description.

19 THE COURT: All right. That would be overruled. That
20 goes to the weight and not the admissibility.

21 You may ask the next question, solicitor.

22 SOLICITOR DAVIS: Thank you, Your Honor.

23 If you could, point to us on State's No. 36 where those
24 wallets would of been located?

25 A On the seat, ma'am.

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1 Q And State's 37, would that just be a closer view of
2 those?

3 A Yes, ma'am.

4 Q I believe that you said that all of the evidence that
5 was collected at the scene you took and what did you do with
6 that?

7 A I transported the evidence back to the West, West
8 Columbia evidence repository and locked it in the -- so, for
9 safekeeping and for transfer later.

10 Q Does everyone have access to where you store evidence?

11 A No, ma'am, the only people that had access is myself
12 and my partner.

13 Q I'm showing you what's been marked as State's Exhibit
14 38.

15 Do you recognize this?

16 A Yes, ma'am, this is the ID that was recovered and
17 bagged from the master bedroom.

18 Q And how do you recognize this?

19 A It's got my handwriting on the back.

20 Q This would be your handwriting?

21 A Yes, ma'am.

22 SOLICITOR DAVIS: Your Honor, at the time the State
23 would move State's 38 into evidence.

24 THE COURT: Subject to previous objections, Mr. Walker?

25 MR. WALKER: Correct, Your Honor.

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1 THE COURT: State's 38's in evidence subject to
2 previous objections.

3 (WHEREUPON, State's Exhibit No. 38 was previously
4 received into evidence.)

5 Q If you would, open that.

6 A (Witness complies.)

7 Q And what is in there?

8 A This is the ID card for Richard David Walker.

9 Q This is the ID card you found in pants near the
10 deceased victim?

11 A Yes, ma'am.

12 Q And that would be the defendant in this case?

13 A Yes, ma'am.

14 MR. WALKER: Objection, Your Honor.

15 THE COURT: What is the basis of your objection?

16 MR. WALKER: Improper identification.

17 THE COURT: All right. That will go to the weight and
18 not the admissibility. I'd overrule that objection.

19 MR. WALKER: Thank you, Your Honor.

20 Q On State's No. 38, can you read the name on that ID for
21 us?

22 A Yes, ma'am, it's David Richard Walker, Junior.

23 Q And can you give us the height and weight?

24 A Weight is 185. The height is 5-feet 11-inches.

25 Q Thank you.

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1 Investigator Sullivan, did you take any evidence to
2 SLED for testing in this case?

3 A Yes, ma'am, I did.

4 Q What evidence would that have been?

5 A We took the or I took the syringe that was recovered
6 from the Herby Curby as well as the autopsy packet brought
7 back from after autopsy.

8 Q And that would include the toxicology of the victim?

9 A Yes, ma'am, it would.

10 Q I'm showing you what's been marked as State's Exhibit
11 No. 39.

12 Tell me if you're able to recognize this.

13 A Yes, ma'am.

14 Q And how are you able to recognize it?

15 A My name is written on the front of the bag as well as
16 the date I dropped it off, the case number, and there was
17 originally sealed. My initials and the date it was sealed
18 is on top of the bag.

19 Q Okay. I see a lot of cuts in the middle.

20 Was this sealed in your presence when you took it to
21 SLED?

22 A Yes, ma'am.

23 Q So, you didn't make these cuts to it?

24 A No, ma'am.

25 Q It was fully in tact and sealed when you left it at

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1 SLED?

2 A Yes, ma'am.

3 Q Is it common for it to be like this once there's
4 testing done?

5 A Yes, ma'am, it's common practice they cut it and heat
6 seal below each cut.

7 Q And when you took this to SLED, had it been altered or
8 changed in anyway?

9 A No, ma'am.

10 Q Did it leave your sight?

11 A Yes, ma'am.

12 Q It did not -- it did leave your sight?

13 A After I dropped it off at SLED, yes, ma'am, it did.

14 Q Before then?

15 A No, ma'am.

16 SOLICITOR DAVIS: Okay. Your Honor, the State would
17 have State's Exhibit 39 as identification.

18 THE COURT: All right. State's 39 identification only.

19 (WHEREUPON, State's Exhibit No. 39 was previously
20 marked for identification.)

21 Q Investigator Sullivan, the belt that was located at the
22 incident location and seized as evidence, do you know
23 whether or not it was taken to the autopsy in this case?

24 A Yes, ma'am, it was.

25 Q Thank you, Investigator Sullivan. Please answer any

James Sullivan - Direct examination
by Solicitor Davis

1 questions that the defense may have.

2 A Yes, ma'am.

3 THE COURT: Thank you, solicitor.

4 Mr. Walker.

5 MR. WALKER: Yes, sir. Thank you, Your Honor.

6 THE COURT: And is that microphone working today, Madam
7 Clerk, at the podium?

8 THE CLERK: Yes, just -- yes, sir.

9 THE COURT: Thank you.

10 what did, what did you say?

11 THE CLERK: That's a test.

12 THE COURT: All right. Mr. Walker.

13 CROSS-EXAMINATION

14 BY MR. WALKER:

15 Q How you doing, Mr. Sullivan?

16 A Doing well, sir.

17 Q That's great. Great to meet you, Mr. Sullivan.

18 A Yes, sir.

19 Q All right. If I may, may I have the -- Ms. Reporter,
20 may I have the same exhibits she just entered out of
21 evidence?

22 THE COURT: what, Mr. Walker, speak kind of a little
23 clearer.

24 okay?

25 MR. WALKER: I'm getting these exhibits, exhibits, Your

James Sullivan - Cross-examination
by Mr. Walker

1 Honor.

2 THE COURT: So the jury can hear you and understand
3 you.

4 All right?

5 MR. WALKER: Sorry.

6 Sorry, ladies and gentlemen.

7 THE COURT: All right. You don't need an apology. I'm
8 just -- want to make sure they can hear you clearly and
9 understand you and that I can also.

10 Q Mr. Sullivan, you say you're employed at the west
11 Columbia Police Department.

12 Is that correct?

13 A I, I was, sir. Yes, sir.

14 Q All right. Within your time, you was an investigator.
15 Is that not right?

16 A Yes, sir.

17 Q All right. What is the proper procedure and the
18 reasons for basically identifying -- identification like
19 that?

20 What would be the prosecution (sic) for that?

21 THE COURT: What, what is the -- what --?

22 Q What would be the procedure to, the official procedure
23 in law enforcement to -- why, why would you identify this as
24 evidence and take it into evidence, Mr. Sullivan?

25 A When you get ready to go out to a crime scene, you try

James Sullivan - Cross-examination
by Mr. Walker

1 to determine who all might of been present, who all lived at
2 a residence, especially when you do not know a cause of
3 death. The person might be a potential witness. That
4 person may be a danger. So, if we find out a house has got
5 five people in it, we only have two people present, then we
6 want to find those other people. So, procedure is, is to
7 collect that to determine who was in the house or who might
8 of been present.

9 Q All right. And you would do that in all homicide
10 cases?

11 Is that right?

12 A Yes, sir, we try to identify all witnesses as possible.

13 Q All right. And I think now -- if I, if I may, Mr.
14 Sullivan, may I, may I borrow your pointer for a second?

15 A (Witness complies.)

16 Q Mr. Sullivan, the State give testimony asking to, asked
17 you about these right here.

18 Could you tell me what you meant to say or what you did
19 say about these rights here momentarily?

20 A Yes, sir, those -- that was a closet door and it was
21 like an accordion style door. It kind of opens and closes
22 and one of them was off the tracks at the time.

23 Q All right. And I mean, from, from your experience in,
24 in law enforcement, would you say that that was due to her
25 death?

James Sullivan - Cross-examination
by Mr. Walker

1 A I can't render opinion of whether that was damage
2 due -- caused by her death. I can't, can't give you that,
3 sir.

4 Q Okay. Was you here for Mr. Eugene Ray's testimony
5 yesterday?

6 A Yes, sir, I was.

7 Q All right. Whenever you took this picture here, did
8 you identify the body as in the same picture as she -- the
9 deceased in it?

10 A I don't understand your question, sir.

11 Q Did Mr. Eugene Ray give you prior testimony before
12 taking these pictures that he had moved the body?

13 A Yes, sir, I wasn't -- I did not interview Mr. Ray.
14 When I arrived on scene, I got the details of the residence,
15 what was inside, and obtained a search warrant. I've never
16 interviewed Mr. Ray.

17 Q All right. How, how about these right here?

18 I have another admission, another exhibit if I may not
19 answer, answer that, answer that on, on the projector. You
20 took a picture of these crowns.

21 Why would you have took a picture of these crowns when,
22 if you look here, there's no markings or no crowns on this
23 body here and the, the corayla (phonetic) is actually under
24 this blanket here?

25 A The reason we took the pictures of the markers was to

James Sullivan - Cross-examination
by Mr. Walker

1 determine how the markings got on the body. So, it was
2 readily, you know, right there next to the body was the
3 Crayola markers. So, we photographed them hence consistent
4 with the colors and type used that were drawn on the
5 deceased.

6 Q Exactly but there's no coloring on this arm. The
7 coloring is underneath this blanket.

8 A I can't tell from that photograph, sir. I'm sorry.

9 Q All right. What would be the basis of that photograph,
10 Mr. Sullivan?

11 A Yes, sir, what we try to do is, again, document the
12 interior of the residence as we found it that give every --
13 the jury a complete view of what it looked like that day
14 prior to executing our search warrant. So, that is the
15 interior living room of the residence as we found it.

16 Q So, you had intentions of prosecuting somebody whenever
17 you took this picture.

18 Is that not correct?

19 A The goal of crime scene is to document the residence as
20 we found it. We didn't know -- we had a dead body. We
21 didn't know the cause of death. So, we document everything
22 cause we don't know if we're gonna need it in the future.
23 So, we document everything, sir.

24 Q And, in your opinion, you just said that you was gonna
25 use it for prosecution and I feel---

James Sullivan - Cross-examination
by Mr. Walker

1 THE COURT: I couldn't understand you, Mr. Walker.

2 MR. WALKER: Excuse me, Your Honor?

3 THE COURT: I couldn't understand you.

4 MR. WALKER: Do you want me to explain my answer (sic)
5 or just repeat?

6 THE COURT: No, I want you to ask your question in a
7 manner in which I can hear you---

8 MR. WALKER: If I may---

9 THE COURT: ---and understand.

10 MR. WALKER: If I may, Your Honor, I think this mic
11 needs a cup. If we can---

12 THE COURT: I'm, I'm not a technique. You may proceed
13 and ask your next question.

14 MR. WALKER: Yes, sir, Your Honor.

15 And so, is it proper procedure to have the jury -- the
16 ladies and gentlemen of the jury in consideration when you
17 take photos?

18 Is that correct?

19 A It's to document for, for any case. Whether it be for
20 criminal proceedings, civil matters. It's to document the
21 scene as we see it and sometimes that it -- a case does go
22 to a jury or to criminal proceedings. So, later they were
23 used to show how the residence was the day we found it, yes,
24 sir.

25 Q All right. I'm gonna leave it at that. I'm gonna let

James Sullivan - Cross-examination
by Mr. Walker

1 the ladies and gentlemen of the jury consider their
2 authority and not -- now, you took this picture right here
3 and basically you was just doing your normal routines and
4 photographing and searching and whatnot, right?

5 Right?

6 A That's correct, sir.

7 Q All right. And once you took that photograph and you
8 was addressing that trashcan, and once you addressed the
9 trashcan, this is the contents of the trashcan.

10 Is that not correct?

11 A Yes, sir.

12 Q All right. And that there is a syringe.

13 In your experience and your opinion, what type of
14 syringe is that?

15 A It's just a syringe, sir.

16 Q Would, would you not address that it would be a
17 diabetic, maybe a diabetic?

18 SOLICITOR DAVIS: Objection, Your Honor. That's
19 outside the scope of the witness's knowledge.

20 THE COURT: You -- if you know the answer, you may
21 answer the question.

22 A I do not know specifically what type of syringe or
23 gauge. I just knew it was a syringe. If you look closely,
24 there was no needle attached to the syringe. So, I didn't
25 know what gauge it was. It was just a syringe.

James Sullivan - Cross-examination
by Mr. Walker

1 Q But I'm just asking you syringe. I'm not gauging a
2 needle.

3 THE COURT: Ask your next question.

4 MR. WALKER: Yes, sir, Your Honor.

5 Once you -- why, why was your relevancy to obtain this?

6 A Yes, sir, again, we did not know the manner of death.
7 So, it could of been -- we're looking at multiple things.
8 So, overdose, medication. There's no telling. So, we open
9 the, the Herby Curby and we found the syringe. We naturally
10 collected it.

11 Q All right. I, I, I would just like to ask you one
12 question.

13 You, you took this photo, this photo right here on the
14 basis of a nonentry.

15 Is that right?

16 A Yes, sir, we try to show that there was no forced
17 entry. If you look on the frame, you don't see any pry
18 marks or anything like around the deadbolt to show it was
19 yanked open or something.

20 Q Did you not see right there is a little pry mark?

21 A No, sir, I've, I've worked a number of break-ins and
22 you can -- aluminum frames, you, you could definitely see a
23 pry mark or where something was pulled pretty hard. And no,
24 sir, that's just normal flex in what I see.

25 Q About here and here, would you say that's a pry mark?

James Sullivan - Cross-examination
by Mr. Walker

1 A No, sir.

2 Q No, sir, it's your opinion. I have another question to
3 ask you about your photo.

4 Are you sure that this photo is the photo of the front
5 door?

6 A I believe it is, sir, yes, sir.

7 Q If I told you it was a photo of the back-door, would
8 you agree?

9 A I recall me taking pictures of the front door, sir.

10 Q If I told you my opinion that it was the back-door,
11 would you agree?

12 A I recall taking a picture of the front door, sir.

13 Q Okay. Thank you. No further questions.

14 THE COURT: Redirect, solicitor?

15 SOLICITOR DAVIS: No, sir, Your Honor.

16 THE COURT: Thank you. You may step down, Detective
17 Sullivan.

18 SOLICITOR DAVIS: May Detective Sullivan be excused,
19 judge?

20 THE COURT: Any objection, Mr. Walker?

21 MR. WALKER: No, sir, Your Honor.

22 THE COURT: Thank you.

23 Call your next witness please.

24 SOLICITOR GRAHAM: State calls Colleen Belk.

25 THE COURT: All right. You can come around and be

Colleen Belk - Direct examination
by Solicitor Graham

1 sworn for us please.

2 COLLEEN BELK, being first duly

3 sworn, testified as follows:

4 THE CLERK: Have a seat.

5 THE WITNESS: Thank you.

6 THE CLERK: Once you're seated, state your full name
7 spelling your last please.

8 THE WITNESS: My name is Colleen Belk. B-E-L-K.

9 DIRECT EXAMINATION

10 BY SOLICITOR GRAHAM:

11 Q Ms. Belk, where are you currently employed?

12 A I am retired.

13 Q Prior to your retirement, did you work for the West
14 Columbia Police Department?

15 A I did.

16 Q And how long did you work in law enforcement?

17 A I worked for the West Columbia Police Department for a
18 little over 20 years and two years at the Kingston Police
19 Department before that.

20 Q December 11th, 2012, what were your job
21 responsibilities with West Columbia?

22 A I was the victim services officer.

23 Q And did you receive a call on December 11th, 2012,
24 relating to this case?

25 A I did.

Colleen Belk - Direct examination
by Solicitor Graham

1 Q And what was your understanding of the nature of the
2 call and---

3 A The nature of the call, as the dispatcher gave out,
4 that there was a child in distress and a possible death at
5 that location.

6 Q As a victim advocate, what would be your job
7 responsibilities related to a situation like that?

8 A Well, my job responsibilities would be to ensure the
9 safety of the child, to make sure she was okay, and also to
10 assist investigations or the patrol division in any other
11 needs that they would have related to the crime victim.

12 Q And did you respond to [REDACTED] Alexandria [REDACTED] in
13 West Columbia---

14 A I did.

15 Q ---on December 11th, 2012?

16 A Yes, sir.

17 Q Do you remember approximately what time you got there?

18 A Per my notes, I have I got there about 12:45.

19 Q When you arrived at the location, what did you see?

20 A When I arrived at the location, I saw Mr. Ray, who had
21 Cassidy [REDACTED] in his truck with him, and I immediately went
22 to him.

23 Q Did you have a conversation with him?

24 A I did.

25 Q And did you meet Cassidy at that time?

Colleen Belk - Direct examination
by Solicitor Graham

1 A I did, yes.

2 Q How was Cassidy behaving?

3 A She was crying. She was very upset. She appeared to
4 be a little bit shaken. So, I immediately just picked her
5 up and I held her for a little while.

6 Q And did she calm down after that?

7 A Well, she did after a little while. I took her back to
8 my patrol car, which was a, was a Chevy Tahoe. So, it was
9 roomy. I got in my car. I held her on my lap for a little
10 while. Just kind of patted her back like I would do with
11 any child that was in distress.

12 Q What, if anything, did you ask her about her physical
13 health or wellbeing?

14 A Asked her if she was okay, did she have any boo boos or
15 did she hurt anywhere.

16 Q And what did she tell you?

17 A No. She said no.

18 Q Did you see any marks or bruises or cuts or anything to
19 give you any kind of reason to believe there had been any
20 recent physical abuse to Cassidy [REDACTED]?

21 A I did not. She had a pair of pajamas on, footy
22 pajamas, and I observed her hands and observed her face and
23 her neck area, and there were no bruises, no scratches, no
24 cuts.

25 Q And how long did you stay with Cassidy on December

Colleen Belk - Direct examination
by Solicitor Graham

1 11th, 2012?

2 A At least four, four and a half hours.

3 Q And were you able to -- when you released Cassidy that
4 day, who did you release her to?

5 A I released her to her aunt, Samantha Gutknecht.

6 Q Thank you, Ms. Belk.

7 THE COURT: Mr. Walker.

8 MR. WALKER: I beg for your indulgence, Your Honor.

9 THE COURT: Yes, sir.

10 MR. WALKER: Thank you.

11 (Pause.)

12 MR. WALKER: Defense rests with the witness, Your
13 Honor.

14 THE COURT: No questions?

15 MR. WALKER: Correct, sir.

16 THE COURT: Thank you.

17 Thank you very much, Ms. Belk.

18 THE WITNESS: Thank you. Thank you, judge.

19 THE COURT: All right. Solicitor, you may call your
20 next witness.

21 SOLICITOR GRAHAM: Your Honor, may she be excused from
22 her subpoena?

23 THE COURT: Any objections to Ms. Belk being excused
24 from her subpoena, Mr. Walker?

25 MR. WALKER: Not, not of the status.

Scott Neel - Direct examination
by Solicitor Graham

1 THE COURT: All right.

2 SOLICITOR GRAHAM: She's under subpoena from the
3 defense, Your Honor. I'm asking if he can -- if she can be
4 released from all of her subpoenas.

5 MR. WALKER: She should -- she shall -- Your Honor,
6 that -- the situation with this witness is she said is -- if
7 she needs to be called by the defense, it would take her a
8 complete day to be here. So, I chose to put her on standby
9 but she don't---

10 THE COURT: All right.

11 MR. WALKER: ---need to be here today.

12 THE COURT: All right. Just be on telephone standby
13 for us please.

14 THE WITNESS: Yes, sir.

15 THE COURT: Thank you. Thank you very much.

16 THE WITNESS: Thank you.

17 THE COURT: All right. Solicitor.

18 SOLICITOR GRAHAM: The State calls Scott Neel.

19 SCOTT NEEL, being first duly
20 sworn, testified as follows:

21 THE CLERK: Have a seat, sir. Once you're seated,
22 state your full name spelling your last please.

23 THE WITNESS: My name is Scott Neel. My last name is
24 spelled N-E-E-L.

25 DIRECT EXAMINATION

Scott Neel - Direct examination
by Solicitor Graham

1 BY SOLICITOR GRAHAM:

2 Q You have the microphone a little bit closer to you,
3 Mr. Neel?

4 A Yes, sir.

5 Q Thank you.

6 A Sorry.

7 Q Where are you currently employed?

8 A I'm currently employed with the Aiken County Sheriff's
9 Office.

10 Q And what do you do for Aiken?

11 A I'm sorry. I couldn't hear you. Bless you.

12 Q What do you do there?

13 A I'm an investigator.

14 Q Back on December 11th, 2012, or during that
15 timeframe, where were you employed?

16 A I was employed with the West Columbia Police
17 Department.

18 Q And what were your job responsibilities at that time?

19 A I was an investigator.

20 Q All right. And, in fact, were you the lead
21 investigator on this case?

22 A Not initially. I became the lead investigator a couple
23 months after the initial --.

24 Q Okay. How long have you been in law enforcement?

25 A Ten years.

Scott Neel - Direct examination
by Solicitor Graham

1 Q Okay. As part of the investigation in this case, were
2 you able to determine who lived at that residence at [REDACTED]
3 Alexandria Street?

4 A We were. Due to the evidence that was found during the
5 processing of the crime scene, it was determined that
6 Mr. Walker was living at the residence at the time of the
7 incident.

8 Q And who other -- who else was living at the residence?

9 A Carrie Banty as well as her daughter, Cassidy.

10 Q And were you able to determine the age of Cassidy at
11 the time of the events?

12 A I believe she was three.

13 Q Do you recognize the phone number of [REDACTED]-4134 as
14 belonging to Carrie Banty?

15 A Yes, sir.

16 Q Once you, once the investigation determined that
17 Mr. Walker lived at that residence, what, if anything, did
18 you or any other law enforcement officers with West Columbia
19 working with you do in an attempt to locate him?

20 A Initially, after he was established that he should of
21 been there or was living there, we begin to take steps to
22 try to locate him. It started with checking area hotels,
23 checking local detention centers, also calling area
24 hospitals to see if he was a patient there. We also put
25 together an information bulletin that would include some

Scott Neel - Direct examination
by Solicitor Graham

1 basic information about him and the incident. That
2 information would of been sent to the State Law Enforcement
3 Division. They would of, in turn, emailed a bulletin out to
4 law enforcement agencies so that they would have the
5 information and be aware of the incident.

6 Q And that would be something -- if I understand right,
7 that would be something that every law enforcement agency in
8 the State would get, and when patrol officers have their
9 squad meetings, that would be something they would discuss?

10 A Yes, sir.

11 Q In addition to that, did you also put an entry into
12 NCIC and can you explain what that is?

13 A I did. After we checked the hotels and hospitals and
14 things of that nature, we never -- we could not locate him.
15 So, on the 13th, it was the morning of the 13th, I
16 completed an incident report listing Mr. Walker as a missing
17 person. By that time, we had spoken with numerous family
18 members. We had learned of some mental health issues and in
19 particularly that he may not be taking his medication. And
20 so, I completed the report and entered him into NCIC, which
21 is a nationwide database, and entered him in as a missing
22 and/or endangered person.

23 Q Do you remember specifically the family members of
24 Mr. Walker that was -- that were reached out to by your
25 agency?

Scott Neel - Direct examination
by Solicitor Graham

1 A It was---

2 MR. WALKER: Objection, Your Honor. He's, he's
3 leading.

4 THE COURT: Overruled.

5 A I believe, at that point, we had spoken with the
6 defendant's father, David Walker, Senior, as well as his
7 mother, Sara Hughes.

8 Q Okay. Do you know -- if I said the name Kyle Walker,
9 does that mean anything to you?

10 A That's the brother of, of the defendant, yes, sir.

11 Q And do you know whether Kyle Walker was spoke to by
12 your agency?

13 A I believe so, yes, sir.

14 Q And based on those conversations, did they have any
15 information to provide you guys the whereabouts of Mr.
16 Walker?

17 A They could not provide any, any information about where
18 he was, no, sir.

19 Q All right. Were you able to determine who the family
20 of the victim, Carrie, was?

21 A Yes, sir.

22 Q Did you have an opportunity to or your agency have an
23 opportunity to speak with her father, Thomas Banty, and his
24 wife, Judy Banty?

25 A Yes, sir, we did.

Scott Neel - Direct examination
by Solicitor Graham

1 MR. WALKER: Objection, Your Honor. Same basis.

2 THE COURT: Overruled.

3 Q And were they able to provide any information as to
4 where the defendant might be?

5 A They could not provide any information, no, sir.

6 Q In addition, were you able to speak with Carrie Banty's
7 mother or somebody from your agency able to speak with her?

8 A Yes, sir.

9 Q That would be Cassidy's grandmother?

10 A Yes, sir.

11 Q Did she have any information as to where Mr. Walker
12 might be?

13 A No, sir.

14 Q And do you know if you or someone with your agency made
15 contact with Carrie's sister, Sam?

16 A They did, yes, sir.

17 Q And did she have any information as to Mr. Walker's
18 whereabouts?

19 A No, sir.

20 Q Is it your understanding of the crime scene at the time
21 as it relates to -- well, you're aware that an autopsy was
22 done, right?

23 A Yes, sir.

24 Q So, what information would of been provided to Doctor
25 Ross, who did the autopsy, of Carrie as to what concerns or

Scott Neel - Direct examination
by Solicitor Graham

1 information sought from the crime scene?

2 A She would of been given details of items that were
3 found in and around the house to include the belt that was
4 located, the syringe that was located. She would of been
5 provided any information that would of seemed, at the time,
6 possibly relevant to her death.

7 Q Based on the information that was provided to her and
8 her autopsy at that time, was she able to give you a cause
9 and manner of death at that time?

10 A The result of the initial autopsy was left open pending
11 toxicology results.

12 MR. WALKER: Objection, Your Honor.

13 THE COURT: What's the basis of your objection,
14 Mr. Walker?

15 MR. WALKER: If the State wishes to agenda (sic) the
16 toxicology and the autopsy, they can call the next witness
17 on that.

18 THE COURT: All right. I would overrule the objection.
19 You may ask your next question, solicitor.

20 Q Investigator Neel, eventually were the toxicology
21 results in and was the autopsy final?

22 A Yes, sir.

23 Q And based on that -- well, let me back up for a second.
24 while, while your agency was pending the final autopsy,
25 were arrest warrants obtained for Mr. Walker?

Scott Neel - Direct examination
by Solicitor Graham

1 A No, sir.

2 Q You were aware that Mr. Walker was located by law
3 enforcement at some point.

4 Is that correct?

5 A Correct.

6 Q But he was not placed under arrest.

7 Is that correct?

8 A Correct.

9 Q At what point was it that West Columbia received a
10 final autopsy from Doctor Ross and warrants were obtained?

11 A We received notification, I believe it was, February
12 the 27th.

13 Q And do you remember when Mr. Walker was placed under
14 arrest?

15 MR. WALKER: Your Honor, if I may, I object to him
16 using notes.

17 THE COURT: That, that's certainly overruled.

18 MR. WALKER: Thank you so much.

19 THE COURT: Yes, sir.

20 A I believe he was located and arrested on March the
21 4th of 2013.

22 Q Thank you, Investigator Neel. Please answer any
23 questions that Mr. Walker has for you.

24 THE COURT: Thank you, solicitor.

25 Mr. Walker.

Scott Neel - Cross-examination
by Mr. Walker

1 MR. WALKER: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. WALKER:

4 Q How you doing, Mr. Neel?

5 A Pretty good, sir.

6 How are you?

7 Q Pretty good, sir.

8 You stated you worked for West Columbia as an
9 investigator, correct?

10 A At the time of the incident, yes, sir.

11 Q And the basis of your investigation was homicide.
12 Is that correct?

13 A Yes, sir.

14 Q All right. And you, you, you give testimony -- you
15 give testimony that you was the lead investigator.
16 Eventually you may be investigator.

17 Is that right?

18 A I was once we received the toxicology results.

19 Q All right. So, why did West Columbia's officials, once
20 you received the toxicology, had you as lead?

21 A The initial lead investigator was Bruce Wade, and by
22 the time we had received the toxicology results, he had been
23 promoted and was actually my supervisor at that time.

24 Q So, are you, are you a certified detective.

25 Is that correct?

Scott Neel - Cross-examination
by Mr. Walker

1 A Yes, sir, I am.

2 Q Thank you.

3 No further questions, Your Honor.

4 THE COURT: Thank you. Thank you very much, detective.

5 THE WITNESS: Yes, sir.

6 THE COURT: Mr. Neel, you may step down.

7 THE WITNESS: Thank you.

8 SOLICITOR GRAHAM: State calls Sarah Walker.

9 THE COURT: All right. Ms. Walker, if you'd come
10 around and join us please.

11 SARAH WALKER, being first duly sworn,
12 testified as follows:

13 THE CLERK: Have a seat please, ma'am. Once you're
14 seated, state your full name spelling your last please.

15 THE WITNESS: Sarah Walker. W-A-L-K-E-R.

16 DIRECT EXAMINATION

17 BY SOLICITOR GRAHAM:

18 Q Ms. Walker, where are you employed, ma'am?

19 A Lexington Medical Center.

20 Q And what do you do there?

21 A I am coordinator, the custodian of the records.

22 Q Custodian of the records.

23 So, the records is -- that are created by the hospital,
24 one of your jobs to keep track of all that those?

25 A Yes, sir.

Sarah walker - Direct examination
by Solicitor Graham

1 Q And have you come to Court before as a records
2 custodian?

3 A Yes, sir.

4 Q And did you bring some records related to the defendant
5 in this case, David walker?

6 A Yes, sir.

7 Q And does it show whether -- what particular -- did it
8 show any kind of admissions on December 9th of 2012?

9 A Yes.

10 Q And what time was Mr. walker admitted?

11 A It would be at 12:06AM.

12 THE COURT: Say, say that again for me.

13 THE WITNESS: 12:06AM.

14 Q And what was his full name that was supplied by him,
15 ma'am?

16 A It has David R. walker.

17 Q And what address did he give you --

18 A It has---

19 Q -- or give Lexington Medical, Medical Center?

20 A It has [REDACTED] Alexandria Street, [REDACTED] West Columbia,
21 South Carolina, 29169.

22 Q And did he provide a phone number?

23 A Yes, it has [REDACTED]-0258.

24 Q And did he state who his nearest relative was?

25 A It's has Catherine Banty.

Sarah Walker - Direct examination
by Solicitor Graham

1 Q And the address and -- is the same?

2 A Yes.

3 Q And his emergency contact was who?

4 A Catherine Banty.

5 Q The same address again?

6 A Yes.

7 Q And what time was he discharged?

8 A At 2:47AM.

9 Q Thank you, Ms. Walker. Please answer any questions
10 that the defense has for you.

11 THE COURT: All right. Mr. Walker.

12 MR. WALKER: Yes, sir. Thank you, Your Honor.

13 CROSS-EXAMINATION:

14 BY MR. WALKER:

15 Q How you doing today, Ms. Walker?

16 A Good.

17 How are you?

18 Q All right. I recall making contact to Lexington County
19 Medical Center.

20 Is that, is that not correct?

21 A I'm sorry. I don't understand what you're asking.

22 Q Can you identify, in, in your recollection, have you
23 ever made contact with me and medical -- at your medical
24 center?

25 A I have not, no.

Sarah walker - Cross-examination
by Mr. Walker

1 Q All right. During that time, did you work night hours?

2 A No, I did not.

3 Q And, and during that timeframe, you never worked
4 overtime or anything?

5 A No.

6 Q At anytime did you meet the deceased victim?

7 A No.

8 Q At anytime in your life have you met the defendant, who
9 am I?

10 A No.

11 Q All right. No further questions. Thank you.

12 THE COURT: Thank you. Thank you, Mr. Walker.

13 Thank you, Ms. Walker, for being with us. You may step
14 down.

15 Any objections to Ms. Walker being excused, solicitor?

16 SOLICITOR GRAHAM: No, sir, thank you.

17 THE COURT: Mr. Walker.

18 MR. WALKER: No, sir, Your Honor.

19 THE COURT: All right. Thank you again. Thank you
20 again for being with us.

21 THE WITNESS: Thank you.

22 THE COURT: All right. Solicitor, how long is your
23 next witness gonna be you think?

24 SOLICITOR DAVIS: Pretty short I guess.

25 THE COURT: That's a great answer. That's all?

Tommy Hines - Direct examination
by Solicitor Davis

1 All right. Go right ahead, solicitor. Call your next
2 witness.

3 SOLICITOR DAVIS: Thank you, Your Honor.

4 The State calls Tommy Hines.

5 THE COURT: All right.

6 All right. Come around and join us, Mr. Hines.

7 TOMMY HINES, being first duly
8 sworn, testified as follows:

9 THE CLERK: Have a seat, sir. Once you're seated,
10 state your full name spelling your last.

11 THE WITNESS: George Thomas Hines. H-I-N-E-S.

12 DIRECT EXAMINATION

13 BY SOLICITOR DAVIS:

14 Q Agent Hines, where are you employed?

15 A At the South Carolina Law Enforcement Division.

16 Q And what do you do there?

17 A I'm -- excuse me. I'm with the state surveillance and
18 intelligence unit.

19 Q Okay. And what does, what does the state surveillance
20 and intelligence unit do?

21 A Gather, analyze, interpret intelligence as it relates
22 to criminal investigations.

23 Q And would that include reviewing cell phone records?

24 A Yes, ma'am, it does.

25 Q And interpreting those records?

Tommy Hines - Direct examination
by Solicitor Davis

1 A Yes, ma'am.

2 Q How long have you worked at SLED?

3 A Eight years.

4 Q Do you have any prior law enforcement experience?

5 A All my experience has been at SLED.

6 Q Okay. Did you have to take any special classes or
7 training for your position?

8 A Yes, ma'am, I've been through numerous training
9 classes.

10 Q And have you testified as an expert in South Carolina
11 before?

12 A Yes, ma'am.

13 SOLICITOR DAVIS: Your Honor, at this time, the State
14 would move the witness as a expert in cell phone record
15 interpretation.

16 THE COURT: All right. Mr. Walker.

17 MR. WALKER: I object until I see credentials.

18 THE COURT: I'm sorry?

19 MR. WALKER: May I see his credential?

20 THE COURT: You may question the witness on his---

21 MR. WALKER: Credentials?

22 THE COURT: You may question the witness on his
23 background, training, experience and such to whether or not
24 he is an expert. I, I don't know -- I don't know what
25 you're asking as far as credentials but you may question, at

Tommy Hines - Cross-examination
by Mr. Walker

1 this time, only as to whether or not the Court is going to
2 qualify you as an expert.

3 MR. WALKER: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. WALKER:

6 Q State your name for the record again.

7 A George Thomas Hines.

8 Q George Thomas Hines.

9 Mr. Hines, you say you're, you're working at SLED for
10 eight years.

11 Is that right?

12 A Yes, sir.

13 Q All right. How, how did you become about your job at
14 SLED?

15 A I applied and was hired.

16 Q You applied and was hired.

17 Did you have any interest in law enforcement beforehand
18 or --?

19 A I did.

20 Q And how -- if I may, how did you -- how was your
21 interest in law enforcement?

22 A My father was in law enforcement.

23 Q Your father.

24 So, therefore, you was pretty relevant (sic) with law
25 enforcement before you went into it.

Tommy Hines - Cross-examination
by Mr. Walker

1 Is that right?

2 A I'm sorry?

3 Q I say you was pretty relevant with law enforcement
4 before you went into it, right?

5 A Yes, sir.

6 Q All right. So, basically family experience, right?

7 A Uh-huh. (Affirmative).

8 Q All right. What was your -- what was your occupations
9 been throughout, throughout your SLED career?

10 A I started out on the bomb squad for two years, and then
11 I've been with the current unit I'm in for six years.

12 Q Could you explain a little bit of detail on your
13 occupation there?

14 Could you just, just explain to me?

15 A What I do currently?

16 Q No, sir, beforehand.

17 A When I was on the bomb squad?

18 Q That's correct.

19 THE COURT: That's, that's not relevant...

20 MR. WALKER: Yes, sir, I was---

21 THE COURT: He's being, he's being offered as an expert
22 in cell phone record interpretation. Not as an expert as a
23 bomb squad officer. Although he may be, that's not, that's
24 not relevant to what he's being offered for at this time.

25 MR. WALKER: All right.

Tommy Hines - Cross-examination
by Mr. Walker

1 You say you're a cell phone expert.

2 Can you explain or understand how you say it's
3 something to do with intelligency (phonetic)?

4 So, I'm pretty sure you've got some confidential stuff.

5 Can you give me as much as information as what the
6 duties and your occupation or whatnot?

7 A Well, we gather intelligence through a number of
8 different means. Some come from cell phone records from the
9 cell phone companies. We also gather intelligence from open
10 source such as Facebook, Twitter, social media. We also
11 gather street intelligence from person to person contact.

12 Q So, basically, there would be suspects and whatnot
13 throughout the criminal system?

14 A That's a part of it.

15 Q All right. Just by, just by relevancy, do you any --
16 do you do any surveillance through your occupation for
17 public citizens outside of the normal suspect?

18 A Only during criminal investigations.

19 Q Only during criminal investigations.

20 All right. And is it always cell phone data or is it
21 more maybe pictures or --?

22 A We do a wide range of intelligence gathering.

23 Q All right. And do you have any schooling in, in --
24 how, how did you come across your, your scholar degrees and
25 your cell phone expertise?

Tommy Hines - Cross-examination
by Mr. Walker.

1 A I've been through multiple classes. Some put on by
2 Penlake, which is a, a very well known, well regarded
3 company that manufactures software that allows for cell
4 phone interpretation, records analysis, and --.

5 Q All right. And you, you say you've been through
6 numerous classes. How -- I mean just periodically how long
7 have, have one of them classes last?

8 Maybe the longest or the shortest.

9 A They've ranged from a couple days to a couple weeks.

10 Q All right. Did you, did you, did you enjoy it?

11 A I did.

12 Q Was you interested in it?

13 A Uh-huh. (Affirmative).

14 MR. WALKER: Thank you. We have no further questions,
15 Your Honor.

16 THE COURT: All right. Do you have any objections to
17 Agent Hines being qualified as an expert in the field of
18 cell phone records interpretation, Mr. Walker?

19 MR. WALKER: No, sir, Your Honor.

20 THE COURT: All right then. Thank you. Thank you very
21 much.

22 Ladies and gentlemen, normally a person can not give
23 opinion testimony. Normally, when a person testifies, they
24 must testify as to what they either saw, heard, sensed by
25 smell, or something of that nature. However, there is an

Tommy Hines - Cross-examination
by Mr. Walker

1 exception when someone is qualified because of education or
2 experience and training. They are permitted to give their
3 opinions in certain areas if the Court qualifies them that
4 way.

5 This witness, George Thomas Hines, will be qualified in
6 the area of cell phone record interpretation to give opinion
7 testimony in that area. That does not mean that you must
8 accept the opinion but it is evidence for you, the jury, to
9 view while you deem it appropriate.

10 Thank you, solicitor. You may proceed.

11 SOLICITOR DAVIS: Thank you, Your Honor.

12 CONTINUED DIRECT EXAMINATION

13 BY SOLICITOR DAVIS:

14 Q Agent Hines, were you asked to review phone records in
15 this case?

16 A Yes, ma'am.

17 Q And what company were those phone records from?

18 A AT&T.

19 Q And what was the phone number associated with those
20 records?

21 A It's [REDACTED]-0258.

22 Q And what were the dates of the records that you were
23 provided?

24 A The records I'm provided here were from December
25 7th of 2012 through December 12th of 2012.

Tommy Hines - Direct examination
by Solicitor Davis

1 Q Were you also given a second set of AT&T records to
2 review?

3 A Yes, ma'am.

4 Q And what were the dates on those?

5 A I don't have those with me, ma'am.

6 (WHEREUPON, the phone records were marked as State's
7 Exhibit Nos. 40 and 41 for identification purposes only at
8 this time.)

9 Q Agent Hines, I'm gonna hand you what has been marked as
10 State's Exhibit 40 and 41.

11 Would you review those please?

12 A Yes, ma'am.

13 Q Do you recognize those?

14 A Yes, ma'am.

15 Q Are those the records that you reviewed --

16 A Yes, ma'am.

17 Q -- in this case?

18 A Yes, ma'am.

19 Q And what were the dates of those records?

20 A The second set was for December 11th of 2012 through
21 December 17th of 2012.

22 Q And would those have been for the same phone number?

23 A Yes, ma'am.

24 Q As a result of those records, were you asked to create,
25 I guess, a diagram showing the information that you deemed

Tommy Hines - Direct examination
by Solicitor Davis

1 from those?

2 A Yes, ma'am, I was able to -- I made a map that
3 reflected the towers that were used during the records.

4 SOLICITOR DAVIS: Your Honor, I believe that the
5 defendant had already stipulated to these records but we
6 would move for State's Exhibit 40 and 41 in evidence.

7 THE COURT: Mr. Walker.

8 MR. WALKER: No objection.

9 THE COURT: All right. State's 40 and 41, the
10 telephone records, in evidence without objection.

11 (WHEREUPON, State's Exhibit Nos. 40 and 41 were
12 received into evidence at this time.)

13 Q Agent Hines, if you could explain to us what you did in
14 reviewing these records?

15 A So, I looked at the, the records themselves. The
16 towers that were used during each transaction, whether it
17 was a call or a text message or data usage, are actually
18 reflected on the records. It shows the GPS location, the
19 coordinates, what latitude and longitude, for the tower as
20 well as the IMSI, which is the direction that the sector
21 faces, that the device was in use during that transaction.

22 Q And what are you able to determine from that
23 information?

24 A With that information, what I'm able to do is create a
25 visual representation of what that tower would look like.

Tommy Hines - Direct examination
by Solicitor Davis

1 So, where that device was during the time of that
2 transaction.

3 Q So, it would -- you would be able to determine where
4 the cell phone or arrange where the cell phone would be
5 located at a date and time?

6 A Yes, ma'am, in a rough area.

7 Q And were you able to do that in this case?

8 A Yes, ma'am.

9 (WHEREUPON, two diagrams were marked as State's Exhibit
10 Nos. 42 and 43 for identification purposes only at this
11 time.)

12 Q Agent Hines, I'm showing you what's been marked as
13 State's Exhibits 42 and 43.

14 Do you recognize those?

15 A Yes, ma'am.

16 Q Are those the diagrams that you created from those
17 records?

18 A Yes, ma'am.

19 Q Have they been altered or changed in anyway?

20 A Not that I can tell.

21 SOLICITOR DAVIS: Your Honor, at this time, the State
22 would move Exhibits 42 and 43 into evidence and ask to
23 publish.

24 THE COURT: Mr. Walker.

25 MR. WALKER: No objection.

Tommy Hines - Direct examination
by Solicitor Davis

1 THE COURT: That's State's 42, 43 in evidence without
2 objection.

3 (WHEREUPON, State's Exhibit Nos. 42 and 43 were
4 received into evidence at this time.)

5 Q I'm gonna show you what is State's No. 43.

6 Agent Hines, if you could explain to us what this
7 depicts.

8 A So, what you see here are the two towers that were used
9 in this area for the duration of the records. What you see
10 is a sector is -- a typical, a typical tower will be divided
11 into three sectors.

12 Okay. All right. So, a typical tower will be divided
13 into three sectors. This here is the tower itself. So,
14 you'll have one sector that typically will face north,
15 southeast, or southwest. There sometimes can be some
16 variance in that depending on which cell phone carrier is
17 used and what their tower's like.

18 So, in here, the southeast tower was used. This number
19 right here represents the actual tower and sector number.
20 And then over here, on the left, were the transactions that
21 occurred on those towers for that time period.

22 Q Okay. So, on those dates and times, the phone would be
23 somewhere in the area of these towers?

24 A Yes, ma'am.

25 Q Okay. And what does data depict?

Tommy Hines - Direct examination
by Solicitor Davis

1 A Date usage can be anything from using Facebook,
2 checking emails, any, any application that might use
3 Internet on, on a phone.

4 Q And how about SMS?

5 A SMS is just text messages.

6 Q And were those dates and times gleamed from the records
7 that you had from AT&T?

8 A Yes, ma'am, they came directly from the records.

9 Q And I think here it says Lexington Medical Center.
10 would these dates and times be consistent with someone
11 having a phone there?

12 A Yes, ma'am.

13 Q I'm gonna show you State's No. 42 maybe. Thank you.
14 Okay. State's No. 42, can you tell us what this is?

15 A So, this is the same basic way I drew out the last
16 ones. You have two sectors of the same tower that were used
17 but predominately there were three sectors that were used
18 from three different towers during the duration of these
19 records, which would indicate that the device was in the
20 area right here during the timeframe of those records.

21 Q And would that area be consistent with [REDACTED] Alexandria
22 Street in West Columbia?

23 A Yes, ma'am.

24 Q The days and times that you have listed to the left
25 side, would those be days and times that the phone pinged

Tommy Hines - Direct examination
by Solicitor Davis

1 off of the towers within that area?

2 A Yes, ma'am.

3 Q Do you have an opinion as to whether or not the cell
4 phone, from the records that you have, was likely near or at
5 the [REDACTED] Alexandria Street address during those days and
6 times?

7 A It would seem very likely, yes, ma'am.

8 Q Okay. And if we can look at the day of December
9 10th of 2012. There seems to be activity on the phone on
10 that day.

11 Can you, can you tell us what that is?

12 A There were several transactions during that day. The
13 majority of them were data transactions. However, there
14 were all, there were also two text messages that were sent
15 or received that day.

16 Q And in order for you to have a GPS location or it ping
17 on a tower, does a cell phone have to be on?

18 A Yes, ma'am.

19 Q Does it have to be operable?

20 A Yes, ma'am.

21 Q If the phone is off, would you get any GPS locations?

22 A No, ma'am.

23 Q If the battery was taken out, would you get any GPS?

24 MR. WALKER: Objection, Your Honor.

25 THE COURT: What's the basis of your objection,

Tommy Hines - Direct examination
by Solicitor Davis

1 Mr. Walker?

2 MR. WALKER: The witness testimony leading.

3 THE COURT: All right. Well, I would overrule that
4 objection. Mr. Hines has been qualified as an expert in the
5 field. Therefore, he can give responses based on his
6 opinions.

7 You may continue, solicitor.

8 SOLICITOR DAVIS: Thank you, Your Honor.

9 If the battery was taken out, would you be able to
10 determine GPS locations?

11 A No, ma'am.

12 Q If the cell phone was dead, would you be able to
13 determine GPS locations?

14 A No, ma'am.

15 Q So, for these days and times here, I believe it goes
16 until 11:10PM on December 10th of 2012, would you be able
17 to say that the phone was at or near [REDACTED] Alexandria Street
18 at this day and time?

19 A It would of been in that vicinity, yes, ma'am.

20 Q And it would of been on?

21 A Yes, ma'am.

22 Q Would there be a time on -- in the records where there
23 would be no GPS location shown?

24 A If the, if the device was off, then there would be no,
25 no location shown.

Tommy Hines - Direct examination
by Solicitor Davis

1 Q And how would that be depicted in the records?

2 A In the records, you would see, if you looked at the far
3 right where it has the cell location, there would be no cell
4 location and then also next to the -- some of the numbers it
5 would have an F, which would indicate that it was forwarded
6 to voice mail.

7 Q And would that be consistent with where you're talking
8 about it being forwarded?

9 A Yes, ma'am.

10 Q And would that be the F next to it?

11 A Yes, ma'am.

12 Q And what does that mean?

13 A It means that the device was off and that the incoming
14 call was forwarded directly to voice mail.

15 Q And you would of received no GPS locations---

16 A Correct.

17 Q ---at that time?

18 What is the last day and time you have a cell phone
19 tower hit for the phone?

20 A It was 11:10PM on December 10th, 2012.

21 Q And where would that phone have been at that time?

22 A It would of been in the area between Charleston Highway
23 and Highway 378 in West Columbia.

24 Q And that would encompass [REDACTED] Alexandria Street, [REDACTED]

25 A Yes, ma'am.

Tommy Hines - Direct examination
by Solicitor Davis

1 Q Thank you, Agent Hines. That's all the questions I
2 have for you. Please answer any Mr. Walker may have.

3 THE COURT: Thank you, solicitor.

4 Mr. Walker.

5 MR. WALKER: Yes, sir, Your Honor.

6 Ms. Reporter, may I have this?

7 CROSS-EXAMINATION

8 BY MR. WALKER:

9 Q Mr. Hines, I understand the State is asked you to, to
10 explain this picture right here to the ladies and gentlemen
11 of the jury, Your Honor.

12 what is the relevancy in your, in your investigation as
13 to this, this, the skin here?

14 A It displays the rough area where the device was during
15 the time of those transactions.

16 Q Right.

17 So, at no, no point in time when you worked at West
18 Columbia as an investigator and you was the lead
19 investigator---

20 A I haven't worked at West Columbia.

21 Q I'm sorry. Wrong. Wrong.

22 No further questions, Your Honor.

23 THE COURT: Thank you. Thank you, Mr. Walker.

24 Redirect?

25 SOLICITOR DAVIS: No, sir, Your Honor.

1 May he be excused?

2 THE COURT: Any objections to Agent Hines being
3 excused?

4 MR. WALKER: No, sir, Your Honor.

5 THE COURT: Thank you. Thank you for being with us.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: You may step down. You may be excused.

8 All right. Ladies and gentlemen, perhaps now would be
9 a good time to take our morning recess. We'll take about 20
10 minutes.

11 Mr. Bailiff, if any members of the jury want to walk
12 outside for any reason, they may do so.

13 Thank you very much. Do not discuss the case during
14 this brief period.

15 MR. WALKER: Your Honor, if I may?

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. Yes, Mr. Walker.

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

20 I would like to, if you could direct the Court on
21 the -- of the condition right here in the courtroom. One,
22 one thing I understand the projector and all that. If that
23 could be organized a little so I can move around a little.
24 Also I need a cuff on that microphone, Your Honor.

25 THE COURT: I think the courtroom is set up in a fine

1 condition, and it has been so since 2004 when it was
2 dedicated as the Mark H. Westbrook courtroom. If something
3 is interfering with your presentation, I will certainly try
4 to accommodate you in that regard. I'm -- that's all I know
5 to say. As far as the cup, I personally don't know what
6 you're talking about.

7 Madam Clerk, if you could get some indication, perhaps
8 if he can discuss that with Ms. Mauldin, perhaps you or, Ms.
9 Mauldin, perhaps you could discuss it with him and give that
10 information to the clerk so that we can accommodate in that
11 regard.

12 All right.

13 MR. WALKER: Thank you so much, Your Honor.

14 THE COURT: Anything else, Mr. Walker?

15 MR. WALKER: No, sir.

16 THE COURT: All right. We'll take about 20 minutes.
17 Thank you. Thank you very much.

18 (WHEREUPON, a short recess was taken at this time.)

19 THE COURT: All right. Anything from the State before
20 we bring in our jury?

21 SOLICITOR GRAHAM: No, Your Honor.

22 THE COURT: Mr. Walker, anything before I bring in the
23 jury?

24 MR. WALKER: No, sir, not at this time.

25 (WHEREUPON, the following takes place within the

1 presence of the jury.)

2 THE COURT: All right. Welcome back, ladies and
3 gentlemen.

4 As you recall, the State is presenting evidence and
5 testimony in its case in chief. Please continue to give the
6 parties your complete and undivided attention.

7 Solicitor, you may call your next witness.

8 SOLICITOR DAVIS: Thank you, Your Honor.

9 The State calls Tenetia Niki Inabinett.

10 THE COURT: All right. Ms. Inabinett, if you'd come
11 around and join us please.

12 Good morning.

13 TENETIA INABINETT, being first duly
14 sworn, testified as follows:

15 THE CLERK: Right up there, ma'am. Once you're seated,
16 speak up loud and clear. State your full name spelling your
17 last please, ma'am.

18 THE WITNESS: It's Tenetia Inabinett.

19 I-N-A-B-I-N-E-T-T.

20 DIRECT EXAMINATION

21 BY SOLICITOR DAVIS:

22 Q Ms. Inabinett, do you go by Niki?

23 A Uh-huh. (Affirmative).

24 Q Is that a yes?

25 A Yes.

Tenetia Inabinett - Direct examination
by Solicitor Davis

1 Q I'm sorry. We have to say everything out loud so this
2 lady can type it down for us.

3 Okay?

4 A Yes.

5 Q Where do you work?

6 A Right now I work at Waffle House.

7 Q And did you, did you just get off your shift?

8 A Yes.

9 Q Have you been up all night?

10 A Yes.

11 Q We'll try to get this done quickly for you so you can
12 get some sleep.

13 Do you know Carrie Banty?

14 A Yes.

15 Q How do you know her?

16 A We worked together at Circle K.

17 Q When did you work with her?

18 A 2012.

19 Q Would you have been working with her around December of
20 2012?

21 A Yes.

22 Q Did you work with her up until when she passed?

23 A Yes.

24 (WHEREUPON, a calendar was marked as State's Exhibit
25 No. 44 for identification purposes only at this time.)

Tenetia Inabinett - Direct examination
by Solicitor Davis

1 Q I'm gonna show you what's been marked as State's
2 Exhibit No. 44 for identification.

3 Do you recognize that?

4 A Yes.

5 Q Okay. What is this?

6 A A calendar of December 2012.

7 SOLICITOR DAVIS: Your Honor, I'd ask that you take
8 judicial notice of the calendar of December of 2012.

9 THE COURT: Any objection, Mr. Walker?

10 MR. WALKER: If I may review, Your Honor?

11 THE COURT: Excuse me?

12 MR. WALKER: Oh, no. I have -- no, sir, Your Honor.

13 Irrelevant. The exhibit is irrelevant, Your Honor.

14 THE COURT: All right. I will take notice of a
15 calendar from December, 2012, and overrule the objection.

16 Q Thank you.

17 Were you just work friends with Carrie?

18 A Yes.

19 Q Did you-all hang out outside of work?

20 A No.

21 Q How long did you work with her?

22 A I would say about six months.

23 Q Okay. And did you get to know her pretty well?

24 A She was nice.

25 Q Tell me about how Carrie acted -- let me take that

Tenetia Inabinett - Direct examination
by Solicitor Davis

1 back.

2 Are you aware that, at some point, the defendant moved
3 in with Miss Banty?

4 A Yes.

5 Q What, if any, change was there in her demeanor after he
6 moved in?

7 A She wasn't the same. She was more quiet and refined.

8 Q How was she before he came?

9 A She was always happy. Always smiling.

10 Q Was she -- did she always chat with you?

11 A Yes.

12 Q The hours you---

13 MR. WALKER: Objection, Your Honor.

14 THE COURT: Overruled.

15 Q The hours you worked, did you work the same shift as
16 Miss Banty?

17 A No, I came in after she would leave.

18 Q Okay. So, what would your shift have been?

19 A 11:00 to 7:00.

20 Q And she would of gotten off at 11:00?

21 A Yes.

22 Q And that's PM?

23 A Yes.

24 Q Would you-all have chatted in the interim when you
25 swapped?

Tenetia Inabinett - Direct examination
by Solicitor Davis

1 A Yes.

2 Q Is that when you did most of your chatting with her?

3 A Yes.

4 Q And was -- tell me how she acted.

5 A She was very friendly.

6 Q Now, I show you State's Exhibit No. 44. Well, there we
7 go.

8 Do you recall if you worked December 8th of 2012,
9 which would of been a Saturday?

10 A Yes.

11 Q And what shift would you have worked that day?

12 A Third. 11:00 to 7:00.

13 Q And do you recall what shift Miss Banty worked?

14 A 3:00 to 11:00.

15 Q So, that would of been one of the times that you
16 crossed paths?

17 A Yes.

18 Q Do you recall her demeanor that day?

19 A She was upset.

20 Q By upset, was she crying?

21 A She was crying and -- yes.

22 Q Did you have a conversation with her about that?

23 A Yes.

24 Q Without telling me what she said, as a result of that
25 conversation, what, if anything, did you tell her?

Tenetia Inabinett - Direct examination
by Solicitor Davis

- 1 A She don't need to be with him.
- 2 Q And is him you're referring to the defendant?
- 3 A Yes.
- 4 Q Did you ever meet Mr. Walker?
- 5 MR. WALKER: Objection, Your Honor.
- 6 A No.
- 7 SOLICITOR DAVIS: He objected, judge.
- 8 THE COURT: Yes, sir, Mr. Walker.
- 9 MR. WALKER: Again, improper identification.
- 10 THE COURT: What, what is the basis of your objection?
- 11 What are you objecting to?
- 12 MR. WALKER: Improper identification.
- 13 THE COURT: I would overrule that objection. It would
- 14 go to the weight. Not the admissibility.
- 15 MR. WALKER: May I further, Your Honor, on that
- 16 objection?
- 17 THE COURT: Sir?
- 18 MR. WALKER: May I further?
- 19 THE COURT: Yes, sir.
- 20 MR. WALKER: Yes, sir, she -- the, the State is
- 21 suggesting who I am in identification. They need not do
- 22 that.
- 23 THE COURT: All right. I would reaffirm my previous
- 24 ruling. Your objection's overruled.
- 25 MR. WALKER: Thank you.

Tenetia Inabinett - Direct examination
by Solicitor Davis

1 Q Ms. Inabinett, in December of 2012, had you met the man
2 sitting at the defense table?

3 A No.

4 Q Did you know of him?

5 A Yes.

6 Q How, how did Carrie describe him?

7 A Mean.

8 Q What was -- what did she call him when she talked about
9 him?

10 Was it her baby daddy or something?

11 A Yes, her baby daddy.

12 Q Okay. So, let's go back to the 8th. I think that
13 would of been Saturday.

14 What advice did you give her then?

15 A To leave.

16 Q And how was she acting?

17 A She was very upset. She was crying.

18 Q Did she stay and chat with you like she usually did?

19 A No, she ran out.

20 Q She ran out.

21 Okay. Did you work again the next day on the
22 9th, which would of been a Sunday?

23 A Yes.

24 Q Did you work the same shift?

25 A No.

Tenetia Inabinett - Direct examination
by Solicitor Davis

- 1 Q what shift did you work then?
- 2 A 11:00 to 7:00 and she worked 3:00 to 11:00.
- 3 Q Okay. So, y'all both worked the same as the day
- 4 before?
- 5 A Yes.
- 6 Q Okay. Did you have any interaction with her on the
- 7 9th?
- 8 A No.
- 9 Q You didn't see her whenever---
- 10 A I saw her and that was it.
- 11 Q Tell me how she looked that day.
- 12 A She was upset. She was crying.
- 13 Q Okay. And you didn't have a conversation with her
- 14 about that, that day?
- 15 A No.
- 16 Q So, she left without talking to you again that day?
- 17 A Yeah, I, I didn't speak to her that night.
- 18 Q Okay. Did you ever see Carrie again?
- 19 A No.
- 20 Q When did you learn that she had died?
- 21 A On the 11th. On Tuesday. I was off and my manager
- 22 called and told me.
- 23 Q Did you ever get to meet her daughter, Cassidy?
- 24 A Yes.
- 25 Q Did you ever see Carrie interact with Cassidy?

Tenetia Inabinett - Direct examination
by Solicitor Davis

1 A Yes.

2 Q Tell me about that.

3 A She loved her daughter.

4 MR. WALKER: Objection, Your Honor.

5 THE COURT: Overruled.

6 Q Did you ever see her discipline her daughter?

7 A No.

8 Q Ever see her strike her daughter?

9 A No.

10 Q Always a good mother?

11 A Yes.

12 Q Ms. Inabinett, that's all the questions I have for you.

13 Please answer any Mr. Walker has.

14 THE COURT: Thank you, solicitor.

15 Mr. Walker.

16 CROSS-EXAMINATION

17 BY MR. WALKER:

18 Q How are you doing, Ms., Ms. Inabinett?

19 A Fine.

20 Q All right. You gave previous, previous testimony that
21 you have never met me before.

22 Is that correct?

23 A Yes.

24 Q So, you don't recall coming to meet me, meet me at your
25 gas station or where you worked at approximately around

Tenetia Inabinett - Cross-examination
by Mr. Walker

1 December the 8th maybe?

2 A No.

3 Q No.

4 And you, you didn't saw Cassidy -- you never come to
5 the car and, and Carrie introduced her little girl to you,
6 and I was also in the car and she said that's my boyfriend?

7 A No.

8 Q No.

9 Okay. Do you generally wear red at your work?

10 A Huh?

11 Q Do you generally wear red at your work?

12 A Everybody wear red at my work.

13 Q Okay. I'm -- have you ever seen me in your store?

14 A No.

15 Q So, I've never been in -- located in the store?

16 A Not that I recall.

17 Q Have I ever had a telephone conversation with you?

18 A No.

19 Q Have you ever spoke with Cassidy over the telephone?

20 A No.

21 Q Has -- have you ever addressed Cassidy about abuse?

22 Have you ever asked?

23 A No.

24 Q All right. How long did you and Carrie work together?

25 A Approximately six months.

Tenetia Inabinett - Cross-examination
by Mr. Walker

1 Q All right. How, how good was your relationship with
2 her?

3 A We worked together.

4 Q I say how good was your relationship with her?

5 A We worked together. That was it.

6 Q work relationship.

7 All right. So, that means y'all wasn't intimate enough
8 to really share, share information.

9 Is that right?

10 A She just told me what was going on in passing if I
11 would ask.

12 Q Do you think Carrie's the type of person that would
13 share any type of information with anybody then?

14 A Yes.

15 Q So, kind of actnoxious (phonetic) really --

16 A No.

17 Q -- with information?

18 A No.

19 Q All right. Have you given any prior testimony before?

20 A No.

21 Q So, you never gave prior testimony.

22 So, you never give prior testimony to a Charles Bunlap
23 on 3/11/13?

24 A when?

25 Q 3/11/13.

Tenetia Inabinett - Cross-examination
by Mr. Walker

1 SOLICITOR DAVIS: Objection, Your Honor. I believe
2 he's mischaracterizing testimony with giving a statement to
3 law enforcement.

4 MR. WALKER: Testimony---

5 THE COURT: Rephrase. Just rephrase your question
6 then, Mr. Walker, please.

7 Q All right. Have you ever given a statement or a
8 voluntary statement to---

9 A Yes.

10 Q ---anyone named investigators?

11 A Yes.

12 Q And that being John -- Charles I believe it's Burnlap?

13 A Yes.

14 Q Do you recall the time and date?

15 A I'm guessing it was some time in March, 2013.

16 Q That's correct.

17 So, so, you said earlier you and, you and Carrie didn't
18 have a very intimate relationship. You just basically
19 worked.

20 A We talked at work.

21 Q That's correct.

22 If I may, may I finish my question before you answer?

23 THE COURT: Don't, don't, don't do that to the witness,
24 Mr. Walker. I'll allow you, of course, anytime to finish
25 your question.

Tenetia Inabinett - Cross-examination
by Mr. Walker

1 Q So, you -- in this statement, you gave a statement
2 saying that you, you could tell something was bothering her.

3 I mean could you explain that a little?

4 A She was crying and she was upset and you can tell she
5 had been crying. And instead of asking her what was wrong
6 like I usually do, I just let her walk out the store.

7 Q So, you say usually do.

8 So, this was a pretty relevant thing of, casual thing
9 for her to cry at her employment?

10 A No.

11 Q So, she didn't cry often?

12 A Just that night and the night before.

13 Q All right. So, you say something was bothering her.

14 What, what type of demeanor or personality did she have
15 when she was bothering her -- when she was being bothered?

16 A She was very irritated. She was crying. Her face was
17 red.

18 Q You say her face was red like she was being, being hit
19 or just --?

20 A No, like she was crying and she was upset.

21 Q So, so, you take Carrie's complexion, complexion and
22 the skin was pretty fair?

23 A I'm sorry?

24 Q Do you say her, her, her complexion and her skin was
25 pretty fair?

Tenetia Inabinett - Cross-examination
by Mr. Walker

1 A She -- her face was red like she had just got finished
2 crying.

3 Q When you said red, was it large?

4 A No.

5 Q Was it white?

6 A No, it looked like she had just got finished crying.

7 Q Okay. All right. Prior to meeting Carrie, did you
8 ever know her?

9 Before ever meeting her at your employment, did you
10 ever---

11 A No.

12 Q ---know her?

13 All right. Did you ever know any friends that she
14 introduced herself---

15 A No.

16 Q ---or associated herself with?

17 A No, I just met her daughter and her mother.

18 Q What type of person would you say her daughter was at
19 that time?

20 A Three.

21 Q All right. I didn't say what, what the age.

22 I said what type of person would you say, you know, as
23 a child's personality?

24 A As a three year old.

25 Q I mean was she happy, sad?

Tenetia Inabinett - Cross-examination
by Mr. Walker

1 A Happy.

2 Q I mean when you say happy, like, like somebody just got
3 McDonald's or, you know, somebody's birthday?

4 A She was happy like you would expect a normal three year
5 old to be.

6 Q All right. what would you expect a three year old to
7 be if I may ask?

8 A Happy.

9 Q I mean happy with a smile or happy with---

10 A Happy with a smile.

11 Q would you agree---

12 A Lots of giggles.

13 Q would you agree that somebody could be happy with a
14 frown?

15 A With a what?

16 Q With a frown.

17 A Not that I know of.

18 Q Not that you know of.

19 So, you wouldn't say sad people could frown?

20 A I mean, if they're sad, I'm pretty sure they would
21 frown.

22 Q Did you ever see Cassidy cry?

23 A No.

24 Q Did she -- what, what would you say your -- what would
25 you say your, your employment environment was, was, was

Tenetia Inabinett - Cross-examination
by Mr. Walker

1 like?

2 A Can you explain that question?

3 I don't want to give the---

4 Q Yes, ma'am.

5 A ---wrong answer and just say working.

6 Q No.

7 what was your employment environment like, your Circle
8 K Stop?

9 Was it---

10 A It was fine. It was nice. Everybody got along.

11 Q Did the, the air conditioner work in, in there?

12 THE COURT: Did what?

13 MR. WALKER: The air conditioner work.

14 THE COURT: Is that, is that relevant?

15 MR. WALKER: It may or may not. I'm not sure, Your
16 Honor. I will move on if you wish.

17 THE COURT: It may or may not. I don't think that's
18 relevant. The allegations, the allegations only is this is
19 December.

20 Q Again, how was the environment at your Circle K?

21 A It was fine.

22 Q It was fine.

23 would you say the store was nice store, that it was new
24 store, a bad store?

25 what would you---

Tenetia Inabinett - Cross-examination
by Mr. Walker

1 A It was a nice store.

2 Q It was a nice store.

3 All right. And at -- and, at that time, what type
4 of -- what type of boss did you have or management?

5 A She was nice.

6 Q Is it, is it true that y'all switched managers sometime
7 in -- during that time?

8 A Yes.

9 SOLICITOR DAVIS: Objection. Your Honor, this isn't
10 relevant.

11 THE COURT: What is the relevancy, Mr. Walker?
12 Explain it to me. I'm not tracking it.

13 MR. WALKER: Impeachment, sir.

14 THE COURT: Sir?

15 MR. WALKER: Impeachment.

16 THE COURT: Impeachment. That would be impeachment on
17 a collateral matter, wouldn't it, and the only way I know
18 how to rule is you can't do that.

19 MR. WALKER: All right. I don't even need---

20 THE COURT: It's, it's not relevant if they switched or
21 didn't switch managers.

22 MR. WALKER: Okay.

23 You said Carrie was crying.

24 Was I right?

25 A Yes.

Tenetia Inabinett - Cross-examination
by Mr. Walker

1 Q All right. Did her manager ever see her cry, either
2 one of them?

3 A No, our managers worked in the morning.

4 Q In the mornings.

5 So -- and so, you're saying Carrie worked always at
6 night?

7 A 3:00 to 11:00.

8 Q And that's every, every time she's ever worked she's
9 worked 3:00 to 11:00?

10 A Or 3:00 to 9:00.

11 Q How about 9:00 to 6:00?

12 Probably, probably AM maybe.

13 A Not that I know of, no.

14 Q You would say 9:00 to 6:00 would be in the morning
15 shift though, right?

16 A Yes.

17 Q So, if I say she, she worked on December the 7th from
18 9:00 to 6:00, that, that, that wouldn't be correct?

19 A I'm not sure.

20 Q Yeah, I'll move on.

21 When, when Carrie was crying, her face was red, did she
22 have tears coming out of her eyes when you viewed her?

23 A Yes.

24 Q Yes.

25 All right. And you say it wasn't happy tears.

Tenetia Inabinett - Cross-examination
by Mr. Walker

1 Is that right?

2 A No.

3 Q Carrie was supposedly on medication.

4 Did you ever see her take her medication?

5 A No.

6 Q Did you ever see her associate with other people in
7 your time of employment?

8 A Yes, coworkers---

9 Q And what of---

10 A ---customers.

11 Q And what type, what type of people were they?

12 A Nice people.

13 Q Nice how?

14 SOLICITOR DAVIS: Objection.

15 THE COURT: I'm not, I'm not sure what you mean by
16 nice.

17 MR. WALKER: I could say sad maybe.

18 THE COURT: Well, what -- sir?

19 MR. WALKER: I could say sad maybe. I mean I'm trying
20 to, trying to get at what type of environment Carrie was in.
21 She was upset. Somebody might of upset her besides me, Your
22 Honor. I need to know these things. The jury needs to know
23 these things. It doesn't mean I upset her. That's what the
24 State is getting at.

25 THE COURT: well, rephrase your question.

Tenetia Inabinett - Cross-examination
by Mr. Walker

1 Q Have you ever seen anybody at -- within your Circle K
2 upset Carrie?

3 A No.

4 Q Have you ever seen her argue or get aggressive with
5 any, any---

6 A No.

7 Q ---employees?

8 How about any citizens that come into your store?

9 A No.

10 Q So, she never argued with anyone?

11 A No.

12 Q So, would you say any, any, any customer would ever
13 made a, a complaint on Carrie?

14 A No.

15 Q None at that time.

16 All right. Did, did Carrie ever reference you, to you
17 about any type of medication?

18 A No.

19 Q No.

20 So, your statement to Mr. Dunlap, you, you stated that
21 she mentioned something about medication that's not
22 consistent?

23 A Yeah, but not for her.

24 Q Not for her.

25 So, she would tell you about someone else's medication

Tenetia Inabinett - Cross-examination
by Mr. Walker

1 rather than hers?

2 Is that right?

3 A Yes.

4 Q You -- do you have a reason for that?

5 Can you vouch for her?

6 A Do I have a what?

7 Q Do you have a reason for that?

8 A I just know what she told me.

9 Q Would it be consistent with her personality?

10 A That she was on medication?

11 Q She was on medication then.

12 Was she on medication?

13 A No. She said -- well, no.

14 Q Take your time, Ms. Inabinett.

15 So, so, you give a statement that on December 8th you
16 made contact with Miss Catherine or Miss Carrie.

17 How long was that before her death?

18 A I guess two days since we worked -- since -- she was
19 leaving on the 8th and I was coming in.

20 Q Do -- are you relevant with a person named Eugene Ray?

21 A Who?

22 Q Eugene Ray?

23 A No.

24 Q Kind of a bigger set guy, maybe crippled or disability?

25 A No.

Tenetia Inabinett - Cross-examination
by Mr. Walker

1 Q Say again.

2 A No.

3 Q He may of drove a red truck.

4 A No.

5 Q No.

6 So, he never spoke with you in the store?

7 A No.

8 MR. WALKER: No further questions, Your Honor.

9 THE COURT: Thank you. Thank you, Mr. Walker.

10 Solicitor.

11 MR. WALKER: Thank you.

12 SOLICITOR DAVIS: Just briefly, judge.

13 THE COURT: All right.

14 REDIRECT EXAMINATION

15 BY SOLICITOR DAVIS:

16 Q Ms. Inabinett, when Carrie was crying when you got
17 there on December the 8th, did she identify who had upset
18 her?

19 A Yes.

20 Q who was that?

21 A Her baby daddy.

22 Q And her baby daddy would be the defendant?

23 A Yes.

24 Q And did she complain anyone else in the store had upset
25 her?

Tenetia Inabinett - Redirect examination
by Solicitor Davis

1 A No.

2 Q You have no, no question it was because of him?

3 A Yes.

4 Q Okay. And in the statement that you gave to law
5 enforcement, I believe you wrote a written statement?

6 A Uh-huh. (Affirmative).

7 Q And the defendant was asking you about some medication.
8 Was the medication you're referring to the defendant's
9 medication?

10 A Yes.

11 Q And that he was not taking it?

12 A Yes.

13 SOLICITOR DAVIS: No further questions, Your Honor.

14 THE COURT: Recross, Mr. Walker.

15 MR. WALKER: Yes, sir, Your Honor.

16 RECROSS EXAMINATION

17 BY MR. WALKER:

18 Q Yes, ma'am, Ms. Inabinett, how do you associate me when
19 you never seen me as, as, as her boyfriend or her bady's
20 daddy?

21 A From what she told me.

22 Q So, did she give you a description of me?

23 A No.

24 Q No.

25 And she said I was on medication.

Tenetia Inabinett - Recross examination
by Mr. Walker

1 Is that right?

2 A Yes.

3 Q From, from my appearance, would you agree that I have
4 medical conditions?

5 A You never know.

6 Q You never know.

7 All right. Would, would you say that people with
8 medical conditions take medications?

9 A No.

10 Q So, people that are sick or ill doesn't take
11 medications?

12 A It depends on what it is.

13 Q So, I -- if I have a common cold and I would need a
14 sinus---

15 SOLICITOR DAVIS: Objection.

16 THE COURT: Overruled.

17 Ask your question.

18 A What was the question?

19 Q If I had a common cold or if I had a sore throat,
20 would, would it be relevant to take medication?

21 A I would hope so.

22 Q Okay. Now, judging on my appearance here today, would
23 you say I'm Catherine's baby's father as you may put it?

24 A That's what they say.

25 Q Do you know of any biological proof of that?

Tenetia Inabinett - Recross examination
by Mr. Walker

1 A No. No.

2 Q So, you don't, you don't know or understand that I'm
3 her father?

4 Is that right?

5 A If you say so.

6 Q Well, how do you associate---

7 A I mean I don't know.

8 Q How do you associate with me as the baby's father?

9 A They said you're the father.

10 Q You don't---

11 A So, you're the father.

12 Q You just identified me earlier as the baby's father.

13 A Where you say -- I'm so -- oh, my gosh. They said that
14 you're the father. So, I assume that you are the father.

15 Q So, you like -- I mean you identified---

16 THE COURT: Speak up for me, Mr. Walker.

17 Q You identified me as the baby's father.

18 A Yeah, her baby daddy.

19 MR. WALKER: Okay. No further questions, Your Honor.

20 THE COURT: Thank you. Thank you, Mr. Walker.

21 Thank you very much, Ms. Inabinett. You may step down.

22 You may be excused.

23 SOLICITOR DAVIS: May she be excused, Your Honor?

24 THE COURT: Yes, ma'am.

25 SOLICITOR GRAHAM: Your Honor, I forgot to ask.

1 Detective Neel, with the Aiken County Sheriff's Department,
2 if he could be released from his subpoena.

3 THE COURT: Any objections to Detective Neel with Aiken
4 County being released from his subpoena, Mr. Walker?

5 MR. WALKER: He's more than welcome to be released from
6 it. The State is more than welcome to release anybody that
7 they wish from here on out tending to their subpoenas. My,
8 my subpoenas are irrelevant to the State, Your Honor.

9 THE COURT: Do you have Detective Neel under subpoena,
10 Mr. Walker?

11 MR. WALKER: I believe I do. If I can check?

12 THE COURT: Just leave him on telephone standby. He
13 may be released.

14 Thank you. Thank you for being with us, Detective
15 Neel.

16 All right. You may call your next witness.

17 SOLICITOR GRAHAM: Thank you, Your Honor.

18 The State calls Dustin Smith.

19 THE COURT: All right. Is Lieutenant Smith?

20 Is that, is that right?

21 All right. Come around.

22 DUSTIN SMITH, being first duly
23 sworn, testified as follows:

24 THE CLERK: Have a seat please, sir. Once you're
25 seated, state your full name spelling your last.

Dustin Smith - Direct examination
by Solicitor Graham

1 THE WITNESS: My name is Lieutenant Dustin Wilson
2 Smith. S-M-I-T-H.

3 DIRECT EXAMINATION

4 BY SOLICITOR GRAHAM:

5 Q Lieutenant Smith, where are you employed, sir?

6 A I'm employed at the South Carolina Law Enforcement
7 Division more commonly known as SLED.

8 Q And what do you currently do there?

9 A I'm the chief toxicologist and supervisor of the
10 forensic toxicology department.

11 Q How long have you worked for SLED?

12 A I have been at SLED -- this is my 19th year.

13 Q And what is a toxicologist?

14 A So, forensic toxicologist is someone who analyzes
15 blood, urine, other bodily fluids for the presence of
16 alcohol, drugs, and poisons, and then interprets those
17 findings, either in a court of law or to investigating
18 agencies.

19 Q To become a forensic toxicologist, what kind of
20 education and training do you have to have?

21 A So, I have a Bachelors of Science in Biology with a
22 Minor in Chemistry from the College of Charleston. I also
23 have quite extensive external training that is gone on over
24 the years, and also training that was provided by the
25 department after, after my hire. So, that, that, that would

Dustin Smith - Direct examination
by Solicitor Graham

1 be the training specifically that I've had.

2 Q How many, how many toxicological samples do you think
3 you have processed over your 19 years with SLED?

4 A Oh, I have, have worked greater than 10,000 toxicology
5 cases. The number of samples, typically we work two or
6 three samples per case. So, I would assume, you know,
7 somewhere 20 to 30,000 toxicology samples over that
8 timeframe.

9 Q And have you testified as an expert in South Carolina
10 Courts as a forensic toxicologist?

11 A Yes, sir, I have.

12 Q How many times?

13 A Over a hundred.

14 SOLICITOR GRAHAM: Your Honor, the State would offer
15 Lieutenant Dustin Smith as an expert in the field of
16 forensic toxicology.

17 THE COURT: Mr. Walker.

18 MR. WALKER: Proceed.

19 THE COURT: You don't have any objections?

20 MR. WALKER: That's correct, Your Honor.

21 THE COURT: Again, ladies and gentlemen, as you've
22 heard, the -- Agent Hines -- normally a person can not
23 testify to opinion testimony. Generally a person must
24 testify to what they saw, heard, sensed by smell, or
25 something of that nature. However, there is that exception

Dustin Smith - Direct examination
by Solicitor Graham

1 when someone is qualified because of training, experience,
2 and education. They're permitted to give their opinion in
3 certain areas if the Court qualifies them that way.

4 This witness, Lieutenant Dustin Smith, will be
5 qualified in the area of forensic toxicology to give opinion
6 testimony in that area and the basis for those opinions.
7 That does not mean you must accept the opinion but it is
8 evidence for you, the jury, to use in anyway you deem fit
9 and appropriate.

10 Thank you, solicitor. You may continue.

11 SOLICITOR GRAHAM: Thank you, Your Honor.

12 Lieutenant Smith, let me show you what has been marked
13 as State's No. 39 for identification and ask if you
14 recognize this.

15 A Yes, I do.

16 Q And is that a toxicological sample and a syringe that
17 were related to this case?

18 A It is. It's the biological samples and the syringe
19 that were submitted to our laboratory for testing and this
20 is the external packaging. Here is our evidence pouch that
21 we placed the evidence into once it's brought into the SLED
22 laboratory.

23 Q Could you describe the contents of the bag for us
24 please?

25 A Sure. In this particular pouch, the biological samples

Dustin Smith - Direct examination
by Solicitor Graham

1 consisted of two gray top tubes of iliac vein blood.

2 Q Let me stop you for a second.

3 what is iliac vein blood?

4 A Sure. It's -- when, when blood samples are drawn in
5 toxicology cases, specifically to postmortem toxicology
6 cases, the samples may be drawn from, from various areas
7 within the body. Samples that provide the best interpretive
8 value are samples that are not near the central cavity of
9 the body or, or taken from arteries or veins that are, that
10 are peripheral from the central cavity.

11 The reason for this is that there's a phenomenon known
12 as postmortem redistribution that can occur within the
13 central cavity. The levels that are, that are notated in
14 the, the samples that are drawn more peripherally are more
15 indicative of what the actual blood concentration was at the
16 time of death.

17 The iliac vein is a vein that runs in the lower portion
18 of your stomach. And so, it, it is more peripheral. And
19 so, the values or any findings that we have, concentrations
20 that we may find in this blood sample, would be more
21 indicative or more representative of what the actual values
22 would of been at the time of death.

23 Q In addition to those two gray top test tubes of Carrie
24 Banty's iliac blood, what else is in the bag?

25 A Yes, sir, we also have one bottle of gastric contents,

Dustin Smith - Direct examination
by Solicitor Graham

1 one bottle of urine, and one red top tube of ocular fluid,
2 and those would be the, the -- that would be all of the
3 biological samples.

4 Q Let me interrupt you for a second.

5 So, all of those are from the autopsy of Carrie Banty?

6 A That's correct.

7 Q In addition to those items, what else is sent to SLED
8 in that bag?

9 A In addition, a syringe was submitted that was found at
10 the scene with an unknown liquid or residue left in the
11 syringe.

12 Q Okay. And did you and your staff analyze the iliac
13 vein blood?

14 A Yes, sir, we did.

15 Q And what specifically were you looking for?

16 A Well, in, in all types of, of postmortem cases that
17 come into our laboratory, the first thing that we're testing
18 for is alcohol or ethanol or drinking alcohol. So, the
19 first thing we do is we test it for ethanol as well as other
20 common substances to include isopropenyl, methanol, and
21 acetone.

22 The next thing that we did was we performed a, a drug
23 screen, a presumptive drug screen, that looks for many of
24 the most common prescription and/or illicit drugs of abuse.
25 That particular panel that was screened for in this

Dustin Smith - Direct examination
by Solicitor Graham

1 particular instance consisted of amphetamine,
2 benzodiazepines which includes drugs such as Valium and
3 Xanax, buprenorphine, which is a narcotic analgesic,
4 carisoprodol, which is a muscle relaxant, cocaine
5 metabolite, methadone, methamphetamine, opiates, which
6 includes drugs such as Morphine, and Codeine, Oxycodone,
7 Tramadol, and Zorprin.

8 Q So, four of the -- and what did you call that screen?
9 I'm sorry?

10 A It's an, it's an immunoassay. It's a presumptive drug
11 screen.

12 Q Okay. And for those ten or eleven drugs that you
13 specifically listed, what were the results of Carrie's blood
14 for the presence of those drugs?

15 A Well, so, all of those drug screens were negative. We
16 did not find any, any drugs. Well, we the -- these screens
17 did not indicate a presence of any drugs. In addition, we
18 went on to perform a more extensive and specific screen by
19 gas chromatography mass spectrometry. This is a, a screen
20 that allows us to detect approximately 300 over-the-counter
21 prescription and/or elicit drugs or medications.

22 And that screen was also negative for, for any drugs.
23 So, we had no positive findings on the, the drug screen or
24 on what we call the general GC mass spec screen.

25 Q And, in addition, on the -- on Carrie's blood, did you

Dustin Smith - Direct examination
by Solicitor Graham

1 also -- I think you started by talking about the looking for
2 the presence of alcohol?

3 A That's right. And so, we did do that testing and we,
4 and we did find some ethanol in this case at a concentration
5 of 0.016 percent grams per deciliter.

6 Q And what is zero-point?
7 what does that mean?

8 A So, 0.016 percent grams per deciliter, it's a very low
9 level. Our threshold, and, by threshold, I mean we consider
10 anything below that level to be negative is a 0.010 grams
11 per deciliter. So, a level of a 0.016 is just slightly
12 above our threshold. It's equivalent to about one beer or
13 slightly less than one alcoholic beverage.

14 Q In addition to Carrie's blood from her iliac vein, did
15 you also analyze a sample of ocular fluid?

16 A Yes, we did.

17 Q And what's the purpose of -- what is ocular fluid?

18 A Ocular fluid is the fluid from your eye.

19 Q And why, toxicologically as a scientist, would that be
20 important to you?

21 A Right. So, they're, they're a couple of reasons why
22 primarily -- primary reasons why we test ocular fluid. The
23 first reason is that, in cases of trauma, there's always the
24 possibility of -- that your blood, your arteries and your
25 veins, may be contaminated with ruptured gastric contents.

Dustin Smith - Direct examination
by Solicitor Graham

1 So, they may be contaminated and the ethanol levels, the
2 volatile levels and, and those blood samples may not be
3 indicative or may not be representative of what was actually
4 there at the time.

5 The ocular fluid is much more isolated, and it's, it's
6 found farther away from that central cavity. So, you don't
7 have the possibility or the likeliness that that area may be
8 contaminated.

9 The second reason and the reason it may be important in
10 this particular case is that there is the potential,
11 during -- after death of, of, of postmortem production of
12 ethanol. Ethanol is a by-product of decomposition. And so,
13 when someone dies or when anything dies and it begins to
14 decompose, ethanol is one of the products that is produced
15 in that decomposition.

16 That can happen in the ocular fluid but, again, that
17 ocular fluid is much better preserved. And so, it's, it's
18 rare that it happens in the ocular fluid.

19 So, some cases, where we find a low level of ethanol in
20 the blood, we want to test the ocular fluid as well because
21 the low level of, of ethanol we find in the blood may be
22 indicative of postmortem production of ethanol due to
23 decomposition. And so, that's what we did in this
24 particular case.

25 So, the ethanol level in the ocular fluid in this case

Dustin Smith - Direct examination
by Solicitor Graham

1 was negative. We can't say definitively or that the ethanol
2 that was found in the blood is due to postmortem production.
3 It still be due to ingestion of alcohol. If that were the
4 case, the ethanol would of had to have been ingested almost
5 immediately prior to death for there not to have been any
6 ethanol in the ocular fluid. But, in most cases where we
7 find a low level of ethanol in the blood and none in the
8 ocular fluid, it's indicative of that low level of
9 postmortem product of ethanol due to decomposition.

10 Q And I just have one more question, Lieutenant Smith.

11 Did you, did SLED also look at items -- SLED Item 5,
12 which is that syringe that was collected at the residence?

13 A Yes, we did.

14 Q And what, if anything, did you determine as far as the
15 presence of anything else in or on it?

16 A So, what we did is we did a wash of that to where we
17 could identify the residue that was left in that syringe,
18 and what we found was cocaine and a drug called Levamisole
19 and Levamisole is a veterinary drug used as a worming agent,
20 but it is also, for the past ten or twelve years, been
21 present in nearly all of the cocaine that's come into South
22 Carolina. So, it's not surprising to see that. It's, it's
23 used as a cutting agent---

24 MR. WALKER: Objection, Your Honor.

25 THE COURT: What's the basis of your objection,

Dustin Smith - Direct examination
by Solicitor Graham

1 Mr. Walker?

2 MR. WALKER: Irrelevant.

3 THE COURT: I would overrule that objection. Thank
4 you.

5 You may continue, lieutenant.

6 A So, our findings were cocaine and Levamisole in that
7 syringe residue.

8 THE COURT: How do you spell that, lieutenant?

9 THE WITNESS: It's L-E-V-A---

10 THE COURT: Again.

11 THE WITNESS: It's L-E-V-A-M-I-S-O-L-E.

12 THE COURT: Thank you. Thank you very much.

13 Solicitor.

14 SOLICITOR GRAHAM: Thank you, Your Honor. No further
15 questions.

16 Thank you, Lieutenant Smith.

17 THE COURT: Thank you.

18 Mr. Walker.

19 Thank you, solicitor.

20 Mr. Walker.

21 MR. WALKER: Yes, sir, Your Honor.

22 May, Your Honor, I beg your indulgence?

23 (Pause.)

24 CROSS-EXAMINATION

25 BY MR. WALKER:

Dustin Smith - Cross-examination
by Mr. Walker

1 Q How you doing?

2 A Good.

3 Q All right. Kind of, kind of going blind here. I don't
4 have the right paperwork I need.

5 And what would you say the relevancy of this toxicology
6 would be for this particular homicide case?

7 A I'm not sure I understand your question.

8 Q What would you -- what would you say the relevancy of
9 this intoxication would be?

10 A All I can say is that I didn't find any positive
11 findings except---

12 MR. WALKER: Objection.

13 A ---some of the---

14 MR. WALKER: Objection, Your Honor. The State is
15 leading the witness.

16 THE COURT: Sir?

17 MR. WALKER: The State is talking to the witness behind
18 my back.

19 THE COURT: Well, they wasn't talking to the witness---

20 MR. WALKER: Solicitor Davis.

21 THE COURT: ---in front of my eyes, which I can see
22 behind my back.

23 MR. WALKER: Solicitor Davis---

24 THE COURT: I have---

25 MR. WALKER: ---was talking to the witness.

Dustin Smith - Cross-examination
by Mr. Walker

1 THE COURT: Sir?

2 MR. WALKER: Solicitor Davis was talking to the
3 witness, Your Honor.

4 THE COURT: Solicitor, were you talking to Lieutenant
5 Smith?

6 SOLICITOR DAVIS: No, sir, Your Honor. I was talking
7 to Deputy Solicitor Graham.

8 THE COURT: The only person I ever knew could see
9 behind their back or his back was my mother.

10 MR. WALKER: I have the same---

11 THE COURT: I, I didn't see and I noted that
12 co-counsel, often times in most cases, confer with each
13 other during the course of the trial as I have noted that
14 you have done in conversations with, with Mr. Watkins. I, I
15 did not see that but you, you may, you may ask your next
16 question.

17 MR. WALKER: I will at this time, Your Honor, move --
18 motion for mistrial but I don't think it's gonna happen
19 cause I was the only one witnessing.

20 THE COURT: Because what?

21 MR. WALKER: Cause I don't -- I believe I was the only
22 one witness that you could ask the court if anyone else
23 witnessed Ms. Davis speaking with the witness.

24 THE COURT: All right. Well, we'll proceed on with
25 this witness and I will hear your motion for mistrial

Dustin Smith - Cross-examination
by Mr. Walker

1 outside the presence of the jury once we finish with live
2 testimony until we take our luncheon recess.

3 MR. WALKER: All right. Thank you so much.

4 THE COURT: Yes, sir.

5 CONTINUED CROSS-EXAMINATION

6 BY MR. WALKER:

7 Q All right. You, you, you, you're a toxicologist for
8 SLED, Mr. Smith. You, you say you got a very extansial
9 (phonetic) background in toxicology. You look like a very
10 professional man of, man of, sir.

11 I, I would, I would just like to know -- I have a few
12 questions. You know, basically, basically, in the drugs
13 that you deal with inside the bloodstreams (sic) or whatnot,
14 you know, what is most common -- you know, what is some of
15 the most common defects that you've run into for -- in
16 toxicology and some of the exstantial (phonetic), you know,
17 some of the stantial (phonetic) defects or effects of blood
18 or, or certain conditions or factors, anything to that
19 nature?

20 A I'm sorry. I don't understand your question.

21 Q Do, do you generally, in, in your profession or your
22 occupation, do you generally have any defects or is there
23 any defects or effects known to toxicology?

24 A Well, they're effects of drugs. That would vary based
25 on the type of drug.

Dustin Smith - Cross-examination
by Mr. Walker

1 Q Right.

2 All right. Is there any conditions outside of that?

3 A I apologize but I, I don't understand what you're
4 asking.

5 Q I'm asking you, in, in the, in the profession of
6 toxicology or the science of toxicology, is there any, any
7 things that can corrupt your testing or corrupt the
8 bloodstream or corrupt the victim's circumstances in
9 relevant to your toxicology?

10 A Okay. So, so, in regards to testing, in order to make
11 certain that all of our testing is done properly and all of
12 our findings are appropriate, we have multiple levels on
13 every type of analysis that we do of quality control to
14 ensure that our findings are appropriate and that our
15 findings are reproducible. In regards to the potential for
16 sample degradation, it is always the potential for sample
17 degradation. It depends on how samples are drawn, how
18 samples are stored, and then how quickly samples are tested.

19 In our particular laboratory, once we receive a, a
20 sample, we take that sample and we, we maintain it
21 refrigerated at the proper temperature to minimize the
22 potential for any drug lost or drug production and
23 throughout our testing procedures.

24 Q All right. In this toxicology, it -- what, what would
25 be the difference between the ocular -- the, the ocular

Dustin Smith - Cross-examination
by Mr. Walker

1 fluid results and the emezyme (phonetic) linked at least the
2 results?

3 Is there any difference in that?

4 A I'm -- sure. Sure, there's quite a bit of difference.
5 The testing that was performed on the ocular fluid, again,
6 was, was volatiles analysis. We look for ethanol and other
7 common volatile compounds.

8 The other testing that was referred to is the drug
9 screen that was performed on the blood. So, there's a
10 difference in sample type. We have the ocular fluid versus
11 the blood and then we have a distant -- you know, we have
12 quite a bit of difference in the actual test performed.

13 So, on the ocular fluid, the, the test that he, he
14 asked about, we performed the volatiles analysis looking for
15 ethanol and other volatiles. In the blood, the test that he
16 referred to is the enzyme linked immunosorbent acid, and
17 that's the technology that we use in order to perform our
18 drug screens.

19 Q All right. I'm pretty sure you said that you -- in
20 your line of profession, in your forensic scientist, science
21 dealing with forensic you test urine and you test ocular
22 fluid. You test blood.

23 And, generally, why wasn't this victim tested for urine
24 and that would of tested for drugs, most common drugs like
25 marijuana, T -- marijuana has THC, and some of the other

Dustin Smith - Cross-examination
by Mr. Walker

1 most common factors that are dealt from a urine screen?

2 why wasn't this victim's urine taken (sic) and, and
3 toxicology?

4 A Okay. Sure. So, we receive urine on a lot of our
5 postmortem cases. The reason why we don't use -- do testing
6 on urine, in the vast majority of cases, is because urine
7 provides us with a history of use. It shows us what someone
8 may have taken over the previous two to three days. If we
9 have sufficient -- excuse me.

10 If we have sufficient amount of blood, blood shows us
11 what was actually affecting the individual at the time of
12 death and that's much more probative and much more important
13 to us in order to determine whether or not someone was
14 impaired, whether or not someone took too much medication,
15 whether or not someone took too little medication. And so,
16 the blood is much more indicative and much more valuable for
17 us to show what was effecting the individual at the time of
18 death.

19 we do use urine, on occasion, where we have a limited
20 sample of blood. We can do some of our screening in urine
21 and we can go back and then do our confirmations in blood.
22 But for the vast majority of cases, we really don't care
23 what -- what the history of use of drugs is. We only care
24 about what was effecting them right at the time of, that's
25 important to us, right at the time of death.

Dustin Smith - Cross-examination
by Mr. Walker

1 Q All right. That's, that's generally so but from my
2 knowledge in toxicology, we're, we're talking about the
3 ELISA, which is the enzyme, which is basically the results
4 of the blood as far as drugs, normal, normal drugs,
5 cooxycotins (phonetic) or cocaine, methamphetamines, and
6 whatnot. Typically, I, from my experience in toxicology,
7 these, these typically last maybe 24-hours.

8 Is that not the, the most that you would receive that
9 would show is 24-hours after the victim's use or after the
10 patient's use?

11 A Right. And so, this varies a little bit based on what
12 drug or drug class it is, what, what your, your dose, what
13 your therapeutic dose is, how long you've been taking the
14 medication. But for most, for most drugs he's correct. We
15 would expect to see drugs in the blood for approximately 12
16 to 24-hours after ingestion.

17 And so, a negative drug screen means that most likely
18 the drug wasn't taken in the previous 12 to 24-hours. So,
19 it could of been longer. Certainly could of been less time
20 than that. This is just kind of in general.

21 Q Would you agree that you just give statements saying
22 that urinalysis, as far as taking urine sample, would last
23 approximately two days to, to contents of it as far as
24 drugs?

25 A I did. And, again, it depends on dose and it depends

Dustin Smith - Cross-examination
by Mr. Walker

1 on frequency of use and it depends on which specific drug
2 but there is the potential to see, in urine, the presence of
3 drugs or drug metabolites out to two or maybe even three
4 days depending on what type of drug it is.

5 Q All right. Now, you have, you have a syringe that you
6 tested.

7 Generally, does that syringe just associate patients or
8 victims associate in your, in your profession?

9 I mean what would be the cause to have a syringe
10 associated in the toxicology of, of this victim, Catherine
11 Carrie Banty?

12 A You know, to be honest with you, we wouldn't know. The
13 syringe is submitted to us and we have a request to do the
14 testing on that syringe, and we provide those results back
15 to the investigating agency and they use those results in
16 their investigation. We're -- we, often times, we're not
17 given that information on the front end.

18 Q So, at no point in time SLED has enforcement to or, or
19 acknowledgment to acknowledge any irrelevant evidence that's
20 placed to them to, to, to forensically search or
21 forensically test?

22 A Well, what -- SLED, SLED is a, is an agency that is
23 assisting the local law enforcement corners and state
24 police. And so, it is not our duty to determine what
25 evidence is probative in a case. It's our duty to analyze

Dustin Smith - Cross-examination
by Mr. Walker

1 the duty that the investigating agency believes is probative
2 in the case and provide those results back to them to
3 further their investigation.

4 Q So, basically the state wouldn't deal with any
5 irrelevancy facts?

6 A You deal with -- I mean just typically get a syringe
7 and, and say oh, okay, we'll just spend tax money and, and
8 test this syringe?

9 Is that not right?

10 A That -- so, again, it's not our job to decide, you
11 know, what's important and what's not important. If it's
12 submitted to us and that we're asked to test it, then we
13 test it.

14 Q All right. In, in, in your toxicology department, do
15 you have a -- someone named Melanie Martin or also a Harry
16 Herman?

17 A No, they do not work at SLED.

18 MR. WALKER: All right. No further questions.

19 THE COURT: Redirect, solicitor?

20 SOLICITOR GRAHAM: No, Your Honor. We'd ask that he be
21 excused.

22 THE COURT: Thank you. Thank you very much. Thank you
23 for being with us this afternoon, lieutenant. You may step
24 down. He may be excused from the State's subpoena.

25 Do you have this officer under subpoena, Mr. Walker?

Judy Banty - Direct examination
by Solicitor Davis

1 MR. WALKER: I do believe so, Your Honor. He may
2 standby on telephone.

3 THE COURT: All right. Thank you. Thank you for being
4 here with us.

5 All right. You may call your next witness.

6 SOLICITOR DAVIS: Your Honor, the State calls Judy
7 Banty.

8 THE COURT: All right. Mrs. Banty, if you would come
9 around and be sworn for us please.

10 JUDY BANTY, being first duly sworn,
11 testified as follows:

12 THE CLERK: Have a seat please, ma'am. Once you're
13 seated, ma'am, state your full name spelling your last
14 please.

15 THE WITNESS: My name is Judy Banty. B-A-N-T-Y.

16 DIRECT EXAMINATION

17 BY SOLICITOR DAVIS:

18 Q Mrs. Banty, how are you related to the deceased, Carrie
19 Banty?

20 A She was my stepdaughter.

21 Q How long have you been married to her father?

22 A We got married in '09.

23 Q So, a while?

24 A '09, yes.

25 Q So, you know Carrie for that amount of time until her

Judy Banty - Direct examination
by Solicitor Davis

1 death?

2 A Yes, because she moved in with us not too long after we
3 bought the house, our house, and we bought it in 2009, yeah.

4 Q So, there was a time that Carrie lived with you and
5 your husband?

6 A Yes.

7 Q Did Cassidy also live with you---

8 A Yes, she did.

9 Q ---and your husband?

10 How long did Carrie and Cassidy live with you?

11 A Well, I tell Tom it seems like forever but it could of
12 been less than a year.

13 Q So, around a year?

14 A Yeah.

15 Q You were able to spend a lot of time with Carrie and
16 Cassidy?

17 A Yes.

18 Q Tell me about how Cassidy was treated by Carrie.

19 A Cassidy was Carrie's world. She got away with a lot
20 but she loved her. Cassidy loved her mom.

21 Q Did you ever see Carrie beat Cassidy?

22 A No.

23 Q Did you ever see her strike her in the face?

24 A Never.

25 Q Did you ever see her threaten her?

Judy Banty - Direct examination
by Solicitor Davis

1 A No, only that she couldn't have dessert if she didn't
2 eat her supper, and she always got her dessert whether she
3 ate or not.

4 Q Did you ever see Carrie discipline Cassidy?

5 A No. No.

6 Q So, they---

7 A I've never seen it.

8 Q ---had timeout or something like that?

9 A Timeouts but that don't work either. I mean she
10 never -- she was -- Carrie was a woose when it came to
11 Cassidy.

12 Q So, you never saw her abuse her?

13 A No.

14 Q Okay. Whenever Carrie had to or attempted to, I guess,
15 discipline Cassidy, how would she -- how would Carrie
16 respond with that?

17 A When she, when she failed at it, Carrie, Carrie would
18 cry because she felt like, you know, she was fighting a
19 losing battle. She never could go through with her threats.
20 She never hit her.

21 Q Did you ever see Carrie violent in the time that you've
22 known her?

23 A No.

24 Q What would she do when she would get frustrated?

25 A Cry mostly. She cried.

Judy Banty - Direct examination
by Solicitor Davis

1 Q Have you ever met the defendant; David walker?

2 A I met him once before they moved in together. They
3 were preparing or she was waiting to rent the mobile home,
4 and I wasn't -- they didn't even stay an hour and then I met
5 him. Well, I saw him when we took some furniture to the
6 mobile home.

7 Q So, do you know whether or not he was her boyfriend?

8 A Oh, he definitely was because, before he got out of --
9 before they got together, they text and she talked on the
10 phone---

11 Q Okay.

12 A ---with him.

13 Q And do you know whether or not he lived with her at [REDACTED]
14 Alexandria Street?

15 A Yes.

16 Q Do you know who all lived in that mobile home?

17 A It was Carrie and David and Cassidy.

18 Q And do you know whether or not the defendant is
19 Cassidy's father?

20 A Yes, he is.

21 Q You said they moved into a mobile home.

22 Had Carrie and Cassidy been living with you prior to
23 them moving in?

24 A Yes, because I told her I wished that she would give it
25 a little more time.

Judy Banty - Direct examination
by Solicitor Davis

1 Q And do you remember around what time they moved into
2 the mobile home?

3 A It was -- they moved in around -- right before
4 December.

5 Q So, close to the time of her death?

6 A Yes.

7 Q Had you and Carrie been pretty close when she lived
8 with you?

9 A Yeah.

10 Q And you talked often --

11 A Uh-huh. (Affirmative).

12 Q -- at that time?

13 Did that change once she moved into the mobile home
14 with the defendant?

15 A I never -- I don't recall ever getting a phone call or
16 seeing her only the one time that we took the furniture over
17 or the couch that we bought for her.

18 Q You helped them get some furniture for their---

19 A Uh-huh. (Affirmative).

20 Q ---mobile home?

21 A Yes.

22 Q Mrs. Banty, that's all the questions I have for you.
23 Please answer any Mr. Walker has.

24 THE COURT: Thank you, solicitor.

25 Mr. Walker.

Judy Banty - Cross-examination
by Mr. Walker

1 MR. WALKER: Yes, sir, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. WALKER:

4 Q How you doing, Mrs. Banty?

5 A Okay.

6 Q Okay. You just stated earlier that, that, that you
7 knew me or whatnot and you, you stated you knew of me or
8 knew of my existence prior to me being with Catherine, as
9 you stated, and also having contact --

10 A Yes.

11 Q -- with her via a telephone.

12 Is that right?

13 A Yes.

14 Q All right. And how, how, how do you know that I was on
15 that telephone speaking with Ms., with Miss Carrie?

16 A I didn't have any reason to think that Carrie would lie
17 to me about who she was speaking to and she got all happy
18 and giddy.

19 Q So, you, you say she was giddy.

20 would you say that she was in, in, in I'm gonna say
21 love?

22 A Yes.

23 Q Okay. So, you're saying she had a love affair with me?
24 Is that what you're saying?

25 A I'm saying that from -- I felt like she loved you.

Judy Banty - Cross-examination
by Mr. Walker

1 Q All right. And you, you said earlier -- did you ever
2 know of, of Miss Banty saying that I was a, a, what you call
3 it -- I'm gonna move on to my next question, Your Honor.

4 THE COURT: All right. Yes, sir.

5 MR. WALKER: Thank you.

6 when the -- when I was on the phone and we was texting,
7 as you say, how, how did you say I was texting Miss Banty?

8 A I, I didn't read her texts. I just know that, from
9 what she told me, that y'all were planning on being
10 together.

11 Q And did you ever realize that I was in North Carolina
12 at this time that you're speaking of?

13 A I knew you were, yes.

14 Q Okay. And did, did you realize that I was in a
15 hospital at that time?

16 A Yes.

17 Q All right. Did you realize that I wasn't allowed to
18 have a cell phone with me?

19 A No.

20 Q If I was to pull the hospital personnel in here to say
21 that, would you agree?

22 A I, I couldn't agree or disagree. You know, all I know
23 was what Carrie said.

24 Q Would you say it's normal procedure to not to have cell
25 phones in a hospital?

Judy Banty - Cross-examination
by Mr. Walker

1 SOLICITOR DAVIS: Objection, Your Honor.

2 THE COURT: If she knows the answer she can answer it.

3 A I've known people that were in facilities before that
4 were allowed to use the phone.

5 Q Okay. And if I told you I was in a facility, facility
6 that did not allow phones, therefore, you would agree?

7 A I could only know what you're telling me. I couldn't
8 know, I mean, different.

9 Q If I told you that it was not me speaking with
10 Catherine via text, would you have an opinion to that?

11 A No.

12 Q No.

13 Okay. And what was the text or the contents of these
14 texts that you're speaking of?

15 A I didn't read them.

16 Q You didn't read them.

17 You, you just expected that that was from me?

18 A Yeah.

19 Q All right. And you expected Catherine's, in the short
20 time you've known her, being with her father, you expected
21 her, by her personality, just to be honest person.

22 Is that right?

23 A I don't understand.

24 Q Did you expect Miss Catherine Carrie to be an honest
25 person?

Judy Banty - Cross-examination.
by Mr. Walker

1 A Yes.

2 Q So, you wouldn't say she had any problems?

3 A No, she was a hard worker.

4 Q She never exhibited or showed any, any behavior that
5 would be out of the ordinary?

6 A No.

7 Q Not even to her father or mother?

8 A No, I was never around her when she was with her mother
9 and we had a good relationship. She had a good relationship
10 with her father and with me.

11 Q Okay.

12 A We're glad to have her.

13 Q And have you ever met her mother?

14 A I never met her mother until the day that she died.

15 Q With Carrie being deceased---

16 THE COURT: The day that Carrie died?

17 THE WITNESS: Yes, the day that Carrie died.

18 THE COURT: Thank you.

19 A No.

20 Q With, with Carrie being deceased, could you vouch for
21 their relationship as far as her and her mother goes?

22 A No.

23 Q No.

24 Okay. Have you ever heard Cassidy speak of that
25 grandmother?

Judy Banty - Cross-examination
by Mr. Walker

1 A She loved her.

2 Q All right. She loved who?

3 A Robin, her grandmother.

4 Q You say that in like a past tense.

5 Is, is that---

6 A Well, she was living with us. The only thing -- I
7 never heard Cassidy say anything bad about her grandmother,
8 Robin.

9 Q Right.

10 So, you -- are you subjecting (sic) that Robin may have
11 abused Cassidy?

12 A No.

13 Q No.

14 would you say that Catherine, the alleged victim in
15 this case, was -- abused drugs with her mother?

16 A No, I wouldn't know anything about that.

17 Q Would you agree to that?

18 A No.

19 Q Okay. would you say that her and her father, being
20 Catherine and her father, had a hostile relationship?

21 A No, they didn't.

22 Q They did not.

23 All right. well, did you know of Carrie being on any
24 medication?

25 A I didn't know any, anything about her medications.

Judy Banty - Cross-examination
by Mr. Walker

1 Q Did you know if -- Carrie of ever being hospitalized?

2 A No, I heard that y'all had met at the same place but I
3 didn't know where y'all were.

4 Q Why would the same place be relevant to a hospital?

5 A I didn't -- I don't -- I'm not saying it was. I don't
6 know where y'all were.

7 Q I'm just asking a simple question, ma'am.

8 THE COURT: All right.

9 A I don't know where y'all were.

10 THE COURT: Ask your next question, Mr. Walker.

11 Q All right. And you -- you've never seen Catherine and,
12 Catherine and Cassidy have any eye contact that may be
13 hostile?

14 A No.

15 Q Did you know Catherine and Carrie or Catherine/Carrie,
16 and Cassidy to be what they call loners or people who like
17 to be associated with by their self maybe in rooms or --

18 A No.

19 Q -- extra places?

20 A No, sometimes I wished they would of gone to their
21 rooms sooner.

22 Q So, would you say that irritated you when they was
23 living with you?

24 A No.

25 Q No.

Judy Banty - Cross-examination
by Mr. Walker

1 Okay. Did, did they, did they watch a lot of TVs and
2 movies?

3 A They watched TV with Tom and myself. Mostly it was
4 we -- Carrie owned a cuddler and Cassidy was between me,
5 Carrie, and Tom.

6 Q And cutler (sic) is what?

7 A It's a small couch that reclines.

8 Q Okay. Recliner couch.

9 What, what, what relevant movies -- what's -- what
10 relevant movies would, would you say that Carrie and/or
11 Cassidy enjoyed and with that, keep in mind, maybe
12 aggressive movies, sexual movies, any type of movies?

13 A No, she -- Carrie would even -- when they first moved
14 in with us, of course, we weren't use to having a young
15 child around and Carrie would be the first one to tell us to
16 change the channel.

17 Q So, you say Carrie was a protective person or
18 protective?

19 A Very.

20 Q Was Carrie a protective mother?

21 A Yes.

22 Q With that reason being she didn't want Cassidy away
23 from her for a certain type of reason?

24 A I don't ever remember Cassidy being away from her
25 except when she was working.

Judy Banty - Cross-examination
by Mr. Walker

1 Q Okay. And so, you never, you never seen Carrie order
2 up with Cassidy to like maybe protect her?

3 A No.

4 Q No.

5 Did you ever see Cassidy do drugs or Catherine view
6 Carrie -- Cassidy drugs?

7 A No.

8 Q All right. This is a question that -- and you do not
9 have to answer.

10 Have you ever did drugs in your lifetime?

11 A No.

12 THE COURT: You can't -- you can answer the Court (sic)
13 but that's an improper question.

14 MR. WALKER: Sorry, Your Honor.

15 THE COURT: You need to read, read the rules.

16 MR. WALKER: I'm sorry, Your Honor.

17 THE COURT: All right. You may ask your next question.
18 Thank you for answering it.

19 You may ask your next question.

20 MR. WALKER: Okay.

21 In your time, you ever went shopping with Carrie?

22 A We use to all go shopping at Wal-Mart and we went out
23 to eat a lot but Cassidy was a very well-behaved child. You
24 know, normal three year old.

25 Q All right. And why did you reference Cassidy was

Judy Banty - Cross-examination
by Mr. Walker

1 Carrie?

2 Do you associate them two together?

3 A Cassidy and Carrie?

4 Q Correct.

5 A Yes.

6 Q You do?

7 All right. You say -- I asked you if you went shopping
8 ever.

9 Did you go to Wal-Mart or did you go---

10 THE COURT: She said---

11 Q ---to gift stores?

12 THE COURT: She said Wal-Mart.

13 A Yes.

14 Q You said Wal-Mart.

15 Sorry, Your Honor.

16 A Mostly Wal-Mart.

17 Q All right. Within that Wal-Mart, did, did Catherine
18 like enjoy certain, certain section of the store or certain,
19 certain merchandise or product?

20 A Tom would always ask her did she need anything.

21 Q All right.

22 A And---

23 Q Not speaking of Tom if I may.

24 A Well, no, we all stayed together. We shopped together.
25 We bought our groceries together, and if she needed anything

Judy Banty - Cross-examination
by Mr. Walker

1 personal or whatever, we would go to that section.

2 Q So, you and Catherine and Cassidy did not shop together
3 with Tom?

4 A Yes.

5 Q But you never---

6 A We all shopped together.

7 THE COURT: Let me ask you the relevancy of this line
8 of questioning now. I'm not tracking, Mr. Walker.

9 MR. WALKER: Personality character of the victim.
10 Traits.

11 THE COURT: The fact that she shops at Wal-Mart?

12 MR. WALKER: That's correct, Your Honor.

13 THE COURT: Well, I think you need to move on to
14 another area of questioning. I do not see the relevance of
15 any of that.

16 Q Okay. Did Catherine have any type of personality?

17 A Did you say Cassidy?

18 Q Catherine.

19 A Catherine. She was just a sweet person. I mean I,
20 I've never had a problem with her.

21 Q Did you---

22 A I never -- we always got along well.

23 Q All right. When, when I say personality, if -- would
24 you agree that a personality could include music and
25 maybe---

Judy Banty - Cross-examination
by Mr. Walker

1 THE COURT: Could include what?

2 MR. WALKER: Music.

3 A Music?

4 We never listened to -- I never listened -- I don't
5 know what kind of music she liked. We didn't listen to
6 music at home.

7 Q So, that whole time -- you agreed earlier that you and
8 Carrie traveled a lot together, associated with her, her
9 father, Tom.

10 Y'all never listened to music during that time?

11 A We listened to what Tom wanted to listen to --

12 Q Never did---

13 A -- which is old rock.

14 Q Rock and Roll?

15 A He's an old rocker.

16 Q All right.

17 THE COURT: Be careful. There might be others in the
18 room, you know.

19 THE WITNESS: Oh.

20 THE COURT: You may ask your next question, Mr. Walker.

21 Q So, would you agree that Carrie, Catherine Carrie
22 enjoyed Rock and Roll music?

23 A Well, she had no choice cause---

24 THE COURT: What is the relevancy of this line of
25 questioning?

Judy Banty - Cross-examination
by Mr. Walker

1 MR. WALKER: Character, Your Honor, trait.

2 THE COURT: Sir?

3 MR. WALKER: Character or trait.

4 THE COURT: Well, what if somebody listens to Lynyrd
5 Skynyrd, Alicia Keys, Rolling Stones, Charlie Daniels, Luke
6 Bryan, Jay Z.

7 MR. WALKER: Psychedelically reasons, Your Honor.

8 THE COURT: I'm trying to think why you may -- it
9 need -- get into another area of inquiry.

10 MR. WALKER: Yes, sir.

11 THE COURT: I'm not going down this shopping music or
12 bumper stickers you have on your car but I'm not doing that.

13 Q All right. If, if I had knowledge to tell you that
14 Miss Banty had a hostile and a rough childhood, would you
15 agree to that?

16 And, and you, you can, you can -- you can plus her, her
17 character, her demeanor, or her trait.

18 SOLICITOR DAVIS: Objection.

19 THE COURT: I don't -- I would sustain that objection.
20 I don't know of the relevance of her childhood.

21 MR. WALKER: Defense have no further questions, Your
22 Honor.

23 THE COURT: Sir?

24 MR. WALKER: No longer question -- you said move on to
25 the next question.

Judy Banty - Cross-examination
by Mr. Walker.

1 Is that correct?

2 THE COURT: Yes, sir.

3 Q All right. Would, would you say that Catherine was a
4 very well put person?

5 A Yes.

6 Q A very well -- okay. And she had no mental, mental
7 characters --

8 A No.

9 Q -- that would, that would rob her demeanor?

10 A No.

11 Q She's never suicidal, homicidal, had any intentions
12 like that?

13 THE COURT: Do what now?

14 MR. WALKER: Homicidal, suicidal tensions (sic) from
15 the witness observance.

16 A No.

17 Q Her recollection.

18 A No.

19 Q No drug abuse, correct?

20 A No, not that I know of.

21 MR. WALKER: No further questions, Your Honor.

22 THE COURT: Redirect, solicitor.

23 SOLICITOR DAVIS: No, sir, Your Honor.

24 THE COURT: Thank you. Thank you very much, Mrs.
25 Banty.

1 THE WITNESS: Thank you.

2 THE COURT: You may step down.

3 THE WITNESS: All right.

4 THE COURT: All right. Perhaps now would be a good
5 time to take our luncheon recess, ladies and gentlemen.

6 Of course, I remind you, during this recess, do not
7 discuss this case with other -- your fellow jurors, lunch
8 mates, family, friends, or anyone else. Do not read, watch,
9 or listen to any news reports about the case should there be
10 any. Do not do any independent research or any research on
11 the case.

12 I think we'll -- I have y'all back. If you'd come back
13 promptly at 2:30 and then we'll hear -- try to get as much
14 and outside of your presence before you return. And I'm
15 gonna, I'm gonna -- I'm gonna send you out to lunch today.
16 In other words, y'all go, y'all go wherever you want to go.
17 You don't have to stay here. So, if you'd please be back
18 promptly at 2:30.

19 Hope y'all have a pleasant lunch. Thank you. Thank
20 you very much.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right. We'll be in recess. Let's say
24 about 2:20. I got a motion to hear.

25 SOLICITOR GRAHAM: Judge, just for the Court's

1 knowledge, I would expect that the State will rest its case
2 this afternoon.

3 THE COURT: All right. Thank you. Thank you very
4 much.

5 Late afternoon or, or, or---

6 SOLICITOR GRAHAM: We have three or four witnesses
7 left, Your Honor.

8 THE COURT: All right. All right. Well, you'll,
9 you'll be on notice of that, Mr., Mr. Walker.

10 MR. WALKER: Sir?

11 THE COURT: In the case of -- after the State rests, I
12 hear motions. Depending on my rulings on the motions, you
13 may need to have some witnesses available.

14 All right?

15 MR. WALKER: Thank you, Your Honor.

16 THE COURT: Yes, sir, thank you. Y'all have -- oh, let
17 him make a phone call also.

18 Lieutenant, he needs to make that phone call.

19 THE OFFICER: Yes, sir.

20 (WHEREUPON, Court was in recess for the lunch hour.)

21 THE COURT: All right. Anything from the State before
22 we bring in our jury?

23 SOLICITOR DAVIS: Your Honor, I do believe that we have
24 an issue that needs to be taken up prior to the jury coming
25 out.

1 THE COURT: All right. Yes, sir.

2 SOLICITOR GRAHAM: It was my understanding, Your Honor,
3 that one of the jurors had some incidental contact with one
4 of the officers. It's either gonna be Alternate 123 or
5 Number 41. I definitely know which -- I know it was an
6 alternate or my understanding it's an alternate. He's the
7 one wearing the orange shirt today.

8 He came in contact with Officer Wharton, who, whose
9 been present in the courtroom here with us. He is not --
10 Officer Wharton has not testified but has been under
11 subpoena, I think, from the defense.

12 My understanding is, is that the juror approached him
13 and asked him is so and so, by name, and I don't -- like Tom
14 Thompson. Was he going to be up here too, which that's
15 another detective for West Columbia, and the officer
16 responded something along the lines of no, I think he's
17 goofing off or pretending to work. And that was the end of
18 it.

19 At that point, I think one of the bailiffs saw the
20 juror down there and, and called for him to come toward the
21 doors but the officer is available in the courtroom if Your
22 Honor wants to question him.

23 THE COURT: All right. Mr. Walker.

24 MR. WALKER: Yes, sir, I would move for immediate
25 mistrial on the basis that the juries (sic) inside as a

1 contact with other juries (sic). Due to his misconduct may,
2 may, may influence the other juries (sic) or may have
3 influenced the other juries (sic) and also that juries (sic)
4 not a standard jury (sic). His conduct has been, been, been
5 observed and his observances, they have conducted (sic) the
6 other juries (sic).

7 So, therefore, based on this conduct and his
8 influences, I, therefore -- and, and also the influences he
9 may have on this trial, I, therefore, ask for a mistrial.

10 THE COURT: All right. Bring me that juror please. I
11 don't know his number.

12 THE OFFICER: Okay.

13 THE COURT: It's the alternate in the orange shirt.

14 (WHEREUPON, the following takes place within the
15 presence of Juror Number 123.)

16 THE COURT: Good, good afternoon. How are you, sir?
17 Tell, tell me your number please.

18 THE JUROR: It's 123.

19 THE COURT: And your name?

20 THE JUROR: Tim McCormack.

21 THE COURT: Mr. McCormack, did you have some contact
22 with this Officer Wharton?

23 THE JUROR: Yes, sir, I didn't know -- I mean I was
24 just -- I didn't say nothing about the case.

25 THE COURT: I'm not fussing at you. I'm not fussing at

1 you. I'm just asking.

2 Can you tell me what it was?

3 THE JUROR: My son-in-law is a police officer---

4 THE COURT: And what---

5 THE JUROR: ---in west Columbia.

6 THE COURT: And what happened?

7 THE JUROR: I asked if he knowed him.

8 THE COURT: Okay. All right. And was there any other
9 contact, any other conversation?

10 THE JUROR: No, just my, you know, cause Tommy's my
11 son-in-law.

12 THE COURT: All right. Have you discussed the fact
13 that Tommy, your son-in-law -- is the last name Thompson?

14 THE JUROR: Todd.

15 THE COURT: What, what's the other officer's name?

16 THE OFFICER: Tommy Todd.

17 THE COURT: Okay. Did you say anything to any members
18 of the jury about your son-in-law?

19 THE JUROR: No, as far as I -- no.

20 THE COURT: All right. And did you say anything to any
21 members of the jury about asking Officer Wharton about your
22 son-in-law?

23 THE JUROR: Nah, just, just what I said to him.

24 THE COURT: Okay. All right. And, of course, in my
25 general instructions to the entire panel on Tuesday, I, I

1 instruct jurors that, you know, in their coming and goings,
2 they may see officers, witnesses, parties, and the like.
3 Not to have any conversation with them whatsoever because
4 innocent conversations may be easily misconstrued.

5 But setting that aside, was the only question you
6 may -- you directed to the officer and his answer was---

7 THE JUROR: Right, he knowed him.

8 THE COURT: Okay. All right. Would you have him
9 sequestered momentarily. He can go in my office.

10 THE OFFICER: Yes, sir.

11 THE COURT: My AA's office, what have you, and bring
12 the jury foreperson.

13 THE OFFICER: Yes, sir.

14 THE COURT: Thank you.

15 Thank you very much, Mr. McCormack. You may be
16 excused.

17 (WHEREUPON, the following takes place within the
18 presence of the foreman of the jury.)

19 THE COURT: Tell me your number.

20 THE JUROR: 137.

21 THE COURT: All right. I just, I just have a few
22 questions for you.

23 Has there been any discussions about the case among any
24 members of the jury?

25 THE JUROR: No, sir, not in the room.

1 THE COURT: All right. And, in other words, that's
2 when you've been with the members of the jury---

3 THE JUROR: Yes, sir.

4 THE COURT: ---in the room?

5 And was there any discussion of any casual conversation
6 between a member of the jury and perhaps one of the
7 potential witnesses?

8 THE JUROR: Not far as I know, sir.

9 THE COURT: Are you even aware that that may or may not
10 have occurred?

11 THE JUROR: No, sir, I wasn't aware of it.

12 THE COURT: Okay. And it may not have occurred.

13 THE JUROR: Yes, sir.

14 THE COURT: Phrase it like that.

15 THE JUROR: We go by your -- we don't talk about it.

16 THE COURT: Yes, sir. Thank you. Thank you very much.

17 Solicitor, you have any questions of our foreperson?

18 SOLICITOR GRAHAM: No, Your Honor.

19 THE COURT: Do you, Mr. Walker?

20 MR. WALKER: Yes, sir, I believe he was the foreman, if
21 that's not correct, but I believe that I would object to
22 what you just asked him on that basis.

23 THE COURT: I just said do you have any questions of
24 our foreperson.

25 MR. WALKER: Yes.

1 THE COURT: If you want to object, you object outside
2 of his presence.

3 MR. WALKER: Yes. Yes, sir, I got it. If you, if the
4 Court will note that I have an objection outside of the
5 presence but right now proceed with answering the questions.

6 You're the foreman. Well, you're, you're typically
7 with, with your juries (sic).

8 THE COURT: Step, step over here to the microphone.

9 THE JUROR: Yeah.

10 Can you speak up?

11 I can't hear you.

12 THE COURT: Step over here to the microphone,

13 Mr. Walker.

14 MR. WALKER: Yeah.

15 You're typically -- you're the juror, juror foreman,
16 right?

17 THE JUROR: Yes.

18 MR. WALKER: All right. All right. And, and if there
19 was a, if there was a particular incident or whatever, you
20 would observed it if due -- to whatever duties go about. I
21 don't know what happens behind the -- out of this jury box.
22 But you would be available to observe whatever---

23 THE COURT: You, you don't need to ask him that. I, I
24 control the jury. They're an arm of the Court.

25 MR. WALKER: All right.

1 THE COURT: He is available. I just sent for him. Our
2 bailiff went and got him and brought him in here.

3 MR. WALKER: I was just getting at his -- I mean I'm
4 gonna leave it at that, Your Honor. I have no further
5 questions but I just like to -- the Court to acknowledge the
6 reason I was asking that question was, was because I, I was
7 generally -- what would -- what would his observance be and
8 his consideration be as to his fellow juries (sic) as to
9 what this -- what the other misconduct has led to. I
10 mean---

11 THE COURT: He said there'd been no discussions. He's
12 not even aware of anything that occurred.

13 MR. WALKER: All right. But when this occurred, how
14 did -- I mean wasn't the jury outside of their deliberation
15 room or whatnot?

16 THE COURT: You, you're asking -- you heard what I
17 heard.

18 MR. WALKER: All right.

19 THE COURT: Have our foreperson step out. Just step
20 out a moment.

21 THE JUROR: Thank you, sir.

22 THE COURT: Thank you, Mr. Foreman.

23 (WHEREUPON, the following takes place outside the
24 presence of all the juror.)

25 THE COURT: You heard what I heard from the solicitor.

1 MR. WALKER: Right.

2 THE COURT: And identifying the officer.

3 MR. WALKER: Right.

4 THE COURT: You heard where it occurred and how it
5 occurred.

6 MR. WALKER: Did the jury -- Your Honor, if I may?

7 The jury shouldn't have been outside of the jury
8 deliberation room.

9 Is that not correct?

10 And he shouldn't had no -- been able to get there.

11 THE COURT: There wasn't any deliberations.

12 MR. WALKER: No, I understand that but is it not
13 correct that the jury has to go -- has to be seated in their
14 deliberation -- in their room, the jury room?

15 They have to sit in the jury room?

16 Is that not right?

17 How did the jury get out the jury room?

18 THE COURT: I let them go to lunch.

19 MR. WALKER: All right. That's all I was asking. I
20 didn't know if they was detained to have to sit inside the
21 jury room during the trial.

22 THE COURT: You were here when I excused them for the
23 luncheon recess.

24 MR. WALKER: As I said, Your Honor, I know that they're
25 in the jury box and they're excused. I know -- I have no

1 idea what happens after that.

2 THE COURT: Well, then you don't listen to me cause I
3 told them I was allowing them to go out to lunch today.

4 MR. WALKER: Well, I don't know if I -- I mean I did
5 not hear out to lunch. I heard out to lunch meaning they
6 was leaving, leaving the box and I don't know if the State
7 leaves for their food or they eat back there. I don't know
8 how the lunch and I really don't care to know. I'm just
9 understanding. But I do have further objection on the -- on
10 misconduct of the jury.

11 THE COURT: On what?

12 MR. WALKER: I do have further objection or further
13 argument for mistrial on the, the one juror that misconduct.

14 THE COURT: I'm going to excuse him from the jury
15 panel.

16 MR. WALKER: All right. I, I ask---

17 THE COURT: He's not going back in the jury room. He's
18 gonna be excused.

19 MR. WALKER: I'm asking for, for a mistrial.

20 THE COURT: All right. Thank you.

21 I would respectfully deny your motion for mistrial.
22 There's no manifest necessity, in the interest of justice,
23 for me to declare a mistrial in my -- and that is in my
24 discretion of whether or not to grant a mistrial or based on
25 what I have heard about the casual conversation between the

1 juror, the alternate, and the officer was an innocent
2 question, an innocent conversation with the juror asking if
3 his son-in-law, who is also an officer, was going to be up
4 here.

5 MR. WALKER: But -- go ahead. I'm sorry. I didn't
6 know you was talking, Your Honor. I thought you was
7 finished.

8 THE COURT: And bring our jury foreperson out here and
9 question him. He informs the Court that there's been no
10 discussions whatsoever. He wasn't even aware that there was
11 any conversation. I even identified, as an officer, I said
12 as a potential witness and he has no awareness whatsoever.
13 So, it could not have tainted any other member of the jury
14 panel or the jury itself. Therefore, I would respectfully
15 deny a motion for mistrial.

16 MR. WALKER: If, if, if I may, Your Honor?

17 I moved for a mistrial earlier on the conditions---

18 THE COURT: Yes, sir.

19 MR. WALKER: ---that Ms. Davis and also I was gonna --
20 I was gonna acknowledge something. I acknowledge something
21 yesterday and I didn't know how to exactly to do it and
22 especially I told you earlier today we was having -- I was
23 having issues with competency. So, that was one of the
24 issues.

25 But yesterday I seen a juror -- I seen two juries (sic)

1 have a conversation as they was going through that door.
2 And it may of been that man that is misconducted (sic) but I
3 have the numbers written down over here. I counted them. I
4 had to wait to today to see how they exited cause you say
5 they always sit in the same seat. They sat in the same seat
6 when they was leaving.

7 THE COURT: That was my observation.

8 MR. WALKER: Exactly but, per my observation, I counted
9 them to see which two juries (sic) cause I knew, I knew the
10 one particular guy that was associated in that, in that
11 conversation and I knew who he had spoke to but I didn't
12 know where he was seated. So, I, I know his number, who he
13 was, but it was two guys and I think it was that one jury
14 (sic) that misconducted (sic).

15 THE COURT: What, what, what misconduct?

16 I'm still not tracking the juror.

17 MR. WALKER: The one that you're releasing, Your Honor.
18 I think it was him.

19 THE COURT: That's not misconduct.

20 MR. WALKER: Or whatever it may be, Your Honor.

21 THE COURT: It is not misconduct.

22 MR. WALKER: All right. What is it?

23 THE COURT: It's an innocent conversation.

24 MR. WALKER: Okay. Well, I'm gonna leave it at that
25 but I'm saying that this -- that particular jury (sic) had a

1 conversation when they was coming through that door with the
2 other jury (sic). One conversation said let's get him,
3 let's convict him to the other jury (sic). Now, I have the,
4 I have the numbers written down, counted for this, that.

5 I did not how to know -- I did not know how to go about
6 it. I wish to address it to the Court now. I would of
7 addressed it back then but, two reasons, I did not -- first,
8 I didn't know where they was seated. I only knew one jury
9 (sic). I did not know his number and I did not know
10 anything about the -- again, my vision is very far and near.

11 So, I couldn't, couldn't see very far. So, I waited
12 and, and waited to see if they sat back in the same seat,
13 and I acknowledge -- now, I have the numbers over there. I
14 don't know exactly who they are but I'm pretty sure I could
15 give you the numbers my -- the rest of the information on
16 that, and I will also move for mistrial on that. And I'm
17 also moving a mistrial for Ms. Davis talking to the witness.

18 THE COURT: Place him under oath please, Madam Clerk.

19 MR. WALKER: All right.

20 (WHEREUPON, Mr. walker was placed under oath at this
21 time.)

22 THE COURT: Come around to the witness stand.

23 (WHEREUPON, the defendant complies.)

24 THE COURT: Tell me, tell me where you were sitting or
25 standing or where you were in the courtroom when you heard

1 this conversation.

2 THE WITNESS: I was at the defense table, Your Honor,
3 seated at the same seat that I'm sitting at now.

4 THE COURT: And tell me where the jurors were.

5 THE WITNESS: The juries (sic) was leaving the jury box
6 through the side door beside the, beside the witness stand.

7 THE COURT: And what time did this occur?

8 THE WITNESS: As we was closing trial. As we was
9 adjourning for the day yesterday.

10 THE COURT: Adjourning for the day yesterday?

11 THE WITNESS: That's correct.

12 THE COURT: And you just bringing it to -- that was
13 around five o'clock. So, you're just bringing it to the
14 Court's attention at 2:45 on Friday when it occurred at the
15 end of a day five o'clock on Thursday?

16 THE WITNESS: That, that's correct. The reason so is
17 because one, I had to exserve (phonetic) the second jury
18 that was having a conversation. And the -- another reason
19 was I, as I'm having competency issues, and I wasn't -- I
20 had to, I had to sit down and think about what I needed to
21 do and how I needed to do it. And I, I -- my, my thoughts
22 are very cloudy and very, and very distinctive.

23 So, I had to get my mindset and research on what to do,
24 and I knew, from prior, prior research, to inform the Court.
25 And I know it should of been done immediately but I couldn't

1 do it at that time for I did not know exactly, exactly how
2 to address it. One, one I'm going to address it, and I also
3 needed to observe the second jury (sic) before -- to finish
4 my whole conclusions cause I knew, if I just presented one
5 jury (sic) as that, that argument, it wouldn't, it wouldn't
6 of been -- it wouldn't of been exstantial (phonetic).

7 THE COURT: why didn't you bring it up earlier today?

8 THE WITNESS: I attempted to, Your Honor, today. I, I
9 written it down. I waited till the jury -- because it was,
10 it was -- the jury coming, I had to wait, as I say. It
11 happened at the closing of trial, the adjourn of trial
12 yesterday. As, as the jury generally -- once they come back
13 in today, I observed their numbers and I waited, I waited
14 for them to exit so I could see who they were and which ones
15 were, were the ones -- the description of the two they was
16 talking. I knew one and I had to see the other one, see the
17 other one so that I can properly inform the Court.

18 THE COURT: And what did you hear?

19 THE WITNESS: One said -- one said can -- convict him.
20 The other one, the other one said let's get him, and then
21 they, they kind of like, in a, in a prepoturas (phonetic)
22 way---

23 THE COURT: In what?

24 THE WITNESS: In like a preposterous way, they, they
25 said that -- they said that -- I think it was let's get him

1 like in a, in a real preposterous way. Like a sex crime.
2 The, the first was like let's convict him. The second was
3 like let's get him and then the third was like in a very
4 preposterous way with them two speaking---

5 THE COURT: So, now it's three jurors?

6 THE WITNESS: ---at the same time.

7 No, it's two jurors but --.

8 THE COURT: Go right ahead.

9 THE WITNESS: They was, they was copairing (phonetic)
10 at the same time. They were saying the same things at the
11 same time like, like to be together and to focal (sic)
12 together.

13 THE COURT: And describe those jurors for me please.
14 Describe number one that says let's convict him.

15 THE WITNESS: He, he was, he was a white male with like
16 grayish hair. I believe he had on, maybe yesterday, a
17 grayish, grayish shirt. It was a either a dark or neutral
18 colored shirt. And the other, the other, the other guy was
19 like another white guy behind it, and there was the, the,
20 the black jury (sic), he was also kind of---

21 THE COURT: So, there was a third juror there?

22 THE WITNESS: Well, no, but he kind of acknowledged it
23 and kind of, kind of smiled at, at that time too whenever
24 cause I, I, I think he may have, have been preposterous with
25 it but he kind of smiled.

1 THE COURT: He might of been preposterous with it?

2 THE WITNESS: With it, yes, sir.

3 THE COURT: And that second white male, describe him.

4 THE WITNESS: Again, he was, he was a, a white male.

5 Kind of thirties, forties, and he looked, looked to be maybe

6 a little bit darker colored hair, a little bit more natural

7 colored hair rather than gray. I couldn't tell his, his

8 further description cause they was crowded and bundled

9 together as they -- the juries (sic) were walking out.

10 THE COURT: Why didn't you bring this to my

11 attention---

12 THE WITNESS: At -- I tried to---

13 THE COURT: ---earlier---

14 THE WITNESS: I, I tried, Your Honor.

15 THE COURT: ---today?

16 THE WITNESS: I, I, I tried, Your Honor, and, no

17 offense, and no offense taken (sic) but due to your

18 aggressiveness and argument and your -- I, I just had to, I

19 had to, I had to think about how I wanted to produce it and

20 address it appropriately, properly to the Court especially

21 my pro se-ism.

22 THE COURT: I'm not gonna allow you to slip into the

23 record my demeanor like that---

24 THE WITNESS: You may scribe to it.

25 THE COURT: ---in, incorrectly. I'm not aggressive.

1 THE WITNESS: Yes, sir, Your Honor.

2 THE COURT: I control the courtroom and I expect all
3 participants in the courtroom to respect the decorum and the
4 dignity of the Court. I do not like a waste of the Court's
5 time or a waste of the jury's time by any of the parties. I
6 would compare my demeanor to me to you with my demeanor with
7 the solicitor when the exhibits weren't correct.

8 THE WITNESS: Correct, Your Honor.

9 THE COURT: I like attention to detail and I like to
10 move the case along at an appropriate pace. Not a marathon
11 pace but an appropriate pace.

12 THE WITNESS: If, if I may?

13 THE COURT: I am not aggressive towards you no more
14 than I am towards the State in that regard. You're presumed
15 to be innocent. You have chosen to represent yourself. You
16 have participated in this process fully and completely.

17 As I say, you have been found to be competent and
18 chosen to represent yourself after full warnings. We all
19 have the right, as individuals, to make choices. Those
20 don't have to be wise. We have the right to make unwise
21 choices.

22 THE WITNESS: If I, if I may, Your Honor?

23 Rather than, than, than state the word aggressive, I
24 would like to replace that word with discretion.

25 THE COURT: Anything else you want to say, Mr. Walker?

1 THE WITNESS: I, I, I would like to produce the, the
2 jury. My -- the numbers that I observed on the jury and I
3 have one matter that I'd like to take up with the Court.

4 THE COURT: So, from your chair at the defense table to
5 over here at this door that goes out to my back right, when
6 the jury leaves, and there's a small space out of the jury
7 box till they get to that door, you heard this conversation
8 between these two jurors with the black -- is that the
9 African-American male juror?

10 THE WITNESS: He, he may, he -- I'm, I'm not sure a
11 hundred percent that he acknowledged it, Your Honor.

12 THE COURT: I'm just talking about that.

13 THE WITNESS: Yes, sir.

14 THE COURT: Is that the male or the female
15 African-American juror?

16 THE WITNESS: The male.

17 THE COURT: And you say he acknowledged preposterous
18 with it?

19 THE WITNESS: He, he may have. From my, from my
20 observance, Your Honor, when I seen him, it was, it was, it
21 was like he kind of was spaced and then he like, he like
22 tensed like he acknowledged but then he may not have
23 acknowledged it. But from, from his, from his like
24 spacedness (phonetic) to, to his, his proportion or his --
25 it, it looked like he may have acknowledged it.

1 THE COURT: All right. Do you have another matter,
2 Mr. Walker?

3 THE WITNESS: Yes, sir.

4 If, if the reporter -- may I no longer on the, on the
5 stand but I'll sit here, Your Honor.

6 The thing I have, Your Honor, is my competency. I'm
7 having trouble, I'm having trouble with thoughts. I'm
8 having trouble with a, with a lot of issues, depression. I
9 think I'm having manic depression and today's been a little
10 bit better but I wouldn't give any impressions as it's
11 getting better cause it's getting real worse.

12 I'm having trouble breathing. At -- when I go back to
13 my cells (sic) at night, and when I wake up in the morning,
14 I'm, I'm hearing voices and the voices is not necessarily
15 people voices, like people talking, but like, like I can
16 hear things that you said yesterday. Like I forget what it
17 was but there was, there was a word that you was a saying.
18 It was like that you was in the room with me saying the --
19 some of the things that you said repeatedly over and over.
20 I was hearing them voices.

21 I, I laid -- when I, when I go, when I try to lay down
22 and rest, you know, even, even just to relax, I go to like a
23 depression state. I, I like to go into like a delusional
24 coma and I, I start hearing voices and I, I, I'm -- my, my
25 heart rate goes down. I can't breathe and I just -- you

1 know, I can be in there for 15 minutes. I could be in there
2 for, for an hour, two hours, and I'm having extreme trouble
3 sleeping. I can't, I can't go to sleep. I'm having trouble
4 breathing.

5 It's, it's so -- well, it's, it's so bad, my, my, my
6 body hurts. I can feel my nerves in my stomach and it, it
7 may be from the, the stress of the trial that's activating.

8 I did -- as I explained to Mrs. Maddox, I spoke with
9 her on the telephone earlier, I was kind of masking a little
10 bit before trial, my, my mental health, and the reason being
11 is cause I was trying to get this over with and out the way.
12 And, and I just tried, I tried to get it out the way.

13 I did let her know, on the Friday before the trial when
14 she evaluated me, that a week or two beforehand I was having
15 a few issues. But she didn't seem -- she seemed to
16 acknowledge. She, she went into it but she didn't seem to
17 go into it deep enough to, to understand it or to, to
18 attention it. And I brought it to her attention and, and
19 basically she's acknowledged now that, if, if anything needs
20 to be done, that I need to address it to the Court. And if
21 the Court sees fit for a new evaluation, Your Honor, the
22 Court needs to order that and not -- I'm having severe manic
23 problems and person and also some psychedelic and
24 psychological problems.

25 THE COURT: Anything else you'd like to say,

1 Mr. Walker?

2 THE WITNESS: No, sir.

3 If, if I may add, a few delusional thoughts. Today I
4 haven't had a lot of this delusional thoughts but yesterday
5 and prior, during this trial, and from yesterday all the way
6 maybe a week and a half, I'd say a week and three days, four
7 days before the trial begin, I was having -- I, I started
8 going to a manic episode and I started having real
9 delusional thoughts.

10 Like, like certain people was out, you know, not
11 necessarily to get me but, like I say, like watching me and
12 like trying to exserve (phonetic) me and; and certain things
13 like that, if you may, Your Honor.

14 THE COURT: Thank you, Mr. Walker. You may step down.

15 THE WITNESS: Thank you so much, Your Honor.

16 Would you like the numbers, Your Honor?

17 THE COURT: The juror numbers?

18 MR. WALKER: I did have it right here, Your Honor. I
19 guess I might have to look for it.

20 (Pause.)

21 MR. WALKER: Your Honor, I believe it was -- I don't --
22 I no longer have the, the, the -- my notes seem to disappear
23 over here whenever I went to the stand. But it was -- I
24 believe it was six and eight from the front and as they let
25 out. It was number six and number eight as the first man

1 out is number one.

2 THE COURT: So, you're saying, if it was in the
3 sixth -- if he was in the sixth seat?

4 MR. WALKER: Yeah, probably -- from the first man
5 forward---

6 THE COURT: The first one, two, three, four -- one,
7 two, three, four, five, six?

8 MR. WALKER: Six and eight, Your Honor.

9 THE COURT: And then seven and then eight?

10 MR. WALKER: That's correct, Your Honor.

11 THE COURT: Eight would -- well, eight here, this, this
12 chair, that chair on the back --.

13 MR. WALKER: At --.

14 THE COURT: -- stays empty. And so, it would of been
15 the same gentleman in the orange t-shirt?

16 MR. WALKER: I'm, I'm guessing, yes. That's what I
17 said earlier, Your Honor. I think it's the same guy that
18 we're having with -- that had the casual conversation about
19 the thing. And I'd like to follow that question with one
20 sense (sic). I mean that, that objection, Your Honor. I
21 understand you made a ruling. You don't want to hear it but
22 maybe the Court could take this into consideration.

23 And that's basically that juries (sic) influences upon
24 law enforcement and what he has, you know, produced within
25 the trial. And, and it may of influenced the trial or other

1 juries (sic).

2 I understand there's been no testimony as to his
3 influences but that's not to say so with his influence of
4 law enforcement.

5 THE COURT: All right. Court will be in recess 15
6 minutes.

7 Thank you. Thank you very much.

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: All right. What I intend to do is, as far
10 as the jury issue right now that Mr. Walker testified to,
11 I'm gonna take that under advisement and investigate that
12 further with the individual jurors described.

13 However, his further testimony concerning his
14 description of his mental state, because of that, I'm going
15 to momentarily bring the jury panel out here and release
16 them until Monday morning at nine o'clock..

17 I'm -- I have sequestered -- the juror alternate has
18 not been back in the jury room. But since, based on
19 Mr. Walker's testimony that he was one of the two jurors
20 that were -- had this conversation going out the door from
21 the jury box to the back hallway that he, Mr. Walker, heard,
22 I have to bring him back separately and distinctly also
23 Monday.

24 And I might add at this point, if there's any other
25 person in the courtroom that heard that conversation or may

1 corroborate Mr. Walker's testimony, I'd ask you to please
2 stand.

3 (WHEREUPON, no one responds.)

4 THE COURT: And I'll certainly ask my law clerk also
5 personally although she has not indicated that to me.

6 Ms. Hahn -- excuse me, Ms. Hahn. I've been gone for
7 several months. I apologize. Ms. Mauldin.

8 Would you prepare me an order please for Doctor Maddox
9 to evaluate Mr. Walker for competency over this weekend?

10 He -- she have access to him at the Department of
11 Corrections at Broad River and she conduct a competency
12 evaluation. Further, that she appear at nine o'clock Monday
13 morning.

14 MS. MAULDIN: I will, Your Honor.

15 THE COURT: All right. And I don't, like I said, I
16 don't feel comfortable, based on his, Mr. Walker's
17 self-reporting of his mental state, of mental condition
18 symptoms. I will say, for the record, that my observations
19 of Mr. Walker, mine, over the course of these three and a
20 half days, is that stress, I think, is a given when one is
21 on trial for whatever offense, but clearly for the highest
22 offense known to our criminal justice system, and I
23 understand there would be stress and anxiety.

24 And that being said, as I've observed him and listened
25 to him, it appears to me that his demeanor has gotten better

1 and calmer once the trial started. I noted he, in his
2 conversation or cross-examination of both experts, both Mr.
3 Hines and particularly Lieutenant Smith, Dustin Smith I
4 believe his name is, that he was tracking very well. He was
5 citing research that he had obviously done or others had
6 done perhaps and provided it to him. He was articulate
7 on -- with an expert forensic toxicologist and he got his
8 points across.

9 I think he is also done that with other of the
10 witnesses, both Mr. Ray, Mrs. Banty, the crime scene
11 officer, Sullivan, Ms. Inabinett. Although he asked
12 questions of, several questions of Ms. Inabinett that I
13 thought were not relevant as to music and shopping habits
14 such like that. He's articulate in asking Ms. Inabinett how
15 she knew that he, Mr. Walker, was the individual that
16 Catherine Carrie was stressed about and crying about.

17 I think, wisely, I don't believe he had significant
18 cross-examination of Ms. Walker on -- to indicate that she
19 ever met him, seen him, or -- nor had she met or seen Mrs.
20 Banty. And also Mr. Neel.

21 So, I have seen what I would call -- I don't want to
22 coach it as a positive direction in his demeanor because
23 it's never been negative to the extent that I questioned his
24 competency but he appeared to be calmer and focused.
25 Particularly when the jury was in the courtroom.

1 So, I'm gonna bring 11 members -- no, excuse me.
2 Thirteen members, 12 primary, one alternate out, I'm gonna
3 release them for the weekend to be back at nine o'clock
4 Monday morning.

5 THE CLERK: May I approach, Your Honor?

6 THE COURT: Yes, ma'am.

7 (Pause.)

8 THE COURT: I'll, I'll be in, I'll be in another
9 courtroom at nine o'clock Monday morning. I don't know
10 which one. Because the jury -- a new pool is coming in here
11 Monday.

12 THE COURT: Yes, sir.

13 SOLICITOR GRAHAM: I had a few matters, Your Honor.

14 I don't know whether the clerk would be able to
15 identify, by the chair number, the people he's referring to
16 so you'd at least have those people identified.

17 THE COURT: Well, one of them is the alternate --

18 SOLICITOR GRAHAM: My understanding---

19 THE COURT: -- I think is my understanding. One of
20 them's the alternate that had the conversation with Officer
21 Wharton.

22 Isn't that correct, Mr. Walker?

23 MR. WALKER: From my observance, Your Honor, I believe
24 that is correct. He fits the -- he fits very well the
25 description I see yesterday. Like I can -- like I said

1 earlier today, I can't give immediate description on what
2 they looked like.

3 THE COURT: well, I, I thought you told me it was the
4 one that I questioned --

5 MR. WALKER: Right.

6 THE COURT: -- that had the -- one of the two is the
7 one I questioned that had the conversation with Officer
8 Wharton.

9 MR. WALKER: Right. I didn't give a positive on that,
10 Your Honor. I give a relevant. He fit, he fit who it was
11 and I, as I said, Your Honor, I can't -- I counted them and
12 I knew who, who they looked like.

13 THE COURT: well, I thought you also wrote down the
14 numbers?

15 MR. WALKER: I did, but when I went to the witness
16 stand and come back, it was no longer where I placed it,
17 Your Honor.

18 THE COURT: So, your note disappeared while you were on
19 the witness stand?

20 MR. WALKER: That is correct, Your Honor. I had a
21 note, a Post-it note, that said six and eight I believe, and
22 I had a colon in the middle of it so I knew the difference,
23 and I had at jury or something and it's no longer here.

24 THE COURT: All right.
25 solicitor.

1 SOLICITOR GRAHAM: I'm sorry. The other thing I was
2 gonna ask, Your Honor, was Mr. Dan is in charge of the jury.
3 So, he would of been at that door. He's not been in the
4 courtroom when you asked for people to rise. So, I would
5 ask it at another time when he comes in for you to ask him
6 whether he's aware of any conversations.

7 MR. WALKER: If, if, if I may, Your Honor?

8 From my vision -- from my recollection of, of the thing
9 that he was at the door but he give the door to the, to the
10 juries (sic) and the juries (sic) give the door to each one
11 of their other juries (sic) as they was exiting basically
12 holding the door for each one of them and he had exited the
13 presence. was like leading the jury and like six of them
14 had left -- went out. So, I doubt he had any presence.

15 THE COURT: well, you may have doubts. I may have
16 questions.

17 MR. WALKER: Thank you so much, Your Honor.

18 SOLICITOR GRAHAM: I would ask the Court to consider
19 maybe having Doctor Frierson have access to Mr. Walker since
20 he did the very first original competency and that way we'd
21 actually have---

22 MR. WALKER: Defense agrees.

23 SOLICITOR GRAHAM: ---two doctors.

24 MR. WALKER: Defense agree, agree to that very well
25 too.

1 THE COURT: I won't do that in lieu of Doctor Maddox.

2 SOLICITOR GRAHAM: No, sir.

3 THE COURT: I would have them -- I would allow both of
4 them to have access.

5 SOLICITOR GRAHAM: That, that wasn't -- my question was
6 would it be -- do you, do you think it would be beneficial
7 to have Doctor Frierson evaluate him as well?

8 THE COURT: I don't have any objection to that.

9 Do you, Mr. Walker?

10 MR. WALKER: No, sir, I, I think the defense would,
11 would like that very well also. As me, I would like that
12 very well, Your Honor.

13 THE COURT: All right. Would you put that in the order
14 also --

15 MS. MAULDIN: Yes, Your Honor.

16 THE COURT: -- Ms. Mauldin?

17 MS. MAULDIN: Your Honor, we probably need to get in
18 touch with him as soon as possible.

19 THE COURT: I've contacted Doctor Maddox.

20 MS. MAULDIN: Yes, sir, and as far as Doctor Frierson.

21 THE COURT: Cause I've got to do something with that.
22 She's suppose to be in Court at nine o'clock Monday morning
23 in Charleston, and I'm trying to get in touch with that
24 judge now to take care of that issue.

25 MS. MAULDIN: Would, would Your Honor mind if Ms. Payne

1 is excused to get in touch with the Department of Mental
2 Health to find out whether Doctor Frierson---

3 THE COURT: I, I have no objection whatsoever. I
4 appreciate the assistance and I, I don't have a number for
5 Doctor Frierson.

6 SOLICITOR GRAHAM: I might, Your Honor.

7 THE COURT: Okay.

8 SOLICITOR GRAHAM: If I do, I'll provide that to Ms.
9 Mauldin.

10 THE COURT: And whoever y'all think I need to call to
11 make sure he gets seen or for him to be seen at DOC this
12 weekend.

13 SOLICITOR GRAHAM: And the other, the only other thing
14 is I will put a request out here from Doctor Ross. We have
15 three witnesses left. She does things for the hospitals, I
16 believe, in the morning and has always asked that she only
17 have to testify in the afternoon. I'm just making the Court
18 aware of that.

19 She's under subpoena. If you tell me we're starting
20 there, I'll tell her she has no choice but to be here. She
21 told me that she could be here at one o'clock, Your Honor.

22 THE COURT: Well, maybe we can negotiate with her to
23 about a noon cause I don't know how long the jury is gonna
24 take and I intend to -- I hope to get back in this courtroom
25 after they qualify the panel. I, you know, that would just

1 be my preference to finish the trial in here but I, I'll
2 certainly consider that.

3 SOLICITOR GRAHAM: Thank you, Your Honor. That's all.

4 THE COURT: Anything further, Mr. Walker?

5 MR. WALKER: No, sir, not at this -- not at this time.

6 THE COURT: All right. Bring me the panel please but
7 not the sequestered alternate.

8 THE OFFICER: Yes, sir, Your Honor.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: Welcome back, ladies and gentlemen.

12 I apologize again for the delay. I know I have no
13 credibility with y'all whatsoever with my time telling
14 abilities. I apologize to you for that. It's very
15 difficult to gauge how long a certain matter may take and
16 it -- the time it takes from its starts to its finishing,
17 whenever that may be, so to speak.

18 But because of a issue that's come up, not the fault of
19 either of the parties, I'm gonna have to release y'all today
20 and ask you to come back at nine o'clock Monday morning. I
21 had hoped to get us further along in the testimony today but
22 I don't always get what I want. Not only in the courtroom,
23 when I have this on, and surely not outside that door when I
24 don't have this on. But it's a matter I must address and I
25 do not want to waste y'all's time.

1 I'll ask y'all a couple of questions before you leave.

2 Is any member of the jury panel formed or expressed any
3 opinion about the guilt or the innocence of the defendant at
4 this time, if so, please stand.

5 (No response.)

6 THE COURT: Has any member of the jury panel read,
7 seen, or heard anything about the facts of the case outside
8 of the courtroom, if so, please stand.

9 (No response.)

10 THE COURT: Has any member of the jury panel had any
11 conversations with any other individual about this case, if
12 so, please stand.

13 (No response.)

14 THE COURT: Thank you. Thank you very much for, for
15 your -- honoring your oath, which I know you will do.

16 Please remember, do not discuss this case with others,
17 your fellow jurors, family, friends, anyone else. Do not
18 read, watch, listen to any news reports about the case, past
19 or present, should there have been, if there are any. Do
20 not do any independent research or any research on the
21 Internet.

22 With that being said, nine o'clock Monday morning. I
23 apologize for the disruption to your personal and
24 professional lives but I assure you you are a great service
25 to both Mr. Walker and the State and the justice system.

1 Thank you. Thank you very much.

2 Hope y'all have a pleasant weekend.

3 (WHEREUPON, the following takes place outside the
4 presence of the jury.)

5 THE COURT: Yes, sir, Mr. Walker.

6 MR. WALKER: Your Honor, from my observance, now that I
7 just seen the jury, it -- I can pretty much tell you exactly
8 who it was. It was the young man with the beard that was
9 sitting next to the guy with the suit in the second seat
10 over. The last over there. The young man with the beard
11 and also I'm pretty sure it was the alternate.

12 THE COURT: who, who is that juror?

13 MR. WALKER: I don't know his number. I don't know his
14 number. He is the guy that, that, if you observed the jury
15 now, he was the very, the very last guy on the back, the
16 backside. There was a missing chair right. He was the guy
17 next to the missing chair.

18 THE CLERK: He's the other alternate.

19 SOLICITOR GRAHAM: Just for clarification, we're
20 talking -- I think he's on the back row?

21 I don't know if he's talking about the very far right
22 of the guy that had the jacket on or to the left of the guy
23 in the jacket.

24 MR. WALKER: I'm speaking of if, if you're facing to
25 the right---

1 THE COURT: walk over there and sit in the chair,
2 Mr. walker.

3 (WHEREUPON, defendant complies.)

4 MR. WALKER: Your Honor, it's right here in this chair.
5 Also, just---

6 THE COURT: Is he the gentleman that's been taking
7 notes?

8 MR. WALKER: That's what I was about to say. Just be
9 relevant, Your Honor, that I've just seen all the jury's
10 notes.

11 THE COURT: And his notes right there?

12 MR. WALKER: The whole thing. All the jury's notes is
13 over there but yes, this second bench right here, Your
14 Honor.

15 See this seat right here, Your Honor?

16 Not this one but this one right here. I'm positive.

17 THE COURT: Who is that?

18 THE CLERK: That would be the other alternate, Your
19 Honor, because the two alternates sit in the very last
20 chairs --

21 THE COURT: All right.

22 THE CLERK: -- on the back row.

23 THE COURT: All right. well, we have the -- that
24 number pretty easy.

25 THE CLERK: Yes, sir.

1 SOLICITOR GRAHAM: Number 41 I think.

2 THE CLERK: Yes, sir. Number 41, he was seated as the
3 last alternate.

4 THE COURT: Forty-one and then the other one that I've
5 talked to for a moment is 123?

6 THE CLERK: Yes, sir, Your Honor.

7 THE COURT: All right. All right. Nine o'clock Monday
8 morning.

9 What courtroom you gonna put me in at nine o'clock?

10 THE OFFICER: 3-B, Your Honor.

11 THE COURT: 3-Bravo. That's the middle one.

12 THE CLERK: Yes, sir.

13 THE COURT: It's the middle courtroom downstairs.
14 All right. I'll be delighted.

15 Yes, sir.

16 SOLICITOR GRAHAM: The only thing I was gonna ask, Your
17 Honor, just so Your Honor can be aware of it, I have tried
18 to pre-mark photographs that I intend to introduce with
19 Doctor Ross in the autopsy, and I have provided the
20 defendant with a copy of them in black and white with
21 numbers. I think per the exception of maybe three that have
22 since been labeled with a B, which were just going to be for
23 either Court Exhibit or for identification, but not to go in
24 front of the jury. They were copies on the one where it was
25 redacted so that it wouldn't be as gruesome.

1 And then the last two we planned on introducing, not in
2 color but in black and white, those are numbered but behind
3 them are the colored versions so the Court would have a
4 record of our intent to, to make them available for the jury
5 to view.

6 THE COURT: All right.

7 MR. WALKER: If I may, Your Honor?

8 THE COURT: No, I don't, I don't want to hear from you
9 this afternoon, Mr. Walker. I want you to be seen by Doctor
10 Maddox and/or Doctor Frierson.

11 MR. WALKER: Can -- and if, if I am able to proceed and
12 if I do proceed, can the, can the Court be honorable enough
13 to take this matter that Mr. Graham has just took up with
14 the Court back up with him in my presence or with my
15 presence?

16 THE COURT: Do what now?

17 MR. WALKER: Can the Court take this matter that
18 Mr. Graham just took up with the Court with, with me at a
19 presence in that?

20 It's my misunderstanding Mr. Graham has stated some
21 stuff to the Court. I'd like to say -- I'd like the Court
22 to take some of my, some of my testimony into consideration.

23 THE COURT: I will before I rule on it.

24 MR. WALKER: All right. That's all I was asking.

25 THE COURT: But you have questioned your competency and

1 requested to be seen by Doctor Maddox.

2 MR. WALKER: I mean---

3 THE COURT: That's why I'm quitting for the day and
4 quitting for the weekend. That's why I'm not interviewing
5 any of the jurors this afternoon and waiting until Monday.
6 I want to hear what the opinions are of either one or both
7 of the doctors.

8 All right?

9 MR. WALKER: All right.

10 THE COURT: I'll be delighted to hear from you once I
11 get the opinions of the psychiatrist, psychiatrists, plural,
12 psychiatrists that evaluate you over the weekend.

13 All right?

14 MR. WALKER: Thank you so much, Your Honor. Have a
15 great weekend.

16 THE COURT: Thank you. Thank you, Mr. Walker.

17 All right. We'll be in recess until nine o'clock
18 Monday morning and resume at that time.

19

20 (WHEREUPON, Court was in recess for the evening.)

21

22

23

24

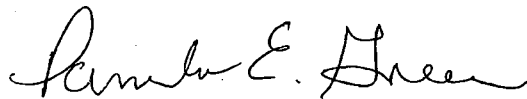
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Lexington County, South Carolina, on the 23rd and 24th days of February, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 29th, 2017

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF LEXINGTON) IN THE COURT OF GENERAL SESSIONS

3 The State,) TRANSCRIPT OF RECORD
4 -vs-) 2015-GS-32-0234
5 David Richard Walker, Jr.,) February 27, 28 and
6 Defendant.) March 1, 2017
7 Lexington, South Carolina

8
9
10 B E F O R E:

11 HONORABLE R. KNOX MCMAHON, JUDGE; and a jury
12
13

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

15 SHANNON A. DAVIS, ESQUIRE
16 D. SHAWN GRAHAM, ESQUIRE
17 Attorneys for the State

18 PRO SE
19 Attorney for the Defendant
20
21
22

23 Margaret A. Woods
24 Circuit Court Reporter
25

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1 (Proceedings February 27, 2017)

2 (Whereupon, a discussion was held off the record.)

3 (The following takes place outside the presence of the
4 jury.)

5 THE COURT: Let's see, our first order of business, uh,
6 Mr. Walker, uh, Ms., uh, uh, s -- solicitor, is a competency
7 evaluation, a competency hearin', is that correct?

8 MR. WALKER: Yes.

9 THE COURT: That correct, Mr. Walker?

10 MR. WALKER: Yes, sir.

11 THE COURT: Solicitor?

12 MR. GRAHAM: Yes, sir.

13 THE COURT: Mr. Walker, did you have the opportunity to
14 meet with a psychiatrist, uh, over the weekend?

15 MR. WALKER: Yes, sir.

16 THE COURT: And, uh, who did you meet with?

17 MR. WALKER: Uh, Dr. Frierson, uh, Dr. Maddox.

18 THE COURT: Alright, so both Dr. Frierson and Dr. Maddox?

19 MR. WALKER: That's correct, Your Honor.

20 THE COURT: Alright, well I guess this is the, uh, second
21 for me at least, uh, presiding in second Blair hearing.
22 Solicitor, you wanna call a witness?

23 MR. GRAHAM: Yes, Your Honor, the State would call
24 Dr. Maddox or recall Dr. Maddox to the stand.

25 THE COURT: Alright, thank you.

DONNA SCHWARTZ MADDOX - DIRECT EXAMINATION BY MR. GRAHAM

1 (Whereupon, a discussion was held off the record.)

2 (Whereupon, the witness came forward.)

3 THE CLERK: Place your left and raise your right.

4 DONNA SCHWARTZ MADDOX, having been
5 first duly sworn, testified as follows:

6 THE CLERK: Have a seat please, ma'am, state your name
7 upon, seat, being seated, please, ma'am, spelling your last.

8 THE WITNESS: Okay. First name Donna, middle name
9 Schwartz, last name Maddox, M-A-D-D-O-X.

10 DIRECT EXAMINATION BY MR. GRAHAM:

11 Q. Dr. Maddox, how are you this mornin'?

12 A. Good mornin', I'm fine.

13 Q. Did you have an opportunity to meet with Mr. Walker over
14 this weekend regarding, his concern regarding his competency?

15 A. Yes, I met with him for an hour and a half yesterday at
16 Broad River ---

17 Q. In a ---

18 A. --- and I also just talked with him very briefly this
19 morning.

20 Q. --- in addition, um, yesterday when you met with him at
21 Broad River, was Dr. Frierson also with you as well or ---

22 A. Yes.

23 Q. --- or did you all meet separately or together?

24 A. Dr. Frierson met with him separately but probably for the
25 last five minutes of Dr. Frierson's evaluation I came in, um,

DONNA SCHWARTZ MADDOX - DIRECT EXAMINATION BY MR. GRAHAM

1 at f -- at four o'clock and so I observed also Dr. Frierson
2 performed a mental status examination of Mr. Walker so I was
3 i -- present for that part.

4 Q. Okay. Could you tell the Court, um, about your
5 interaction with Mr. Walker yesterday regarding his
6 competency.

7 A. Yes. Um, Your Honor, what, uh, Mr. Walker, I spent about
8 a hour and a half with him and also as I mentioned observed
9 Dr. Frierson's mental status exam, uh, Mr. Walker, uh,
10 reported that, he's, um, described two episodes in the last
11 week where he felt, um, as if he had difficulty concentrating,
12 difficulty organizing his thoughts and some difficulty trying
13 to, uh, collect his thoughts and get them together. Um, the
14 first episode he described was during his opening statement,
15 he reported that he became, um, extremely anxious, had some
16 difficulty concentrating and had to stop his opening statement
17 earlier than he would have wished, he also, uh, described, uh,
18 one episode, uh, I think later that was, uh, not as
19 significant but he's had two times in the last week that he
20 noted he had some difficulty organizing his thoughts. Um, he
21 reports he feels he he has done better during the week as he
22 cross-examined witnesses, um, he felt like his cognitive
23 performance was better during the the latter part a the week,
24 that was, uh, symptom number 1.

25 Symptom number 2 he has been complaining of some

1 hallucinations, um, the hallucinations are auditory in nature
2 and he reported that he has been hearing female and male
3 voices. He reported, uh, Your Honor, the male voice one a
4 them appears to be yours and that it's, uh, he hears, uh, um,
5 you calling his name sayin', "Walker, Walker, Walker," um,
6 they're not command in nature, the hallucinations are not
7 command in nature. He denies that he has had any
8 hallucinations while he has been in the courtroom or during
9 the performance of his duties. Um, Your Honor, what he states
10 is that in the evenings, um, he he will be in court during the
11 daytime and then as he returns to the Department a Corrections
12 in the evening when he is trying to sit down, prepare his
13 thoughts for the next day, try to get his records together
14 that those are the times when the hallucinations appear to
15 bother him.

16 Um, the third set of, uh, in in my opinion the third set
17 of, uh, symptoms that he's expressed, he uh, yesterday
18 discussed he has a very bizarre somatic delusion, uh, and and
19 it's probably not, it it's not related to his trial
20 proceedings at this point but he did describe, and I told him
21 I would put it on the record and he was fine with that, Your
22 Honor, he has, um, a belief that he's, his body's infested
23 with three different kinds of worms and he, uh, went into a
24 colloquy that, um, m -- a few years ago when he was having
25 his, uh, deep venous thrombosis ultrasound that the, uh,

DONNA SCHWARTZ MADDOX - DIRECT EXAMINATION BY MR. GRAHAM

1 sonographer saw a worm in there, a a long, a kind of tapeworm
2 so to speak and that he, um, no one's ever really worked it
3 up. He said that the the s -- uh, sonographer wrote it down
4 that there was a presence of a worm in his, uh, blood clot, he
5 stated later a radiologist also observed on another scan a
6 similar, um, finding. He reported that he has, uh, different
7 kinds a worms, Your Honor, and one kind lives in his stomach,
8 well they they travel, but he he's concerned, he says that one
9 a these, um, eat his food, they sometimes will digest his
10 medicine if he doesn't crush them and that they, and he
11 actually showed me some areas on his body where he thought
12 were consistent with that. Um, the main symptom that he
13 reported and another one is that one a the worms comes up
14 through his lacrimal duct and it's a peep hole and so he's had
15 some sensation sometimes physically where he feels
16 uncomfortable from that, um, those were his symptoms.

17 Um, the circumstances that I think have changed over the
18 weekend for the better, um, for Mr. Walker has been that after
19 Friday afternoon, Your Honor, they began administering his
20 Tylenol number 3 again and so he's had some comfort, um, in
21 terms of his pain from the DBT and it also has some calming
22 effects on his mental state and he did get his medications
23 this morning as well, also, he slept, um, he slept Saturday
24 night and I spoke with him briefly this morning and he rested
25 again today, um, so that's kind of an update on his situation

1 since, uh, Friday.

2 Q. I know one a the things that he mentioned in court on
3 Friday was that in prior conversations with you that he was
4 masking symptoms from you, did he share that with you?

5 A. Yes, he did and his, uh, reasoning behind that. He
6 reported that one a the reasons he had masked his symptoms is
7 he was, um, he had a earlier judge assigned and thought that
8 perhaps some a the trial proceedings would have been less
9 anxious and that he was, uh, a a attempting to minimize some
10 of his symptoms and that, uh, when he had, when the judge
11 changed at the last minute that that was, uh, one of the
12 reasons for him to be forthcoming about his masking symptoms.

13 Q. As far just as the maskin' itself, do you have any
14 concerns about what he had been masking to you as affecting
15 his competency before the trial started?

16 A. No, um, not not at this time and even, I I don't think
17 he's um, exaggerating his symptoms, I think he's being
18 somewhat forthcoming, um, Mr. Graham, there there may, there's
19 certainly secondary gain for it but I thing he's probably
20 consistent but at this time even if I took all of those things
21 at face value and considered them active symptoms, in my
22 opinion it still doesn't affect right now his rational and
23 factual understanding a these proceedings and I observed
24 Dr. Frierson's mental status exam, he's had no decline in his
25 cognitive function at all, it is still the same as it has been

DONNA SCHWARTZ MADDOX - DIRECT EXAMINATION BY MR. GRAHAM

1 each time that I've evaluated him since 2014 so I think he is
2 more forthcoming in his symptoms but at this point he still,
3 um, when treatment is offered to him he's a little more
4 willing to consider some of it but, um, this is not something
5 that would happen overnight with him, he, um, has a lotta
6 issues about antipsychotic medications and, uh, even speaking
7 with him the only thing he would be willing to take would be
8 an antidepressant, so, um, even even if taking all those at
9 face value if they are genuine and consistent, um, in my
10 opinion they still at this point is presently do not
11 interfere, uh, with his competency to stand trial.

12 Q. Well have you had a chance to speak with Dr. Frierson
13 regarding his, um, findings?

14 A. Just very briefly. Uh, Dr. Frierson, just, uh, opined
15 that he thought he was competent, that's, uh, the other thing
16 I know that, uh, Dr. Frierson, uh, reported to me is that
17 there are some things, there are some recommendations, Your
18 Honor, I think of things we could do for Mr. Walker. I I do
19 have some concern as the trial goes on this week, you know,
20 that it takes a toll on everybody in the courtroom, not just
21 persons with mental illness but for him his his days are very
22 long, Your Honor, he gets back at night about 5:30 and he's in
23 the holding cell sometimes till about 7:30 or 8 and so he has
24 very little time to, uh, prepare for his defense and one a the
25 things, uh, Mr. Graham, Doc Frierson I have talked about were

DONNA SCHWARTZ MADDOX - DIRECT EXAMINATION BY MR. GRAHAM

1 some things perhaps we could do in the courtroom to to help
2 him this week. One of my recommendations was that, um, after
3 the State rests that perhaps Mr. Walker have some quiet time
4 here in the courthouse where he can prepare his case, it's
5 been very difficult for him to go back at night, he's
6 tired and it's been a long day and then I I don't know if
7 Dr. Frierson's comin' this mornin' or not but, um, okay, one a
8 the things he recommended is that, uh, when the the
9 prosecution table that when Mr. Walker is presenting that
10 perhaps you all write notes instead of whisper to one another,
11 um, evidently that's a symptom Mr. Walker reported to
12 Dr. Frierson that it's, um, somewhat distracting for him.

13 Q. Were there any other recommendations from yourself or
14 Dr. Frierson?

15 A. No, not that I know of.

16 Q. No, okay.

17 MR. GRAHAM: Your Honor, the State has an email from
18 Dr. Frierson that was sent to standby counsel Ms. Mauldin and
19 also myself that I'd like to make a court's exhibit.

20 THE COURT: Alright, does, uh, Mr. Walker have a copy of
21 that, uh, Ms. Mauldin?

22 MR. WALKER: I would like to view it, Your Honor.

23 THE COURT: 'scuse me?

24 MR. WALKER: I would like to view it and also hold a
25 copy.

DONNA SCHWARZ MADDOX - CROSS-EXAMINATION BY MR. WALKER

1 THE COURT: Alright, we'll mark it as a court's exhibit.

2 (Email from Dr. Frierson Marked Court's Exhibit No. 9 for
3 identification.)

4 (Whereupon, a discussion was held off the record.)

5 MR. GRAHAM: Your Honor, that's all the questions the
6 State has for Dr. Maddox. Thank you, doctor.

7 THE WITNESS: You're welcome.

8 THE COURT: Mr., uh, Walker, you have any questions of
9 Dr. ---

10 MR. WALKER: Yes, ---

11 THE COURT: --- Maddox?

12 MR. WALKER: --- I do.

13 CROSS EXAMINATION BY MR. WALKER:

14 Q. Ms. Maddox, is it, is it is it true that, um, I told
15 you that, uh, also that I I I went periodically with no sleep
16 for days, uh, generally?

17 A. Yes, ---

18 Q. Alright.

19 A. --- that's absolutely what you reported.

20 Q. And is it true that, um, that I, that I told you that,
21 um, that I was homicidal and suicidal?

22 A. That's your words, yes, but, um, if if I may, I -- you
23 have reported suicidal ideation and homicidal ideation and
24 very specifically your suicidal ideation, I believe
25 Dr. Frierson and I were both present for that part of the

DONNA SCHWARZ MADDOX - CROSS-EXAMINATION BY MR. WALKER.

1 evaluation. You reported that, um, your suicidal ideation
2 seems to be associated with a depressed mood, that in the
3 evenings when you return that, uh, you were having impulses to
4 cut yourself and that is a behavior that you had engaged in in
5 the past and you have not done that in ten years. The
6 homicidal ideation you kind of equate you state that you have
7 a tension within your body and that that tension leads you to
8 to have some homicidal impulses,, you were not very specific
9 when I asked you if they were related to anyone or specific,
10 um, we did -- you were not forthcomin' in those details but
11 you did report those ideations, yes.

12 Q. Alright. Um, and it, you wouldn't agree that maybe
13 medication would be substantial to to have and to make the
14 competency more legit, more better with all these conditions?

15 A. Well competency is competency, uh, Mr. Walker, it's it's
16 a, it's a legal standard but do I think you would benefit from
17 being now on antipsychotic medications, absolutely, and I
18 also, uh, would, uh, agree that as the week went on it would
19 be a a protective factor for you.

20 Q. And if I told you that that my conditions have masked my
21 ability to, uh, conduct my defense correctly rather than as
22 what I told you yesterday, would you take that in
23 consideration ---

24 A. Absolutely.

25 Q. --- even if it was to the fact that, um, I couldn't

DONNA SCHWARZ MADDOX - CROSS-EXAMINATION BY MR. WALKER

1 produce a, produce a whole defense, is that -- would that be
2 in consideration to you?

3 A. Yes, and I've considered those things, Mr. Walker. Do
4 you -- you've got to understand there are many lawyers that
5 even have performance anxiety, when I take the witness stand,
6 that's not uncommon for people when you're, that this is such
7 a serious case as well and I've taken those things into
8 consideration and and I, and I I have no quarrel that you have
9 probably masked your symptoms.

10 Q. So you're s -- you're sayin' that I masked, uh, do you
11 think that, uh, the things that I've given you would be
12 masked, the -- it -- maybe there was more issues and more more
13 more to it than I, what I, what I've told you or less to it
14 what I told you either ---

15 A. That ---

16 Q. --- or?

17 A. --- that would certainly be possible.

18 Q. And if you took any a that in consideration plus what
19 I've told you, would you find me s -- s -- would you still
20 find me competent?

21 A. Yes, and and the reason being if I may is just even today
22 competency is a present, a present function and again, you you
23 are comprehending, um, I I certainly understand your symptoms
24 that that perhaps there's times where it's preventing you from
25 doing exactly asking all the questions you may have wanted to

1 ask or say all the things but that's really no different than
2 most other persons that are acting as an attorney, that some a
3 that, some a those anxieties are consistent with the role and
4 I have taken those things into consideration but even today as
5 you cross-examine me I think your questions are relevant,
6 you're spot-on, you're protective, you remain using good
7 judgment.

8 Q. Alright. Uh, when you say "role," what did you mean,
9 what do you mean?

10 A. I'm s ---

11 Q. You said, you said somethin' another about consistent
12 with the role, uh, I don't know whether you was addressin' my
13 role or your role or the competency rule.

14 A. I'm sorry, I don't recall that testimony.

15 Q. Do you see that in the record, reporter, or well, yeah,
16 think she used role her last sentence, maybe second to last
17 sentence.

18 (Pause.)

19 COURT REPORTER: I don't see it.

20 MR. WALKER: Alright, thank you.

21 COURT REPORTER: Um-hum.

22 THE COURT: Can I see that, uh, email one minute.)

23 (Whereupon, the email was handed to the Court.)

24 THE COURT: Thank you.

25 BY MR. WALKER:

DONNA SCHWARZ MADDOX - CROSS-EXAMINATION BY MR. WALKER

1 Q. Um, that do you not, that, uh, uh, also, I I told you you
2 you stated that, uh, that, um, I only was havin' issues, I
3 only had two issues, uh, if I told you that was incorrect, uh,
4 that I -- you told me that I had two issues in the, in court,
5 if I told you that was incorrect, would you, would you agree
6 or believe me?

7 A. Um, I I think you're, um, I think I would disagree with
8 you. I said you were havin' two issues regarding your
9 cognitive function so I gave two examples. I think you have
10 three issues going on: I think you had hallucinations that
11 you're dealin' with, I think that you have some concerns about
12 your body, which are somatic in nature and then you have
13 cognitive deficits meaning that sometimes your ability to pay
14 attention and and get your thoughts organized and so what I
15 said was that you had two instances of cognitive disfunction
16 last week in court.

17 Q. Is it not true that you was agree that I in a manic
18 depression or a bipolar state?

19 A. No, I don't agree with that, that's been your
20 characterization of it. I do think you're having early
21 symptoms of a mental illness but, um, those are, I think
22 that's been more your diagnosis than mine.

23 Q. Alright. Um, and and that you stated that, uh, I mean, I
24 I, I mean, like now I'm havin' problems talkin', is is, would
25 that that, is that not a issue at all as far as competency?

1 A. No, in my opinion not because ---

2 Q. Um-hum.

3 A. --- you're still able to function, you're still asking
4 very relevant questions, that, uh, my contention to you would
5 be that happens to many attorneys, um, that happens to many
6 witnesses, sometimes, uh, after I get off the stand I think of
7 a hundred things I should have said, ---

8 Q. But ---

9 A. --- um, so that's not uncommon just for the situation
10 that you're in right now.

11 Q. --- but if if I told you whenever I have that problem I I
12 have a a blank, uh, I come to a blank mind and exhibit or I
13 lose all thought and concentration and everything, uh, I I
14 lose, I lose basically all, mean, I I don't know what I'm
15 sayin' or what I'm s -- I'm just speakin', you know, I I have
16 no demeanor over what I'm sayin', I can't, I can't express
17 myself, it's just actual nerves talkin', it's not the human
18 function of talkin', is that -- would that be agendable [sic]
19 for your competency?

20 A. It, uh, it has to be taken into consideration, I think
21 that's very fair of course but at my, uh, reply to that would
22 be at this point it's not impairing your function. If you're
23 feeling that on the inside, it's not appearing on the outside,
24 you're still doin' a very good job, you're asking very
25 relevant questions, you remain very protective of yourself and

DONNA SCHWARZ MADDOX - CROSS-EXAMINATION BY MR. WALKER

1 and just I can only, uh, base things on what I observe.

2 Q. Alright, so yet you're sayin' that somebody who's blank
3 minded and exhibits, uh, basically a break -- a blank status
4 in thought, in concentration and speech is is competency, is
5 competent?

6 A. What I'm saying is such a person if those are the
7 symptoms you're having right now, you are still protective,
8 you're able to ask questions that are relevant so even if
9 you're feeling those things internally, you're, the things
10 that we can see, the external measures of that behavior are
11 very competent.

12 Q. And if I told you that, um, when I was conductin' trial,
13 um, that I was, I was hearin', uh, I wasn't hearin' voices but
14 I was feelin' their presence, would that change your status?

15 A. It would depend on what the nature of the presence is.

16 Q. Uh, if I say that they was basically kinda in my face,
17 like I could feel 'em, maybe not relatively speakin' but I
18 could feel maybe their thoughts maybe, uh, maybe, uh, like
19 impulsive thought of of voices maybe?

20 A. If -- you would have to explain the nature of them.

21 Q. Okay. I just, I could feel them like in my, like maybe
22 they was speakin' to my face basically. I could feel like
23 maybe somebody in my face talkin' to me maybe in just kinda
24 like aggressive manner or a, or a a flat manner, you know,
25 just just a presence, not necessarily a demeanor or behavior

1 towards the the the voice or the person but or the feelin', I
2 I wouldn't say that it was actual voice or a feelin', I have
3 to, the presence of of bein' in my face and that that still
4 wouldn't help?

5 A. That's a symptom, that's a symptom of mental illness but
6 again, there there are many people, Mr. Walker, that even have
7 symptoms of mental illness that are still competent and so,
8 for example, I I don't wanna, uh, go into too much detail but
9 I I have been doin' this for twenty-eight years and I, and I
10 do recognize that you have mental illness and I do believe
11 that you are having some symptoms but competency is a
12 different standard than just having symptoms. Just because
13 someone has symptoms of mel -- mental illness does not render
14 them not competent, it depends on what the nature of the
15 symptoms are, how intrusive they are and what impairments and
16 I don't doubt your reporting of those symptoms but in my
17 opinion still even today with what you say you're still able
18 to function, you're still paying attention, you're asking very
19 relevant questions, you wanna win your case, you are very, uh,
20 you you have goals, um, I I do recognize and I do believe that
21 you have had some difficulty organizing your thoughts, there's
22 remedies to that, when those things happen: we can -- you can
23 ask the judge for a little time to to organize your thoughts,
24 you have co-counsel that you can confer with if you need some
25 help organizing your thoughts and you have an investigator so

DONNA SCHWARZ MADDOX - CROSS-EXAMINATION BY MR. WALKER

1 there's remedies for those things although I do recognize what
2 you're saying.

3 Q. Wanna take you back to my openin' statement, um, you said
4 that I had a remedy here, I I, and like I informed you in our,
5 in our hearin' I went like, I I tried to say somethin', I I
6 couldn't say what I said and I had to immediately get off the
7 stand, uh, due to my functioning, I mean, therefore, I I plan
8 present, you know, basically a 30 to an, 30-minute to an hour
9 testimony in openin' statement, as much as the judge would
10 allow it, um, I was prepared to do that but once I got up
11 there I just went blank minded and as as the report may may be
12 or may show, I I produced very very faint testimony, I I
13 produced a testimony that wasn't relevant to my openin'
14 statement that I agendaed or my defense needed, um, what would
15 be your remedy for that or your conclusions that could, that
16 could say that that was competent?

17 A. Sure, and that's a good question. There there's two
18 issues here, Mr. Walker. Competency to represent yourself and
19 and I'm not a lawyer but I I'm I'm ---

20 Q. Just to stop you, Ms. Schwartz, there's, the the the
21 State of South Carolina does not interpret the Edwards
22 evaluation, there's no injury ---

23 THE COURT: I I'm familiar with that case, ---

24 MR. WALKER: --- Mr. McMahon made.

25 THE COURT: --- because they reversed me on that

DONNA SCHWARZ MADDOX - CROSS-EXAMINATION BY MR. WALKER

1 because ---

2 THE WITNESS: Yes.

3 THE COURT: --- I've always thought there should be two
4 standards but right now if you're competent to stand trial,
5 you're competent to represent yourself, ---

6 MR. WALKER: That's correct.

7 THE COURT: --- it's the same standard under South
8 Carolina law, ---

9 MR. WALKER: Yes, sir.

10 THE COURT: --- not under United States Supreme Court
11 law.

12 MR. WALKER: Right, but the State has judicial [sic]
13 power so it's, but it's, um, I I'm I'm very relevant with it
14 and I know it and I agree with it for the simple fact that if
15 somebody is competent, they're competent, you know, I don't
16 see no difference 'tween 'cause if somebody has to get on the
17 stand or wishes to get on the stand or or help their defense
18 attorney then I think that that they should be just ha -- hold
19 to the same standard as someone who's gonna get in the
20 courtroom, move around or give testimony, there's really no
21 big difference.

22 THE COURT: There's really no what, Mr. Walker?

23 MR. WALKER: No big difference, it's that I I don't
24 think, you know, as far as ---

25 THE COURT: So you agree with the majority of the Supreme

DONNA SCHWARZ MADDOX - CROSS-EXAMINATION BY MR. WALKER

1 Court, uh, that, uh, disagreed with me, ---

2 MR. WALKER: Right.

3 THE COURT: --- be that as it may, um, ---

4 MR. WALKER: I'm familiar with *State vs.* ---

5 THE COURT: --- you certainly ---

6 MR. WALKER: --- *Barnes*.

7 THE COURT: --- have a, uh, rational and factual
8 understanding of that case but you may ask your next
9 question.

10 THE WITNESS: And, Your Honor, if I may I di -- I wasn't
11 allowed to finish that answer and I ---

12 THE COURT: I ---

13 THE WITNESS: --- think it's ---

14 THE COURT: --- I apologize, ---

15 THE WITNESS: --- important.

16 THE COURT: --- yes, ma'am. Yes, ma'am, the Court ---

17 THE WITNESS: Well ---

18 THE COURT: --- apologize.

19 THE WITNESS: --- what I was sayin', Mr. Walker, is that
20 that it is the same standard, competency to represent yourself
21 and competency to stand trial, so we evaluate your competency
22 to stand trial. An opening statement in my opinion is not
23 evidence, that's an opening statement, so it's not a function
24 of being competent to stand trial, um, that that could happen
25 to Mr. Graham, that could happen to anybody on the stand, so

DONNA SCHWARZ MADDOX - CROSS-EXAMINATION BY MR. WALKER

1 again my opinion in keeping those things 'cause I too
2 understand that that standard and in my opinion you still
3 presently have a rational and factual understanding of the
4 proceedings and you have the capacity to assist in your
5 defense.

6 BY MR. WALKER:

7 Q. I I'm not addressin' openin' statement, I'm addressin' a
8 defense and and the judge may take a defense, uh, my defense
9 especially in a directed verdict, uh, my openin' statement,
10 it's that he can take that into consideration as a directed
11 verdict, the jury sure can take that in consideration, the
12 jury was present, I mean, that's that's a main defense and a
13 openin' statement introducts [sic] and and as society or human
14 nature will tell you introduction is one a the most important
15 parts of life and that introduction, me there's no way with me
16 goin' the way in the status that I'm goin' at not bein' able
17 proden -- produce my my defense, my testimony and what I need
18 to say that's why I'm relevant sayin' I can't and that I'm not
19 longer competent and I'm also havin' mental issues that are
20 substandard to me to seek mental health and even if I was to
21 get medication right now, my, from my personal knowledge it
22 will take three, four weeks for the medication to even start
23 to work and that wouldn't even put me in a therapeutical,
24 therapeutical way. I've been, I've got a long history of
25 mental health, I I know I've got a long history of medical

DONNA SCHWARZ MADDOX -- CROSS-EXAMINATION BY MR. WALKER

1 history, I don't think all my conclusions are medical history,
2 like I, like I told you yesterday, I think my medical history
3 kicks in my mental vi -- my mental health and then the stress
4 that I'm receivin' from this thing because I was alright
5 before I come into this trial, about two weeks before I come
6 in this trial I really had issues and I started becomin' real
7 stressful, I started couldn't sleep and I started, you know,
8 gettin' manic depressed and then I started, uh, like havin'
9 thoughts, like suicidal thoughts, homicidal thoughts, started
10 havin' issues very very issues and I addressed them to you
11 before we come into this trial on Friday but I don't think you
12 addressed 'em well enough and if they was addressed on Friday
13 I don't think we would've been here today but, um, ---

14 A. Well my answer to that, uh, Mr. Walker, would be that,
15 uh, Tuesday morning you cross-examined me when we had your
16 Blair hearing and that was the appropriate opportunity for you
17 to bring those questions if they were concerns of yours.

18 Q. But I I understand, I I I don't wanna get out the way and
19 and I don't wanna regard you in any in -- informal way but
20 that that's that's your opinion, we're here for what or mental
21 health, what conducts a proper person to proceed in proper
22 defense, I mean, I understand I'm I'm really, you know,
23 relevant to what I'm sayin' but, I mean, that as far as
24 cross-examine, I I did, I agree that I did well in some
25 cross-examine but I did not do well on some a the

1 cross-examine, I I couldn't function the way I wish, couldn't
2 produce the way I want, even though I was strong, I didn't do
3 as I needed to do and that that to me is is very har -- a hard
4 issue and now I'm goin' into the point that I have to make a
5 decision as whether to present a defense or or let it be and
6 and like they say, like the whole case law says that it's a,
7 it's a fool, it it takes a fool to to take on a case that is
8 is is not your case, basically if the State, uh, accuses you a
9 somethin', you shouldn't take it on but, you know, that's a
10 very old case and I have to, you know, I've took that that
11 case in a lotta consideration and it, and it deals with, uh,
12 directed verdicts, that case usually is agendaed in directed
13 verdicts, um, but a as I'm goin' into this point there's no
14 way I feel competent to present a defense, I mean, yes, I can,
15 I can, I can cross-examine but that don't mean a de -- uh,
16 cross-examine is not a defense, it takes, it takes lawyers two
17 hundred up to a thousand hours to put on a defense, I mean, I
18 I've had time prepare but every time I get to a point I have
19 to backtrack because I'm not not competent enough to produce a
20 defense, now I'm at this point there's no way I feel competent
21 to produce a defense as I wish and if I'm not, if I'm not
22 found competent, I may or may not produce a defense but that
23 would be on your consideration, also the Court's consideration
24 and I just hope you take that into consideration. You have
25 any further or any further statements?

DONNA SCHWARZ MADDOX - CROSS-EXAMINATION BY MR. WALKER

1 A. I I have, Mr. Walker, and I do, as as I mentioned on the
2 record, I I I absolutely do think you're having symptoms but
3 the standard of competency is a present ba -- a present
4 capacity and again, my my answer to you would be that you've
5 demonstrated you're paying attention, you're listening to what
6 I say, you're following up on the statements I make with
7 appropriate follow-up questions which indicate that you
8 presently have a cognitive capacity to do those things, you've
9 slept over the weekend, you're being medicated for some a your
10 physical conditions and I do agree with you, I do think your
11 physical conditions exacerbate your illness when they are not
12 being treated.

13 Q. But if if I may, Ms. Maddox, um, well my main concern is
14 cross witnesses, what I produce. I I've did nothin' but, uh,
15 basically in in a standard object to what the State has and by
16 objectin' I went and cross-examined, that's, that's relevant,
17 I produced a openin' statement, that is not a defense, I have
18 to produce a defense and you as bein' a doctor you may or may
19 not know what it takes to present a defense, I do and it's
20 very, very hard for me and it's very hard for as you say a
21 normal lawyer to produce defenses, I'm havin' a hard time
22 issue and I wish you would take that my defense into
23 consideration, is not, I mean, we're at a point here that it's
24 it's it's extremely hard to proceed due to my mental health,
25 I'm I'm -- I -- would would you not agree that the Court shall

1 adjourn and allow me to have treatment and then come back on
2 this issue, would that be pres -- presentable?

3 Q. I don't think it's called for at this point. Um, again,
4 the standard for competency to stand trial is that you have a
5 rational and factual understanding of these proceedings which
6 do you and that you have a present sufficient capacity to
7 assist in your defense which in my opinion you do and you've
8 demonstrated today ---

9 Q. Your Honor, ---

10 A. --- so it's a different, you're asking me for a different
11 standard and the standard is ---

12 Q. But I, ---

13 A. --- what ---

14 Q. --- uh, ---

15 A. I ---

16 Q. --- I ---

17 A. --- I ---

18 Q. --- but ---

19 A. --- reported.

20 Q. --- I do not have a rational understandin' of a defense
21 when I can't produce a proper defense, it, that it's a, it's
22 a, it's a balance there. To to to rationalize a defense, you
23 must produce a defense, I can't produce a defense if I'm not
24 rationalize to do so by the incompetent is mental with mental
25 and medical conditions. I I get blank minded, ma'am, uh, I

DONNA SCHWARZ MADDOX - CROSS-EXAMINATION BY MR. WALKER

1 lose my thought, my concentration, I get back to a cell I go
2 berserk, I have, I'm hearing voices, um, I I can't move, I
3 can't, I, all I can do is just -- later I'm in a coma-like
4 state, uh, I have problems periodically through the day, um,
5 presentin' this trial and basically that's, uh, I wouldn't say
6 attention but gettin' my attentions ready for the next step
7 and and I just basically, at this point I basically just go to
8 the stand, the podium and and do as I need to do with my notes
9 that I have produced, it has took me many years produce them
10 notes and I think them notes are, you know, somethin' that may
11 be throwin' the Court off in understandin' who or what's goin'
12 on because I've had, this this this has been goin' on for four
13 years, the lo -- the notes that I've been producin' is notes
14 that I've had over these years and produced over these years
15 so when I get up there and read 'em or use 'em then the Court
16 thinks that or you may, I'm not not necessarily addressin' the
17 Court, I'm addressin' observance then the observance that is,
18 that that I was doin' sumtin' but . . .

19 A. Um, yes, and I would agree I, it certainly would be
20 stressful and I, and I do think you've had some some problems
21 over the week but again, the standard is your present
22 sufficient capacity and, uh, there remedies available to you
23 that I would recommend such as asking the judge for a break,
24 taking a few minute, that if you're in the middle of your
25 closing argument and you were to have a a lapse there, uh,

1 taking a minute to pause and collect your thoughts that would
2 be a reasonable thing to do and I, in my opinion even when you
3 do have symptoms they're brief and there's remedies available
4 for you to remain where you're protective.

5 Q. But, ma'am, what what I'm gettin' at is thirty minutes or
6 two hours is not gonna fix my ability to produ -- produce a
7 defense, I'm mentally ill, I'm medically ill, I have no
8 demeanor or no ability to produce a proper defense is what I'm
9 gettin' at. I can rest all day long, I can rest here to next
10 week, it does not make me eligible or or obtain a ability to
11 produce proper defense in the state and standards that I'm at.

12 A. I'm sorry, my my answer would just be that competency to
13 stand trial does not require that you produce a defense, the
14 standard is that you have a rational and factual understanding
15 of these proceedings and that you have the capacity to assist
16 in your defense, I don't believe ---

17 Q. Exactly.

18 A. --- the standard is that it's, uh, and or if the judge
19 corrects me, unless I'm wrong I believe it's to assist in your
20 defense, not to produce a defense.

21 Q. How can you not assist in your own defense when you can't
22 produce your own defense, I mean, it's ---

23 THE COURT: Mi -- Mr. ---

24 Q. --- it's ---

25 THE COURT: --- Walker, uh, you've you've asked that

DONNA SCHWARZ MADDOX - CROSS-EXAMINATION BY MR. WALKER

1 question several times of Dr. Maddox.

2 MR. WALKER: I didn't think I did, Your Honor, but
3 if ---

4 THE COURT: I think you did and you know you did.

5 MR. WALKER: I don't know I did. If I know I did, I'd a
6 wouldn't a asked again. I was tryin', I was tryin' to get at,
7 Your Honor, she s -- she says that assist is not producin' a
8 defense.

9 THE COURT: I I I've heard your questions, I heard the
10 doctor's answers, ---

11 MR. WALKER: Well I don't ---

12 THE COURT: --- I've heard the doctor's opinions, she
13 evaluated you, Dr. Frierson evaluated you over the weekend,
14 spoke with you and, uh, you just keep revisitin' the same
15 thing, that the doctor's opinion is her opinion, ---

16 MR. WALKER: That's correct, Your Honor.

17 THE COURT: --- that's why we're havin' the hearing to
18 hear what the expert's opinions are on your competency and
19 that's the standard that she applies in the medical field,
20 that's the standard the Court applies.

21 MR. WALKER: Thank Your Honor, no further questions.

22 THE COURT: Anything in, uh, reply ---

23 MR. GRAHAM: No, Your Honor.

24 THE COURT: --- or redirect I guess?

25 EXAMINATION BY THE COURT:

MOTIONS AND MATTERS

1 Q. Uh, doctor let me ask you a couple questions as I guess,
2 uh, considering the, um, three areas, that you first started
3 talkin' about the, uh, episode, two episodes during the week,
4 openin' statement; two, hallucination auditory, evidently part
5 of which is hearing me call his name Walker, Walker, Walker
6 and; three, the delusions and concerns about, uh, worms, even
7 given those, uh, he, uh, remains competent and continues and
8 continue to ha -- and does have a rational and factual
9 understanding, ---

10 A. That's my ---

11 Q. --- is that ---

12 A. --- opinion, ---

13 Q. --- correct?

14 A. --- yes, sir.

15 Q. And and those may be part of a, of a mental illness
16 complex ---

17 A. Yes, they are.

18 Q. --- but given aside one can be mentally ill and still
19 competent to stand trial.

20 A. Yes, sir.

21 Q. Oh. And, um, he's now takin', uh, Tylenol 3 that has
22 some calming effects.

23 A. Yes.

24 Q. Well when you say "mask symptoms," what what does that
25 mean like?

MOTIONS AND MATTERS

1 A. It means he was underreporting his symptoms.

2 Q. Underreporting.

3 A. Yes, sir.

4 Q. And do you feel like he was?

5 A. He may have been, there's there's no way to know but
6 certainly the symptoms that he disclosed to me yesterday are
7 consistent with mental illness, um, they're self-serving in in
8 respects but they are consistent with mental illness.

9 Q. Well what about, uh, what about, uh, manipulation and
10 malingering?

11 A. I, and I don't think he's malingering, Your Honor, I
12 think he's protective and I think, um, that that, I think
13 there i -- there is a self-serving nature to some a this but
14 again, the symptoms that he's reported, they certainly have
15 not been inconsistent with schizophrenia, Your Honor, I think
16 they're opportunistic for him to a degree but they're
17 certainly, I don't think he's fabricated these symptoms, um,
18 there's no evidence that his malingering.

19 Q. And based on your observations and his cross-examination
20 of you both, uh, well this past week and now, uh, does that,
21 uh, factor into your opinion?

22 A. Yes, sir.

23 Q. And tell me about how it does now, cross-examination
24 today.

25 A. Yes. Again, Your Honor, um, I think this morning

MOTIONS AND MATTERS

1 Mr. Walker's demonstrated an ability to listen to me, he's
2 asked appropriate follow-up questions, he's remained very
3 protective of his record, um, he's been able to, uh, in my
4 opinion communicate what his concerns are about his
5 competency, he did that yesterday and he's done that today in
6 my opinion.

7 Q. And you do have, uh, certain recommendations, you and
8 Dr. Frierson, ---

9 A. Yes, sir.

10 Q. --- as as I understand it, uh, give him, uh, quiet time
11 perhaps, a better environment, uh, to prepare his case ---

12 A. Yes ---

13 Q. --- as far as what may be comin' up next ---

14 A. Yes, sir.

15 Q. --- and what's your recommendation on that?

16 A. Um, after, uh, what if -- what I would recommend is after
17 the State rests that perhaps he have a, the Court to determine
18 an appropriate amount a time for him to get his thoughts
19 together, to collect his thoughts first of all and then I
20 believe Dr. Frierson's recommendation which I concur with, um,
21 evidently, uh, Mr. Walker had expressed some concerns,
22 sometimes when he's presenting that, um, he saw that there's
23 been some, uh, chatter from the other table and Dr. Frierson
24 had recommended that perhaps, um, the prosecution write notes
25 to each other if they're communicating while he's, uh,

MOTIONS AND MATTERS

1 presenting to, just to minimize distractions, that would be
2 very helpful and then thirdly I, that, oh, I would, uh, if
3 Mr. Walker's having a period where he's havin' difficulty
4 collecting his thoughts, I would, uh, ask that he address the
5 Court and ask for just a minute to compose himself and to to
6 take a breath and go back and and regroup. Um, I discussed
7 with him yesterday some strategies such as to make sure that
8 he wrote notes and I told him that lawyers often do that, I've
9 seen them go back and check off their notes as they've asked
10 questions and that if he needed a chance to regroup that
11 perhaps he could return to a notepad and and just take a
12 minute and collect his thoughts, so just to have the
13 opportunity to do that, he recognizes when those symptoms are
14 coming so if he would just be proactive about that and let the
15 Court know.

16 Q. Alright. I'm gonna read, uh, Court's Exhibit No. 9
17 Dr. Frierson, his opinion is unchanged as to his competency to
18 stand trial from his 2014 evaluation and seeing him again
19 today, ---

20 A. Yes, sir.

21 Q. --- so that's a period 2014, 2015, 2016, 2017
22 Dr. Frierson's opinion has not changed.

23 A. Correct.

24 Q. And yours never changed.

25 A. No, sir.

MOTIONS AND MATTERS

1 Q. And, uh, Dr. Frierson says as you have indicated, "Any
2 communication at the solicitor's table between members of that
3 team should be done in writing rather than whispering while
4 Mr. Walker is conducting direct or cross-examination." I I
5 actually concur in that, uh, back when I had the ability to
6 try cases, uh, chatter annoys me from anybody, uh, that's
7 that's not a complaint, that's just an observation, uh, that,
8 uh, it it can distract your, uh, focus and your attention so I
9 would, uh, ask that, uh, that be accomplished, uh, Solicitor.
10 Uh, Dr. Frierson further indicates that, "Mr. Walker
11 demonstrates an above-average understanding of the legal
12 system," I would advise that I have seen people, uh, educated
13 in the law and do not demonstrate an above-average
14 understanding of the legal system, "also of possible defenses
15 or lesser included offenses and gave rational reasons behind
16 some of his trial strategy, i.e., jury selection."

17 As far as, uh, producing a defense, uh, Doctor, I I
18 don't, I don't know if this is a fair statement from me or not
19 but there is trial strategy involved in all trials whether a
20 defendant takes the witness stand and subjects himself to
21 cross-examination, take some other type of strategy in
22 presenting their defense, uh, has that been your observations,
23 uh, in your twenty-eight years experience?

24 A. Yes, sir.

25 Q. And whether one is representing oneself or not that would

MOTIONS AND MATTERS

1 likely be an in-depth discussion if one was not representing
2 himself that that individual would have with, uh, his or her
3 attorney ---

4 A. Correct.

5 Q. --- to to the the, I call it the assets and liabilities
6 so to speak of whether or not to take the stand.

7 A. Yes, sir, and I've done a number of evaluations over the
8 years where where that was the question was someone competent
9 at that point and that, and that's correct, that's my
10 understanding as well.

11 Q. And and throughout the trial, and I typically not only do
12 it with Mr. Walker, I typically do it with, uh, attorneys also
13 or anyone if they ask for a few moments, uh, they ask for a
14 break, I typically do that and, uh, he has not been, uh, shy
15 in asking for a few minutes, uh, not necessarily a break in
16 court but asking for a few minutes. As we go through the, uh,
17 course of, if we go through the course of the trial based on,
18 uh, my findings today that in my finding if I find that he is,
19 uh, competent to stand trial, would you be available for the
20 Court to conduct other evaluations ---

21 A. Absolutely.

22 Q. --- on Mr. Walker?

23 A. Absolutely. I just, this afternoon the only conflict
24 I'll have, Your Honor, I have a trial in Charleston this
25 afternoon but other than that I'm available and would make

MOTIONS AND MATTERS

1 myself available to Mr. Walker. Um, I, on the record I would
2 like to say that I offered, on Friday Mr. Walker and I had a
3 telephone conversation at lunch ---

4 Q. Yes, ma'am.

5 A. --- and at that time I I offered and and I continue that
6 offer if he would decide that he would like some psychiatric
7 medication I'm glad to call the Department a Corrections as I
8 did Friday. I called the Department a Corrections on Friday
9 and notified them again that he had not been receiving
10 treatment for his deep venous thrombosis and at any point if,
11 uh, he wanted medications and wanted to be seen, I was told by
12 the department attorney that they have a doctor twenty-four
13 hours a day at Broad River so even after court in the evening
14 there would be someone available if he did want medication and
15 I would be glad, if that's something he wanted, I would, uh,
16 be glad to help him in securing that treatment.

17 Q. You think that would be to, uh, not not being able to see
18 a doctor but you think, uh, perhaps medication would be to his
19 benefit both, uh, mentally and physically?

20 A. Yes, sir, just in the protective sense. Right now it's
21 my opinion he's competent, he has a ra -- a present rational
22 capacity but over the week as the week went on if that became
23 an issue, again, I would, I would, uh, raise the idea that he
24 should also have treatment, it would be protective, um, not
25 nec -- not necessary but protective.

DONNA SCHWARTZ MADDOX - REDIRECT EXAMINATION BY MR. GRAHAM

1 Q. Alright, thank you.

2 THE COURT: Yes, sir, uh, Mr. Walker.

3 MR. WALKER: Your Honor, I I would just like to say that,
4 uh, Ms. Ms. Watts have -- has ordered me Tylenol 3s, um, they
5 have consisted, uh, they are consistent with my treatment, um,
6 I've took 'em in the past, um, they work very well for me
7 medically, medically and mentally, the only problem I have is
8 they take about three weeks to start kickin' in and about
9 about another two weeks to get full full exist but they are,
10 they are keep me, I mean, they help me now but as far as my
11 full demeanor, um, gettin' rationallizely [sic] in, uh, the
12 ability to cope with everything it usually takes about three
13 weeks for me to get situated.

14 THE COURT: Uh, well the issue is, uh, not taking three
15 weeks, the issue is present, ---

16 MR. WALKER: That's correct, Your Honor.

17 THE COURT: --- um, as, uh, as Dr. Maddox has said.
18 Anything further?

19 REDIRECT EXAMINATION BY MR. GRAHAM:

20 Q. Uh, I think and I neglected to, I think um, Dr. Maddox,
21 did you write a report about you interaction from this weekend
22 and your opinion?

23 A. I did.

24 MR. GRAHAM: Your Honor, we'd like to make that report a
25 court exhibit as well.

MOTIONS AND MATTERS

1 THE COURT: And does Mr. Walker have a copy of it?

2 MR. WALKER: Um, no, and I would like to review in case I
3 may wanna radicate [sic] from the ---

4 THE WITNESS: Yes, ---

5 MR. WALKER: --- report.

6 THE WITNESS: --- sir, Your Honor, and I only, uh, sent
7 the report to you, I I did not disclose it to the attorneys
8 and I've emailed that and I do have my original one and glad
9 to provide that. Mr. Walker, um, it is also the same, part of
10 that is the same original report I issued last week and I do
11 believe there was an area that you had redacted so it's, I
12 don't know what area you redacted but that there are some
13 similarities to the report ---

14 THE COURT: I think ---

15 THE WITNESS: --- issued.

16 THE COURT: --- the area redacted has come out, um,
17 during the, uh, pretrial hearings on cross-examination of
18 Mr. Walker of you, uh, being part of the basis of your opinion
19 but it has not, it has not been in fronta the jury.

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

21 THE COURT: Do you have any other recommendations, Doc?

22 THE WITNESS: No, sir, other than I'm glad, if you all
23 need me, I'll be glad to see him again.

24 THE COURT: Okay. Alright. Thank you, uh, you may step
25 down. Thank you for bein' with us, uh, this morning.

MOTIONS AND MATTERS

1 THE WITNESS: You're welcome.

2 (Whereupon, the witness left the stand.)

3 MR. WALKER: Your Honor, I have one issue I'd like to
4 take 'fore the Court and if its got time, consideration.

5 THE COURT: Is it on competency?

6 MR. WALKER: No, sir, Your Honor.

7 THE COURT: Well let me, uh, let me finish with this
8 issue, let me, uh, look at the report of Dr. Maddox.

9 (Pause.)

10 THE WITNESS: Your Honor, may I be excused?

11 THE COURT: Yes, ma'am, um-hum, yes, ma'am. Thank you
12 again for bein' with us, Doctor.

13 (Pause.)

14 (Whereupon, a discussion was held off the record.)

15 (Pause.)

16 THE COURT: Solicitor, I'll make this report, uh, part of
17 the record and, uh, quite frankly, uh, whatever he wants
18 redacted besides the, uh, conclusions of the doctor, the
19 opinions of the doctor, I'm going to allow, uh, redact,
20 alright? Well whether it's alright or not it's what I'm gonna
21 do so ---

22 (Laughter.)

23 THE COURT: --- for purposes of the, uh, *Blair* hearing.

24 MR. WALKER: Your Honor, defense have found the only
25 thing needed to be radicated was the thing that was radicated

MOTIONS AND MATTERS

1 prior.

2 THE COURT: And did you mark those, Mr. ---

3 MR. WALKER: Yes, ---

4 THE COURT: --- Walker?

5 MR. WALKER: --- sir. Yes, sir, Your Honor.

6 THE COURT: Alright so it's, uh, on page 5 of the report,
7 that will be, uh, that will be redacted, I'm gonna have this
8 marked as next Court's Exhibit 10 I believe and I'll have, uh,
9 this sealed and then the redacted can be, uh, 11, alright.
10 Madam clerk, would you hand this to to my ---

11 THE CLERK: Yes, ---

12 THE COURT: --- court ---

13 THE CLERK: --- sir.

14 THE COURT: --- court reporter.

15 (Psychiatric evaluation by Dr. Maddox marked Court's
16 Exhibit No. 10 and psychiatric evaluation by Dr. Maddox with
17 redactions marked Court's Exhibit No. 11 for identification.)

18 THE COURT: Alright, uh, anything, uh, you would like
19 present on the issue of, uh, competency, Mr. Walker?

20 MR. WALKER: Um, Your Honor, I was, I was, I was really
21 thinkin' about taking the stand, um, but I I'm I'm kind of, I
22 decided not to so I'm done.

23 THE COURT: Alright, you have any other witnesses,
24 testimony, reports you'd like to present?

25 MR. WALKER: No, sir, not at this time.

MOTIONS AND MATTERS

1 THE COURT: Alright.. Alright, uh, based on the record
2 before this Court I find that Mr. Walker is competent
3 competent to stand trial therefore he is competent to
4 represent himself. He has a rational and factual
5 understanding, uh, of the charges against him, has a, also
6 looking at Court's 9 Dr. Frierson, "he demonstrates an
7 above-average understanding of the legal system possible
8 defenses, lesser included offenses and gave rational reasons
9 behind some of his trial strategy," further in addressing some
10 issues factually as far as his, uh, opening statement, I
11 thought it was, uh, clear, coherent, rational, tracking the
12 factual, uh, setting as he said it was and it was consistent
13 with all of his, uh, with his pretrial, uh, testimony as to
14 the events that occurred, uh, uh, both opening statements, uh,
15 both the State's and, uh, Mr. Walker's were least of a average
16 if not a greater length than many I found, an opening
17 statement is supposed to be a brief opening as to, uh, the
18 issues that the parties think exist in the case, a road map,
19 if you will, and not the full and complete, uh, factual
20 rendition of the case at that point, uh, as I tell the jury
21 they're not evidence, uh, what the attorneys tell you, what
22 the pro se defendant tells you if he's not on the witness
23 stand under oath, um, is not evidence in the case, it cannot
24 be considered as evidence in the case. Um, also, throughout
25 the, uh, trial of the case, um, I thought his, uh, direct

MOTIONS AND MATTERS

1 questioning of witnesses that he called pretrial,
2 cross-examination, uh, during the course of the pretrial
3 hearings and cross-examination of the witnesses have been
4 presented, that have been presented has been, uh, clear,
5 rational, I thought he did an outstanding job with Lieutenant,
6 uh, Dustin Smith, he referred to some research and such of
7 deterioration of drugs in the body, uh, postmortem, such as
8 that, I think he's, uh, competent to stand trial and to
9 present his defense. Alright, what's your, uh, next issue,
10 uh, Mr. Walker?

11 MR. WALKER: Uh, my issue is, Your Honor, um, that as you
12 know I'm incarcerated at SCDC, um, and during the period a
13 this trial, Your Honor, uh, I, like today I I haven't had a
14 shower since Thursday, like Thursday mornin' at five o'clock.
15 I've asked all weekend, I've asked Thursday night, I asked
16 Friday to all to take a shower, they haven't let me take a
17 shower all all this week, I've had ability to take a shower, I
18 haven't have an ability s -- to shave and I, um, and also,
19 I -- through -- this hasn't really been addressed directly to
20 the Court and reason I'm addressin' it to the Court is 'cause
21 I think it's to this point that it needs to be addressed to
22 the Court, uh, during the time a this trial, um, SCDC has
23 neglected to to provide the following amount of meals: they
24 they failed to to provide one lunch, they've they for failed
25 provide two dinners and two breakfastes in the course of this

MOTIONS AND MATTERS

1 trial, um, and as today goes my lunch bag is is half contents
2 of what it should have so I, they're they're severiously [sic]
3 neglectin' me throughout this trial, ---

4 THE COURT: Ms. ---

5 MR. WALKER: -- that this goes with the ---

6 THE COURT: Let me, ---

7 MR. WALKER: --- here ---

8 THE COURT: --- let me stop ya a minute. Ms., uh, Ms.
9 Mauldin, prepare me an order as to, uh, his, uh, requirements
10 and request ---

11 MR. WALKER: That, Your Honor, as ---

12 THE COURT: --- as far as, uh, his, uh, hygiene and his,
13 uh, nutrition. Besides hygiene and nutrition, uh, what next,
14 Mr. Walker?

15 MR. WALKER: I mean, I I understand it's its' way outta
16 the Court's normal procedure or anybody's ---

17 THE COURT: Well I've ---

18 MR. WALKER: --- part ---

19 THE COURT: --- al -- I've ruled on it, what what else
20 besides hygiene and nutrition?

21 MR. WALKER: Um, I was just hopin' maybe I, if I can get
22 the ability to shave before I go in fronta the jury.

23 THE COURT: To shave?

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

25 THE COURT: How how is that, ---

MOTIONS AND MATTERS

1 POLICE OFFICER: Here's what Your Honor, ---

2 THE COURT: --- uh, typically done?

3 POLICE OFFICER: --- we we can make it happen.

4 THE COURT: Sir?

5 POLICE OFFICER: We can make it happen.

6 THE COURT: Hygiene and including showering, shaving.

7 MR. WALKER: Thank you so ---

8 THE COURT: Alright.

9 MR. WALKER: --- much, Your Honor, and maybe some lunch,
10 Your Honor, or the proper ---

11 THE COURT: I ---

12 MR. WALKER: --- contents.

13 THE COURT: I said nutrition.

14 MR. WALKER: Thank you so much.

15 THE COURT: Alright, uh, now, uh, we go back to, um,
16 let's see, Friday, can't find the right notepad. Alright,
17 uh, I understand we had, uh, two jurors, both of whom are
18 alternates, to interview concerning the alleged, uh,
19 conversation or statement that Mr., uh, Walker overheard, is
20 that, is that correct, Mr. Walker?

21 MR. WALKER: Yes, sir, Your Honor, and I hope the Court
22 don't consider my, uh, mental state as in my consideration
23 into them juries, I I'm I'm very strong and as Ms. Dr.
24 Schwartz will testify I've been, uh, I've been real consistent
25 as far as the truth as as what you find and I hope that the

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1 the the Court will take that in consideration and have full,
2 uh, consideration in in what I've told the Court on them
3 jurors.

4 THE COURT: And that was, let m -- refresh my memory,
5 that was Thursday afternoon as the jury was leaving the box
6 going to the hallway when court was, uh, goin' into recess, is
7 that correct?

8 MR. WALKER: I'm pretty sure, Your Honor, that's correct.

9 THE COURT: Alright, bring me, uh, Juror 41, that's the
10 sequestered juror. What's the other one, madam clerk, do you
11 know if it's 140, 140 ---

12 THE CLERK: Think it's ---

13 THE COURT: --- 123?

14 THE CLERK: --- it's 123.

15 THE COURT: Alright.

16 THE CLERK: Yeah, Number 41 is Casey Crowe.

17 THE COURT: 'scuse me?

18 THE CLERK: 41 is Casey Crowe, 123 was the Mr. McCormack.

19 THE COURT: Oh, okay.

20 THE CLERK: You asked for 41 which is in the jury pool.

21 THE COURT: I asked for 41 the sequestered one so I got
22 my numbers, uh, ---

23 THE CLERK: Do you wish me to catch Mr. Blackman?

24 THE COURT: Whoever comes in will ---

25 THE CLERK: Alright.

MOTIONS AND MATTERS

1 (Pause.)

2 (The following takes place in the presence of Juror
3 Number 123.)

4 THE COURT: Yeah, this is 1, this is Mr., uh,
5 McCormack, ---

6 THE CLERK: Yes, sir, that's ---

7 THE COURT: --- 123, ---

8 THE CLERK: --- Mr. McCormack, he got ---

9 THE COURT: --- 123.

10 THE CLERK: --- the right one outta this ----

11 THE BAILIFF: Yes.

12 THE COURT: Good mornin', Mr. McCormack. I I have a few
13 more questions, uh, for you, Mr. McCormack, and, again, it,
14 uh, I hope you, I hope you don't feel, uh, intimidated or
15 inhibited in any manner, I just have to, if an issue comes to
16 my attention whether it is or is not an issue, I have to
17 address it, that that's basically it and that and by sayin' it
18 like that I don't mean that I am minimizing addressing
19 whatever issue it may be and I, other words I have to look at
20 the facts whatever they may be, ---

21 JUROR NUMBER 123: Right.

22 THE COURT: --- wherever they may lead me. If you
23 recall, and you may not, I think we broke a little early, uh,
24 Thursday afternoon around four o'clock perhaps, as the jury
25 was leaving their jury box and of course ya'll would go out

MOTIONS AND MATTERS

1 the door and go out the hallway and I guess turn left unless
2 you had to retrieve anything from the jury room and leave for
3 the day with instructions to come back the next day, do you
4 recall that Thursday leaving?

5 JUROR NUMBER 123: Uh, yes, sir, ---

6 THE COURT: Okay.

7 JUROR NUMBER 123: --- I left.

8 THE COURT: Alright. As you were leaving, did you have
9 any conversations or make any statement to any other juror or
10 anyone about the case?

11 JUROR NUMBER 123: No.

12 THE COURT: Um, ---

13 JUROR NUMBER 123: No.

14 THE COURT: --- um, none whatsoever?

15 JUROR NUMBER 123: No, we don't say nuttin' to jur -- we,
16 as we the jury we don't talk to one another about the case
17 period, we talk about other stuff.

18 THE COURT: Have you made, and I I asked your fellow
19 jurors, not not about you, ---

20 JUROR NUMBER 123: Right.

21 THE COURT: --- I just don't want you to think it's a
22 about you, uh, personally but, uh, as I excused them Friday I
23 asked each as a group if, uh, anyone had had, uh, any
24 conversations with fellow jurors or anyone else about the case
25 whatsoever and your response it be you have not?

MOTIONS AND MATTERS

1 JUROR NUMBER 123: Right.

2 THE COURT: Okay. Have you formed or expressed opinion
3 about the guilt, that standin' here right now, have you formed
4 or expressed any opinion about the guilt or the innocence of
5 Mr. Walker?

6 JUROR NUMBER 123: No.

7 THE COURT: Okay. And standing here right now, uh, and
8 recalling, uh, my opening comments to the jury a part of which
9 was a criminal defendant, regardless of the serious nature of
10 whatever the offense may be is always presumed to be
11 innocent, ---

12 JUROR NUMBER 123: Yes.

13 THE COURT: --- you understand that's the ---

14 JUROR NUMBER 123: Yes, ---

15 THE COURT: --- law?

16 JUROR NUMBER 123: --- sir.

17 THE COURT: And you're, uh, follow that law ---

18 JUROR NUMBER 123: Yes, sir.

19 THE COURT: --- and, uh, standing here right now you're
20 still following that law.

21 JUROR NUMBER 123: Yes, sir.

22 THE COURT: Alright, thank you, uh, thank you very much,
23 uh, Mr. McCormack. You just have him step right outside and
24 and I'll, uh, let me ask the attorneys and Mr. Walker
25 somethin'.

MOTIONS AND MATTERS

1 (The following takes place outside the presence of Juror
2 Number 123.)

3 THE COURT Alright, uh, any questions, uh, from the
4 State?

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

6 THE COURT: From the defense, Mr. Walker?

7 MR. WALKER: No, Your Honor. I have one objection, I
8 didn't wanna object in fronta the jury, uh, basically you told
9 him the jury, uh, in that last part a your statement you said
10 somethin' about, uh, actually addressin', you addressed
11 somethin' that was, uh, wasn't supposed to be addressed, I
12 think it was, um, either me or or the Court or the trial or
13 somethin', I I I don't know, I just thought it it didn't, it
14 didn't seem proper to me, Your Honor.

15 THE COURT: Alright, your your, uh, objection's on the
16 record, thank you very much, uh, sequester and that was Juror
17 123?

18 THE CLERK: Three, yes, sir.

19 THE COURT: Bring me juror 1 -- no, 41, ---

20 THE CLERK: Forty-one.

21 THE COURT: --- 41 out of the jury panel please, sir.

22 (Whereupon, a discussion was held off the record.)

23 (The following takes place in the presence of Juror
24 Number 41.)

25 THE COURT: Good mornin', how are you, sir?

MOTIONS AND MATTERS

1 JUROR NUMBER 41: Good, Your Honor.

2 THE COURT: Good. I, uh, I just have a few questions,
3 uh, that I would like to ask you. Uh, things are brought to
4 my attention, uh, at times throughout the course of a trial
5 and I need to, uh, just research it and get to the facts and
6 pay attention to the detail so I had a couple a questions for
7 you. You're one of our two alternates, correct?

8 JUROR NUMBER 41: Yes, sir.

9 THE COURT: And you sit next to, I don't know if you know
10 the gentleman's name you sit next to or not, uh, uh, had the
11 orange shirt on I believe Friday, the ---

12 JUROR NUMBER 41: Yes, sir.

13 THE COURT: --- oth -- the other alternate that's ---

14 JUROR NUMBER 41: Yes, sir.

15 THE COURT: --- still an alternate. Do you recall
16 leaving court, leavin' the jury box for the day, Thursday
17 afternoon we left little bit early?

18 JUROR NUMBER 41: And that day in particular I'm not
19 sure, Your Honor.

20 THE COURT: Okay. Well whatever day ya'll are leavin',
21 uh, for the day, um, course ya'll leave your jury box and you
22 go out to the hallway and you either turn left and leave
23 unless you have to retrieve somethin' from the jury room I
24 take it, ---

25 JUROR NUMBER 41: Yes, sir.

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1 THE COURT: --- that correct? Did you have, uh, any
2 conversation or hear any conversation from any member of the
3 jury panel, uh, about the case?

4 JUROR NUMBER 41: No, Your Honor.

5 THE COURT: Have have you had any conversations or
6 overheard any conversations by members of the jury about the
7 case or the facts of the case?

8 JUROR NUMBER 41: No, Your Honor.

9 THE COURT: Oh. Uh, standing here right now have you
10 formed or expressed any opinion about the guilt or the
11 innocence of Mr. Walker?

12 JUROR NUMBER 41: No, Your Honor.

13 THE COURT: Now of course as you recall in opening that,
14 my outline to the jury I would say or I said that a criminal
15 defendant in South Carolina is always presumed to be innocent
16 regardless of the serious nature of the charges, standing here
17 right now are you still abiding by that ---

18 JUROR NUMBER 41: Yes, ---

19 THE COURT: --- instruction ---

20 JUROR NUMBER 41: --- Your Honor.

21 THE COURT: --- to you?

22 JUROR NUMBER 41: Yes, sir.

23 THE COURT: Okay. Haven't formed or expressed any
24 opinion, hasn't heard any member of the jury try, uh, the jury
25 panel form or expressed any opinion and been no conversations

MOTIONS AND MATTERS

1 whatsoever about the facts of the case among any members of
2 the jury panel while they were in your presence.

3 JUROR NUMBER 41: Correct, Your Honor.

4 THE COURT: Okay. Alright, I'm going to, uh, ask you to
5 return to your jury room, do not discuss our conversations
6 with your fellow jurors.

7 JUROR NUMBER 41: Yes, Your Honor.

8 THE COURT: Thank you, uh, thank you very much.

9 JUROR NUMBER 41: Thank you, sir.

10 (The following takes place outside the presence of Juror
11 Number 41.)

12 THE COURT: Any questions, uh, Solicitor?

13 MR. GRAHAM: No, Your Honor.

14 THE COURT: Mr. Walker?

15 MR. WALKER: No, sir, not at this time.

16 THE COURT: Anything further on this issue, uh,
17 Mr. Walker?

18 MR. WALKER: No, sir, not really. I I understand court,
19 I mean, it's it's ---

20 THE COURT: Sir?

21 MR. WALKER: I said no, sir, I understand court, I mean,
22 it's, uh, and I I say it happened, they they deny it, there's
23 no further I know.

24 (Pause.)

25 THE COURT: Alright, uh, citing both State vs.

MOTIONS AND MATTERS

1 B-A-N-T-A-N and *State vs. Burgess*, 391 S.C. 15 (2010), uh,
2 Bantan of course was where a juror had overheard other people,
3 uh, talking about information that may have been prejudicial
4 and then *Burgess* involved a juror that was not removed
5 although after being seated later on he had indicated that he
6 knew one witness, a family member I think victim, uh, and the
7 law, uh, being very clear that I have very broad discretion to
8 determine of whether a juror is qualified or not qualified I
9 am going to, uh, excuse Mr., 123, is that right, McCormack?

10 THE CLERK: Yes, sir, Mr. McCormack.

11 THE COURT: I'm going to excuse him from the jury panel,
12 uh, only because of the casual conversation he had with
13 Officer Wharton concerning, uh, his his, the juror's
14 son-in-law also being employed there. I find the jurors', uh,
15 testimony concerning, uh, the event that Mr. Walker brought up
16 that he heard this, uh, statements and such, uh, as the jury
17 was leavin' the jury box headed out the door Friday, uh, find
18 the jurors' testimony to be credible. Uh, Mr., uh, Walker was
19 seated a great distance away and I will have that distance
20 measured and put on the, uh, record from the jury at the time
21 this alleged conversation would have taken place, it's also,
22 um, some obstacles, uh, as far as a, an independent podium in
23 a, in place, a attached podium, uh, the witness stand, uh, and
24 other, uh, structures, uh, in the, uh, courtroom. I asked in
25 court, uh, Friday if anyone in the courtroom had heard that

MOTIONS AND MATTERS

1 conversation besides Mr. Walker, no one stood and numerous
2 people in the courtroom that would be much closer including
3 the, uh, the court reporter that is trained to hear and
4 trained to, uh, listen, including myself and I typically
5 watch, uh, jurors, uh, as they leave, uh, and as they arrive,
6 uh, in the morning, uh, also, uh, the bailiff, uh, there is no
7 corroboration, I, uh, find the jurors to be credible, uh,
8 Juror Number 41, that's ---

9 THE CLERK: Yes, sir.

10 THE COURT: --- Mr. ---

11 THE CLERK: Crowe.

12 THE COURT: Juror Number 41 ha -- was asked both Friday
13 with the entire, uh, jury panel, uh, informed or expressed any
14 opinion, any conversations such as that, 120 -- 123 as I say
15 I'm going to excuse him based on the casual conversation that
16 he had with Officer Wharton although I do not think that it
17 rises to a juror misconduct, so the, uh, motion for a
18 mistrial, uh, there's no manifest necessity to grant a
19 mistrial, there's no misconduct, a mistrial is a drastic
20 remedy and, uh, it is denied, uh, in the, uh, interest of
21 justice.

22 Alright, uh, any any other matters, uh, Mr., uh,
23 Mr. Walker?

24 MR. WALKER: Uh, no, sir, not at this time.

25 THE COURT: Uh, Solicitor?

MOTIONS AND MATTERS

1 MR. GRAHAM: Yes, Your Honor, um, there are two matters I
2 believe, the first one is, our second witness is going to be
3 Officer or Deputy Kostyk from Aiken County with the video, um,
4 it in line with the judge's ruling we have redacted that
5 video, we're a little, um, perplex and would want some
6 direction from the Court and maybe also Mr. Walker if he has a
7 suggestion about how we present to the jury that that tape is
8 ending, um, we're we're just not quite sure it bein', just
9 wouldn't be proper to lie to the Court and say that it broke
10 or anything like that, we can say that the conversation ---

11 THE COURT: Well, ---

12 MR. GRAHAM: --- end ---

13 THE COURT: --- typ -- uh, typically what I do is I just
14 tell the jury based on my pretrial rulings this matter has
15 been redacted, you don't hold it for, against either party be
16 it Mr. Walker or the State.

17 MR. WALKER: I was hopin' that you would deem appropriate
18 that it was unconstitutional that what -- that's why it was
19 matter ---

20 THE COURT: Uh, ---

21 MR. WALKER: --- over.

22 THE COURT: --- no, sir, that's, uh, that's not a jury
23 issue, uh, that's a issue for the, uh, judge and I didn't rule
24 it was unconstitutional, ---

25 MR. WALKER: I thought you, ---

MOTIONS AND MATTERS

1 THE COURT: --- they didn't offer it.

2 MR. WALKER: --- I thought you did, Your Honor.

3 THE COURT: No, they didn't offer it.

4 MR. WALKER: That's right, that's right, I'm sorry.

5 THE COURT: So, uh, I'm a judge, when I don't have to
6 rule, I don't rule ---

7 MR. WALKER: That's right.

8 THE COURT: --- so, uh, I di -- I didn't have to rule on
9 it, uh, and I didn't rule on it but, uh, so they chose to
10 offer that part and that part alone, that's what I ruled on
11 and, uh, that's all that's before them and that's typically
12 what I say, don't hold it for or against either party, either
13 for, against Mr. Walker or for, against the State, it it's not
14 evidence.

15 MR. WALKER: Your Honor, if I may, I ---

16 THE COURT: Yes, ---

17 MR. WALKER: --- uh, ---

18 THE COURT: --- sir.

19 MR. WALKER: --- I spoke with this Ms. Mauldin and our
20 our, uh, our memory is not consistent but I thought that, um,
21 it was only to be used for, uh, impeachment purposes.

22 THE COURT: That the impeachment purposes was, uh, go
23 ahead, Solicitor.

24 MR. GRAHAM: For that video, Your Honor, the impeachment,
25 what we were offering that your ruling was that the question,

MOTIONS AND MATTERS

1 Do you have any warrants, and the answer by Mr. Walker,
2 Murder ---

3 THE COURT: It's ---

4 MR. GRAHAM: --- but that's it ---

5 THE COURT: --- up to the request for an attorney,
6 correct?

7 MR. GRAHAM: Well, we were stopping at the, at the
8 deputy asking if they were any warrants on him and he said
9 murder, ---

10 THE COURT: Right.

11 MR. GRAHAM: --- for the case-in-chief we were stopping
12 there. For impeachment purposes if he chose to testify, we
13 would go to the next question or set a questions asking if you
14 killed somebody and his answer being yes and we would stop
15 there for impeachment purposes.

16 THE COURT: Right, so so parts of what they offered was a
17 case-in-chief and part was impeachment purposes. Alright, uh,
18 anything further, Mr. Walker, ---

19 MR. WALKER: Uh, no, ---

20 THE COURT: --- on ---

21 MR. WALKER: --- sir, not ---

22 THE COURT: --- this issue?

23 MR. WALKER: That I still object to the video, Your
24 Honor, but I ---

25 THE COURT: Well ---

MOTIONS AND MATTERS

1 MR. WALKER: --- stated that ---

2 THE COURT: --- you you, I mean, you objected under
3 *Jackson vs. Denno*.

4 MR. WALKER: Well, I I I just think typically, Your
5 Honor, that it's it's irrelevant and it's not, that and then
6 you you have the complete completion [sic] of rule, it's
7 not, it's not complete and ---

8 THE COURT: If -- well that, that would be your motion.

9 MR. WALKER: Well, I mean, I I I don't know the video at
10 all, I I'm not addressin' to cut it, ---

11 THE COURT: Well ---

12 MR. WALKER: --- we ---

13 THE COURT: --- the rule ---

14 MR. WALKER: --- have permission ---

15 THE COURT: --- of completeness, uh, in *State vs.*
16 *Jackson*, that that's up to you, uh, of whether or not you
17 wanna make a a a motion to record under the rule of
18 completeness with *State vs. Jackson*, I have, that's not
19 somethin' that's before me because that motion hasn't been
20 made.

21 MR. WALKER: Well, may may I motion that, Your Honor,
22 once the solicitor has finished with his ---

23 THE COURT: Well ---

24 MR. WALKER: --- considerations?

25 THE COURT: Well now think through that, Mr. Walker.

MOTIONS AND MATTERS

1 MR. WALKER: I don't know, Your Honor, uh, I'm ---

2 THE COURT: Look ---

3 MR. WALKER: --- lis ---

4 THE COURT: --- at rule, what is it 106?

5 MR. WALKER: I'm tryin' right now.

6 THE COURT: Look at Rule, uh, 106, that you want it all
7 in? You want, you want all of that video before the jury?

8 MR. WALKER: You say that was Rule 106, Your Honor?

9 THE COURT: I think it is, give me a second.

10 MS. DAVIS: Yes.

11 MR. GRAHAM: That's correct, Your Honor.

12 THE COURT: I mean, that's just a rule of completeness,
13 that's all it is, it codifies rule of completeness. Yeah,
14 106, that's right.

15 MR. WALKER: Yes, yes, Your Honor, I I would, I would, I
16 would make a motion under, uh, the the South Carolina Rules
17 Evidence Rule 106.

18 THE COURT: Well, speak, uh, why don't we, uh, --
19 alright, 'fore I ru -- before I rule on Rule 106, give me just
20 a minute. Anything further, Solicitor?

21 MR. GRAHAM: Not on this matter, there's one more issue
22 that I'd like to discuss, Your Honor.

23 THE COURT: Alright, what's the next issue?

24 MR. GRAHAM: The, at the end of court on Friday, the
25 State had premarked a bunch of, uh, um, several photographs, I

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1 don't have the number, Your Honor, I apologize but photographs
2 that the State intended to offer with Dr. Ross in its case-in-
3 chief, um, those were numbered and provided, um, to
4 Mr. Walker, at some point I'm sure that he has objections
5 for some a those and we will need to deal with that before
6 Dr. Ross testifies.

7 THE COURT: Alright, we will. Alright, uh, you have
8 anything, uh, we're gonna take a recess for a few minutes, you
9 have anything, Mr. Walker?

10 MR. WALKER: Um, yeah, Your Honor, uh, I I have one
11 objection to them photos and I I would like to get back on
12 them photos at at the proper time but right now, uh, I'm
13 'bout to rereview but I looked on Friday in my, uh, discovery
14 that I was a agendaed and some a these pictures was not
15 provided to me beforehand ---

16 THE COURT: Well ya'll ya'll, well make sure whatever
17 you -- that, uh, are are you sayin' that the autopsy
18 photographs were not pro -- when you say "beforehand," what
19 are you talkin' about?

20 MR. WALKER: Beforehand, uh, before ---

21 THE COURT: Well ---

22 MR. WALKER: --- they ---

23 THE COURT: --- beforehand could be before ten minutes,
24 before two weeks, before ---

25 MR. WALKER: It -- before trial, Your Honor, they was

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1 never, I never received these photos until now, some of
2 em, not not all of 'em. I was, I've received some of 'em but
3 there's a lot of 'em like probly like four or five, maybe six
4 of 'em that I have not received, yeah, until now.

5 THE COURT: Well ya'll ya'll, uh, you get 'em, whichever
6 ones you haven't received straight and, uh, I'll hear that,
7 all of that before Dr. Ross testifies.

8 MR. WALKER: Thank you, Your Honor.

9 THE COURT: Anything further?

10 MR. WALKER: No, sir, Your Honor.

11 THE COURT: Alright.. Well we gonna do, uh, I'm gonna
12 bring Mr., uh, McCormack out, release him from his jury
13 service, uh, then we're going to, um, ---

14 THE CLERK: Okay.

15 THE COURT: --- I may bring the jury out real quick and
16 tell them we're gonna reconvene as soon as they finish jury
17 qualifications, uh, upstairs so they won't be sittin' back
18 there long, ---

19 THE CLERK: Right.

20 THE COURT: --- okay? Will you bring me Mr. McCormack.

21 THE BAILIFF: Oh, yes.

22 (Whereupon, a discussion was held off the record.)

23 (The following takes place in the presence of Juror
24 Number 123.)

25 THE COURT: Alright, uh, Mr., uh, McCormack, I, in an

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1 abundance of precaution, uh, no, uh, no criticism of you
2 whatsoever, whatsoever, um, I'm gonna release you from your,
3 uh, jury service for the remainder of the week. As I say it
4 is is no criticism whatsoever, uh, I I I would rather, uh,
5 deal with it now than lat -- than later on, uh, I like, uh,
6 as sterile an environment, uh, as possible, um, that I -- and
7 it -- I'm not critical, ---

8 JUROR NUMBER 123: Right.

9 THE COURT: --- I'm not, if you see me when I'm upset,
10 you would know I'm not upset, ha, ha, ha, think you know and
11 and I'm not, uh, it's just issues arise during the course of
12 the trial and, uh, you know, you never know what what may
13 occur, I can predict anything fr -- but the future and it's
14 just an issue that, uh, would be resolved, ---

15 JUROR NUMBER 123: Right.

16 THE COURT: --- so and and and I thank you, uh, for your
17 service, that you and other members very excellent jury
18 willing to, uh, participate, willing to go into second week,
19 that that doesn't happen every week but, uh, I do appreciate
20 your civic-mindedness.

21 JUROR NUMBER 123: Okay, where do I get the papers so I,
22 so I can turn in to where I work?

23 THE COURT: Um, the clerk will, does that answer your
24 question?

25 JUROR NUMBER 123: Okay.

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1 THE COURT: Okay, did I answer it? Alright, thank you,
2 Sheriff. Good look to you, thank you so much.

3 MR. WALKER: I don't think he heard you, Your Honor.

4 THE COURT: Sir?

5 MR. WALKER: I don't think he heard you.

6 THE COURT: Say that again now.

7 MR. WALKER: I don't think he heard ya.

8 THE COURT: You don't think he heard me?

9 MR. WALKER: You said clerk so he he was still stunned.

10 THE COURT: Bring us, uh, our jury panel, please.

11 THE BAILIFF: Yes, sir.

12 (Whereupon, a discussion was held off the record.)

13 (The following takes place in the presence of the jury.)

14 THE COURT: Everybody's movin' places on me this mornin',
15 again, it's the new venue. Good mornin', hope you, uh, all
16 had a, uh, pleasant weekend, as you see we're in a, uh,
17 different venue this morning, that's because a new jury panel,
18 a full panel, uh, reported at 9:30 this mornin', the, uh,
19 Westbrook courtroom is the only space that we have available
20 to qualify a jury panel and so, uh, we were assigned down
21 here, we're gonna move back upstairs as soon as that is
22 completed which ya'll know how I am on time, I'm gonna say
23 about 11:15, um, and I had, the parties have been here not
24 ear -- not not on time but early and workin' very diligently
25 since, uh, 9 a.m. this morning on some other motions. Uh,

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1 I'll ask you each again that, uh, and I do this with each and
2 every, uh, jury panel, has any member of the jury panel
3 formed or expressed any opinion about the guilt or innocence
4 of Mr. Walker, if so please stand.

5 (No response.)

6 THE COURT: Has any member a the jury panel read,
7 watched, uh, any, uh, media report should there have been any,
8 uh, whether, uh, radio, television, newsprint, Internet or
9 otherwise, if so please stand.

10 (No response.)

11 THE COURT: Has any member of the jury panel, uh, done
12 any independent research or any research, uh, on the Internet
13 or otherwise, if so please stand.

14 (No response.)

15 THE COURT: Thank you, uh, thank you very much. Now it's
16 gonna take a little bit a transition to, uh, move the, uh,
17 panel that's being qualified out from upstairs and and us back
18 back upstairs, the court reporter have to move her equipment
19 and such so I'm gonna give ya a break and ask you to please
20 report back to this jury room at, uh, 11:15, 11:15, that you
21 can certainly remain back there but you don't have to remain
22 captive, um, and, uh, hopefully at 11:15, uh, I'll -- our
23 courtroom will be available and ya'lls seats will be
24 available, um, we will get started at that time. Thank ya'll,
25 uh, thank ya'll very much, you may now go with the, uh,

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1 bailiff and we'll see you, uh, promptly back here at your jury
2 room. 11.

3 (Whereupon, a discussion was held off the record.)

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: Anything further, Mr. Walker?

7 MR. WALKER: Um, no, sir, Your Honor, I was hopin' I
8 wouldn't appear in fronta the jury before I shaved but it's
9 alright.

10 THE COURT: Can he shave at this break? Solicitor, you
11 need a shave too.

12 (Laughter.)

13 MR. GRAHAM: I'll get into a bathroom, Your Honor.

14 THE COURT: Anything from the St -- anything from the
15 State?

16 MR. GRAHAM: No, Your Honor, thank you.

17 THE COURT: Alright, well, uh, we'll shoot for, if I can
18 get them, uh, marshall back her and we'll see when, uh, our
19 upstairs courtroom's available. Alright, thank ya'll, thank
20 ya'll very much.

21 (Whereupon, a recess was taken.)

22 THE COURT: Thank you, uh, good mornin' again, please be
23 seated. Alright, they're moving our jury upstairs right now,
24 uh, before we, uh, bring them in anything from the defense,
25 Mr. Walker?

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1 MR. WALKER: Uh, no, sir, Your Honor. Um, I guess I'd
2 still like to motion, uh, we still have to see these, uh,
3 autopsy photos, we haven't ---.

4 THE COURT: Yes, ---

5 MR. WALKER: --- yet.

6 THE COURT: --- sir, and I understand Dr. Ross won't be
7 here till this afternoon.

8 MR. GRAHAM: She's actually here now, Your Honor.

9 THE COURT: She's here now? Well ---

10 MR. GRAHAM: Yes.

11 THE COURT: --- when when are you gonna put her on the
12 stand?

13 MR. GRAHAM: I plan on havin' her be my last witness of
14 three.

15 THE COURT: Alright, well I plan on breakin' about 1:15,
16 uh, do you want to look through those photographs now? Do you
17 have 'em premarked?

18 MR. GRAHAM: We can, Your Honor, they are premarked and
19 they're ---

20 THE COURT: Alright.

21 MR. GRAHAM: --- sitting right down there if You Honor
22 wants to go ahead and look at 'em.

23 (Whereupon, the exhibits were handed to the Court.)

24 THE COURT: Alright, uh, to begin with, Mr., uh, Walker,
25 uh, I have 46A and 46B, what -- why is there an A and B?

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1 MR. GRAHAM: The B I think, and I don't have the, and I
2 didn't make a copy for myself, Your Honor, the B has, um, it
3 shows some, uh, part of the dissection and ---

4 THE COURT: In the upper left side?

5 MR. GRAHAM: Correct, Your Honor, we redacted that on
6 46A.

7 THE COURT: Alright, so I'm I'm only ruling on 46A ---

8 MR. GRAHAM: Correct, ---

9 THE COURT: --- and the ---

10 MR. GRAHAM: --- and that ---

11 THE COURT: --- redacted version 46B?

12 MR. GRAHAM: And 46 B would just be a court exhibit, Your
13 Honor.

14 THE COURT: Alright, uh, Mr., um, Walker, um, did you
15 have a copy of this (indicating) photograph?

16 MR. WALKER: That is -- no, sir, Your Honor, no, sir.
17 Uh, ---

18 MR. GRAHAM: He ---

19 THE COURT: I I thought I'd said at the break to make
20 sure he had photographs.

21 MR. GRAHAM: He he does, Your Honor, he has 46 I
22 believe ---

23 MR. WALKER: Yeah, ---

24 MR. GRAHAM: --- which ---

25 MR. WALKER: --- I ---

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1 MR. GRAHAM: --- is the ---

2 MR. WALKER: --- I have the photographs by my objection
3 to 'em, Your Honor, was under Rule 5, I I wasn't, I'm just now
4 receivin' 'em as a exhibit.

5 THE COURT: And ---

6 MR. GRAHAM: But most ---

7 THE COURT: --- there's a cont -- alright, go ahead,
8 Solicitor.

9 MR. GRAHAM: Your Honor, he was provided the coroner
10 photos a long time ago, he was provided crime scene officer
11 photos who were present they obviously autopsy a long time
12 ago. On January 26 in front of Judge Griffith here in court
13 we, um, had provided him printouts of nine to a page of
14 Dr. Ross's report, diagram and photos. Um, my understanding
15 is that Judge Griffith handed the photos to the SCDC officers
16 and asked him to look at it for contraband because some some a
17 the photos Ms. Banty is, um, entirely unclothed, so I think
18 that the result a that hearing is all those photos were left
19 or at least the objected to photos were left in the possession
20 of Ms. Mauldin so she's had 'em to at, he just hadn't had 'em
21 to necessarily take with him to SCDC ---

22 UNIDENTIFIED MAN: Sir, ---

23 MR. GRAHAM: --- some a the photos.

24 THE COURT: Alright, uh, Mr., uh, Walker.

25 MR. WALKER: I guess that maybe so, Your Honor, now

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1 that, uh, the State has add to my recollection but I I guess
2 we'll proceed.

3 THE COURT: Did you have a photograph?

4 MR. WALKER: Um, now that Mr. Graham had said somethin',
5 uh, they was given to me, uh, at the last hearing, um, with
6 Gr -- with, uh, Judge Griffit [sic] and, uh, they basically
7 asked me to view 'em and keep 'em at the courthouse and I I
8 wasn't real relevant 'cause I only viewed 'em real quick like.

9 THE COURT: Do you have objections to, uh, photograph,
10 uh, 46A?

11 MR. WALKER: Uh, yes, I do, Your Honor.

12 THE COURT: What's the basis of the objection?

13 MR. WALKER: I don't have a 46A anywhere, Your Honor, I
14 have a 46.

15 MR. GRAHAM: His his 46; Your Honor, I believe would be
16 the 46A.

17 THE COURT: I I hadn't seen his 46, I have 46A, 46B, now
18 there's a 46.

19 MR. WALKER: I just have a 46, Your Honor.

20 THE COURT: Show me the 46 and make sure it's the same as
21 what I'm looking at.

22 (Whereupon, the exhibit was handed to the Court.)

23 THE COURT: Thank you, uh, Sheriff, thank you, uh,
24 Mr. Walker.

25 MR. WALKER: Thank you.

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1 THE COURT: Alright, it appears to be the same beside --
2 except with the exception that it is a black and white
3 photograph so they're offering 46A in evidence and not 46B,
4 it's only a court exhibit 'cause it appears to have some type
5 of a dissection up in the upper left so it has been, uh,
6 redacted. Uh, what is your objections to 46A?

7 MR. WALKER: If I may have that photo back, Your Honor?

8 (Pause.)

9 (Whereupon, a discussion was held of the record.)

10 (Pause.)

11 MR. WALKER: Yes, sir, Your Honor. Uh, first, back we
12 have a, this photo shows the belt, um, and I believe that I
13 addressed a ex, explodatory [sic] which means, uh, showin' my
14 innocence, uh, and I I, the belt, again, and I I needed to, I
15 wish that, uh, tested that belt, make sure it never touched
16 this, the victim's body until after the coroner produced, uh,
17 actually pressed it against the body and therefore it's it's
18 against my explore evidences and plus there's no relevancy to
19 a photo of a arm or a belt and it has no cumulative value and
20 it also has no de -- depiction [sic] and it really, it has
21 no no, uh, depiction towards anything and it's, uh, also no
22 purpose for admission.

23 THE COURT: Alright, I find, uh, 46, uh, A is relevant,
24 uh, subject to the testimony of the doctor, the pathologist
25 that, uh, it is a photograph of the victim's, uh, arm showing

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1 bruises, showing the belt, that will go to the weight and
2 credibility as far as that's concerned, uh, and would be
3 subject to cross-examination, uh, as to whether or not the
4 belt was, uh, forensically tested for skin cell or DNA; 46A
5 the redacted version of 46B, uh, again, subject to testimony
6 of Dr. Ross, um, would be admissible right now identification
7 purposes only, 46B is marked as a courts Exhibit. Now as to,
8 uh, 47, Mr. Walker, ---

9 MR. WALKER: Yes, sir, uh, 47's highly gruesome ---

10 THE COURT: Well first do you have an objection?

11 MR. WALKER: Yes, sir, I have objection, ---

12 THE COURT: Alright, ---

13 MR. WALKER: --- Your Honor.

14 THE COURT: --- you go right ahead.

15 MR. WALKER: It is highly gruesome, again, that it shows
16 no no purpose, it shows a, it also, uh, it it, the and there's
17 no reason to show, uh, rigor mortis and there's no reason to
18 show the decomposed body.

19 THE COURT: Uh, do you have the same objection as to 48?

20 MR. WALKER: Uh, well I I do, Your Honor, but I I'm
21 pretty sure that the Court might find 48 that there's a
22 bruisin' on the arm that might be different rather than 47 so
23 I definitely don't think 47 is is, uh, is is depiction of of
24 homicide and, uh, I I'm guessin', I'm guessin' 48 may be but I
25 I still object because there's, you know, them them them

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1 wounds are what they they look like postmortem to me.

2 THE COURT: As to, uh, 49 and do you have objections to
3 49?

4 MR. WALKER: Ye -- I'm tryin' to look, Your Honor, on my
5 screen 'cause that I'm havin' troubles with these black and
6 whites, they're very hard for me to see. Um, I I don't, I
7 can't even tell what's on this photo, Your Honor, all I can
8 see is a ruler.

9 THE COURT: Alright, uh, ---

10 MR. WALKER: Can I ---

11 THE COURT: --- show ---

12 MR. WALKER: --- show ---

13 THE COURT: --- him 49 for me, please.

14 (Whereupon, the defendant examined the exhibit.)

15 MR. WALKER: Yes, sir, and I, again, I I object, there's
16 there's no purpose, no, uh, no depiction, um, ---

17 THE COURT: Alright, that's 49, 50?

18 MR. WALKER: --- and is highly gruesome also here.

19 THE COURT: Sir?

20 MR. WALKER: I would like to add that it's gruesome.

21 THE COURT: Alright, yes, sir.

22 MR. WALKER: Uh, yeah, 50 is highly gruesome, Your Honor,
23 around the, uh, around the, uh, el -- or the, uh, shoulder and
24 also there's no, they they're showin', uh, crayons again.

25 THE COURT: Fifty-one?

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1 MR. WALKER: Your Honor, I I object to number 51 due that
2 the the relevancy and also, uh, also no purpose.

3 THE COURT: Fifty-two?

4 MR. WALKER: Uh, there's no dic -- no dic, uh, no, uh,
5 dictation for murder of the, a a photo of the foot, Your
6 Honor.

7 THE COURT: What's the relevancy of 52, Solicitor?

8 MR. GRAHAM: May I see the photo, Your Honor, please.
9 It's showing the additional bruising and abrasions on the the
10 victim's right foot.

11 THE COURT: Fifty-three, Mr. Walker.

12 MR. WALKER: Yes, sir. Uh, 50 is highly gruesome and it
13 is, uh, has no cumulative value, it it it's it's probative and
14 it's, they're all gruesome, Your Honor, all the photos are
15 gruesome and this particular photo is, I mean, it it, the body
16 is decomposed, been decomposed for it looks like, you know,
17 forty-eight hours, if not longer, it's it's highly spoilin',
18 it's highly highly gruesome and it doesn't meet its standards.
19 I I think the Court is, it's not a -- it is, it shows, it
20 shows no dic -- dictation to strangulation when I've already
21 testified that there was strangulation so there's no need for
22 State ---

23 THE COURT: If it's ---

24 MR. WALKER: --- to ---

25 THE COURT: --- not testified in fronta the jury ---

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1 MR. WALKER: I did in openin', Your Honor.

2 THE COURT: That's not testimony, opening statement, uh,
3 is not evidence. Uh, fifty-four?

4 MR. WALKER: Uh, again, it's decomposed body, Your Honor,
5 it's no no necessary, it's highly, very extremely gruesome.

6 THE COURT: Fifty-five?

7 MR. WALKER: Has ---

8 THE COURT: Fifty-six, is that's all the same all that
9 being the neck area?

10 MR. WALKER: Yes, sir, the same same objection, uh, that
11 they're highly gruesome, they're highly irrelevant.

12 THE COURT: Alright, 53 and 55, that both 55, uh, and 56,
13 53, 55, 56 are only, uh, courts exhibits. What what's the,
14 uh, relevancy of 57, uh, Solicitor?

15 MR. GRAHAM: I can't see it Your Honor. The one in your
16 hand, Your Honor, is, um, that we intend to use the black and
17 white, not the color, the relevance is that that shows the
18 throat area upon dissection and the doctor will talk about the
19 blood in the larynx, Your Honor.

20 THE COURT: What about 57, Mr. ---

21 MR. WALKER: That is, ---

22 THE COURT: --- Walker?

23 MR. WALKER: --- uh, highly highly gruesome, Your Honor,
24 and, uh, I I don't think the State can, the State is producin'
25 a lotta autopsy photos is are highly irrelevant and highly,

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1 they they need to cumulate a little bit of their their autopsy
2 photos.

3 THE COURT: Fifty-eight, what does this show, Solicitor?

4 MR. GRAHAM: Fifty-eight, um, is also black and white
5 copy, Your Honor, it's been redacted. It shows, um, the that
6 blunt force trauma to Ms. Banty's head ---

7 MR. WALKER: There's n ---

8 MR. GRAHAM: --- and then ---

9 MR. WALKER: Ha ---

10 MR. GRAHAM: --- the -- upon dissection, Your Honor.

11 MR. WALKER: Your Honor, I I don't think, I I object to
12 this, to 58, I I think the and also, uh, together with 57, I
13 think the pathologist is more than capable of subjectin'
14 proper testimony especially with her experience to, uh, the
15 relevancy to these, to the conditions of the autopsy and that
16 goes for all the photos, Your Honor.

17 THE COURT: Alright, uh, 48, excuse me, 46B, 53, 55, 56,
18 57, okay, 58 are court's exhibits only, I'll find they are
19 cumulative, uh, further, um, the, uh, dissected part of the
20 neck, uh, and its, uh, color, uh, it might appeal to the
21 emotions of the jury, uh, 56, 55 and 53 are cumulative to I
22 think 54. Um, I find under *State vs. Collins* that the, and
23 under Rule, uh, 403, uh, subject to the proper foundation by
24 Dr. Ross that all of this is relevant and it may be excluded
25 if its probative value is substantially outweighed by the

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1 danger of unfair prejudice. I see, uh, none of these
2 photographs that would, uh, that its probative value would be
3 outweighed by the danger of unfair prejudice as that term is
4 defined under *State vs. Collins*, of course, uh, subject to,
5 uh, the foundation of Dr. Ross's testimony, um, as is, uh,
6 well elucidated in our case law, so they're ID purposes only
7 46B, forty -- 53, 55, 56, 57 and 58 are not in evidence, um,
8 they are only court's exhibits. Alright, uh, anything else,
9 and that again, that's subject to, uh, Dr. Ross's, uh,
10 testimony under *Collins* and that line of cases so, anything
11 further, um, Solicitor?

12 MR. GRAHAM: No, Your Honor.

13 THE COURT: Anything further, Mr. Walker?

14 MR. WALKER: No, sir, Your Honor.

15 THE COURT: Thank you, uh, ---

16 (Whereupon, a discussion was held off the record.)

17 (The following takes place in the presence of the jury.)

18 THE COURT: Alright, uh, ladies and gentlemen, welcome
19 back, we continue in the trial of the case by the presentation
20 of evidence and testimony by the State in its case-in-chief,
21 you'll please continue to give the parties your complete and
22 undivided attention as you have done throughout the trial of
23 this case. Solicitor, you may call your next witness.

24 MR. GRAHAM: Thank Your Honor, the State calls Johnny
25 Darby.

JOHNNY LEE DARBY, III - DIRECT EXAMINATION BY MR. GRAHAM

1 THE BAILIFF: Your Honor, may I give out the notepads,
2 well I ---

3 THE COURT: Course.

4 THE BAILIFF: --- just haven't given', got -- gotten 'em
5 yet. Thank you.

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

7 THE COURT: What was the name of your witness, Solicitor?

8 THE CLERK: Johnny ---

9 UNIDENTIFIED JUROR: Johnny ---

10 THE CLERK: --- Darby.

11 UNIDENTIFIED JUROR: --- Darby.

12 THE COURT: Johnny Darby.

13 (Whereupon, the witness came forward.)

14 THE CLERK: Raise your right. Uh, raise your right the
15 best you can.

16 JOHNNY LEE DARBY, III, having
17 been first duly sworn, testified as follows:

18 THE CLERK: A seat right up there (indicating),
19 Mr. Darby, once you're seated state your full name spelling
20 your last, please.

21 THE WITNESS: Johnny Lee Darby the third, D-A-R-B-Y.

22 DIRECT EXAMINATION BY MR. GRAHAM:

23 Q. Good morning, Mr. Darby, how are you?

24 A. Good mornin', I'm fine, sir.

25 Q. And you're wearing a red jumpsuit, you're presently in

JOHNNY LEE DARBY, III - DIRECT EXAMINATION BY MR. GRAHAM

1 the Lexington County Detention Center, is that correct?

2 A. Yes, sir.

3 Q. And you have pending charges: a use of vehicle without
4 owner's permission, ---

5 A. Uh, yes, sir.

6 Q. --- assault and battery second degree, ---

7 A. Yes, sir.

8 Q. --- stalking ---

9 A. Yes, sir.

10 Q. --- and a grandson larceny, ---

11 A. Yes, sir.

12 Q. --- is that correct?

13 A. Yes, sir.

14 Q. Okay, now the charges are pending at the moment.

15 A. Yes, sir.

16 Q. Back in 2015 I think you wrote a letter to me asking to
17 speak with me regarding conversations that you had with
18 Mr. Walker, is that correct?

19 A. Yes, sir.

20 Q. Do you see David Walker in the courtroom today?

21 A. Uh, yes, sir, I do.

22 Q. Could you point him out, please.

23 A. Okay. (Pointed to the defendant.)

24 Q. So what color is his shirt?

25 A. Um, yellow.

JOHNNY LEE DARBY, III - DIRECT EXAMINATION BY MR. GRAHAM

1 MR. GRAHAM: Your Honor, let the record reflect that he's
2 identified the defendant.

3 THE COURT: So reflected.

4 BY MR. GRAHAM:

5 Q. Mr. Darby, why did you write me a letter?

6 A. Um, I was roommates with Mr. Walker, um, and he told me
7 some things I told him I'd share with you, ---

8 Q. Uh, how many times have ---

9 A. --- told him ---

10 Q. --- you and I ---

11 A. --- I was definitely ---

12 Q. --- spoken?

13 THE COURT: Told you some things, what, I just didn't
14 understand you.

15 THE WITNESS: Um, told me some, we had conversation, I
16 thought I should share with the solicitor.

17 THE COURT: Alright, thank you.

18 BY MR. GRAHAM:

19 Q. Mr. Darby, can you pull the mic towards you, maybe sit a
20 little closer so everybody can hear you well. How many times
21 have you and I met?

22 A. Once.

23 Q. And what, if any, promises have I or anybody in the
24 solicitor's office made to you to get you to come forward and
25 testify today?

JOHNNY LEE DARBY, III - DIRECT EXAMINATION BY MR. GRAHAM

1 A. Nothin'.

2 Q. What are you hoping to get out of your testimony today?

3 A. Nothin'.

4 Q. You don't want any help?

5 A. No, sir, actually when I wrote the letter I was in there
6 on on a different charge that I was found not guilty on and,
7 um, these charges I have now are are new, they're nuttin' to
8 do with anything I had goin' on when I wrote the letter.

9 Q. Okay. In the spring of 2013, did you have a chance, um,
10 to be a roommate with Mr. Walker?

11 A. Yes, sir, I did.

12 Q. And what, if anything, did he tell you about the crime
13 that he was charged with that put him in with you?

14 A. That he had ---

15 THE COURT: Is that, is that plural ---

16 MR. GRAHAM: I'm sorry?

17 THE COURT: --- plural?

18 MR. GRAHAM: No, sir, crime.

19 THE COURT: Crime? Alright, thank you.

20 A. He told me that he, uh, had killed the mother of his
21 child.

22 Q. Did he tell you how he killed the mother of his child?

23 MR. WALKER: Objection, Your Honor.

24 THE COURT: Uh, what's the basis of your objection,
25 Mr. Walker?

JOHNNY LEE DARBY, III - DIRECT EXAMINATION BY MR. GRAHAM

1 MR. WALKER: Hearsay.

2 THE COURT: That's overruled, uh, if it's a statement by
3 a party. You may continue, uh, Mr. Darby.

4 A. I can't really remember the content of any further
5 conversation, uh, as far as any details, you know, it been so
6 long ago, when I wrote your letter, it was still kinda
7 fresh.

8 Q. Did he have any conversations with you about how or did
9 he ask for any a -- what, if any, advice did he ask you for
10 how he could get off, uh, of his murder charge?

11 A. At that time?

12 Q. Yes.

13 A. None at that time.

14 Q. How 'bout at any time?

15 A. Later on when I I was representin' myself, uh, we would
16 talk 'cause he was explorin' the option of actually
17 representin' hisself and, uh, you know, he'd ask me things
18 like, you know, 'bout I guess, uh, insanity or how to, you
19 know, get get to the mental hospital, stuff like that so he
20 could I guess play crazy, um, . . .

21 Q. What did you tell him?

22 A. Told him to eat his own feces.

23 THE COURT: Told him what?

24 THE WITNESS: To eat his own feces.

25 MR. WALKER: Objection, Your Honor.

JOHNNY LEE DARBY, III - DIRECT EXAMINATION BY MR. GRAHAM

1 THE COURT: Uh, what's the basis of your objection?

2 MR. WALKER: Hearsay and relevant and penal interest
3 statement.

4 THE COURT: That's not hearsay 'cause the witness that
5 made the statement is present testifyin' and subject to, uh,
6 cross-examination, ---

7 MR. WALKER: Penal interest.

8 THE COURT: --- it is relevant. I I'm sorry, Mr. Walker,
9 go ahead.

10 MR. WALKER: I'm sayin' that a penal interest clause.

11 THE COURT: I I would overrule the objection. You may
12 continue, Solicitor, ask your next question.

13 MR. GRAHAM: Thanks, Mr. Darby, and, Your Honor, please
14 answer any questions Mr. Walker has for you.

15 THE WITNESS: Yes, sir.

16 THE COURT: Thank you, uh, Solicitor. Mr. Walker.

17 MR. WALKER: If you may indulge, Your Honor. May
18 I, ---

19 THE COURT: Sir?

20 MR. WALKER: --- may I have your indulgent?

21 THE COURT: Yes, sir, ---

22 MR. WALKER: Thank you, Judge.

23 THE COURT: --- of course.

24 (Pause.)

25 CROSS-EXAMINATION BY MR. WALKER:

JOHNNY LEE DARBY, III - CROSS-EXAMINATION BY MR. WALKER

1 Q. How you doin'; Mr. Darby?

2 A. How you doin', Mr. Walker?

3 Q. Alright. Alright, that you say it was, me and you were
4 cellmates, is that about right?

5 A. Yeah.

6 Q. Alright, and, uh, you say this was particularly around
7 2013, spring spring, am I right?

8 A. I believe it was 'bout March, somewhere in March.

9 Q. Alright. Uh, and you're sayin' I gave you some testimony
10 about murder, 'bout murder, is that right?

11 A. Testimony?

12 Q. Or I tell, I I explained to you, uh, uh, statements, uh,
13 that had to do with murder, is that, is that right?

14 A. I asked you what you was in there for.

15 Q. And I told you murder.

16 A. Yes, sir.

17 Q. Alright. And, uh, why would you think or why would you,
18 I mean, uh, why would you think I will tell you that, I mean.

19 A. We were havin' a discussion on what we were in jail
20 for.

21 Q. Right, okay, so normal inmates have that discussion, am I
22 right?

23 A. Every day.

24 Q. Every day, alright. So, um, so you you you say that I I
25 was plannin' to play crazy, is that right?

DARRELL JAMES KOSTYK - DIRECT EXAMINATION BY MS. DAVIS

1 A. It's what you talked to me about later on, not not when
2 you first were my roommate.

3 Q. Alright; no further questions, Your Honor.

4 THE COURT: Redirect, Solicitor?

5 MR. GRAHAM: Nothing, Your Honor, thank you.

6 THE COURT: Thank you, uh, thank, uh, Mr. Darby, you may
7 step down.

8 THE WITNESS: Thank you.

9 (Whereupon, the witness left the stand.)

10 THE COURT: Alright, uh, solicitor, you may call your
11 next witness.

12 MS. DAVIS: Thank, Your Honor, the State calls Darrell
13 Kostyk.

14 THE COURT: Alright, uh, Sergeant Kostyk, come around and
15 be sworn for us, please.

16 (Whereupon, the witness came forward.)

17 DARRELL JAMES KOSTYK, having
18 been first duly sworn, testified as follows:

19 THE CLERK: Seat, sir, once you're seated state your full
20 name spelling your last, please.

21 THE WITNESS: Darrell James Kostyk, K-O-S-T-Y-K. Thank
22 you.

23 THE CLERK: Yes.

24 DIRECT EXAMINATION BY MS. DAVIS:

25 Q. Officer Kostyk, where are you employed?

DARRELL JAMES KOSTYK - DIRECT EXAMINATION BY MS. DAVIS

1 A. The Aiken County Sheriff's Office.

2 Q. And how long have you been there?

3 A. Around eight years.

4 Q. Do you have any other law enforcement experience?

5 A. I do, I've been in law enforcement since 1994.

6 Q. Where were you employed prior to Aiken County?

7 A. I was employed at the Orangeburg Department a Public
8 Safety in in, uh, South Carolina and also at, uh, the Palmyra
9 Borough Police Department in Palmyra, Pennsylvania.

10 Q. And and what is your position currently at Aiken County?

11 A. Currently I'm a staff sergeant assigned as a road patrol
12 supervisor.

13 Q. And what do you do in that position?

14 A. I supervise an area of the county in conjunction with
15 another sergeant. Um, basically what we do is we split the
16 county in half and I'm in charge a one-half a the county, the
17 deputy's assigned to that area, and he's in charge a the other
18 half.

19 Q. Were you working for Aiken County back in December of
20 2012?

21 A. Yes, I was.

22 Q. And what was your position at that time?

23 A. The same position, a road patrol supervisor.

24 Q. Do you recall working on the evening of December 17th, of
25 2012?

DARRELL JAMES KOSTYK - DIRECT EXAMINATION BY MS. DAVIS

1 A. Yes, I do.

2 Q. Okay. Um, what were you doing that evening?

3 A. That evening I was assigned to the western side a the
4 county. Um, as the road patrol supervisor, um, I was
5 answering calls, assisting the deputies as they needed it and
6 and in the down time in between that I was, uh, watching co --
7 a convenience store, um, due to the time a year it is that you
8 have an a -- we have a, elevated robberies during that time.

9 Q. And you're referring to the holiday season?

10 A. Yes, ma'am, between, uh, typically between, uh, Halloween
11 and New Years we have a higher crime.

12 Q. And where is this convenience store that you were looking
13 at?

14 A. The convenience store I was watch is located at the
15 corner of Houndville (phonetic) Road and South Carolina State
16 Road Route 421.

17 Q. Okay. And I assume you weren't sitting in the parking
18 lot watching it, where would you have been?

19 A. I was not. There's a business that shut down across the
20 roadway, uh, that's typically dark, it's a, it it's a great
21 place to sit and watch the convenience store.

22 Q. And what time of evening was this?

23 A. It was around quarter of 11 I believe at night.

24 Q. So it woulda been dark at that time.

25 A. Yes, ma'am.

DARRELL JAMES KOSTYK - DIRECT EXAMINATION BY MS. DAVIS

1 Q. Um, at some point did you see something that you deem
2 suspicious?

3 A. I did. I saw a male; uh, enter into a a business across
4 the street from the parking lot onto their property across
5 from the convenience store, uh, it was closed. U, the
6 business has a, an awning or like a prefabricated metal
7 carport in the parkin' lot, um, like I said, it's very dark,
8 especially under that, uh, when the business is closed. Uh, I
9 saw the male enter and go unter -- under the the awning and
10 he, I observed him for a little while, he appeared to be in in
11 my opinion casing the, possibly casin' the convenience store
12 for what I thought was potentially gonna be a robbery.

13 Q. And how many years total do you have in law
14 enforcement?

15 A. Uh, twenty-two or twenty-three.

16 Q. So based on your training and experience in law
17 enforcement you believed that that the person was suspicious
18 because they may have been casing the convenience store?

19 A. Absolutely.

20 Q. Okay. And as a result of that, um, what, if anything,
21 did you do next?

22 A. I decided to pro --- to approach the individual and find
23 out what he was doin'.

24 Q. Okay. At that point did you have any type of a recording
25 device on?

DARRELL JAMES KOSTYK - DIRECT EXAMINATION BY MS. DAVIS

1 A. I I did.

2 Q. And what would that be?

3 A. I had a in-car camera video system, uh, with a wireless
4 belt mic recorder, well it's a belt microphone on my, on my
5 duty belt.

6 Q. Would that give you audio and video feed?

7 A. The camera in the vehicle provides video feed and and
8 also audio and the belt mic provides audio if you're away from
9 the vehicle.

10 Q. Okay. I'm gonna show you what has been marked for, um,
11 ID as State's Exhibit Number 45 and ask if you recognize this.

12 A. Yes, ma'am.

13 Q. And how are you able to recognize it?

14 A. I initialed it, uh, both on the packaging and on the
15 actual DVD itself.

16 Q. Okay, and what is this a, um, recording of?

17 A. It's a copy of the in-car video outta my patrol vehicle.

18 Q. And you reviewed this?

19 A. I did.

20 Q. Has it been altered or changed in any way other than the
21 redactions made in accordance with the judge's ruling?

22 A. It has not.

23 MS. DAVIS: Your Honor, at this time the State would
24 offer State's Exhibit Number 45 into evidence and ask to
25 publish.

DARRELL JAMES KOSTYK - DIRECT EXAMINATION BY MS. DAVIS

1 THE COURT: Mr. Walker?

2 MR. WALKER: Um, um, um, objection, same one.

3 THE COURT: What what's the, uh, basis of your
4 objection?

5 MR. WALKER: Same rules: relevancy and others.

6 THE COURT: Relevancy and ---

7 MR. WALKER: Uh, relevancy, Your Honor, I'll ---

8 THE COURT: Alright, well I I will find that, uh, it is,
9 uh, relevant under Rule 401 so, uh, State's 45 did you say?

10 MS. DAVIS: That's correct, Your Honor.

11 THE COURT: State's 45's in evidence subject to, uh,
12 defendant's objection. You may publish.

13 (State's Exhibit No. 45, redacted in-car video, admitted
14 into evidence.)

15 MS. DAVIS: Thank Your Honor. Um, would this be a good
16 time for you to give an instruction regarding redactions to
17 the jury, Your Honor?

18 THE COURT: Yes, ma'am. Uh, I have, uh, redacted, uh,
19 portions of the, uh, videotaped that appear after the segment
20 that will be published; in other words, it's continuous up to
21 the point that when it stops. There other things on the
22 videotape that, uh, based on certain rulings, uh, are not
23 admissible; therefore, they will not be published and they're
24 not wh -- they will not be in evidence. When an item is
25 redacted whether written or audio or taped or or videoed, uh,

DARRELL JAMES KOSTYK - DIRECT EXAMINATION BY MS. DAVIS

1 don't hold the fact that it has been redacted either for or
2 against either of the parties and don't speculate, uh, which I
3 know you won't, as to what may have been on them, again,
4 that's, uh, based on, uh, certain rulings that I have made in
5 the course of pretrial, uh, hearings. Thank you, uh,
6 Solicitor.

7 MS. DAVIS: Thank you, Your Honor.

8 THE COURT: You object anything I've told the jury, uh,
9 in that regard, Mr. Walker?

10 MR. WALKER: No, sir, Your Honor.

11 THE COURT: Alright, thank you, uh, thank you, Solicitor.

12 MS. DAVIS: OKay. Permission to publish, Judge?
13 Permission to publish?

14 THE COURT: Yes, ma'am, you may publish.

15 MS. DAVIS: Thank you.

16 (Pause.)

17 (Whereupon, State's Exhibit No. 45, in-car video, was
18 played for the jury.)

19 (Whereupon, State's Exhibit No. 45, in-car video, was
20 paused.)

21 MR. WALKER: Judge, ---

22 THE COURT: Yes, ---

23 MR. WALKER: --- I ---

24 THE COURT: --- sir.

25 MR. WALKER: --- I object to that. I highly object to

DARRELL JAMES KOSTYK - DIRECT EXAMINATION BY MS. DAVIS

1 the audibility and it's very distorted, can't hear.

2 THE COURT: Alright, well that would go to its weight and
3 not its admissibility, that would be a, the jury, uh, bein'
4 the finders of fact would have to, uh, evaluate the, uh,
5 quality of the tape and come to their own conclusions in that
6 regard, Mr. Walker.

7 MR. WALKER: Sorry.

8 THE COURT: Any other objections?

9 MR. WALKER: Not at this time, Your Honor, thank you.

10 THE COURT: Sir?

11 MR. WALKER: No, sir, not at this time, thank you.

12 THE COURT: Alright, yes, sir. Thank you, you may
13 continue.

14 MR. GRAHAM: Right.

15 (Whereupon, State's Exhibit No. 45, in-car video, resumed
16 play.)

17 BY MS. DAVIS:

18 Q. Sergeant Kostyk, is that the encounter you had with the
19 defendant that evening?

20 A. Yes, ma'am, it is.

21 Q. And I know that it's not the best audio so I'm gonna ask
22 you what kinda, what questions were you asking him in that
23 video?

24 A. When I, when I first approached him I asked him what he
25 was doing, um, ---

1 Q. And what was his response to that?

2 A. He didn't, he didn't, he did not give me a response, he
3 began to approach me.

4 Q. Um, and I saw on the videotape, and correct me if I'm
5 wrong, that he approached you puttin' his hands behind his
6 back, is that somethin' that is typical that you see?

7 A. That's a little bit unusual.

8 Q. Okay. And as a result of that what did you do?

9 A. I patted him down as a result of that plus my original
10 suspicions as to what he was doin' there to begin with.

11 Q. And is patting him down for your safety?

12 A. Absolutely.

13 Q. Is that something you would have done in in any, with
14 anyone in that circumstance?

15 A. Absolutely I would have.

16 Q. Okay. And what questions did you ask him?

17 A. I asked him if he had any warrants and he told me that he
18 did.

19 Q. Okay. Um, when you started off did you ask his name?

20 A. I did, I asked him his name.

21 Q. And did he tell you?

22 A. He did, David Walker.

23 Q. Okay, and then did you ask him his birthday?

24 A. I did.

25 Q. And did he provide you with that?

DARRELL JAMES KOSTYK - DIRECT EXAMINATION BY MS. DAVIS

1 A. He provided me the date of birth of [REDACTED] of '82.

2 Q. Okay. Um, and as a result of that did you ask him if he
3 had any warrants?

4 A. I did.

5 Q. And what was his response to that?

6 A. He indicated that he did have a warrant.

7 Q. And did you ask him what that was for?

8 A. I did.

9 Q. And what did he answer?

10 A. He responded, For murder.

11 Q. Okay. At that point did you contact dispatch?

12 A. I did.

13 Q. And what did you learn from dispatch?

14 A. I was advised that he did ha -- indeed have a hit through
15 what we call "NCIC," however, it was not for a warrant it was
16 as a missing endangered person.

17 Q. Okay. Um, and you said "NCIC," can you explain what that
18 is.

19 A. That's the National Crime Information Computer. Um,
20 every agency in the country enters information into it, uh, to
21 facilitate the law enforcement's job, they enter wanted
22 people, missing people, uh, stolen vehicles, stolen computers,
23 uh, virtually any item or any any, uh, name that is law
24 enforcement seeking.

25 Q. Okay. And you said that NCIC returned that the defendant

DARRELL JAMES KOSTYK - DIRECT EXAMINATION BY MS. DAVIS

1 was a missing and endangered person?

2 A. Yes, out of West Columbia Police Department.

3 Q. Okay. Tell me about the defendant's, um, demeanor and
4 appearance when you, when you spoke with him in the video.

5 A. His general demeanor was calm; however, he he did display
6 to me as odd, um, that somethin' wasn't right with him. Um,
7 his clothing was fairly normal, um, there was some, uh, some
8 small stains on the clothing, um, ---

9 Q. Did he seem to be completely dirty ---

10 A. No.

11 Q. --- like he had been trompin' through the woods or
12 anything?

13 A. Absolutely not.

14 Q. Okay. Um, when you spoke with him, I know you said he
15 was acting rather odd, but did he seem to understand your
16 questions?

17 A. Yes, he did.

18 Q. And did he respond appropriately to those?

19 A. He did. Um, he didn't give me any indication that he was
20 under the influence of any anything, I could smell no alcohol
21 on him, he was just odd.

22 Q. Okay. Did you threaten him in any way to get him to
23 speak to you?

24 A. Absolutely not.

25 Q. Did you make any promises to him to get him to speak to

DARRELL JAMES KOSTYK - DIRECT EXAMINATION BY MS. DAVIS

1 you?

2 A. Absolutely not.

3 Q. He seemed to be responding to you of his own will.

4 A. Yes.

5 Q. Okay. Um, I saw at one point you put or you had the
6 defendant lean against the car; explain to me why you would do
7 that.

8 A. I did that after he indicated to me he he had a warrant,
9 um, I placed him for my safety at a position of disadvantage,
10 he's off balance, he cannot, uh, make any sudden movements,
11 uh, to harm me.

12 Q. Um, and at some point did you cuff the defendant and put
13 him in your patrol car?

14 A. I did.

15 Q. Okay. And would that have been after he said he had
16 murder warrants?

17 A. Yes.

18 Q. Okay. Um, I believe that you s -- testified that it was
19 out of NCIC for West Columbia; at some point did you contact
20 West Columbia?

21 A. I did.

22 Q. Okay, and as a result of that what, um, did you do with
23 the defendant?

24 A. I transported him to the Aiken Regional Medical Center
25 for a mental evaluation.

DARRELL JAMES KOSTYK - DIRECT EXAMINATION BY MS. DAVIS

1 Q. Okay. And was a mental evaluation performed on him at
2 that time?

3 A. It was.

4 Q. Okay. Um, did the hospital hold him at that time?

5 A. They did not.

6 Q. Okay. Um, at some point did you ask the defendant
7 whether or not he would like to be transported?

8 A. Immediately after that I asked him if he wanted a
9 ride, I told him I would provide him a ride to either Augusta
10 or Lexington County.

11 Q. Okay. Was he in custody at that time?

12 A. He was not.

13 Q. Were there any warrants for him at that time?

14 A. No, ma'am.

15 Q. You were just giving him a ride back to where he wanted
16 to go.

17 A. Correct.

18 Q. Okay, and where did he tell you he wanted to go?

19 A. To Lexington County.

20 Q. Okay. And during your -- did you transport him to
21 Lexington ---

22 A. I ---

23 Q. --- Cou ---

24 A. --- did.

25 Q. Where did you take him in Lexington County?

DARRELL JAMES KOSTYK - DIRECT EXAMINATION BY MS. DAVIS

1 A. I told him as far as I could go would be Exit 44 which is
2 the second exit out of Aiken County, it's, I don't know, 4 or
3 5 miles inside of Lexington County.

4 Q. Okay. And is there any buildings or anything there?

5 A. There's a truck stop.

6 Q. Okay. And is that where you took the defendant?

7 A. Yes, ma'am.

8 Q. On your ride from Aiken to Lexington, did you have any
9 conversation with Mr. Walker?

10 A. No, ma'am, he he wouldn't s -- really speak to me from
11 basically when the video ended other than some i -- in in
12 incidental conversation.

13 Q. Okay, so nothing about the case.

14 A. No, ma'am.

15 Q. Okay. Um, did you just drop him off by himself at the
16 truck stop?

17 A. No, I notified the Lexington County Sheriff's Office that
18 I was gonna be droppin' someone at, in their jurisdiction.

19 Q. And you met another law enforcement officer there?

20 A. There was a representative from the Lexington County
21 Sheriff's Office there, yes.

22 Q. Okay. And once he arrived there what did you do?

23 A. I open the door, he got out and I had a brief
24 conversation with the Lexington County deputy and then I left.

25 Q. Was Mr. Walker handcuffed at that time?

DARRELL JAMES KOSTYK - DIRECT EXAMINATION BY MS. DAVIS

1 A. No, ma'am.

2 MR. WALKER: Objection, ---

3 Q. Would ---

4 MR. WALKER: --- Your Honor.

5 THE COURT: What's the, uh, basis of your objection?

6 MR. WALKER: There's no significant evidence to introduce
7 that that that, uh, officer has, I I I haven't received any
8 evidence that the officer has did this, he has not re.--
9 reported this in a, in a, uh, criminal report or anything,
10 he's just carrying on.

11 THE COURT: Alright, I would, uh, overrule the objection,
12 a witness can testify to, uh, personal knowledge. Uh, you may
13 ask your next question, Solicitor.

14 MS. DAVIS: Thank Your Honor.

15 BY MS. DAVIS:

16 Q. Um, Sergeant Kostyk, followin' the defendant telling you
17 that he had a murder warrant and you transporting him to the
18 hospital and then to Route 44, did you have any other input in
19 this case?

20 A. No, ma'am.

21 Q. Uh, please answer any questions that Mr. Walker may have
22 for you.

23 THE COURT: Thank you, uh, thank you, uh, Solicitor.
24 Mr. Walker.

25 MR. WALKER: Yes, sir, Your . . .

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 CROSS-EXAMINATION BY MR. WALKER:

2 Q. How you doin', ladies and gentlemen a the jury? Ya'll
3 enjoyin' this Monday mornin'?

4 THE COURT: Uh, ask your, uh, ask your first ---

5 Q. How ya, ---

6 THE COURT: --- question.

7 Q. --- how ya doin', uh, Mr. Kowalski [sic]?

8 A. I'm doing fine.

9 Q. Okay, you first off, um, you stated that earlier, uh,
10 basically that that I was lookin' odd and, uh, the solicitor
11 asked you if, uh, said that I presented my hands, um, that I
12 had my hands up and you said that looked quite odd but did did
13 you not give testimony sayin' that, uh, you ordered me to
14 present, put put my hands up?

15 A. After I approached you yes, I did, it was very clear on
16 the video motioned for you to raise arm so that I could
17 conduct a pat-down.

18 Q. That's correct but, I mean, you told the solicitor that
19 it was odd that I raised my hand but what ---

20 A. It was odd for you; first of all, you approached me which
21 is an officer safety issue, uh, secondly, you were turning
22 around as if you were motioning with your hands behind your
23 back for me to handcuff you.

24 Q. Alright, and you'll state, you says, uh, I, officer,
25 ordered a white male to present his hands, the white male

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 complied and the white male had been, was, a pat-down search
2 was conducted and that's inconsistent, is it not? Would you
3 agree with that?

4 A. No, that's exactly what happened. I approached you when
5 you began approaching me and asked you to raise your hand
6 which was very clear on the video, you could you see me doin'
7 this (demonstrating) and you had, you put your arms out and I
8 patted you down.

9 Q. And and you wouldn't have no reason to give inconsistent
10 statements or or tamper with evidence, would you?

11 A. No.

12 Q. Okay.

13 MR. WALKER: Um, Your Honor, may I play this video down
14 at a little bit smaller decibel for the, uh, the ladies and
15 gentlemen of the jury?

16 THE COURT: You you wanna play ---

17 MR. WALKER: Well not ---

18 THE COURT: --- what's been offered in evidence State's
19 45?

20 MR. WALKER: That's correct, Your Honor.

21 THE COURT: Alright, yes, sir, you may play it. Uh,
22 let's let, uh, detect, uh, you wanna play the, uh, fully
23 complete that's ---

24 MR. WALKER: I actually ---

25 THE COURT: --- that's been offered?

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 MR. WALKER: --- would. I I I really would like to play
2 it all, complete video, under is, uh, therefore by if
3 objections to allow, um, I would object under rule of
4 completeness and ask for the whole video to be played rather
5 than portion.

6 THE COURT: Alright, uh, Solicitor.

7 MS. DAVIS: Your Honor, we have no objection to that, I
8 believe that the entire video it has been put in evidence in
9 pretrial as a court's exhibit.

10 THE COURT: Alright, step out, step out please, ladies
11 and gentlemen, momentarily, do not discuss the case during
12 this brief recess.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: I'm tryin' to, uh, recall or recollect how
16 long that video was, I've, I watched it, uh, ---

17 THE WITNESS: It's right at forty minutes I think,
18 Your ---

19 THE COURT: Forty minutes?

20 THE WITNESS: It's it's close, yes, sir.

21 MS. DAVIS: That's my recollection, Judge.

22 THE COURT: And, Mr. Walker, uh, you want that part of
23 the video which'd be probly thirty, high thirty minutes left
24 in evidence?

25 MR. WALKER: That's correct, Your Honor.

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 THE COURT: And you're familiar with the, uh, substance
2 of that video.

3 MR. WALKER: Uh, well, yes, sir, I'm I'm objectin' and
4 askin', I'm familiar with it and I'm I'm objectin', askin' for
5 it be under rule of completeness and I'm askin' for the whole
6 subjects, Your Honor.

7 THE COURT: Have you discussed this, uh, with your
8 standby counsel? You don't have tell what the discussions
9 were, I'm just askin' if you've discussed it with your standby
10 counsel.

11 (Whereupon, a discussion was held off the record.)

12 MR. WALKER: That, Your Your Honor, I I I I I do, I I
13 continue that objection and that's what, that's what I would
14 like to proceed with. Um, at this time I'm asking my PI if
15 maybe he can run some type a program in fronta that video that
16 will make it very audible for the ladies and gentlemen of the
17 jury, I think he has a remedy maybe.

18 (Pause.)

19 MR. WALKER: Can can we have this, the the State object
20 to him holdin' the CD, the PI to hold the the CD so he can
21 run, uh, ---

22 THE COURT: Not the Court's exhibit I don't object.

23 MR. WALKER: He needs it. Reporter?

24 MS. ADAMS: Your Honor, he was provided a copy of this,
25 um, ---

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 THE COURT: Well ---

2 MS. ADAMS: --- provided ---

3 THE COURT: --- he doesn't have the Court's exhibit, ---

4 MR. WALKER: Thank you, Judge.

5 THE COURT: --- that's the marked court's exhibit.

6 MS. ADAMS: Right, Court's Exhibit I think it's Number 2
7 would be the entire video, he was provided that in discovery
8 so he should have his own copy.

9 MR. WALKER: We're we're tryin' to get that. What we're
10 gonna do with it, Your Honor, is we're gonna put it over here
11 on this PI's programs, he's got a lot better computer than
12 what the solicitor has pointed up there, uh, or or pointed up
13 there so it's it's much better software and it would be much
14 more audicate [sic].

15 (Pause.)

16 MR. WALKER: Alright, Your Honor, we're gonna try to use
17 this computer and ---

18 THE COURT: I I I don't have objections to what equipment
19 you use ---

20 MR. WALKER: Right, I I don't either. Um, I'm thinkin'
21 I -- if we can get the exhibit unless the State, uh, objects
22 to it then we'll, our PI will try to make it audible.

23 THE COURT: You can use State's 2, it's the one in
24 evidence.

25 MR. WALKER: May I approach the court reporter?

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 THE COURT: Yes, ma'am.

2 MS. DAVIS: Your Honor, we would object to him doing
3 anything to it that would change it or alter it in any way.
4 We have no problem with him playing it on a different computer
5 with different software but not if it's going to be altering
6 it any way.

7 MR. WALKER: It's not ---

8 THE COURT: Well ---

9 MR. WALKER: --- gonna.

10 THE COURT: --- I understand that but I, I mean, uh,
11 Mr. Watkins, it's not gonna change or alter it in any manner,
12 is ---

13 MR. WATKINS: No, Your Honor.

14 MR. WALKER: If I may approach, Your Honor.

15 THE COURT: Yes, sir.

16 MR. WALKER: Thank you.

17 THE COURT: Are there, are there parts of, uh, State's 2
18 that you want redacted?

19 MR. WALKER: Uh, I mean, it would, it would be
20 appropriate but I'd rather just play the full video, uh, under
21 rule of completeness.

22 THE COURT: Are there parts of State's 2 that you want
23 redacted?

24 MR. WALKER: Not at this time, Your Honor.

25 (Pause.)

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1 THE COURT: Let let me stop you a minute, Mr. Watkins,
2 step up here for me, uh, Ms. Mauldin, step up here for me
3 momentarily by my court reporter.

4 MR. WALKER: Yes, sir.

5 THE COURT: And you, Solicitor, you come up here also.

6 (The following takes place at the court reporter's desk.)

7 THE COURT: Have you considered that there may be parts
8 of the audio, video that may not be admissible and under the
9 remainder of the video that you're wanting to publish to the
10 jury?

11 MR. WALKER: Yeah, um, I mean, if it's not admissible I
12 don't guess we can admit it but, I mean, if there's ---

13 THE COURT: Well you have, you've told me you ---

14 MR. WALKER: I did.

15 THE COURT: --- you want to admit it under the rules of
16 completeness.

17 MR. WALKER: Correct. Is there a way, I mean, does the
18 rule of, does the rule of completeness waive admissibility, I
19 mean, is it -- does it make it admissible under consideration
20 you, I mean, I don't know.

21 THE COURT: Mean, you're, rule of completeness says that
22 that as part of a writing or conversation or recording that in
23 all fairness should come into evidence, that at, along with
24 that which has already been offered by the opposing party ---

25 MR. WALKER: Right, I mean, I I would like to play the

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 whole video it's possible.

2 (Whereupon, the defendant and standby counsel had a
3 discussion off the record.)

4 MR. WALKER: See, Your Honor, I I I I don't see, I think
5 right now it weighs probative of value as it is and I try to
6 object to this because basically it it, it's it's not
7 obstantial [sic] 'cause it is optional so when I'm sayin'
8 murder, doesn't give anymore fuller detail and that kinda
9 brings the incrimination [sic] to me and I'm gonna, it makes
10 the situation look, fall on me basically what I've had to say
11 taken further and see the actual apprehension and then the
12 actually words as Kowalski and ---

13 THE COURT: Let let me suggest this to you and I'm I'm
14 not, I'm not, I can't and I'm not going to try the case ---

15 MR. WALKER: Right.

16 THE COURT: --- for you, you're tryin' the case yourself,
17 you ---

18 MR. WALKER: Um-hum.

19 THE COURT: --- got standby counsel, you got your private
20 investigator, that do you want the opportunity to review the
21 remainder of the video with Mr. Watkins, with Ms. Mauldin to
22 see if there are parts of it that you may not want
23 admitted ---

24 MR. WALKER: Um, ---

25 THE COURT: --- and I'll, I'm -- I'll have the officer

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 subject to, uh, recall, ---

2 MR. WALKER: Yes, sir. I think at this point ---

3 THE COURT: --- you know, ---

4 MR. WALKER: --- I I don't see anything that would hurt
5 me as what the video was on, my only objection to the thing
6 was the Terry stop and the, uh, admissibility of a Terry stop
7 and admissibility of my constitutional right's been violated.

8 THE COURT: Well, you can cross-examine him about
9 that, ---

10 MR. WALKER: Right, that's ---

11 THE COURT: --- I'm ----

12 MR. WALKER: --- that's ---

13 THE COURT: --- not sayin' your cross-examination's
14 limited.

15 MR. WALKER: --- that's the only reason. I mean, I ha --
16 I objected to the be -- the whole video, I mean, whether
17 it's portions or whether it's whole, I objected to the video
18 in whole ---

19 THE COURT: Understand.

20 MR. WALKER: --- so right now at this time is if you'll
21 grant my motion I have no further objections to playin' the
22 whole video unless the State sees somethin' that it shouldn't
23 be completed.

24 THE COURT: And ya'll have no objection?

25 MS. DAVIS: No, sir, Your Honor, we have no objection to

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1 him playin' the entire video. If there's any parts he decides
2 he wants to have redacted, we we may have objections to that.

3 THE COURT: I'm tryin' to give you the opportunity to
4 review it.

5 MR. WALKER: I I don't need to review it, I've seen it
6 enough, just sayin'. I've I've I've, I'm pretty well with
7 that video, I mean, I I I I know exactly what happens 'cause
8 it's kinda like my nightmare, you know. Um, it -- sorry.
9 Ju -- I was just gonna object to this, uh, the evidence on the
10 table right there in view a the jury 'cause I don't know if
11 that's, ---

12 THE COURT: Turn upside down, ---

13 MR. WALKER: --- I mean, ---

14 THE COURT: --- I mean, it's ---

15 MR. WALKER: I don't know ---

16 THE COURT: Just ---

17 MR. WALKER: --- if that's ---

18 THE COURT: --- turn that top picture upside down, madam
19 court reporter.

20 (Whereupon, the court reporter complied.)

21 THE COURT: Thank you. Alright, thank you.

22 MR. WALKER: Thank you.

23 (Whereupon, a discussion was held off the record.)

24 THE COURT: Thank you, uh, thank you, uh, Solicitor,
25 Mr. Watkins. Alright, you, uh, ready for the jury,

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1 Mr. Walker?

2 MR. WALKER: May I -- no, sir.

3 THE COURT: Mr. Watkins, ya'll ready?

4 MR. WALKER: Uh, can you give us about fifteen minutes or
5 'bout five minutes, sir?

6 MR. WATKINS: I mean, I'm I'm good.

7 THE COURT: You good?

8 (Whereupon, a discussion was held off the record.)

9 MR. WALKER: Sorry, Your Honor, I mean, we gotta ---

10 THE COURT: That's alright, you take whatever time you
11 need.

12 MR. WALKER: I I just wanna play it and see how, I wanna
13 get the audio right and and then we can bring the jury in.

14 (Pause.)

15 (Whereupon, a discussion was held off the record.)

16 MR. WALKER: Ready to proceed, Your Honor.

17 THE BAILIFF: Yes, sir.

18 THE COURT: And, Solicitor, you have one more witness
19 after the sergeant?

20 MR. GRAHAM: Correct, Your Honor.

21 (The following takes place in the presence of the jury.)

22 THE COURT: Mr., uh, Mr. Wa -- Walker, I understand you
23 want to offer into evidence under Rule 106, the rule a
24 completeness, the remainder of the video that, uh, the
25 redacted version is State's 45, the unredacted version is

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1 Court's Exhibit No. 2, ---

2 MR. WALKER: Uh, ---

3 THE COURT: --- and you want offer the entire video, is
4 that correct?

5 MR. WALKER: --- that's correct, Your Honor.

6 THE COURT: Alright, uh, ladies and gentlemen, uh, that
7 it is, it will be in ev -- it -- that the entire video will
8 come into evidence, ladies and gentlemen, it's about 'bout 40
9 minutes long. Alright, uh, you may publish, uh, Mr. Walker.

10 (Court's Exhibit No. 2, unredacted in-car video, admitted
11 into evidence.)

12 (Whereupon, Court's Exhibit No. 2 was played for the
13 jury.)

14 THE COURT: Alright, uh, Mr. Walker, Solicitor, perhaps
15 now would be a good time to take our, uh, lunch recess. I
16 would remind you, uh, during this recess, ladies and
17 gentlemen, do not discuss this case with others, that includes
18 your fellow jurors plus your family, friends, or anyone else,
19 do not read, watch, or listen to any news reports about the
20 case, do not do any independent research or any research on
21 the Internet. I would ask you to please be back at 2:40,
22 2:40, hope ya'll have a, uh, pleasant lunch. Thank you, uh,
23 thank you very much.

24 (The following takes place outside the presence of the
25 jury.)

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1 THE COURT: Alright, the Court be in recess till 2:40,
2 thank you very much, thank you very much. Oh, Sergeant,
3 uh, you may step down, do not discuss your testimony during
4 this ---

5 THE WITNESS: Thank you, ---

6 THE COURT: --- break.

7 THE WITNESS: --- Judge.

8 (Whereupon, the witness left the stand.)

9 (Whereupon, a recess was taken.)

10 THE COURT: Anything from the State before we bring in
11 our jury, Solicitor?

12 MR. GRAHAM: No, Your Honor.

13 THE COURT: Defense, uh, Mr. Walker?

14 MR. WALKER: No, sir, Your Honor.

15 THE COURT: Alright, uh, I got a note from a juror,
16 Number 36, "In the public bathroom with a witness," um, so a
17 witness and a juror was in the potty at the same time,
18 anything, uh, from the State, Solicitor, I'm sellin' it just
19 like I bought it, that's all I know.

20 MR. GRAHAM: I haven't heard anything from any a the
21 witnesses tellin' me that there was any conversation, Judge,
22 so I don't know, it's the first I've heard.

23 THE COURT: Mr. Walker?

24 MR. WALKER: Yeah, I mean, I think we might -- I I don't
25 know, Your Honor, what do you think?

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 THE COURT: Is a great question. Bring me, uh, Juror
2 Number, uh, 36, please.

3 THE BAILIFF: Sir.

4 (The following takes place in the presence of Juror
5 Number 36.)

6 THE COURT: Good afternoon.

7 JUROR NUMBER 36: How are you, sir?

8 THE COURT: Are you Juror Number 36?

9 JUROR NUMBER 36: Yes, sir.

10 THE COURT: And, uh, I got a note that, uh, you were in
11 the public restroom with a witness, uh, ---

12 JUROR NUMBER 36: Yes, sir.

13 THE COURT: --- at the same time.

14 JUROR NUMBER 36: Yes, sir.

15 THE COURT: Alright, but any conversation?

16 JUROR NUMBER 36: No, sir.

17 THE COURT: None whatsoever?

18 JUROR NUMBER 36: No, sir.

19 THE COURT: Alright, and you recognize that individual
20 from bein' in the courtroom?

21 JUROR NUMBER 36: No, sir, ---

22 THE COURT: You do not?

23 JUROR NUMBER 36: --- I just had to use the restroom.

24 (Laughter.)

25 THE COURT: I understand, uh, happens to me a lot.

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1 JUROR NUMBER 36: Yeah.

2 THE COURT: Um, no conversations, uh, how did you know it
3 was a witness?

4 JUROR NUMBER 36: I didn't, he told me.

5 THE COURT: Oh, ---

6 JUROR NUMBER 36: Yeah, ---

7 THE COURT: --- okay, so you ---

8 JUROR NUMBER 36: Yeah, I didn't even know. I didn't ---

9 THE COURT: You didn't recognize ---

10 JUROR NUMBER 36: --- even come to realize it's
11 too ---

12 THE COURT: --- the individual, when you say he told ya,
13 the, a bailiff ---

14 JUROR NUMBER 36: Bailiff, ---

15 THE COURT: --- told you.

16 JUROR NUMBER 36: --- yes, sir.

17 THE COURT: Oh, alright. Alright, and it's no one that
18 has already testified ---

19 JUROR NUMBER 36: No, sir, ---

20 THE COURT: --- or perhaps ---

21 JUROR NUMBER 36: --- I guess so.

22 THE COURT: --- no one ---

23 JUROR NUMBER 36: I don't know, sir.

24 THE COURT: --- that would testify.

25 JUROR NUMBER 36: I have no idea.

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1 THE COURT: I got ---

2 JUROR NUMBER 36: Ha Ha.

3 THE COURT: --- ya. Uh, given given that ---

4 JUROR NUMBER 36: Yes, sir.

5 THE COURT: --- can you be a fair and impartial in the
6 trial of this case for both Mr. Walker and the State?

7 JUROR NUMBER 36: Yes, sir.

8 THE COURT: Anything else you'd like to add?

9 JUROR NUMBER 36: No, sir.

10 THE COURT: Thank you, uh, thank you very much, ---

11 JUROR NUMBER 36: Alright.

12 THE COURT: --- you may return to your jury room.

13 JUROR NUMBER 36: Thank you.

14 THE BAILIFF: Sir.

15 THE COURT: Yes, sir.

16 (The following takes place outside the presence of Juror
17 Number 36.)

18 THE COURT: Alright, I'll ask you the same question, uh,
19 Mr. Walker, what do you think?

20 MR. WALKER: Think we, I, Your Honor, I think we need to
21 put the juries on some chains.

22 THE COURT: Put 'em where?

23 MR. WALKER: In some chains, they keep jumpin' outta the
24 jury room.

25 THE COURT: Think they were comin' back from lunch ---

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1 MR. WALKER: Yeah.

2 THE COURT: --- 'cause the, uh, public restroom's outside
3 security, um, so I think they were just comin' back from
4 lunch.

5 MR. WALKER: But by all means, Your Honor, uh, I I'm not,
6 um, dishonorin' your discretion but, uh, is is it, is it not,
7 I thought it was, uh, standard in, uh, to keep the jury in the
8 jury room at all times during a trial.

9 THE COURT: Oh, no, sir, not at all, um, they're allowed
10 to leave for lunch, they're allowed to take breaks, they can
11 go home for the evening, ---

12 MR. WALKER: Right, but ---

13 THE COURT: --- uh, they don't go to lunch together, uh,
14 even, uh, it's been a number a years since I sequestered a
15 jury, uh, and that's, uh, primarily been, uh, in death penalty
16 cases, I've never, uh, thinking back in my memory, I've never
17 sequestered a jury in a non-death penalty case, ---

18 MR. WALKER: Yeah.

19 THE COURT: --- so that that's not standard practice, uh,
20 for me, I can't speak for other judges 'cause I've never
21 watched it for except when I sat out there (indicating). Now
22 up here I've seen other judges, uh, try cases but outside a
23 sequesterin' death penalty juries and even then they can take
24 walks together, they can, or apart, do, uh, uh, many things.

25 MR. WALKER: Does does Your Honor see fit that, I, uh,

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2 whoever was seen him inside there and gave him the testimony
3 or gave him the, uh, informed him that that he was in the
4 restroom with a witness maybe maybe we can inquire into
5 whoever that may be if Your Honor sees fit.

6 THE COURT: Well, uh, he doesn't even know who he was --
7 who -- that he was a witness, the bailiff told him so, um, I I
8 think I've done a sufficient inquiry in that regard.

9 MR. WALKER: Thank you so much, Your Honor.

10 THE COURT: Alright, yes, sir.

11 THE BAILIFF: Yes, sir.

12 THE COURT: Here you go, Madam court reporter.

13 (Whereupon, the Court handed the note from a juror to the
14 court reporter.)

15 COURT REPORTER: Thank you.

16 (Note from a juror marked Court's Exhibit No. 12 for
17 identification.)

18 (The following takes place in the presence of the jury.)

19 THE COURT: Alright, welcome back, ladies and gentlemen,
20 we continue the trial of the case by the cross-examination of
21 the sergeant, uh, by Mr. Walker, please continue to give the
22 parties your complete and undivided attention as you have done
23 throughout the trial of this case. Mr. Walker.

24 BY MR. WALKER:

25 Q. Again, Ms. Kowalski [sic], uh, how you doin'?

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1 A. I'm doin' good today, sir.

2 Q. Great. Um, I'd just like to, uh, inquire into a little
3 bit about, uh, we we watched a video before we recessed for
4 lunch. Um, earlier earlier you gave a, I hate to make the
5 jury watch the, I hate to make the Court and the jury watch
6 the video all over, uh, so that I'm just havin' a little
7 trouble remembering where we left off, what was shown in
8 video, um, what hap -- what happened generally, uh, in the
9 video, did you basically, uh, want to arrest me? Uh, in the
10 video you give, you stated that, uh, basically, uh, you was
11 tryin' to find a reason to arrest me 'cause you couldn't
12 arrest me for murder, I mean, what woulda that resolved or
13 solved?

14 A. Not sure I fully understand the question but I'm gonna
15 try. Um, I didn't want to arrest you, um, I wanted to
16 investigate what was going on which I did do, um, and that
17 was, that was basically it. I did run through some thoughts
18 on, uh, what the proper course of action was was gonna be for
19 me to take, um, in the course of figuring out, you know, what
20 I was gonna do, it's not that every day, as a matter a fact,
21 it's fairly unusual to approach someone and have them tell you
22 that they've murdered someone.

23 Q. But isn't that unfair prosecution or unfair to the
24 justice system and especially me as bein' a individual?

25 A. Your Honor, I'm not sure I understand if that he wants my

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1 opinion?

2 MR. WALKER: If if if I may, Your Honor.

3 THE COURT: Re -- rephrase the question, uh,
4 Mr. Walker.

5 BY MR. WALKER:

6 Q. Well bein', uh, bein' on -- at in the video, uh, I,
7 you're on a cell phone and in that video and the cell phone
8 you're you're askin' someone, uh, someone is speakin' to ya
9 through the cell phone and, uh, and you basically make the
10 announcement sayin' that, uh, I can't arrest him for anything
11 right now but I might can arrest him for this and that, uh,
12 you you said a few things and and you may state now if you
13 recall them things, do you recall them things?

14 A. Sure I did.

15 Q. And what was those things?

16 A. I don't recall exactly who I was speaking to on the
17 phone, uh, but they were inquiring as to what I was going to
18 do: if I was gonna be able to detain you or or what the case
19 was gonna be and I I was running through things in my mind
20 that I would consider, uh, to look at closer, uh, however,
21 when I got all the information that I could get that I
22 determined you had not broken any law in my presence and
23 therefore I was not going arrest you nor was there an active
24 existing arrest warrant for you.

25 Q. Right, uh, um, that I just, I know that there was a lot

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1 of, it was, it seemed to be a lot of trouble that you was
2 tryin', that in the my observance from the video and you may
3 or may not agree and and I hope that you, would you agree that
4 that you was basically tryin' to find a reason to arrest me
5 relevant to, uh, to murder me be -- uh, or to -- for the
6 murder charge because basically you say in there that, I can't
7 hold him for anything, he's he's did a few things but he's
8 only basically suspicious but we we have a NCIC that says he's
9 wanted as as a endangered person so we can, that's only mental
10 health was the term that you use.

11 A. Okay, I think I, I think I understand what he's askin'.
12 Um, yeah, I'm obligated to the citizen Aiken County to be
13 diligent in my, in my job, um, and that's what I did. It
14 worked out actually that night, um, to everyone's benefit that
15 I saw, including yourself, um, I I was diligent in finding out
16 that you were not actively wanted, um, and I also obtained you
17 medical treatment, that, uh, everyone that was there with me
18 felt was, uh, completely appropriate, uh, under the
19 circumstances, um, and that's that's what I did. I did
20 everything possible that I thought I could do and that I
21 thought appropriate under the circumstances.

22 Q. Alright. Uh, would would you say that was against my
23 will, that, I mean, ---

24 A. I have no idea. I I asked you if you wanted medical
25 treatment and you would not answer me, uh, which led me even

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1 further to believe that you needed to get up to the
2 hospital.

3 Q. So readibly [sic] if, uh, someone doesn't speak it just
4 makes you suggest that they're mentally ill and needed to go
5 the hospital and be committed, is that that your proper
6 standard in Aiken?

7 A. That's not the standard at all. What what I was doing
8 was, uh, evaluatin' all of the the totality of what was going
9 on, (a), you were listed in the computer as an endangered
10 person due to mental health condition, (b) you completely shut
11 down speakin' to me, um, you you know, so you take away a lot
12 of my options on finding out exactly what needs to be done so
13 of course I'm gonna err on the side a caution and and go ahead
14 and seek the medical treatment.

15 Q. So and you understand, would would you agree that a
16 person has a Fifth Amendment right to remain silent?

17 A. Well sure.

18 Q. Then why didn't you observe them and and basically l
19 --leave the the amendments, leave leave the well known right
20 alone?

21 A. Well, uh, I wanna clarify and I'm not a s -- a lawyer or
22 a scholar of the law but the Fifth Amendment that I believe is
23 more against self-incrimination, um, regardless a that there
24 there's only one way when I come in contact with someone, I
25 don't have a crystal ball that, uh, in ascertainin' what's

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1 goin' on and that's to ask them or ask someone else there it's
2 appropriate to ask, um, that that's the only, the only manner
3 I have out on the street to to figure out what an appropriate
4 course of action's gonna be.

5 Q. And and in your job and duties in law enforcement you're
6 well familiar with Miranda rights, is that correct?

7 A. Yes, I am.

8 Q. Could you re -- could you read me my Miranda rights if I
9 was bein' placed un -- under investigation at this time?

10 THE COURT: That that that's a, that's a matter a law and
11 and I have, uh, ruled on that in camera, uh, and that that's
12 that's not a, uh, question for the jury at this time under the
13 circumstances that existed at the time of the sergeant's
14 encounter with you, uh, Mr. Walker.

15 MR. WALKER: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 BY MR. WALKER:

18 Q. Alright, uh, back to this Fifth Amendment right, um, if
19 someone has no response at commands or, you know, rose -- no
20 response to your commands or questions basically and and your
21 duties and, uh, and enforcements as law enforcement, I mean,
22 you should be well-acknowledged that if someone doesn't
23 respond that they're obligated to to remainin' silent, I mean,
24 and therefore if you and if you any, if you further, any
25 further it violates someone's rights, is that not right?

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1 A. That's completely incorrect. Um, during the course of
2 our duties, we come in contact, uh, with, over the years I
3 couldn't even tell ya how many people that are having a, an
4 ongoing medical emergency that prohibits them from bein' able
5 to speak or they have overdosed or or done something else to
6 themselves that has, that they've lost their ability to
7 communicate, um, and they are in dire need of of me figurin'
8 out what is goin' on to seek proper help, um, so I would
9 disagree with what you said.

10 Q. Well, and in your report, Mr., uh, Kowalski, um, and that
11 your report says, uh, two questions: Did you have any
12 warrants, uh, I responded yes, and, uh, you questioned, What
13 kind of warrants and what for, and I responded, Murder, and
14 therefore immediately after I stated verbally that I wanted a
15 attorney.

16 A. I don't dispute any of that.

17 Q. But obligated to rights and standards isn't that the
18 pro -- upon that isn't it right to, uh, no longer question or
19 apprehend anybody and immediate release 'em later?

20 A. Not necessarily, no. Um, first of all, you weren't
21 charged with any crime at that time and I still have an
22 obligation to you and to the citizens Aiken County to
23 ascertain if you, if you're having a medical condition, what's
24 going on with you so that I can take appropriate action, (a)
25 in the best interest of I would help you, (b) in the best

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1 interest of the county and the Aiken County Sheriff's Office,
2 um, because we're liable for making poor decisions.

3 Q. And well you wouldn't say this was a poor decision that
4 night?

5 A. Absolutely not, it was a one hundred percent appropriate
6 course of action.

7 Q. And you wouldn't agree that upon me remainin' quiet and
8 you takin' me against my will or or a hospital to the, to the,
9 uh, emergency room at Aiken County that's not a violation,
10 that's not movin' somebody illegally?

11 A. No, sir.

12 Q. Can you explain why.

13 A. I can. I I have a a level of of ascertaining your mental
14 condition, uh, to reach and I am mandated to take you to the
15 emergency room and that level would be if you're potentially a
16 hazard to yourself or others then I am required to seek
17 medical attention for you. Um, the factors that night were
18 you were already listed as an endangered person with violent
19 tendencies and you had just told me that you had murdered
20 someone and I don't think that it was not appropriate to
21 consider the fact that you possibly could be a danger to
22 yourself or others.

23 Q. And could you cite that rule or that that standard in
24 your Aiken County policy or anything relevant to the nature
25 of.

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1 A. Let's see, it is, it's a part a state law but no, I can't
2 cite that for you.

3 Q. And you say it's a part of state law, can you, uh, can
4 you inform us of of what state law that is?

5 A. I cannot.

6 MS. DAVIS: Objection, Your Honor.

7 THE COURT: Uh, I'd overrule the objection, uh, he's
8 answered the question, "he" the officer has answered the
9 question.

10 BY MR. WALKER:

11 Q. Right.. So you already knew and upon your telephone call
12 to whoever you were speakin' with, don't remember, you already
13 knew that my girlfriend was deceased, uh, but and then you,
14 that you continually, uh, said we wanna check on your
15 girlfriend and we know such and such, somethin' else 'bout
16 your girlfriend, why would you give a inconsistent statement
17 like that?

18 A. I'm not sure I understand, I don't know what is
19 inconsistent.

20 Q. Right. Why would you give a, why would you indulge or or
21 or take part of askin' a, it -- an irrelevant question or, uh,
22 or a basically a a lieful [sic] question if I may.

23 A. Um, I don't understand, Your Honor, what question ---

24 Q. They don't know how to ---

25 THE COURT: Ask the question, uh, again, Mr. Walker.

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 Q. Upon upon you, the video shows that that, was just shown
2 that you was on a cell phone and you stated on the cell phone
3 that his girl, that the girl, you say when when did the
4 girlfriend die and I guess they give you that information and
5 then you further say, I'm gonna question him and try to find
6 out more information, even after I've had to ask for the
7 'ttorney and then you go and you further, you say, I wanna
8 check, uh, and that you ask me, I wanna check on your
9 girlfriend, tell me where Carrie is, what what what is the
10 relevancy it was -- what was the relevancy in that question?

11 A. Uh, I'm still tryin' to ascertain, uh, whether what you
12 told me was factual or not. When I spoke to West Columbia
13 Police Department that they had not even listed it as a
14 homicide, they listed it as a suspicious death, I even made a
15 correction to my report at their request because I erroneously
16 put in the report originally that it was a murder
17 investigation, um, was not inappropriate for me to try to
18 gather information. I think what you're tryin' to ask me is
19 is if the Court would accept it and I have no way of knowing
20 that until, uh, the information is presented to a a judge and
21 the judge rules that it's either admissible or inadmissible,
22 that that that particular situation isn't clear-cut because
23 there there's no custodial arrested ga -- in progress, I don't
24 even have any charges against you and therefore typically I
25 can ask ya anything I want.

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 Q. So that you're sayin' that, Your Honor, I I'm gonna leave
2 well enough alone, Mr., uh, Mr. Kowalski, I'm I'm gonna ask ya
3 again though to answer the question more more correctly. When
4 when you was on the cell phone, you spoke with someone and you
5 asked, well you asked, uh, what was the girl, you know, you
6 stated what was the girlfriend, what was name, uh, and I guess
7 they tell you 'cause you ask me, you say, Where where's
8 Carrie, I wanna check on Carrie, now you already knew she was
9 deceased, why would you ask, why would you wanna check on
10 someone who is deceased, I mean, is that just ---

11 A. Obviously I wanted to elicit information from ya.

12 Q. You said elucive.

13 A. Elicit, gather.

14 Q. So you was just, I mean, is that proper form of of
15 question?

16 A. Asking a question is nothing wrong with that.

17 Q. So you don't think that question was irrelevant or
18 wrongly?

19 A. No, sir.

20 Q. Now why was your, why was your, truthfully, I mean, I
21 I -- that you say we was at -- you was at, uh, a a c -- in a
22 pro -- close proximity of Curly's (phonetic) Supermarket and
23 you was watchin' the the adjuent [sic], uh, the adjuent, uh,
24 s -- the adjuent store for burglaries or or robberies, do --
25 does -- is is that neighborhood typically get robberies or ---

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 A. Yes.

2 Q. And they they typically -- and how many times has that --
3 was that store robbed, um, to make your relevancy and and your
4 your views or your department's views enough to to black out
5 and sit across the the railroad tracks and watch that certain
6 area?

7 A. I I couldn't tell ya the exact number that store's been
8 robbed, I I'm not at work, uh, 24/7 and typically, uh, you
9 know, Aiken County's over 1200 square miles, I can't keep
10 track of every crime that occurs, uh, particularly when I'm
11 off.

12 Q. From your best guess and that you bein' a sergeant, uh,
13 and a high rankin' staff sergeant and as you said earlier you
14 you basically run your half a the county, um, at -- what made
15 you, what what made your presence in the, present in the area
16 that you was at observin' that store that night? Uh, how
17 many, uh, and you say that it was for robbery, how many times
18 to the best, using your recollective memory and how many times
19 would you say before you apprehended me that night?

20 A. I had been to that store I know at least twice prior for
21 armed robberies, um, I couldn't give you the exact time frame,
22 I I just don't remember, um, and that the reason why I was at
23 that particular store at that particular time is that's the
24 area I happen to be in, um, and, you know, we're encouraged
25 highly to watch these convenience stores, like I said from the

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 period beginnin' around Halloween through the New Year because
2 they get or there's a higher frequency of them bein' robbed
3 durin' that time a year.

4 Q. And in my, well in my, you know, I I believe that to be
5 false, Mr. Kowalski, that and you may or may not agree, uh,
6 but, um, I I know of, I know of no knows news articles that or
7 nothin' ---

8 MS. DAVIS: Objection, Your Honor.

9 THE COURT: I I hadn't even heard the question. U, let
10 me, let me hear a question please, Mr. Walker.

11 BY MR. WALKER:

12 Q. Uh, so, Mr. Kowalski, uh, what what generally, you say
13 you took me to, uh, ARMC, uh, Aiken Regional Medical Center
14 that, you know, what what typically happened upon our arrival
15 there and you can go back as far as you need to be or you can
16 go as ahead as, uh, ahead as far as you need, can in in detail
17 tell us what happened there.

18 A. I took you into the emergency room and explained the
19 circumstances a why I was bringin' you there and asked 'em to
20 conduct an evaluation.

21 Q. And upon your asking of, uh, A, uh, ARMC to conduct a
22 evaluation, what was their findin's and what was your findings
23 as a criminal investigator or as a sergeant, uh, takin' over
24 this situation.

25 A. I'm gonna try, Your Honor.

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 THE COURT: Yes, sir.

2 A. Um, my findings obviously were that I reached the
3 decision that you needed to go for an evaluation. I took you
4 for the evaluation, I don't have anything to do with the
5 evaluation after that. Um, they conducted an evaluation and
6 determined that you were g -- were gonna be released, you were
7 not gonna be committed.

8 Q. Well then this, uh, that did you observe at any time or
9 did you leave me alone at any time with the person or the
10 hospital personnel?

11 A. Um, yes, I did.

12 Q. Uh, was that all the time, some a the time or most a the
13 time?

14 A. It was probly about 90 percent a that time.

15 Q. So you never observed me and the, uh, personnel at the
16 hospital or at the medical center, uh, ha -- ha -- holdin' an
17 evaluation.

18 A. No.

19 Q. So let me ask ya this: Why'd you stick around, uh, after
20 this, while while this evaluation was bein' complete?

21 A. That typically they ask us to stay if this person's
22 status is unknown, um, i.e., if they could potentially be
23 violent. We we take people to the hospital all the time, the
24 sheriff's office is mandated to perform transports for mental
25 health purposes, um, the hospital, some of 'em they want us to

1 stay with, some of 'em they don't ---

2 Q. And ---

3 A. --- but ---

4 Q. --- is ---

5 A. --- they determine that, not me.

6 Q. --- is it not hospital policy, uh, from my observances
7 hospital policy did not to allow the Aiken County Sheriff's
8 Office or I guess anybody relevant to Aiken County Law
9 Enforcement into that part of the hospital once a patient has
10 arrived, is that incorrect or is that correct?

11 A. I have no idea what the hospital policy is but, um, we
12 go, we go into the hospital all the time.

13 Q. And they typically let ya'll just hang out in the
14 hospital until somebody's either committed or not committed?

15 A. I'm not sure what "hang out" is but, uh, frequently we
16 stay, uh, like I already testified based on whatever it is
17 they want.

18 Q. At at any time upon me arrivin' at the hospital, when did
19 you leave my presence or, uh, when did me and you depart until
20 you met me here or until you arrived at this trial?

21 A. Well whenever they were done examin'in' ya and you weren't
22 gonna be committed, I asked you if you wanted a ride, you told
23 me yes and I told ya I would take ya to Augusta or Lexington,
24 whichever you wanted, and you told me you wanted a ride to
25 Lexington so I brought ya to Lexington County ---

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 Q. Right.

2 A. --- and that was the last time I saw you or heard really
3 anything about you until this trial.

4 Q. If may I have your indulgence one second, Your Honor.

5 THE COURT: Yes, sir, course.

6 (Pause.)

7 BY MR. WALKER:

8 Q. Mr. Kowalski, how, um, could you readily -- do you recall
9 who was on scene with you that night?

10 A. Well believe there was a Deputy Masters on scene that
11 night and possibly Deputy Heath if my memory serves me
12 correctly and I believe that a Lieutenant Clough had stopped
13 by right before we went to the hospital just briefly.

14 Q. Mr. Kowalski, what is your unit call number?

15 A. Alpha -- well right now?

16 Q. Uh, at this time.

17 A. Alpha 11.

18 Q. So you had no C well before your unit number?

19 A. At the time a this incident my call sign was Charlie
20 11.

21 Q. Okay. Who was some a the people with you that night,
22 Mr. Kowalski?

23 A. Thought I just said, uh, I believe Deputy Masters was
24 present and I believe a Deputy Heath he, he -- Deputy Heath
25 might have even been a corporal at that time but he hadn't

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 been at the agency very long and a Lieutenant Clough stopped
2 by the scene briefly.

3 Q. Can you explain some of who they are and their duties and
4 especially who they, uh, or why they was at the scene to
5 assist you, what they're, what happened that night with with
6 them deputies.

7 A. Nothing happened that night with the deputies but they
8 were at the scene because that (a) they were assigned to that
9 area and (b) they heard me sign out with you.

10 Q. You say "sign out," uh, that means basically if someone
11 signs out that all officers come and run to that area, that
12 scene or they just helpful or what what does that mean?

13 A. Well no, if they're nearby, um, we back each other up
14 obviously, um, and that's what they were doin', they they were
15 nearby and weren't busy on other calls and they stopped in.

16 Q. Is it not true that them same officers was, uh, observin'
17 the soup, the the, uh, store with you at your blackout?

18 A. Well one of 'em may have been but I don't think both of
19 'em were, uh, but I don't remember a hundred percent for sure.

20 Q. Do you not recall which one?

21 A. Um, not a hundred percent sure, I believe Deputy Masters.

22 Q. Thank you but you just said she was on another call, uh,
23 nearby and she come to you so what call was that?

24 A. That I don't know, I I don't, I don't know exactly where
25 she was before she was with me.

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 Q. Is it not true that ya'll was illegally blacked out, uh,
2 unconstitutional to pub -- um, un -- unconstitutional
3 observers of the public, uh, what is better known in law
4 enforcement as "blacked out?"

5 THE COURT: You you gonna, you gonna have to show me a
6 case on that, Mr., uh, ---

7 MR. WALKER: I will definitely try to find that, Your
8 Honor.

9 THE COURT: Yes, sir. Uh, ---

10 MR. WALKER: I will.

11 THE COURT: --- you're gonna have to show me a case on
12 that, uh, before you can ask that question.

13 MR. WALKER: Would you like to correct?

14 THE COURT: Sir?

15 MR. WALKER: Uh, would you like to do a charge,
16 correction charge?

17 THE COURT: I didn't understand, I apologize.

18 MR. WALKER: Would you like to do a correction charge?

19 THE COURT: I'm not sure what a correction charge is ---

20 MR. WALKER: Sir?

21 THE COURT: --- but I would like to see your case that
22 you're referring to which I asked for last week.

23 MR. WALKER: I tried to find it for Your Honor, you know
24 time is, I miss a lot.

25 THE COURT: Alright.

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 MR. WALKER: Uh, ---

2 THE COURT: Well ask your next question, Mr. Walker.

3 BY MR. WALKER:

4 Q. Alright, you, uh, so you're sayin' there was a Heath
5 there, a Cloth [sic] there and a Masters there but, uh, you
6 and Ms. Masters was across the street observin' somethin' but
7 Ms. Masters was also at another call, um, and you explained
8 you didn't know how that was possible, is that correct?

9 A. Well, no, that's not what I said, I said I didn't know
10 where she was before she was in my presence.

11 Q. Alright, um, and at any time that you see a suspicious
12 person, I mean, no matter what you just apprehend them and and
13 basically hold them and if they don't talk you take 'em to the
14 hospital, is that right, Mr. Kowalski?

15 A. That is not right.

16 Q. I mean, uh, I understand if if a m -- well well well
17 explain to me how a missin' person, uh, you say I was subject
18 to a missin' person, a NCIC check, uh, explain that a little
19 for me, Mr. Kowalski.

20 A. Okay. I'm not quite certain how you became entered into
21 NCIC because I wasn't, didn't enter you nor did the Aiken
22 County Sheriff's Office but as a normal procedure we, uh,
23 obtain biographical data: the person's name and date a birth
24 and we ask our dispatcher to run them through NCIC, um, your
25 name and date a birth was entered into NCIC as a missing

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 endangered person.

2 Q. Would it, would it be correct that if the NCI said, the
3 NCIC said, and you may or may not agree, I'm gonna, I'm gonna
4 read you what I think the NCIC says and you can agree or you
5 can't agree, uh, that's your choice, and it says, Subject has
6 had no contact with family in Walterboro, South Carolina, he
7 has severe mental health issues and does not have any of his
8 medication and it is, is a patient at the Department of Mental
9 Health, he is not takin' meds as directed by physician and may
10 be in danger to his own mental health issues, he does not have
11 a vehicle and there's no information available of clothin',
12 and that was put out by West Columbia Police Department, does
13 that sound like the proper NCIC?

14 A. I'm not sure what you're askin' me but it's an NCIC
15 entry.

16 Q. Is that what, is that what you observed that night,
17 Mr. Kowalski?

18 A. This is the information I was provided, correct.

19 Q. That's the same NCIC that you've come across.

20 A. This is the information I was provided by our dispatcher,
21 yes.

22 Q. And, well again, Mr. Kowalski, you you said earlier that
23 you come across a NCIC and now now you're sayin' that it come
24 from your dispatch, which one is it?

25 A. I said I had you run through NCIC and came back with an

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 NCIC hit, this is that hit.

2 Q. Right, but there's nothin' that says anything about a a
3 murder and there's nothin' in there that says a missin'
4 person, is that not correct, Mr. Kowalski?

5 A. Well we call this basically a, it does say missin'
6 person, yeah, may I read the whole thing to you, sir?

7 Q. Sir, you're more than welcome to answer any question how
8 you wi -- wish to.

9 A. This this document has a lotta coding on it, um, that I
10 don't even know what it means so if if he, if Mr. Walker's
11 okay I'm not gonna read the coding, I'll just read the English
12 language that's on it, um, but it says, uh, Message key and
13 then it's coded QWA searches all NCIC persons falls without
14 limitations, a missing person disability with a caution code,
15 medication required, violent tendencies, name Walker, David,
16 Richard, Jr. sex male, race white, place a birth South
17 Carolina, date of birth [REDACTED], height 5'11, weight 185,
18 eyes brown, hair brown, and then there's an associated FBI
19 number, um, and then it goes into tattoos, there's a tattoo it
20 says on the left arm, there's some additional coding that I
21 don't know exactly what what it means and then it goes into
22 what he read some of, Subject has had no contact with family
23 in Walterboro, South Carolina, he has severe mental health
24 issues and does not have any of his medications and is a
25 patient at the Department of Mental Health, he is not taking

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 medications as directed by physicians and may be in danger,
2 uh, to his own mental health issues, he does not have a
3 vehicle and there's no information available of clothing and
4 then it says, ORI ---

5 THE COURT: Let let me see that a moment, let me see it a
6 moment.

7 (Whereupon, the witness handed the document to the
8 Court.)

9 (Pause.)

10 THE COURT: Alright, you may continue, thank you, and I
11 think you stopped at ORI.

12 A. Ye -- yes, sir, thank you. Um, and then it stays ORI
13 which I do happen to know what that code means, that's the
14 originating agency and it says is West Columbia Police
15 Department and provides a telephone number and then it goes
16 into, uh, aliases ---

17 THE COURT: Yeah, let him and, uh, do -- don't go into
18 that, uh, strike strike that as far as, uh, that information.
19 Ladies and gentlemen, do not consider that as part of your,
20 uh, deliberations or your verdict in this case. Uh, thank
21 you, uh, thank you, sir.

22 A. Then I'll just skip to the bottom line, it says,
23 Immediately confirm missing pers status with the originating
24 agency.

25 Q. Alright, Mr. Kowalski, um, so, uh, was there, there's no

1 one by the name of Chuck Cain at this, uh, particular
2 incident?

3 A. I did request an investigator, uh, to call me and respond
4 and that was Investigator Chuck Cain which he responded to the
5 hospital.

6 Q. Alright, and upon your observance that night, uh, if if
7 you wish, could you explain a little bit a, uh, you know, your
8 your familiarity [sic] with, uh, Mr. Chuck and what he did
9 that night.

10 A. He's an investigator at the Aiken County Sheriff's Office
11 and he took some photographs of you as far as I know is all he
12 did.

13 Q. And them photographs bein' what for, the general?

14 A. I don't know if they were requested from West Columbia PD
15 or what exactly that the intention for those were.

16 Q. And you wouldn't, um, I mean, so that and you took no
17 part in takin' them photos or anything like that, abstractin'
18 them photos or ---

19 A. I saw the photographs but I I had no part taking 'em.

20 Q. Alright, you say you just, you viewed them photos, uh,
21 when and how did you view them photos?

22 A. I I don't have any idea when I first saw the photos, it
23 may have been just recently but I saw the photos, that's how I
24 saw them.

25 Q. Um, so so that night, Mr. Kowalski, you're you're sayin'

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 the, uh, there was, there was three officers besides you that
2 basically come to the scene, um, um, and they just stopped in,
3 now how long was their presence and, you know, uh, if you
4 you've already stated that they're, they had no duties or
5 anything within this matter, um, if if you wish to continue it
6 or add to that statement, you may, uh, but ---

7 A. I don't understand, Mr. Walker.

8 Q. You you stated there was, uh, three of the, uh, three
9 other officers besides you that night and, uh, on on this this
10 crime scene or that this incident scene, um, what what were
11 that you said that these personnels [sic] didn't have any
12 duties or anything like that in this, you know, what, um,
13 exactly what what was the, what was the relevancy to be there,
14 I mean, uh, you already explained this but what what what
15 actions did they take, I mean, from point-blank to, what what
16 was your observance of these deputies?

17 A. They were present.

18 Q. I mean, they just sat in their car?

19 A. No, they got out of their car.

20 Q. And then what?

21 A. They were present in in in in case I needed them to do
22 somethin' and also as in in a backup capacity which is an
23 officer safety term.

24 Q. Uh, Mr. Kowalski, uh, anybody could tell from the showing
25 of the video that you was kinda, this was kind of aggressive

DARRELL JAMES KOSTYK - CROSS-EXAMINATION BY MR. WALKER

1 move from the get-go, um, why was you so aggressive in this
2 apprehension and why would you immediately apprehend somebody
3 who was basically sittin' at a, at a convenience store, I
4 mean, at a supermarket?

5 A. Yeah, I'll answer your first part first that I think that
6 I disagree the exact opposite with you that anyone who sees
7 the video can see that it's not aggressive, um, first of all,
8 and second of all, I've I've stated numerous times why I was
9 there and how I came into contact with you but I'll say it
10 again I was observing a convenience store ---

11 Q. Uh, I'm I'm familiar with that, ---

12 THE COURT: Now don't ---

13 Q. --- you don't have ---

14 THE COURT: --- don't ---

15 Q. --- to re ---

16 THE COURT: --- don't interrupt, you asked a question,
17 he's got the right to answer the question.

18 Q. Sorry. Sorry, Your Honor.

19 A. I was observing a convenience store due to the heightened
20 occurrence of armed robberies at that period of time. Um, as
21 I was observing the convenience store, I observed Mr. Walker
22 who I didn't know who he was at that time, um, come onto an
23 adjacent property and I observed him for a little bit, um, he
24 appeared to me to be acting a suspicious manner and indeed I
25 felt casing or possibly casing the convenience store to rob

DARRELL JAMES KOSTYK - REDIRECT EXAMINATION BY MS. DAVIS

1 it; therefore, I approached him to ascertain what he was doin'
2 there.

3 Q. Okay, Mr. Kowalski, um, but I'm I'm gonna ask you if, uh,
4 it -- I I'm a father, I'm a very protective father and if
5 someone basically walked up to my child said, you know, Put
6 your hands up, stand up, turn around and, uh, you know, do
7 the, do the, uh, limbo across the hood a my car, that's that's
8 not, that's not too, uh, too legit, is it not, Mr. Kowalski?

9 A. Everything I did was, uh, perfectly within accepted norms
10 of police procedure and the Aiken County Sheriff's Office
11 policy.

12 Q. So is that normally typically how you treat the public,
13 Mr. Kowalski?

14 A. If they're a s -- suspect that just tells me they
15 murdered someone then yes.

16 Q. No further questions, Your Honor.

17 THE COURT: Thank you, uh, thank you, Mr. Walker. Uh,
18 redirect, uh, Solicitor?

19 MS. DAVIS: Very briefly, Judge.

20 REDIRECT EXAMINATION BY MS. DAVIS:

21 Q. Sergeant Kostyk, when you asked the defendant if he had
22 any warrants, what did he answer with?

23 A. Said he did.

24 Q. For what?

25 A. For murder.

DARRELL JAMES KOSTYK - RECROSS-EXAMINATION BY MR. WALKER

1 Q. And then did you ask him if he had murdered someone?

2 A. I did.

3 Q. And what did he say?

4 A. He said, Yes, sir.

5 Q. Okay. Thank you, no further questions.

6 THE COURT: Recross, uh, Mr. Walker?

7 MR. WALKER: Yes, sir, Your Honor.

8 RECROSS-EXAMINATION BY MR. WALKER:

9 Q. Mr. Kowalski, that you you you explained it to the State
10 that I basically murder, mur -- I stated murder, you know, I
11 mean, typically if, uh, if I was a psychological [sic] patient
12 as you, as that ---

13 THE COURT: What?

14 Q. --- ment ---

15 THE COURT: I'm sorry, I didn't understand.

16 Q. A psycho -- psychol, a psychotic patient or a psychotic
17 person.

18 THE COURT: Alright.

19 Q. If I was a psychotic person, typically, um, and and most
20 people who's in in psychotic they they typically don't speak
21 and they typically, uh, wind theirselves up or whatnot, I mean,
22 and and you did say that, uh, you was ha -- properly
23 apprehended to the hospital but, I mean, typically do you
24 think that everybody who has a problem are are psychotic or
25 wishes to be quiet should be apprehended into to a hospital?

DARRELL JAMES KOSTYK - RECROSS-EXAMINATION BY MR. WALKER

1 A. I'm not a psychologist but if I have a, as a reasonable
2 person believe they're a threat to themselves or others then,
3 yes, they need to go to the hospital.

4 Q. So someone quiet is normally typically a threat to
5 theirselves or threat to others?

6 A. Absolutely not.

7 Q. But you you started off as I say that you was very
8 aggressive, uh, due to the fact that, um, from the get-go you
9 was aggressive and then you get to the point where we state,
10 you ask me questions on the warrant and that you say that I
11 say murder, um, typically and then someone remains quiet
12 afterwards that, I mean, do -- i -- isn't there proper
13 procedure to either let that person go or charge that person
14 with sumtin'?

15 A. There's many proper procedures, um, so that you may
16 follow the proper procedure you need to find out what is going
17 on, um, and then you need to look at all the circumstances.
18 Um, you know, I testified earlier that there's numerous
19 occasions we come into contact with someone where their
20 behavior appeared suspicious but is actually innocent, there's
21 occasions where they're having a medical condition and they
22 can't communicate properly, um, but, you know, that we're out
23 in a parkin' lot and we're police officers, we're not
24 psychologists and doctors and and everything else, you know,
25 we're we're making, uh, decisions based on policy and standard

DARRELL JAMES KOSTYK - RECROSS-EXAMINATION BY MR. WALKER

1 procedure and common skill fashion, common sense, um, and and
2 experience quite frankly and that's what I did that night.

3 Q. And you're you're all entitled to your profession, uh,
4 Mr. Kowalski ---

5 THE COURT: Speak up a little bit and be a little
6 clearer, Mr. Walker.

7 Q. You are entitled and you're always always entitled to
8 your profession, Mr. Kowalski, uh, and I I but from my
9 acknowledgment, you may or may not agree, it's typically if if
10 you cannot arrest somebody, you have to release 'em and it's
11 also my, uh, my typical understandin' that if someone is bein'
12 quiet, uh, it's not relevancy apprehend 'em or take 'em to the
13 hospital, if someone is actually fist fightin' with somebody
14 tryin' to be homicidal or suicidal then basically you could
15 take 'em but still you have to have a pretty good reason to,
16 uh, transport somebody to the hospital and you also have to
17 go through the courts to get that done, is that not right,
18 Mr. Kowalski, would you agree with that?

19 MS. DAVIS: Objection, Your Honor, this is outside the
20 scope of redirect.

21 THE COURT: I I'll I'll allow it but I'm not sure, uh,
22 what part of that was a question. Um, ask a succtinct -- a
23 succinct question, uh, a a s -- a specific question,
24 Mr. Walker.

25 Q. Mr. Kowalski, uh, it's typically and after someone

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1. harasses you, you know, typically this night, uh, on this this
2. certain standard or, you know, uh, uh, let's let's let's say
3. that someone, you know, says what I said, I answered your
4. question, I said murder, I I typically disagree that what the
5. video shows, it's the same thing happened that night but I'm
6. gonna leave well enough alone, Mr. Kowalski, and I'm gonna
7. typically ask you when someone is in the public and they they
8. choose to remain quiet, choose to remain silent, what what
9. gives you the obligation to break their public interest and
10. apprehend them and further questions, Mr. Kowalski?

11. MR. GRAHAM: Objection.

12. THE COURT: I I'm I'm gonna allow this officer to, uh,
13. answer the question, Solicitor, that if if he understands ---

14. A. I'm a ---

15. THE COURT: --- the question also.

16. A. --- gonna try, Your Honor, I'm not a hundred percent
17. sure. Okay, ---

18. THE COURT: Thank you.

19. A. --- so as a patrol officer, uh, the general public sees
20. us every day, that's part of our goal is to be visible, um, we
21. also have interactions with the general public that occurs in
22. many, many different way, um, I'm not gonna try to break it
23. down every single way but I'll go through some of it with you.
24. Um, either you call us and we come at your request and speak
25. to you or someone else calls us about you and we come and

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1 speak to you or we observe somethin' that doesn't appear
2 normal, um, and as a general manner of of our duties and what
3 the public expectation is is of us, we investigate that. Um,
4 based on that investigation we do, this is very general, some
5 things, sometimes we do nothing, sometimes we document it,
6 sometimes we take a, take some type of action whether it be an
7 enforcement action or a civil action, um, that's the best I
8 can answer his question with Your Honor for now.

9 THE COURT: Thank you, uh, sergeant, ask your next
10 question, Mr. Walker.

11 BY MR. WALKER:

12 Q. Uh, Mr. Kowalski, that generally if someone says that
13 they were, they they was wanted for the warrant of murder or
14 someone was lookin' for them for murder, um, and they remain
15 quiet, uh, what what does a, by proper procedure do you or do
16 you not have to to let that person go ---

17 A. Well ---

18 Q. --- or or ---

19 A. --- I'm not ---

20 Q. --- read them or or read them, uh, what's known as
21 "Miranda rights" and ---

22 THE COURT: No, no, sir. Now you you've already, you've
23 already asked that question.

24 MR. WALKER: But it's not ---

25 THE COURT: What ---

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1 MR. WALKER: --- if I may, Your Honor.

2 THE COURT: Me and you've talked about this several
3 times, Mr. Walker, don't interrupt me.

4 MR. WALKER: Yes, sir.

5 THE COURT: Uh, you've already asked that question.

6 MR. WALKER: Okay, uh, mis ---

7 THE COURT: I -- let me finish. I've made certain
8 pretrial rulings, those are rulings by the Court as to the
9 admissibility or the inadmissibility of evidence, those aren't
10 decisions, factual decisions, to be made by the fact finders,
11 by the jury. You may ask your next question.

12 BY MR. WALKER:

13 Q. Mr. Kowalski, generally when someone askses [sic] about
14 murder, uh, or answers your question if you ask them to
15 complete they have warrants or they're wanted anything and
16 they state murder, um, and they choose, uh, if they choose to
17 remain silent, um, what what's the typical procedure, I mean,
18 it, is it not that you can ---

19 THE COURT: That that's been asked ---

20 MR. WALKER: No more questions, Your Honor.

21 THE COURT: --- and answered, no, if you, if you wouldn't
22 interrupt me, Mr. Walker, I I'm not, uh, not tried to be
23 disrespectful to you in any manner, you can continue your
24 questioning, you may ask your next question. Just just 'cause
25 I rule against you or I rule against the State, that's not to

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1 cut ya'll off, you can ask your next question.

2 MR. WALKER: I'm just tryin' to get him to answer the
3 question I'm asking, Your Honor.

4 THE COURT: Well, I'm I'm just tryin' to get you to ask
5 your next question, that doesn't mean you have to stop
6 questioning, that's not an issue before the jury and it's been
7 answers, I've allowed it ---

8 MR. WALKER: Thank ---

9 THE COURT: --- the right, ---

10 MR. WALKER: --- you, Your Honor.

11 THE COURT: --- right to remain silent so ask ask your
12 next question please, Mr. Walker.

13 MR. WALKER: Uh, if if I may, Your Honor, I would like to
14 clear up somethin'. I'm not typically gettin' under, I meant
15 the right to remaining silent, I'm just gettin' on someone
16 remaining' silent.

17 THE COURT: And ---

18 MR. WALKER: I'm not puttin' in the laws ---

19 THE COURT: --- he's been through that.

20 MR. WALKER: Yes, sir, Your Honor. No further questions,
21 Your Honor.

22 THE COURT: Thank you, uh, thank you, Mr. Walker.
23 Alright, Sergeant, uh, you may step down, uh, you may be
24 released. You want him on telephone standby, uh, Mr. Walker?

25 MR. WALKER: That's correct, Your Honor.

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1 THE COURT: Will you remain on s -- telephone standby for
2 us, Sergeant?

3 THE WITNESS: Your Honor, and may I make one small
4 request with that? I'm working night shift and, uh, it's very
5 difficult for me to hear the phone ring if you were to call in
6 the morning after I've worked all night so can I ask for as
7 much advance notice as possible?

8 THE COURT: Alright, that's a very small request, I think
9 we can accommodate that, Sergeant. Thank you, uh, thank you
10 very much.

11 THE WITNESS: Thank you, Judge.

12 (Whereupon, the witness left the stand.)

13 THE COURT: How many more witnesses do you have, uh,
14 Solicitor?

15 MR. GRAHAM: One, Your Honor.

16 THE COURT: And after that one witness the State intend
17 to rest?

18 MR. GRAHAM: Correct, Your Honor.

19 THE COURT: Alright, well let's, uh, let's take about a
20 15-minute recess before we take this last witness. Thank you
21 very much, ladies and gentlemen, do not discuss the case
22 during this brief recess.

23 (Whereupon, a recess was taken.)

24 (The following takes place outside the presence of the
25 jury.)

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1 THE COURT: Alright, uh, anything before we bring in our
2 jury from the State?

3 MR. GRAHAM: N -- no, Your Honor.

4 THE COURT: From the defense, Mr. Walker?

5 MR. WALKER: No, sir, Your Honor.

6 THE COURT: One thing I think Court's 2 would now be
7 Defense 1, do you agree, Solicitor?

8 MR. GRAHAM: Yes, yes, that it was -- it it's marked
9 on -- yes, sir, it's marked on the thing itself as State's 2,
10 that that's the ticket that's on there but I agree that ---

11 THE COURT: I'm sorry, I thought it was Court's 2, it's
12 State's 2 for identification ---

13 MR. GRAHAM: I I think that's how the court reporter has
14 it marked.

15 THE COURT: --- would now be Defense 1. Mr. Walker,
16 you ---

17 MR. WALKER: But I ---

18 THE COURT: --- agree, that's the, uh, video.

19 MR. WALKER: In one second, Your Honor, what ---

20 THE COURT: Yes, sir, of course.

21 MR. WALKER: Alright. Yeah, yeah, so you're just sayin'
22 that it's been switched or changed, right, correct, is that
23 what you're gettin' at?

24 THE COURT: Court's 2 for identification was the full
25 videotape ---