Vol. I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

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S.C. SUPREME COURT

TARUS TRAMAINE HENRY, SR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000847

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General
Rembert Dennis Bldg, Room 519
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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COUNTY OF FLORENCE	)	
	)	2008-GS-21-1877
	)	
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Tarus Tremaine Henry, Sr.	)	)
DEFENDANT	)	

July 27-31, 2009
Florence, South Carolina

B E F O R E:

THE HONORABLE RALPH KING ANDERSON, JR., judge and a jury.

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

STEPHEN HILL, Assistant Solicitor
Attorney for the State

KAREN PARROTT, Assistant Public Defender
Attorney for the Defendant

KESHIA REED
Circuit Court Reporter

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THE COURT: All right, Mr. Solicitor, call the case.

MR. CLEMENTS: Your Honor, I defer to Assistant Solicitor Stephen Hill is calling our first case, first case this week.

THE COURT: All right. Call the case and I need the indictment after the case is called.

MR. HILL: Yes, Your Honor.

THE COURT: All right, proceed.

MR. HILL: Your Honor, the State calls the following indictment, it's 08-GS-21-1877 against Tarus Tremaine Henry, Sr. It's a multiple count indictment. I'm Stephen Lawrence Hill, assistant solicitor with the Twelfth Circuit Solicitor's office and I'll be trying the case with the State.

THE COURT: The defendant, Tarus Tremaine Henry, Sr., is he in the courtroom?

MS. PARROTT: Yes, Your Honor.

THE COURT: All right. And, Counsel, you represent him in this proceeding?

MS. PARROTT: I do, Your Honor.

THE COURT: Thank you, please, be seated.

Jurors, the paper that I hold in my hand is called an indictment. It is not evidence. It does not prove anything. It's simply the charging paper. It's the paper that we use to bring the matter for court action. The

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pending charges are assault and battery with intent to kill, arson in the second degree, unlawful conduct toward a child, two counts. Once again, nothing in this paper is evidence. Nothing in this paper is proof in regard to the case. In regard to the assault and battery with intent to kill, it is an allegation that on or about June 23, 2008, the defendant did commit assault and battery with intent to kill upon Carol Dennis Parker, also known as Carol Henry, by cutting or stabbing her with a knife and or machete with intent to kill the said Carol Denise Parker also known as Carol Henry. Arson in the second degree relates to a pending charge against the defendant for maliciously setting a fire to or burning a dwelling and residence. Count 3 and 4 relate to unlawful conduct toward a child under the statute that mandates that children be tended with care and safety.

Mr. Henry, would you please stand and face the jury panel? Is there any member of the jury panel who is related by blood or connected by marriage to the defendant, Tarus Tremaine Henry, Sr., if so please stand?

(WHEREUPON, there are none.)

THE COURT: Is there any member of the jury panel who has any direct or indirect connection of any nature whatsoever with the defendant, Tarus Tremaine Henry, if so please stand?

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(WHEREUPON, there are none.)

THE COURT: Thank you, please, be seated.

Witnesses for the State I do not have the list.

MR. HILL: Your Honor, may I approach?

THE COURT: Yes. Witnesses for the State as I call your name, please, stand and remain standing until I posit the query. Once again, please, stand and remain standing until I posit the query: Carol Parker Henry formally known as Carol Parker, Erica Garner, Dr. Richard L. Frierson, Darren Yarborough, Adam Moore, Bert Turner, Keith Lutcken, Kathleen Streett, Calvin Timmons, Brett Camp, Jamie Cooper, Michelle Brown, Adam Raynor, Steve McCormick, Joseph Warnix, Alan Walden, Cathleen Delung, Jacob Delung, Joe Park, Gary Dicks, Gary L. Pace, Matthew Huggins, Amy Corbett, Scott McAleese, Lindsey Thompson, Mark Reynolds, and that's a doctor, Dr. Mark Reynolds, Jeff Parrott, Jasper Humbert, Kim Cockfield, Sharon Logan, Donna McDaniel, Maureen Nogy, Lori Giles, Rudene Hutto, Larry Quick, Becky Green. And witnesses possibly for defense Resia Henry. Is that a close pronunciation Resia? And Dr. Richard Frierson. Is there any member of the jury panel who is related by blood or connected by marriage to any of these witnesses, if so please stand?

(WHEREUPON, there are none.)

THE COURT: Is there any member of the jury panel who

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has any direct or indirect connection with any of these witnesses, if so please stand? Name and number?

PROSPECTIVE JUROR: Twenty-eight, Leslie Cooper.

THE COURT: Yes, Ms. Cooper?

PROSPECTIVE JUROR: I work for Dr. Reynolds, sir.

THE COURT: In regard to his testifying in the case, are you able to say to the Court that you can and will give both the State and the defendant a fair and impartial trial or should you be excused?

PROSPECTIVE JUROR: I can be impartial, Your Honor.

THE COURT: You will do that in this case?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you, please, be seated.

Name and number in the back?

PROSPECTIVE JUROR: Pamela Smith, I believe it is 156.

THE COURT: Yes.

PROSPECTIVE JUROR: Brett Camp, the police officer, I was a teacher for one of his children.

THE COURT: In regard to that nexus, do you feel comfortable in saying as a matter of conscious to the Court, that you can and will give both the State and the defendant a fair and impartial trial?

PROSPECTIVE JUROR: Yes, I can.

THE COURT: Thank you, please, be seated.

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Anyone else? Anyone else?

Thank you, folk, please, be seated.

MR. HILL: Judge Anderson, there is one other potential witness who may be a substitute for Sharon Logan, that person is unknown at this time according -- this person would be an employee of the Kershaw County Medical Center. Would the Court, please, inquire of the panel whether or not any of these folks were related to or know any people that work in the health records department at the Kershaw County Medical Center?

THE COURT: Kershaw County Medical Center is located up Interstate 20. In regard to that wonderful city, is there any member of the jury panel who has any direct or indirect connection with the Kershaw County Medical Center, if so please stand?

(WHEREUPON, there are none.)

THE COURT: Jurors, listen closely now, listen carefully. This case did in fact receive some publicity when it first occurred. Obviously, you can't depend on any kind of presentation from the media because it's unsworn and it is not identifiable in regard to court, our court system. But is there any member of the jury panel who recalls listening to any radio account or watching any television account or reading anything about this case in the newspaper, if so please stand?

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(WHEREUPON, there are none.)

THE COURT: Is there any member of the jury panel who has formed or expressed an opinion or made any statement about any issue in this case, if so please stand?

(WHEREUPON, there are none.)

THE COURT: Is there any member of the jury panel who could not give both the State and the defendant, Tarus Tremaine Henry, Sr., a fair and impartial trial, if not please stand?

(WHEREUPON, there are none.)

THE COURT: Is there any member of the jury panel who knows of any reason whatsoever as to why you should not serve on this jury, if so please stand?

(WHEREUPON, there are none.)

THE COURT: Is there any member of the jury panel who holds any personal belief or opinion which would prevent you from sitting in judgment of another person, if so please stand?

(WHEREUPON, there are none.)

THE COURT: Is there any member of the jury panel or any member of your immediate family who has been the victim of a crime in the past, if so please stand?

Yes, your name and number, please, in the back?

PROSPECTIVE JUROR: My name is Seneca Brand, I don't know my number.

THE COURT: Hold on one second.

THE CLERK: Fourteen, Judge.

THE COURT: Fourteen, is the number, Counsel.

Yes, Ms. Brand.

PROSPECTIVE JUROR: I think about 15 years ago, my dad was murdered.

THE COURT: In regard to that past circumstance, are you comfortable in saying to the Court that you can and will give both the State and the defendant a fair and impartial trial?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you, please, be seated.

Name and number, please?

PROSPECTIVE JUROR: Number 100 Gerald Wayne Mitcham. My baby brother was murdered here in town in an arm robbery in 1980.

THE COURT: In regard to the past circumstance, do you feel comfortable in saying to the Court that you can and will give both the State and the defendant a fair and impartial trial?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you, please, be seated.

Anyone else?

All right, Mr. Solicitor, both of you would stand, please, and introduce yourself to the jury panel, the

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Solicitor's office.

MR. HILL: Good morning. I'm Stephen Hill assistant solicitor here in Florence and this is our Solicitor Mr. Ed Clements.

MR. CLEMENTS: Good morning, I am Ed Clements Solicitor of the Twelfth Judicial Circuit. Also here is Mr. Taylor Shuster, who is about to enter his second year of law school. He is interning with us this week and hopefully, he can learn something about the judicial system. Christine is one of our staff people, she will be here in the courtroom with Mr. Hill. I will participate in helping select the jury and then move on to the court with Judge Nettles. Good morning to all of you.

THE COURT: Is there any member of the jury panel or any member of your immediate family who is now being represented by the Twelfth Circuit Solicitor's office in any legal matter or who has in the past been represented by the Twelfth Circuit Solicitor's office in any legal matter, if so please stand?

(WHEREUPON, there are none.)

THE COURT: Counsel for defense would you stand and introduce yourself, please?

MS. PARROTT: Thank you, Your Honor. May it please the Court.

THE COURT: Yes.

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MS. PARROTT: Ladies and gentlemen, my name is Karen Parrott and I'm an assistant public defender here in the Florence County Public Defender's office. Seated at the table with me is Frank White, who's one of the investigators for our office, and he'll be assisting me with this trial. Other members of my office are, Michael Bell, Jack Lawson, Vick Meetze, Grayson Smith, Carrington Wingard, Scott Floyd. Thank you.

THE COURT: Is there any member of the jury panel or any member of your immediate family who is now being represented by the public defender's office of this county or who has in the past been represented by the public defender's office in any legal matter, if so please stand?

(WHEREUPON, there are none.)

THE COURT: Any further voir dire request requested by the State?

MR. HILL: No, thank you, Your Honor.

THE COURT: By the defense?

MS. PARROTT: None, Your Honor.

THE COURT: All right, Counsel, we will begin this procedure hopefully with CMS and we'll proceed to print out the list of 40 names. They will be called seriatim and they will be called forward under the old system one by one in terms of the exercise of preemptory challenges. The preemptory challenges in this case are five and ten,

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five and ten. I will have alternates in the procedure under the alternate process under 14-7-1120 is one and two, one and two for each alternate. Let the computer begin.

Jurors, while we're waiting, you have met the Solicitor of the Twelfth Judicial Circuit and his deputies in regard to the handling and proceeding with the trial of cases on behalf of the State. That's an elected public position as it ought to be and the Solicitor here is in charge of presenting trials to the Court.

The public defender's office is entrusted with the duty and responsibility of representing individuals charge or accused of a crime.

In reference to our work this week, the lady to my right here is the court reporter. She probably has the most important job in this courtroom because she must take down every single word that is given by way of testimony or by way of argument of counsel or by way of instruction from the Court and it's a pleasure and privilege to have her. She did live here in Florence, but she's move to Columbia, but she is assign back here and we certainly welcome her back. She is a wonderful, fantastic court reporter, welcome. Thank you.

In regard to the people to my left, you met the elected clerk of court Connie Reel-Shearin. And she, of

course, has a wonderful staff here. She leads by virtue of example, experience and acumen and I've had the wonderful privilege to serve with her for a number of years. We'll just leave it at that.

THE CLERK: Don't get specific.

THE COURT: Don't get specific. In regard to the two ladies to my left, they are chief deputy clerks. They work under Mrs. Connie Reel-Shearin and they both are very experienced in regard to the court work. They are now in the second week of dealing with CMS. We all are in a state of flux in that regard. And let me introduce my bailiffs who will have first contact with you. Once you're selected on the jury, they'll get you things like coffee, Cokes, nabs and the like. And in the back would you introduce yourself, Mr. Riley Propps?

BAILIFF: Riley Propps.

THE COURT: And to my right over here?

BAILIFF: Olivia Joe.

THE COURT: And then the deputies. Deputy would you introduce the deputies in the courtroom assign this week.

DEPUTY: Lieutenant Wayne Bellflowers, Eric Barnes, Jamie Winthrow and Cheryl McFadden.

THE COURT: We look forward to working with you in reference to the trial of this case and others as we proceed this week. I will explain everything to you with

specificity. Do not have any feeling of concernment or a feeling of trepidation in reference to jury service. I will explain to you in detail your participation under the constitution and under our statutory system, so please, please relax. I will explain it to you as we proceed to try the case. And it is my firm belief that we need to remember to respect jurors who bring the wisdom and talents of their personalty to the court and thank you for coming with a good attitude and a good disposition. We need you to make these important bottom line decisions in cases such as this. Welcome and thank you for your attending the court today and this week.

All right, jurors. I believe we need to take a respite here. CMS is not printing out the names right now. Hopefully, they will print out the names. Otherwise, I'm going to one of these little bingo balls and I'm going to use that to identify the numbers. Maybe, that will satisfy the system. Anyway regardless a 20 minute recess.

(WHEREUPON, a break was taken.)

THE COURT: Let the record show that we have been blessed because the computer CMS system has now worked. For the State, we have given to you the random strike sheet and for defense we have given to you the random strike sheet which will be called seriatim. Is that

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correct from the State?

MR. HILL: It is, Your Honor. There is a matter that I need to bring to the Court's attention. If we might approach?

THE COURT: All right.

(WHEREUPON, a bench conference was held in the presence of the jury panel, but out of the hearing of the jury panel.)

MR. HILL: He only knows her by first name number 14 and she's number 14.

THE COURT: Sometimes as we take a break in these proceedings, something occurs and it is innocent from the standpoint of everyone. Ms. Seneca Brand, would you stand where are you? Ms. Brand, you, I'm sure innocently spoke to a person who will be testifying in the case. In regard to that nexus to that person that you spoke to, are you able to assure the Court and all of the lawyers and participants that you can and will give everyone a fair and impartial trial?

PROSPECTIVE JUROR: Yes.

THE COURT: You will do that?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you. All right, jurors how does the selection process work. Historically, as approved by the United States Supreme Court, we call forward jurors

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one by one. As we call your name, you will come forward and stand somewhere in the vicinity of the mic there and face the prosecution. The State has the right to excuse you or to approve you. If the State excuses you, return to your seat. If the State approves you, we then go to the defense and the defense has the right to excuse you or to accept you. If the defense excuses you, please return to your seat. If the defense accepts you, you been approved by both the State and the defense. And you will have a seat in the jury box to my right.

I explain that public selection process to you, so that you will understand that's mandated by our system. Do not let it upset you. Do not be embarrassed if some lawyer excuses you in this case. There are multiplicity of reasons, multitudinous reasons that they might use in their own mind as to your participation in the case. It might fall within the category of what I call trivial reasons like you might not have enough hair to suit them, you understand. Just relax and let the system work, that's the way it's mandated by our system.

Ms. Clerk, you're recognize.

THE CLERK: 129 Valerie Speights. If you will come to the middle of the courtroom to the microphone and turn around and face the back of the jury.

(The juror, a black female, comes forward.)

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THE COURT: Wonderful, thank you.

THE CLERK: What say the State?

MR. HILL: Seat the juror.

THE CLERK: Say defendant?

MS. PARROTT: Please swear the juror.

THE CLERK: Please have a seat in the jury box, ma'am.

132 Stephanie Sturkie.

(The juror, a white female, came forward.)

THE CLERK: What say the State?

MR. HILL: Please seat the juror.

THE CLERK: Say the defendant?

MS. PARROTT: Please swear the juror.

THE CLERK: Please have a seat in the jury box, ma'am.

Number 14 Seneca Brand.

(The juror, a black female, came forward.)

THE CLERK: What say the State?

MR. HILL: Please seat the juror.

THE CLERK: What say the defendant?

MS. PARROTT: Please excuse the juror.

THE CLERK: You been excused from this trial only, ma'am. You may return to your seat.

108 David Pate.

(The juror, a white male, came forward.)

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THE CLERK: What say the State?

MR. HILL: Please seat the juror.

THE CLERK: Say defendant?

MS. PARROTT: Please swear the juror.

THE CLERK: Please have a seat in the jury box, sir.

133 Jerry Taylor.

(The juror, a white male, came forward.)

THE CLERK: What say the State?

MR. HILL: Please excuse the juror.

THE CLERK: You been excuse for this trial only, sir.

114 Shameka Robinson.

(The juror, a black female, came forward.)

THE CLERK: What say the State?

MR. HILL: Please excuse the juror.

THE CLERK: You been excuse for this trial only.

Nine Christy Bailey.

(The juror, a white female, came forward.)

THE CLERK: What say the State?

MR. HILL: Please seat the juror.

THE CLERK: What say the defendant?

MS. PARROTT: Please swear the juror.

THE CLERK: Please have a seat in the jury box.

THE CLERK: 143 Wendy Watrous.

(The juror, a white female, came forward.)

THE CLERK: What say the State?

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MR. HILL: Please seat the juror.

THE CLERK: Say the defendant?

MS. PARROTT: Please swear the juror.

THE CLERK: Please have a seat in the jury box, ma'am.

145 Sandra White.

(The juror, a black female, came forward.)

THE CLERK: What say the State?

MR. HILL: Please seat the juror.

THE CLERK: What say the defendant?

MS. PARROTT: Please excuse the juror.

THE CLERK: You been excused from this trial only.

121 Donna Seegars.

(The juror, a white female, came forward.)

THE CLERK: What say the State?

MR. HILL: Please seat the juror.

THE CLERK: What say the defendant?

MS. PARROTT: Please swear the juror.

THE CLERK: Please have a seat in the jury box, ma'am.

151 Cheryl Hanna.

(The juror, a black female, came forward.)

THE CLERK: What say the State?

MR. HILL: Please seat the juror.

THE CLERK: What say the defendant?

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MS. PARROTT: Please swear the juror.
THE CLERK: Please have a seat in the jury box.
156 Pamela Smith.
(The juror, a white female, came forward.)
THE CLERK: What say the State?
MR. HILL: Please seat the juror.
THE CLERK: Say defendant?
MS. PARROTT: Please excuse the juror.
THE CLERK: You been excused from this trial only, ma'am.
Forty-five Homer Ervin.
(The juror, a white male, came forward.)
THE CLERK: Say the State?
MR. HILL: Please seat the juror.
THE CLERK: Say defendant?
MS. PARROTT: Please excuse the juror.
THE CLERK: You been excused from this trial only.
Seventy Jesse Hatcher.
(The juror, a black male, came forward.)
THE CLERK: What say the State?
MR. HILL: Please seat the juror.
THE CLERK: What say the defendant?
MS. PARROTT: Please swear the juror.
THE CLERK: Please have a seat in the jury box, sir.
Seventy-seven Lester Jenkins.

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(The juror, a black male, came forward.)
THE CLERK: What say the State?
MR. HILL: Please excuse the juror.
THE CLERK: You been excused from this trial only, sir. You may return to your seat.
Forty-four Rogers Epps.
(The juror, a black male, came forward.)
THE CLERK: What say the State?
MR. HILL: Please seat the juror.
THE CLERK: Say defendant?
MS. PARROTT: Please swear the juror.
THE CLERK: Please have a seat in the jury box.
110 Derek Paul.
(The juror, a white male, came forward.)
THE CLERK: What say the State?
MR. HILL: Please seat the juror.
THE CLERK: Say the defendant?
MS. PARROTT: Please swear the juror.
THE CLERK: Please have a seat in the jury box.
Seventy-five Brenda Hutchinson.
(The juror, a white female, came forward.)
THE CLERK: What say the State?
MR. HILL: Please seat the juror.
THE CLERK: Say defendant?
MS. PARROTT: Please swear the juror.

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THE CLERK: Please have a seat in the jury box.
Fifteen Hattie Brayboy.
(The juror, a black female, came forward.)
THE CLERK: What say the State?
MR. HILL: Please seat the juror.
THE CLERK: Say the defendant?
MS. PARROTT: Please excuse the juror.
THE CLERK: You been excused from this trial only.
Eighty Victor Johnson.
(The juror, a black male, came forward.)
THE CLERK: What say the State?
MR. HILL: Please excuse the juror.
THE CLERK: You been excused for this trial only. You may return to your seat.
152 Michael Carroll.
(The juror, a white male, came forward.)
THE CLERK: What say the State?
MR. HILL: Please seat the juror.
THE CLERK: What say the defendant?
MS. PARROTT: Please swear the juror.
THE CLERK: Please have a seat in the jury box.
THE COURT: Stephanie Sturkie, Stephanie Sturkie come forward and be the foreperson take seat number one. You will use that seat at all times as the foreperson.
Alternate one procedure one and two, one and two

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under 14-7-1120. Proceed one and two.

THE CLERK: 107 Cindy Pete.

(The juror, a white female, came forward.)

THE CLERK: What say the State?

MR. HILL: Please seat the juror.

THE CLERK: Say the defendant?

MS. PARROTT: Please excuse the juror.

THE CLERK: You been excused from this trial only.

127 Margaret Sinsel.

(The juror, a white female, came forward.

THE CLERK: What say the State?

MR. HILL: Please seat the juror.

THE CLERK: What say the defendant?

MS. PARROTT: Please swear the juror.

THE CLERK: Please have a seat in the jury box.

Eleven Theresa Barris.

(The juror, a black female, came forward.)

THE COURT: One and two in this process, Counsel, since we're down to alternate two, one and two.

THE CLERK: What say the State?

MR. HILL: Please seat the juror.

THE CLERK: What say the defendant?

MS. PARROTT: Please swear the juror.

THE CLERK: Please have a seat in the jury box.

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THE COURT: Ms. Sturkie, you're the foreperson, please sit there at all times as we try the case. And I will explain your duties later on.

Alternate one, Margaret Sinsel, use that chair at all times, that's your designated chair.

Ms. Barris, that's your designated seat as alternate number two. The rest of you may sit in any location other than those three designated seats.

Just please respond yes or no in regard to Batson vs. Kentucky. Yes or no?

MR. HILL: No.

THE COURT: No.

Yes or no?

MS. PARROTT: No.

THE COURT: No. Thanks.

Jurors, in the audience give me your attention, I'm going to excuse you now until Wednesday, Wednesday morning at 9:30. Do not come tomorrow. You do not have to come tomorrow, but I need you back here Wednesday morning at 9:30. Please be here Wednesday morning at 9:30. You may leave now. No one leaving but jurors, no one but jurors. You may leave now.

(WHEREUPON, the remaining members of the jury panel were excused.)

THE COURT: I'm going to give the oath office to the

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jurors the State understand?

MR. HILL: We do, Your Honor.

THE COURT: Defense?

MS. PARROTT: Yes, Your Honor.

(WHEREUPON, the jury was sworn.)

THE COURT: Jurors, turn and face me now and please give me your attention. Please give me your attention. We begin this trial under certain constitutional rules. These constitutional rules govern and control the trial. I must comply with these constitutional rules and so must the lawyers, so please understand that as we proceed in regard to this matter. Because of legal matters that are urgent, I will release you as soon as I finish talking to you and bring you back tomorrow because I need to take up some legal matters that are quite lengthy.

As we proceed to try this case, you are jurors. The juror word comes from Latin, I love Latin. We use Latin in its pure form in the law today. The Latin word for a juror is jurat. It means an oath person. And we did not ask you to stand and raise your right hand to go through the motions, it's not that at all. It's the solemn obligation now thrust upon you to fairly and impartially try and determine the facts of this case. My role under the constitution is to rule on matters of law and to give you a detail charge on the law before you decide this

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case. And I will do that with great specificity before I give you the case for decision. Your role is to decide the facts. We blend our duties and responsibilities together so that you might arrive at a verdict. A verdict that is just, fair and true to the State and a verdict that is just, fair and true to the defendant.

The word verdict also comes from Latin, two Latin root words. The first word in Latin is verus. The word means truth. In the old Latin, the concept is pure truth. Whatever you do in life, whatever. If you get your hands on pure truth, you made progress. Verus pure truth.

The other word in Latin is dicto. The two words are combined in Latin, the word is veredicto, that word means to speak the truth. And when we ask the foreperson have you reached a unanimous verdict, that verdict must speak the truth in this controversy.

Now, as we proceed to try the case, we proceed under constitutional rules. And the constitutional rules are most important because they are in fact the absolute prerequisites of this system: One, the State must prove the defendant guilty beyond a reasonable doubt, separately and distinctly concerning these four charges, separately and distinctly concerning these issues of law and issues of fact. The verdict must be unanimous. The foreperson is required to sign the verdict on your behalf. Her

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signature guarantees to the Court that what she is in fact a unanimous verdict. Madam forelady, under no circumstances, do you sign the verdict form, which I'll give to you, until all 12 freely and voluntarily agree.

As we proceed to try the case, the State must prove the defendant guilty beyond a reasonable doubt, once again considering these charges separately and distinctly. I will define the term reasonable doubt for you in detail under the United States Constitution and State Supreme Court cases. I will define that term. The State must prove the defendant guilty beyond a reasonable doubt. The next important constitutional rule is this, the defendant is presumed to be innocent under the constitution. And that presumption of innocence is legal proof of innocence. It remains with the defendant at all times from the moment of his arrest throughout the trial proceeding and goes into your jury room and remains with the defendant there unless and until you, the jury, remove the presumption of innocence by evidence satisfying you of his guilt beyond a reasonable doubt.

As we proceed in this matter, I will bring you back in the morning at nine o'clock. Please note that time nine o'clock that is a change in time. And please, I beg all of you to be on time because if you don't come, it holds up the entire transaction, so please, please, be

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here at nine o'clock in the morning. At that time, the lawyers will make an opening statement for you. The solicitor will explain to you the contention of the State and defense counsel will explain to you the position of the defendant.

In regard to that particular matter and proceeding from that point, the lawyers are officers of the Court. They are distinct officers of the Court under the license that has been issued to them by the State Supreme Court. As officers of the Court, they bring matters to my attention on matters of law. They may say I object. If they do that, sometimes I rule on those matters in your presence. Not only do they have the right to do that, they have the duty and obligation to do that. So please understand these lawyers are also trying the case under the court rules. Please accept that now as we proceed to try the case.

As we proceed to try the case, there are certain matters that govern and control your conduct: One, you cannot talk about this case from this point forward until I give you the case for decision. That means as you leave here today, you cannot go talk to your wife, your husband, your child or as one lady did go talk to her minister. You cannot talk to a person about this case, that's prohibited. If it happens, what occurs: One, under the

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State Supreme Court decision, you are in contempt of court. Please do not do that because it also impacts the verdict. Please, please, please help me try the case under the court rules. And once again, you cannot talk to anyone about this case. You cannot have conversations and that is a very strict rule. I beg you to follow the rule.

The second matter is the jurors cannot have conversations about the case until I give you the case for decision. So as you leave here today, you cannot say to a juror what about this case. Don't talk about the case. Don't make any statement about the case. Please do not make any statement about the case. When you come back tomorrow, we'll bring you in early on. As soon as you get here, we'll take you in for coffee and so forth before court begins, hopefully a little before nine. And at that point, do not make any statement about the facts of the case.

As we try the case, do not go to that jury room and make statement about the facts of the case. Do not make such statements as, did you hear that, do you believe that. Do not do that. Please, folk, we've had a lot of problems in this regard and the chief justice has asked the judges to make sure the jury understands, talk about weather, sports, politics, gossip or whatever, but do not talk about the facts of this case and that's not

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permissive, that's not precatory, that's mandatory.

Also please do not bring any devices to the Court. Last week, the chief justice issued a very firm order. The order says under no circumstances are the jurors allowed to go on the computer during the trial. And you certainly cannot bring a computer to court tomorrow, that is prohibited. You cannot take a computer in the jury room. Tonight under no circumstances can you go on the computer to look up issues of law or matters of law that now covered on the computer like everything else in life almost everything is covered on the computer, but do not, do not use that computer to go on the legal site and look for any kind of edification or explication of the law. Do not bring any cell phones tomorrow. Do not bring cell phones. They are not permitted in the jury room, so those two rules govern and control you. As you come back tomorrow, do not bring a computer. Do not bring a cell phone, please, under any circumstances.

As we proceed to try the case, because of the number of witnesses the case may be lengthy, so please bear in mind we'll proceed in regard to several days here in reference to this trial. And young lady let's see, Christy Bailey, I got to help you with that problem tomorrow and so as the other jurors leave you wait here and I'll see if I can work out that problem for you in

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reference to the schedule for tomorrow. You are now excused be back at nine o'clock tomorrow, nine o'clock. Has everyone understood my instructions? If you have not understood these instructions, would you lift your hand and I'll try to make it clearer? Does everybody understand the instructions? Okay, come right through here and I'll see you in the morning at nine o'clock except Miss Bailey. Wait right there, Miss Christy Bailey.

(WHEREUPON, the jurors were excused for the day.)

THE COURT: All right. Miss Bailey she had indicated to the Court that she had some kind of court appearance tomorrow down in Lake City.

MISS BAILEY: Yes, sir, for a speeding ticket.

THE COURT: For a speeding ticket. And I assured her that I would get it continued. So Mrs. Clerk ---

MISS BAILEY: I don't have my ticket or anything with me.

THE COURT: Where you suppose to be in magistrate court or the city court?

PROSPECTIVE JUROR: I'm not sure, I lost my ticket about three weeks ago. It was a highway patrolman from Lake City, but he got me off the Francis Marion exit.

THE COURT: In regard, were you suppose to appear in Lack City or Florence?

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MISS BAILEY: Lake City.

THE COURT: Lake City. All right. Mrs. Clerk, call the magistrate in Lake City, make sure you identify yourself and make sure you identify Miss Bailey, tell them or him or her -- tell him that I have delayed that trial because she is on the jury. And if he gives me any problem, I intend to call the chief justice, there's no if and or but, that case is put off.

MISS BAILEY: It's on tomorrow at 10:30.

THE COURT: Tomorrow at 10:30. And make sure he understands the case is put off. If he does not agree, he does not agree. Please let me know. I'll call the chief justice today.

(WHEREUPON, Juror Number 9 Christy Bailey was excused for the day.)

THE COURT: I am cogitating and contemplating taking the lunch respite here now and then coming back maybe at 1:30 and beginning with these legal matters or do you lawyers want to begin right now? For the State?

MR. HILL: Beginning at 1:30 would be fine with the State?

THE COURT: Ms. Parrott.

MS. PARROTT: Your Honor, he's given me a tape to or a CD of a tape to listen to this morning. How long is that?

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MR. HILL: Forty-five minutes.

MS. PARROTT: Your Honor, that's my only concern is that I do need to take that -- I would like to listen to that before we reconvene this afternoon. Given that it's almost 12:10 now, 1:30 should be okay, sir.

THE COURT: 1:30 or two, your choice?

MS. PARROTT: Why don't we make it two.

THE COURT: Two o'clock everybody, two o'clock. Thanks.

MS. PARROTT: Thank you, Your Honor. I'm sorry, Your Honor, do you want the jury list back.

THE COURT: For the record, they are return back to the Court for confidential purposes. Thank you.

(WHEREUPON, Court's Exhibit No. 1 was marked for the record.)

(WHEREUPON, a lunch break was taken.)

THE COURT: All right. We are back on the record in regard to this particular case on The State vs. Tarus Tremaine Henry, Sr. The pending indictment is 2008-GS-21-1877. What motions do we have from the defense, please?

MS. PARROTT: Thank you, Your Honor. May it please the Court.

THE COURT: Yes.

MS. PARROTT: Your Honor, given the number of

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witnesses that the State has given on this list and in fact continued to add to including as of this morning, I would make a request to sequester witnesses. At this time, I think it's something that even there's at least eight law enforcement officers. There's a possibility of ten firemen. If there is a whole wall of law enforcement that stands behind the State, I think there is certainly something that can be inferred from that and negatively against my client or positively for the State both. So given that appearances do count for something, otherwise we wouldn't worry about what people look like and what things look like and what things are, I would ask that you sequester the witnesses.

THE COURT: All right. What says the State in regard to the position of the defendant requesting sequestration?

MR. HILL: Your Honor, I understand that's left to the sole discretion of the Court. The State's position would be that it would oppose sequestration for the following reasons: That normally sequestration is justified in those cases when the Court believes that there is a reason where potential witnesses could use and gain advantage by hearing the testimony given by other witnesses to help bolster or strengthen their testimony later during the trial. I don't think that that is the primary concern of the defense when making this motion.

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If the main concern for the motion is based upon the appearance that it would give to the jury, I don't think that that reason in and of itself gives rise to the granting of the motion ask for by the defense and the State would respectfully ask that the motion not be granted.

THE COURT: Okay.

MS. PARROTT: Your Honor, I understand that that would be the normal reasons for it, but I do think in certain situations you can make exceptions and I would ask that this be an exception.

THE COURT: Order, Rule 615 of the South Carolina rules of evidence articulate the rule concerning sequestration of witnesses. The rule is quote, quote, Exclusion of witnesses at the request of a party, the Court may order witnesses excluded so that they cannot give the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of one party who is a natural person, two an officer or employee of a party which is not a natural person designated as its representative by its attorney or three a person who's presence is shown by a party to be essential to the presentation of the party's cause, end of quote.

Historically, we are edified by the rule of State vs.

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Cabbagestalk. Cabbagestalk explicates the rule that the idea notion of a witness hearing other witnesses is not an absolute compelling circumstance to invoke sequestration of witnesses.

The Court declines to invoke sequestration of witnesses at this time because there is no showing that there would be any negativistic or nefarious impact by denying sequestration of witnesses. Concomitantly, I deny the motion for sequestration of witnesses at this time. And it is so ordered. All rights are reserve. All rights are protected for purposes of appellate review. Next matter, please?

MS. PARROTT: Thank you, Your Honor. I would renew Rule 5 or the Brady motions as well. I've spoken with the prosecution about the fact that I would need the NCIC's for whatever witnesses that he choose to call in regards to this matter and I believe he's agreed to do so. I just don't know if he has them at this time.

MR. HILL: I don't have them, but I'll have them for you.

THE COURT: I'm sorry what was that response?

MR. HILL: I will have them provided prior to the witness' testimony.

THE COURT: Please comply with that particular impact. Obviously, under the criminal practice rules of

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criminal procedure and under Brady, we have the continuing obligatory production and I hereby order that before we begin the testimony of the trial testimony. And it is so ordered. Next matter, please.

MS. PARROTT: Thank you, Your Honor. We did have Mr. Henry evaluated pursuant to State vs. Blair and we would need to put the Blair hearing on the record, Your Honor.

THE COURT: Order, pursuant to State vs. Blair, B-L-A-I-R and section 44-23-410 et sequitur of the Code of Laws of South Carolina, a mandatory hearing is to be held once a Blair hearing is conducted.

The Blair hearing is now to be held. And it is so ordered. Please present the evidentiary showing under 44-23-410 and State vs. Blair, please.

MR. HILL: Your Honor, at the sake of looking very unprofessional, I'm looking for a copy of my report that I received from the state hospital. I have torn my file a part in preparation and that's what I'm looking for at this time.

(WHEREUPON, a pause in the proceedings.)

THE COURT: Ms. Parrott, do you have a copy of the report?

MS. PARROTT: I've given it to actually Mrs. Van Lutcken, Your Honor, is making a copy of it at this time.

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THE COURT: Thank you.

(WHEREUPON, a pause in the proceedings.)

THE COURT: The State offers into evidence a medical report in regard to 44-23-410 et sequitur and State vs. Blair. It is marked as Court's Exhibit Number 1 -- Court's Exhibit Number 2 from the defendant.

(WHEREUPON, Court's Exhibit No. 2 was marked for the record.)

THE COURT: Thank you. All right. Anything further from the State in regard to a medical report from the department?

MR. HILL: No, thank you, Your Honor, I appreciate your patience. I ask the Court to take notice of the contents of that report and accept it as a finding in regards to competency in this case.

THE COURT: Any response from the defendant?

MS. PARROTT: No, Your Honor. Offer without objection.

THE COURT: Order, pursuant to State vs. Blair 275 S.C. 529, 273 S.C. Second 536 and section 44-23-430. The Court has reviewed Court's Exhibit Number 2. The medical report reveals with exactitude that competency to stand trial is affirmatively responded with quote, yes, end of quote. The sections two and three are included with a clinical history, medical history, social history, mental

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status examine, conclusion regarding competency to stand trial and recommendations. The exhibit is signed by Dr. Richard L. Frierson, professor of clinical psychiatry, University of South Carolina School of Medicine.

Based on the entirety of Court's Exhibit Number 2, the Court concludes that the defendant is competent to stand trial. And it is so ordered. All right. Any other matters, please?

MS. PARROTT: Your Honor, Mr. Henry did give a statement as part of this investigation. And, Your Honor, only one of the investigators that was actually present at the time is present here today. Obviously, one would be unavailable because as I understand it he's in Afghanistan. The second one is available at least certainly available, but I believe had a conflict of scheduling today. But I would certainly defer to the Court's judgment in this matter as to whether or not to convene early regarding a Jackson v. Denno tomorrow, so that I could address the second investigator as well or if you would just go forward with the first investigator who in all honesty, Your Honor, was present during the whole recording session of this time, but would not have been present, I believe, for the whole period.

THE COURT: All right. What says the State in that regard?

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MR. HILL: Your Honor, the State understands that there were three officers involved in the taking of the statement. The statement that the State plans to offer was attended by Officer Kathleen Streett, who is present today. She was there during the entirety of the recording and giving of the statement. Second Officer Bert Turner is unavailable today due to his wife having surgery. He is available tomorrow, but he could not come today because he needed to be with his wife while she was at the hospital. The third officer, Calvin Timmons, is unavailable, he's presently in Afghanistan. We believe that the testimony offered by Mrs. Streett would be sufficient in order to allow the Court to make a finding regarding the admissibility of the statement under Jackson vs. Denno. We ask that we be allowed to proceed today with her testimony.

THE COURT: All right. Pursuant to Jackson vs. Denno 378, U.S. 368 84 Supreme Court 1774 Twelve Lawyers Edition Second 908 and State vs. Benny site omitted, State vs. Rochester site omitted, State vs. Childs site omitted, State vs. Washington site omitted, and State vs. Miller 375 S.C. 370 652 S.C. Second 444, we now hold a hearing pursuant to the mandate of Jackson vs. Denno. A thorough review in regard to the Denno hearing process is to be conducted and we now proceed to swear witnesses in that

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regard with the hearing pursuant to the Denno procedure. And it is so ordered. Call your first witness please.

MR. HILL: Your Honor, the State would call Investigator Kathleen Streett of Florence County Sheriff's Office.

THE CLERK: Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated and state your full name for the record.

THE WITNESS: My first name is Kathleen with a K. Middle name is Vargovich. You need me to spell that for you? V as in victory A-R-G-O, V as in victory C-H-I-K Streett S-T-R-E-E-T-T.

THE COURT: Proceed.

MR. HILL: Thank you, Your Honor.

WHEREUPON,

Kathleen Streett,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION IN-CAMERA

MR. HILL:

Q Mrs. Streett, were you involved in the interrogation of the defendant, Mr. Henry, in this case?

A Yes, sir.

Q Did you have copies of the statement that he gave as

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well as waiver of rights forms that you brought with you today?
A Yes, sir.
Q Are these copies of those documents?
A Yes, sir, these are those.
Q Might they be helpful to you during the testimony that you give today?
A Yes, sir.
Q Mrs. Streett, do you have documents that were signed by Mr. Henry indicating that he understood his rights under the South Carolina and U.S. Constitutions and that he wish to waive those rights in speaking with you on June 23rd 2008?
A Yes, sir, I have the Miranda warning form.
MR. HILL: Your Honor, the State would ask what's been identified as a waiver of rights form be admitted into evidence as State's, I believe, one. There's no objection from the defense.
THE COURT: State's Exhibit Number 1 in evidence without objection?
MS. PARROTT: Correct, Your Honor.
THE COURT: Thank you.
(WHEREUPON, State's Exhibit No. 1 was admitted into evidence.)
BY MR. HILL:

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Q Mrs. Streett, I'm going to hand you what's been marked as State's Exhibit Number 1. Were you present when that document was signed?

A Yes, I was.

Q In that statement that he signed, what rights did he agree to waive?

A All of his constitutional rights under Miranda. Would you like me to read them?

Q No, I think for the purposes of this hearing that testimony is sufficient. What time of day did the statement begin?

A 2015 military time.

Q Which is in civilian time?

A 8:15 p.m.

Q What time of day did the incident that bring us here happen?

A It was that afternoon, after lunch.

Q Okay. So you're speaking an interrogation of him began approximately eight hours later?

A Correct.

Q At the time that you spoke to him, were you made aware of any physical difficulties that may be keeping him from understanding what he was doing?

A As far as him physically?

Q Uh-huh.

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A No.
Q Were you aware or made aware by him or anyone else of any mental difficulties that may prevent him from making a knowing and intelligent statement?
A He hold us that he had had surgery a few years prior to on his brain for a seizure disorder but other than that no.
Q What, if anything, did that do to you or the other officers in regards to continuing to take the statement from him?
A We continued to take the statement.
Q Did he indicate that he wish to stop talking with you all during that time?
A No.
Q Did he ever request any assistance either from a lawyer or from any other person while he made the statement?
A No, sir.
Q If he had, what would you have done?
A We, at that time, would have stopped.
Q In fact, have you been involved in the taking of many statements during your career?
A Yes, sir.
Q Have you been trained in the proper methods and techniques for obtaining statements from witnesses and

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defendants?
A Yes, sir.
Q Are you aware of the consequences of not following those procedures when you take statements from witnesses and defendants?
A Yes, sir.
Q And what might those consequences be?
A Well, they may not be used in court and various different things.
Q So it's important -- so would you say it's important that you follow the law correctly while you take these statements?
A Yes, sir.
Q What is your opinion regarding whether or not that was done in this case?
A It was.
Q And simply for the purposes of this hearing, did Mr. Henry give a confession regarding the incident in this case?
A He did.
Q How long did it take for the statement to be recorded?
A Time was 2005, which could have been 8:05 when we started and we ended -- bear with me for just a second. 9:02 p.m., so not quite an hour.

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Q And it does to take place in an interview room at the Florence County detention center in Effingham?
A It did.
Q Was this interview recorded on videotape?
A On video, no.
Q Was it monitored by other officials in the department?
A No, sir, not to my knowledge.
Q What time was Mr. Henry taken into custody?
A I am not sure of the exact time, that probably is reflected somewhere in the incident report. We had gotten information from the scene that he was actually in another county and we travel from Florence County to that county.
Q And was that Kershaw County?
A That was Kershaw County, yes. And there was the issue of the two minor children that we had to tend to, so he was there in Kershaw County for a little bit of time before he was brought back to Florence County.
Q And after he was taken into custody in Kershaw County where was he delivered?
A To the Florence County sheriff's office.
Q What delay, if any, was there between his arriving at the detention center and the taking of your statement?
A When we took his statement in the interview room, he was -- he may have gone into the restroom, I'm not sure

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about that. But the walk from the car into the interview room would have been about it.

Q How long of a period of time passed from the time he entered the interview room until you begin to record the statement?

A Maybe five, six, seven, ten minutes just long enough to introduce ourselves and everything.

Q Do you recall whether or not there was anything that was said during that intervening time for six minutes that you just stated that is not contained in the statement that Mr. Henry gave?

A No.

Q Does the statement contain everything that you all discussed in the intervening time for six minutes?

A In the actual statement?

Q Uh-huh.

A Probably not because it was all just, you know, I'm telling him who we were as far as that goes and that, you know, we asked him if he wanted to give a statement. He said yes, so then we turn the tape recorder on and did the Miranda and then started the actual interview interrogation process.

Q Did you ask him about his educational background?

A He was ask that.

Q And how far had he gone in school?

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A I have to refer back 12th grade and one year of college, so 13 years.
Q Was there anything -- did he mention whether or not he was on any medications?
A He was ask that also. He was asked if he was under the influence of drugs and alcohol and he replied no.
Q Now, one of the investigators that was involved in the recording of the statement, which we're discussing is Calvin Timmons; is that correct?
A Yes, sir.
Q Where is Mr. Timmons today?
A He's in Afghanistan.
Q So he's unavailable to be here?
A That's correct.
Q Okay. Were you present during the entire time that Mr. Calvin Timmons was present?
A Yes, sir.
Q Okay. Now, we need to go ahead and cover this. Was Officer Timmons the individual that took Mr. Henry into custody in Kershaw County and delivered him back to Florence County detention center?
A He was, yes, sir.
Q Okay. To your knowledge, are we attempting to put into evidence anything that Mr. Timmons might have heard Mr. Henry say?

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A During the time that they were in transit?
Q During that drive.
A Whatever questions he asked him in the statement that Investigator Timmons asked him in the statement are the ones that were discussed. I don't know what they said in the car.
Q Okay. So we're not testifying about anything that happened in that car?
A Correct.
Q And Officer Bert Turner was he also present during the recording of the statement?
A He was.
Q Was he present during the entire time?
A To the best of my knowledge, yes.
Q Were you -- did you ever leave the room during the recording of the statement?
A Not to my knowledge I don't recall.
Q So you were there when all questions were asked and answered?
A Yes, sir.
Q Did you have an opportunity to review the statement after it was transcribed?
A I did.
Q Did you learn about a blank spot in the transcription?

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A I did.
Q Can you address that issue with the Court?
A As far as?
Q What your knowledge is about that particular blank space?
A Whenever we do our interviews on audio and or videotape, which in this case was audiotape. We'll tag the tapes and then give them to our office coordinator, which is Donna McDaniel for transcription and proofreading. And basically, she was in the transcription process and she came to me and told me that there was a blank spot on the tape. And that's how that came to be as far as me learning about that.
Q Is this something that -- how often does something like this occur?
A In my cases, in all the interviews and stuff that I have given to Donna and the others, this is the first time in nine years that has happen to me.
Q So would you term it as an accident?
A Yes, sir.
Q So there wasn't anything intentional or malicious or purposefully done to erase something out of this tape, is it?
A Not to my knowledge, no, sir.
Q What steps, if any, were taken to rectify or to

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correct the situation?
A We went back and listen to the tape and there was no way that we could think of to try and put something back that, you know, was no longer there. So she did went ahead with the transcription from the point where the tape begin again and on to the end.
Q And is there an affidavit or a statement that she prepared that accompanies the statement?
A Yes.
Q And it is just from that that she explained what happened to the best of her recollection?
A That is correct.
Q Do you recall based on your work in this case whether or not there was anything exculpatory, that fancy word means, it would show that Mr. Henry wasn't responsible for this crime that was erased out of that portion of the tape?
A No, sir.
Q What steps, if any, would have your office have taken had there been something exculpatory or important in that blank spot?
A That I don't know because it's never happened to me and I've never experience that before.
Q In looking at the statement in totality and especially the area where this blank occurs, what topic

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was being discuss shortly before the eraser portion?
A I need to get to where it was. Investigator Timmons was asking Mr. Henry or they were talking about the children.
Q And then shortly after the statement, what did they begin discussing?
A About whether or not his wife was leaving, whether or not she was upset.
Q Regardless of the blank, was there anything that happened in that interview room that indicated Mr. Henry didn't want to continue with the statement, that he didn't want to give or that it was being given against his will?
A No, sir.
MR. HILL: Thank you. Answer any questions that the defense may have.

CROSS-EXAMINATION

BY MS. PARROTT:
Q Investigator Streett, you are saying that he -- that you met up with witnesses at Kershaw County Hospital; is that correct? Is that what your investigation was?
A Repeat that.
Q Did you ever go to Kershaw County Hospital?
A I did.
Q Okay. And did you meet Mr. Henry then?
A He was there, yes, ma'am.

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Q You were with Bert Turner at the time, weren't you?
A And Adam Moore, Corporal Moore.
Q But where was Investigator Timmons?
A He was also there.
Q Okay. Did Investigator Timmons take -- you say he actually took physical possession of Mr. Henry to bring him back to Effingham?
A I believe he did that from the Kershaw County detention center.
Q Okay. What's the approximate time that it would take to travel from Kershaw County detention center to Effingham, the jail at Effingham?
A An hour and 15, 20 minutes perhaps. He was in Camden.
Q And you weren't present for any part of that transport, were you?
A No, ma'am.
Q And to your knowledge, Investigator Timmons didn't do any kind of recording of Mr. Henry while that transport was occurring?
A Not to my knowledge.
Q And no one else was present in Investigator Timmons' car?
A Not to my knowledge.
Q Okay. Then you met back up with Investigator Timmons

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back at Effingham later in the day?
A Correct.
Q And you're saying that would be 7:30, 8:00 o'clock somewhere along in there?
A Around in there.
Q All right. You stated that he went from the car to the interview room; is that correct?
A As far as I know. I know the next time I had contact with Mr. Henry we were in the interview room.
Q All right. So his having been booked in at 7:26 would be consistent with what your memory is or inconsistent?
A I don't know what time he was booked in. I know that Calvin was bringing him back. And then when I got into the interview room, we started the interview whenever the statement said like at 8:05.
MS. PARROTT: Permission to approach, Your Honor?
THE COURT: Sure.
BY MS. PARROTT:
Q Does this look what is, I guess, the web site information for your sheriff's office?
A Uh-huh.
Q And -- I'm sorry I'm going to need you to speak yes or no.
A Yes.

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Q And is that Tarus Henry's booking information?
A Yes, it is.
Q And that's from what date?
A The 23rd.
Q Okay. And what information has the sheriff's office entered in there for a booking time?
A It shows 6-23-08 at 1926.
Q Okay. But you weren't part of that booking process?
A No, I was not.
Q Do you know who would have been?
A Have no clue.
Q You figure somewhere though right after that cause you're saying eight o'clock or so whenever you start the interrogation?
A About 8:05 according to the statement.
Q Is it customary for investigators to discuss with potential defendants what the story is or what they believe the story is about the incident that was suppose to have occurred?
A At times.
Q And that being prior to any kind of recording?
A Sometimes.
Q So that sometimes you have an informal interrogation or an informal talk. Did you do anything like that with Mr. Timmons here excuse me -- with Mr. Henry here?

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A I did not.
Q Do you know if Mr. Timmons did?
A I don't know.
Q You had an opportunity to review the statement have you not?
A Yes, ma'am.
Q Okay. You stated that this wasn't videoed either; is that correct?
A Not to my knowledge.
Q You do have the capability of doing a video interview out there at the sheriff's office, do you not?
A At times.
Q There is one room that's equipped for it; correct?
A When it works.
Q Okay. Do you know if it was at this time?
A I don't know.
Q All right. All three of you though were in an interview room with Mr. Henry?
A When the statement began, yes, ma'am.
Q How big is this interview room?
A Well, it has seating for one, two, three, four, five, six, seven, eight, nine, ten people.
Q Which interview room is this?
A The one next to investigations.
Q To the left of the door?

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A Correct.
Q Okay. So is it just the three of you and Mr. Henry in this room or more people involve?
A Just those four.
Q Okay. How were y'all situated three on one wall and him on the other?
A I believe, Calvin Timmons was on one side of the desk. There's a desk here. Mr. Henry was on this side of the desk. Bert Turner was over here and I was over here.
Q Okay. All three of you had equal access to Mr. Henry in asking him questions; correct?
A Yes, ma'am.
Q All right. You have your copy of your statement in front of you?
A I have the transcribed copy, yes, ma'am.
Q All right. And you were involved in giving him the rights, but you witnessed Investigator Timmons doing so; correct?
A That's correct. I was there when he did that.
Q So you are saying that you actually witnessed Mr. Henry signing those sheets of the Miranda form?
A I was in there, I believe, when he signed it, yes, ma'am.
Q Okay. And making his initials beside each constitutional right?

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A Yes, ma'am.
Q But that's Calvin Timmons' signature at the bottom; is it not?
A Correct.
Q All right. Was Investigator Turner there also during that time?
A He was when I was in there.
Q All right. You stated that you don't believe that anything that was discussed during the car ride as part of this statement, is that what you -- am I stating that correctly?
A I don't know what was discussed in the car ride. I don't know that's -- Calvin was in the car with him and I can't tell you what was discussed in the car.
Q And you also stated that he -- he stated that he wasn't on any medication, but you don't recall him stating anything about medication either?
A He was ask the question of whether he was under the influence of any drugs or alcohol and he stated no.
Q Okay. Could I direct your attention to page six. And about middle way of the page Investigator Turner says, All right, are you prescribed to take any medication? Mr. Henry is suppose to have responded not that I know of. I know that Investigator Turner kind of continues with him and a little bit further down the page he says I was on

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Zyprexa and I was on metamoric (sic) for my diabetes, but I lost enough weight to get off the diabetes medication. Says, All right, what other medication? Again, goes back to the Zyprexa and later it says it was prescribed for his schizophrenia. And a little bit further on down the page it's for psychosis; is that not what was stated during that interview?

A That's correct, but then he -- Investigator Turner goes on to say, but you're not taking that because of some of the side effects or something else. And he -- Mr. Henry stated that the doctor discontinued his medication.

Q But at that time, you had been informed by his answer that he had had at least been diagnosed or possibly been diagnosed with schizophrenia and psychosis at some point in his past; correct?

A He made a statement that the doctor had told him that.

Q And schizophrenics don't usually cure themselves, do they?

A I have no clue, I'm not a psychiatrist.

Q But in your experience as an investigator in dealing with people with antisocial disorders or psychotic disorders, do you believe a schizophrenic to do that?

A I didn't know what he had at the time, if he had

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anything at all.
Q Okay. And on page ten, if I could direct your attention there. Did he not tell you that he was also still bleeding as part of this interview? It's about right up maybe a quarter of a page, not even that far from the bottom.
A He said he was still bleeding.
Q Okay. Were there any other obvious physical problems with Mr. Henry?
A Not that I noted.
Q He had at least the wrap around his hand for where he had been cared for at Kershaw Medical; correct?
A He had received medical treatment at Kershaw for a cut on his hand.
Q Had you talked with anybody there at Kershaw County about what his status and condition was, what medications they may have given him?
A No.
Q So as far as you know, he could have been on something you don't know?
A I don't know.
Q And if I could direct your attention to page 12 as well. Investigator Timmons after Investigator Turner gives a soliloquy says, And don't just like I told you, Tarus, in the car, man, don't spoon feed us any

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information, okay. You just telling us a little bit from true feeling, we're gonna to back down from you, but we are not. So that's referring to at least some kind of conversation that occurred between Investigator Timmons and my client; is it not?

A Yes, but I wasn't there. I can't tell you what they said and what they didn't say.

Q As far as the break in the statement that occurs on pages 31 to 32 -- let me make sure I got the page number correct, I'm sorry. You gone back and listen to the statement?

A It's been a while since I listen to it.

Q Okay. But were you following it with this transcribed statement as well?

A Yes.

Q And at that time, you found that it just cut off as well?

A It's blank.

Q Because -- how long did you believe that it stays blank?

A I don't know I didn't time it.

Q If I told you it's about two minutes, maybe two minutes and six seconds or so, would that seem about right to you?

A I don't know.

Q Do you recall from your memory what was actually said during that two minute time span?
A No, I'm sorry, I don't.
Q When did you discover that this was a missing section here?
A When Donna McDaniel notified me of it. In her...
Q When she transcribed it?
A Right. The type date is 12-2 of '08, but it was before that when she told me about it.
Q Okay. Did you make any handwritten notes as part of this time whenever you were interviewing Mr. Henry?
A No.
Q Do you know if Investigator Turner or Investigator Timmons did?
A I don't know.
Q If I could also direct you to page 37 with Investigator Timmons about half way the page. It's like Investigator Turner said, He's the one that would help you out, man. You might as well tell us everything. Don't you remember what I said about the spoon feeding comment, don't spoon feed us, man. Okay, I mean, that is what we are here for. I mean, we don't honestly sit in here and expect everybody to tell us the truth. So is that not yet again the time when you were present and they're referring back to another car conversation or prior conversation?

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A Prior conversation.
Q And Investigator Timmons even continues to say we can help you out man. I mean, the judge takes our word very serious. Okay, did he not?
A That's what's transcribed here.
Q So at that point and multitudinous other times, y'all were just trying to get Mr. Henry to tell y'all the story; correct?
A The truth.
Q And this was an hour long time or approximately 57 minutes or so that y'all had done this interview?
A That's correct.
Q Do you recall Investigator Turner talking with Mr. Henry about what y'all could do to help him in court?
A What are you referring to?
Q The different times within the interview -- if you want a specific page, you can go back to number 13. Investigator Turner says, You don't want us to end up in the courtroom, you know, with 12 people, you know, listening and hanging on to every word we say. Is that why we know this is a lie that you told us, you know, when we ask you this believe me, you know, we don't want that for you, you don't want that for you? Because I can tell you that our judge and a jury, they have absolutely no problem with handing down a guilty verdict and a pretty

severe sentence when we make people out, you know, to be lying in court. Were you present when that was said?

A Yes.

Q If you will turn to page 34. Investigator Timmons says, that, I mean, if you going to tell a story like that that you just told us the jury would say, man, this guy he's not working with a full deck. Okay, but you have to be real with us because the people -- we real people and in the jury box is real people. Yet, again that's Investigator Timmons in the room trying to get him to talk?

A Get him to tell the truth.

Q After he's been in there for about an hour, y'all never took a break during this whole time?

A Not to my knowledge.

Q Never offered him water?

A I don't -- I didn't.

Q Or any kind of food that you know of?

A I didn't.

Q Are there any other threats or coercion that was made that wasn't recorded?

A There were no threats or coercion made at all.

MS. PARROTT: Nothing further, Your Honor.

THE COURT: Redirect?

MR. HILL: No, thank you, Your Honor.

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THE COURT: You may step done down.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Next witness, please?

MR. HILL: Donna McDaniel.

THE CLERK: Ms. McDaniel, if you will stand. You can stand right there. Place your left hand on the Bible and raise your right. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated and state your full name for the record.

THE WITNESS: My name is Donna McDaniel.

WHEREUPON,

Donna McDaniel,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION IN-CAMERA

BY MR. HILL:

Q Ms. McDaniel, are you employed by the Florence County sheriff's office in the investigations department?

A Yes, I am.

Q And as part of your duties, do you transcribe statements that have been recorded?

A Yes, I do.

Q And did you transcribe the statement involved in this case against Mr. Tarus Henry?

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A Yes, I did.
Q Can you explain to the Court what you recall about the existence of a blank in the transcription or the report?
A Yeah, I brought the transcription -- the dictaphone with me.
Q Would it help you to demonstrate?
A Yes. This is a dictation phone, dictaphone and it's very simple. I was typing the tape, went and answered the phone or the radio and slightly touch this button. This button is a record button. If I would have touch this button, it would have erase totally, but I touched the record button and that's what happened. It has a rewind, a play, stop. And I don't know whether I was stopping the machine or going, but when I turn, I press the wrong button and that's what happened.
Q And so you press a small record button towards the top of the machine?
A Uh-huh.
Q And was that done purposefully or accidentally?
A That was done accidentally.
Q Okay. Did you know Mr. Henry before this occurred?
A No.
Q Did you have any interest whatsoever in this case?
A No.

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Q Has anything like this ever happened with any of your transcriptions?
A No, that I'm aware of, no.
Q Okay. So what period of time passed before you discovered the eraser?
A It was almost immediately that I discovered after I -- I don't know what I was doing talking on the phone or reaching to get something. I don't recall what I was doing, but immediately when I saw it, I stopped it.
Q And then what did you do?
A I said, Oh, no. When I saw Kathleen again, I told her. I said you want believe what I did, I erase a portion of the tape, but immediately afterwards, I typed in the area where I -- where the blank came in it.
Q So in the statement, you typed a statement explaining that there was an eraser?
A Yes.
Q Okay. Was there another document that you attached to the back of the statement?
A Yes.
Q And what was that?
A I put in there that the proof reader would have problems reading this portion of the tape because it was erase. And I put approximately exactly where the tape was erased.

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Q So did you report this episode to your supervisor?
A Not to my supervisor. I report it to Kathleen. And I was talking to others in the office, I say you wouldn't believe what happened to me today.
Q Okay. Were you reprimanded or punished in anyway?
A No.
MR. HILL: Answer any questions that the defense may have.

CROSS-EXAMINATION

BY MS. PARROTT:
Q Had you listen to the tape prior to transcribing it?
A No.
Q So you were just listening and typing as it went?
A Yes.
Q And you were right on that time, you weren't listening ahead to what you were typing either?
A Well, the dictaphone it rewinds things back and forward. So as you press the peddle, it rewinds it back and forward.
Q Okay. Had you done that at this time when this little break occurs?
A Yeah, the peddle takes it back for you.
Q Okay. Did you hear any of what was suppose to be there on that time that was erased?
A I wasn't certain what it would say or I would have

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put it in the statement.
Q All right. So what you have as part of what you -- for the statement is what you know to have been on that statement?
A Yes.
Q And you just simply put that break in there for -- to alert everybody about what had occurred?
A Yes.
Q And there's no backup tape?
A No.
Q No backup recording that the dictaphone makes?
A No.
Q And can you approximate the time that was erased?
A You mean how long?
Q Correct.
A It couldn't have been that long. I was probably doing something else and then just turn back around and just started getting ready to type again. And, you know, notice that I had the record button.
MS. PARROTT: Nothing further, Your Honor.
THE COURT: Redirect?
MR. HILL: None, thank you, Your Honor.
THE COURT: You may step down.
(WHEREUPON, the witness leaves the witness stand.)
THE COURT: Next witness, please?

MR. HILL: We don't have any.

THE COURT: Defense desire to put up any testimony?

MS. PARROTT: No, Your Honor.

THE COURT: All right. The State desire to be heard in regard to argument?

MR. HILL: Yes, Your Honor, briefly. It is my understanding that the law in our state that at this juncture the issue before the Court is whether or not the constitutional rights afforded to each individual in this country were followed during the giving of the statement. Our belief is that all his rights were freely and voluntarily, knowingly and intelligently waived and the statement was freely and voluntarily given. If there's a question regarding the weight of the evidence, that should go and be an issue and question for the jury. So at this juncture, the State would respectfully request that the Court find that the evidence presented supports a finding that the statement was freely and voluntarily given knowingly and intelligently made.

THE COURT: Defense.

MS. PARROTT: Your Honor, obviously, I'm going to argue that it was not. They have information that was given as part of the interview, that he certainly had been under doctor's medication for at least psychosis or schizophrenia by his telling them. He wasn't sure about

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his diagnosis. And he gave Zyprexa as well as some other medications that he had been under while he was under doctor's care. This is an interview that is 50 pages in length, Your Honor, and that's without the skipped part or the erased part. It's something that occurred over about an hours worth of time with three people in a room and it's on the hills of an hour and 15 minutes by law enforcement's own approximation ride from Camden to Effingham.

Wherein, it is certainly obvious by this statement Investigator Timmons did talk with my client and speak about this case by his own statements as part of this. So I don't know exactly what was discussed in an hour and 15 minute ride, but I certainly know that by what was in here it was. I believe even in his own incident report as part of his supplement here, he discussed part of this as well. Of course, he's not here for us to discuss that with or to question and to cross examine, but I would ask that the Court take into consideration that this does not appear to have been a statement that was given freely and voluntarily nor easily. Otherwise, it wouldn't take 50 something pages or an hour worth of time with three investigators. Certainly, after he has been possibly threatened or you can put whatever kind of characterization you want to with it, but certainly having

the sway of the Court and sway of the jury held over his head, having been deprived of the freedom of movement, water, restrooms, food, all of these sorts of things, while also already having been booked into custody, so that he understands that he is already booked now at this time.

And also, Your Honor, I would bring to the Court's attention or bring back to the Court's attention, that he had been treated at the facility over in Kershaw County, but they do not know what the extent of treatment was and what medications may have been given at that time. So they're simply going off of his ability to respond to them, but that's still being triggered by they're controlling all the circumstances. He also told him that he's diabetic, Your Honor. And, of course, food and water certainly play a huge part in that in somebody sugar dropping and their ability to function, so it's the totality of the circumstances, Your Honor, that I would ask you to consider.

THE COURT: Anything further from the State?

MR. HILL: No, thank you, Your Honor.

THE COURT: Order, the process for determining whether a statement is voluntary and thus admissible is bifurcated. It involves determinations by both the judge and the jury. First, the trial judge must conduct an

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evidentiary hearing, outside the presence of the jury, where the State must show the statement was voluntarily made by a preponderance of the evidence. Jackson vs. Denno 378 U.S. 368, 84 Supreme Court 1774 Twelve Lawyers Edition Second 908. If the statement is found to have been given voluntarily, it is then submitted to the jury, where its voluntariness must be established beyond a reasonable doubt, State vs. Washington 296 S.C. 54, 370 S.C. Second 611.

A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights. Miranda vs. Arizona 384 U.S. 436 86 Supreme Court 1602 Sixteen Lawyer's Edition Second 694; State vs. Saltz 346 S.C. 114 551 S.C. Second 240. If a suspect was advised of his Miranda rights but made a statement, the burden is on the State to prove by a preponderance of the evidence that his rights were voluntarily waived. A statement is not admissible unless it was voluntarily made. State vs. Vondohan 322 S.C. 234, 471 S.C. Second 689. Under Jackson vs. Denno, a defendant is entitled to a reliable determination as to the voluntariness of his statement by a tribunal other than the jury charge with deciding his guilt or innocence. In South Carolina, the judge makes this initial determination of voluntariness required by

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Jackson vs. Denno.

In order to secure the admission of a defendant's statement, the State must affirmatively show the statement was voluntary and taken in compliance with Miranda.

During the Jackson vs. Denno hearing, the trial judge must examine the totality of the circumstances surrounding the statement and determine whether the State cared its burden -- showing the statement was made voluntarily.

The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving of a statement. The due process test takes into consideration the totality of all the surrounding circumstances both the characteristics of the accused and the details of the interrogation.

In the case sub judice, the Court concludes one that the defendant was advised of his Miranda warnings. And two, the statements made by the defendant were freely and voluntarily given. This conclusion is made based on a preponderance of the evidence.

Under the precedent extant emanating from the United States Supreme Court and the South Carolina Supreme Court once the Court concludes that the statement is admissible, it is submitted to the jury based on proof of the statement beyond a reasonable doubt. The statement will

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be submitted to the jury in this case with a charge to the jury in reference to the admissibility that is under a charge where the State is required to prove the admissibility of the statement beyond a reasonable doubt. And it is so ordered. All rights are protected. All rights are reserved for purposes of appellate review. And it is so ordered. All right. The next matter, please?

MS. PARROTT: Your Honor, it's kind of a sub, I guess, a sub motion to that one. It would simply be whether or not you would suppress this statement based upon the fact it is incomplete due to the erased portion and the fact it's left to anybody's guess as to what occurred during that two minute time period.

THE COURT: Order, the motion made by the defendant is that the statement that is proffered by the State is incomplete because a portion of the statement was deleted.

The Court concludes that the deletion of a portion of the statement was inadvertent and not presented by the State or the State's witnesses as done on purpose. Rather, it is an act that was simply inadvertent and does not prevent the admissibility of the statement in totality. The right is served and protected for purposes of the defendant and defendant's counsel to cross examine the State witness as to a deletion of a portion of the statement and that may be done in regard to the

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presentation of the matter to the jury. And it is so ordered.

MS. PARROTT: Objection, Your Honor, obviously.

THE COURT: Yes.

MR. HILL: Your Honor, regarding the statement and defense forgive me if I'm jumping ahead. Since, the Court has ruled that the statement is admissible, I do think that it is appropriate that we now address whether or not a redaction is appropriate from page 23 of the statement.

THE COURT: All right. What's on page 23? I don't have it before me.

MR. HILL: Your Honor, I will hand it up to you. It addresses a prior criminal domestic violence charge. And while I think that might be admissible should the defendant testify, I don't think it's admissible as a part of the State's case in chief and the State has no objection and that's -- and we're offering to make that redaction with cooperation of defense counsel. I didn't want to have any surprises or problems during the trial.

THE COURT: What about that counsel for defense?

MS. PARROTT: Thank you, Your Honor. I would have no objection.

THE COURT: The Court rules that the information contained on page 23 must be redacted. And it is so ordered.

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MS. PARROTT: Just for clarification, Your Honor, could I ask exactly how -- what portion or what line you're starting at and what point you tend to quit.

MR. HILL: Your Honor, defense and State might concur after the hearing and we probably can agree to the portions that need to be redacted. If there is a problem, we will come to the Court later tomorrow.

THE COURT: Consult with counsel to make sure that that is agreeable. All right.

MR. HILL: Your Honor, in that regard as well should the State decide to publish the statement to the jury through the use of a compact disk, the original tape, would the Court offer suggestions about how to cover the redaction when we reach that point in playing the statement before the jury?

THE COURT: No. It's your case, you try it. I will lean on it as we go.

MR. HILL: This what I would propose to do then, Your Honor.

THE COURT: All right.

MR. HILL: Judge, what I propose is that whenever we reach that area of the statement, that we be allowed at that point to simply stop, fast forward to a place that skips the redaction. That's the State's proposal in that regard.

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THE COURT: What says the defense in that regard?

MS. PARROTT: That would be fine, Your Honor.

MR. HILL: Thank you, Your Honor.

THE COURT: I would ask you, Mr. Solicitor, listen, listen, listen. I don't want any difficulty in regard to the activity in presenting the matter to the jury. I want to make sure the redaction is completed and is observed with absolute certitude, so the person who is handling that should be made aware of that. I don't want any difficulty in regard to the redaction being committed in an egregious erroneous fashion.

MR. HILL: Thank you, Your Honor, the State certainly wants the same.

THE COURT: All right. What's the next matter?

MS. PARROTT: I believe the last thing, Your Honor, is that I would be making a motion to suppress all photographs that the State has in this matter. It is -- I have a CD with 169 different pictures that has been provided to me. Last Thursday, I had other pictures that had been provided to me, I believe they were all the same. This is just a compilation of all of them at one time. And have been informed they are not trying to introduce all the 169, but they are looking at as many as possibly 100. If that has changed, I would be happy about such, but I simply would still say that any pictures in this

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matter would be offered simply for the motive of inflaming the passions of the jury and it would certainly be substantial prejudice to my client as oppose to the testimony that they're also planning to offer by at least the doctor who was treated excuse me -- the lady in this case as well as EMS excuse me -- fire departments and law enforcement in this matter. It's just something where we're getting too cumulative as well as burdensome and overly prejudicial, Your Honor.

THE COURT: What about?

MR. HILL: Your Honor, the State began several weeks ago combing through the photographs reduce what was originally 330 or 357 photographs down to 100. I've since give those 100 to the defense, gone through again and taken out all that I thought were repetitive. And at this point, I think having counted maybe between and 40 and 50 photographs that I like to be able to propose as exhibits to the jury. I understand the concerns of the defense, but the State also has a need based upon the facts of this case and the allegations of assault and battery with intent to kill to at least be able to display in as a careful and appropriate manner as possible the photographs that depict the victim's injuries. In that regard, I've gone through and taken out any duplicates of injuries. I taken out any that would be embarrassing to the victim.

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And I'd ask at this time for the Court to make an appropriate ruling. I have copies for the Court to view. They are placed on a CD, the ones that we would propose to introduce to allow the defense and State to view these while the Court also views the copies so that we can cover this issue now.

THE COURT: All right.

MR. HILL: And we're able to view these on CD either on the screen and I can provide hard copies to the Court. They're in numerical and chronological order.

THE COURT: I prefer to review the hard copies and then that will be submitted based on your presentation to the jury of the CD, but the hard copies are necessary for me to make a judgment as to each. Do you have an objection to all of those photographs counsel for defense?

MS. PARROTT: I'm not sure what 40 or 50 now he's talking about, Your Honor.

THE COURT: All right. Let's take time here to review it.

(WHEREUPON, a pause in the proceedings.)

MR. HILL: Your Honor, may we approach?

THE COURT: Sure.

MR. HILL: Your Honor, this folder contains photographs that the State would process to offer. The ones that the State proposes are turned correctly in the

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folder. The ones that the defense objects to are turned facing outwards.

THE COURT: Like these?

MR. HILL: Yes, sir.

MS. PARROTT: Yes, sir.

MR. HILL: And the State has no objection to that one being taken out.

MS. PARROTT: Your Honor, this would be what the State has identified as number 73; is that correct?

MR. HILL: Yeah, this is -- my office's own ID number.

MS. PARROTT: Okay. Just for the purposes of keeping everything straight, this is a picture of the interior of the car and also present on the interior of this car and for everybody to see is a CD that is by Little Wayne. I'm not sure what might be the Carter III, I'm not real sure. But I would object to that just because Little Wayne is a rapper, who has tattoos all over his face and body and the like and is known for his criminal record as well as his violence and propensity for drugs. In fact, his bus was searched here before he could even have his concert here in Florence not too long ago. I don't think it's integral to the State's case and it certainly has a possibility of prejudice, so I would ask that it be that -- there's a different picture also that the State could have that

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doesn't have such a close shoot of Little Wayne's CD. And I would rather have that picture.

MR. HILL: Your Honor, the State proposes to introduce this photograph because there was blood evidence taken from the seats in the automobile and that's the purpose of these pictures being -- that particular photograph being admitted into evidence to give the jury a perspective about where the blood was located. As regarding the placement of the CD in the photograph, the State had no idea that that was the nature and type of music that was on it nor had any knowledge of the artist that produced that work.

MS. PARROTT: And I don't mean to say that they did, I'm just saying other people may very well know that would be on the jury.

THE COURT: The Court sustains the objection to this photograph because I am interested in maintaining a pristine record and thus this photograph is not to be admitted.

All right. Counsel, I think the best thing for me to do is hand you these and let you tell me what is objectionable in each one.

MS. PARROTT: Okay. Your Honor, the rest of these would be fine. I believe, this is a series of pictures of the young lady involved here that were taken by the

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doctor, Your Honor, and I would object to their being presented. Again, because of the fact that we're going to have multiple people discussing what the injuries were, what the nature of the injuries were by the doctors as well as, I believe, law enforcement. And they're so shocking, Your Honor, that I do believe it is possible that it could be something that would shock the conscious of the jurors and overwhelm them and inflame their prejudices instead of allowing for logical thought in regards to this matter. And as I stated, someone else can describe the nature of the injuries, so I would ask that those not be allowed in.

THE COURT: What say you to that, Mr. Solicitor?

MR. HILL: Your Honor, the State would ask that these photographs be admitted into evidence. As a background, there were numerous other photographs depicting the injuries to Miss Parker as the photographs were made by the physician. I can't help the close up nature of those photographs. I took out all duplicate photographs. I took out all photographs that were embarrassing in a nature showing things that did not need to be seen by a jury. I tried to put in only one photograph depicting each injury. And while I understand that they are horrific to look at quite gruesome, the purpose is not to inflame the prejudices of a jury. They were made in good

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faith by the physician. They are asked to be presented to the jury in a good faith effort to establish one of the elements in this defense, which is assault and battery with intent to kill and ---

THE COURT: Did you talk to the physician in regard to these photographs?

MR. HILL: I have.

THE COURT: And the physician indicated that these photographs depicted circumstances that should be presented to the jury so that he could explain the nature of the injuries to the jury?

MR. HILL: Yes, Your Honor, I can state as an officer of the Court that was part of our interview process.

THE COURT: What about that, Ms. Defendant Counsel?

MS. PARROTT: Your Honor, he's going to be testifying to those things and I understand that he, being a doctor, may speak in jargon that not the ordinary person might understand, but I do believe that that's the purpose of asking the next question and asking him to give a clearer answer for the edification of all, so that the jury can understand. And I -- these pictures are such that I don't know that necessarily goes to the intent to kill. It is just simply -- it's simply going forward and inflaming the passions, Your Honor.

THE COURT: The following photographs are now

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reviewed by the Court 85, 86, 87, 93, 94, 96, 97, and an unnumbered photograph. Order, photographs may be used to corroborate other evidence. State vs. Robinson, 201 S.C. 230, 22 S.C. Second 587.

The relevancy, materiality, and admissibility of photographs are matters left to the sound discretion of the trial judge. And those rulings will not be disturbed absent a showing of abuse of discretion. However, photos which are calculated to arouse the sympathies or prejudices of the jury should be excluded if they are irrelevant or not substantial necessarily to show material facts or conditions. State vs. Kornahrens K-O-R-N-A-H-R-E-N-S 290 S.C. 281 350 S.C. Second 180 certiorari denied by the United States Supreme Court, that's 480 U.S. 940 107 Supreme Court 1592. And State vs. Hughey 339 S.C. 439 529 S.C. Second 721.

The criterion for admitting photos is not whether they depict a gruesome scene, but whether their prejudicial effect outweighs their probative value, such as by creating a tendency to suggest a decision on an improper basis such as an emotional basis. State vs. Hughey cite omitted and State vs. Franklin cite omitted.

The caveat in regard to admissibility in the case sub judia (sic) is whether the physician testifies to the effect that the photographs are necessary to show the

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exact circumstances that are covered in the physicians testimony.

In summary, the photographs are admissible subject to the caveat that the physician must first attest to the absolute need and necessity that the photograph be used so as to edify and enlighten the jury as to the circumstances of the injury. And it is so ordered. Simplistically put, Mr. Solicitor, you are not to show the photograph to the jury until the physician testifies that this is necessary so as to show the injuries sustained by the victim.

MR. HILL: Absolutely understood, Your Honor.

THE COURT: Thank you. Here you go, you may come pick these up. What's the next matter?

MS. PARROTT: Your Honor, I believe that would be it for the defense.

THE COURT: All right. I need to visit a matter both of you give me your attention. Some of you know and some of you don't, I served in South Carolina General Assembly for seven years. I served as a member of the South Carolina House of Representativities, which brings me to a point based on my prior history of service as a judge, I have 17 prior years circuit judge. I have 13 years service on the South Carolina Court of Appeals. Obviously, I do not believe that my physiognomy is affected by those years of service. I.E., I should look

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young because I feel young. Regardless, when I view the indictment, I saw that the indictment referred to a statute 20-7-50 in Count 3 and Count 4. The statute referred to in Count 3 and 4 has been repealed. And the statute that is now efficacious in that regard is contained in Act Number 361 of the General and Permanent Laws of 2008. The statute that is now efficacious is contained in Act Number 361. Does anyone want to be heard in regard to the Court giving efficacy to the new statute. State?

MR. HILL: Yes, Your Honor. If I recall, I believe that the statute referred to in the indictment was a part of the recodification and I asked for leave to amend the indictment simply to reflect the right section number code.

THE COURT: What says defense?

MS. PARROTT: Your Honor, he's held to the statute or he's held to the indictment as it's presented to the Court, so -- with the understanding that it's sufficiently apprises us as to what the merits of the action would be. I would ask that they be quashed, since they are no longer consistent with the law.

THE COURT: Order, it is apodictic that the indictment contains Counts 3 and 4 referencing a statute that has been repealed.

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The law extant in South Carolina edifies and inculcates the bench and bar as to the utilitarian aspect of a new statute that is replacing a repealed statute.

Two elements are necessary and essential in regard to the efficacy of the new statute that replaces the repealed statute: One is the repealed statute replaced in haec verba with the new statute and two does the new statute contain a "savings clause."

Addressing the two elements seriatim. The Court now references Act Number 361 and as a part and parcel of this ruling in totality. Act number 361 is a lengthy allege review of the law in South Carolina and it affects children and minors in South Carolina. Act number 361 contains a title "The South Carolina Children's Code." The South Carolina Children's Code is amended with a plethora of statutory provisions. The purpose and intent of the act is stated "Accordingly, the current children's code has become cumbersome and often difficult to use, therefore, the General Assembly has determine that transferring the children's code to its own new title in the code of laws as necessary and ultimately will be a more accessible, practical resource for those working in the area of children's law. The transfer and the reorganization of the code provisions in this act are technical for the purposes stated in this section and are

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not intended to be substituted."

We then visit Act Number 361 and come to what is known in the law as a savings clause. Historically, those experts in statutory provisions guard zealously provisions such as a savings clause. What does a savings clause do? Ultimately, it saves and protects the language in the repealed section. Act Number 361 contains the following savings clause "Section six, the repeal are amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties or liabilities found in their own, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repeal or amended law, unless the repeal or amended provision shall so expressly provide. After the effective date of this act, all the laws repeal are amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of the act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stand under the repealed are amended laws." Without doubt of any nature whatsoever, Act Number 361 was pened by people who have expertises in the laws as passed by the South Carolina

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General Assembly. Especially, as it relate to a repealed section that is then included within the new act. The acts and conduct of the General Assembly meet the test of the law. The indictment is efficacious as it relates to the new section because it is repeated in haec verba and thus is efficacious in regard to the trial of this case. And it is so ordered. All rights are reserved. All rights are protected for purposes of appellate review. Anything else today?

MR. HILL: Not from the State.

THE COURT: From defense?

MS. PARROTT: No, Your Honor.

THE COURT: Have a wonderful afternoon. Please be here a little before nine tomorrow and make sure that the defendant is present in this courtroom before nine. I will not be happy if he is not present here before nine. Thank you very much.

MS. PARROTT: Thank you, Your Honor.

(WHEREUPON, the proceedings were concluded for the day to be reconvened on July 28, 2009.)

THE COURT: Good morning, jurors. Everyone feeling okay? Everythings all right? We ready to proceed now. The lawyers will make an opening statement to you now at this phase and explain what they will contend will be proved to you. Remember, my instructions that the lawyers

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do not testify, they do not give evidence, but they simply will, as officers of the Court, outline the case for you. Mr. Solicitor, you're recognize for opening statement.

MR. HILL: Thank you, Your Honor. Good morning, ladies and gentlemen. A few nights ago as I was preparing for this trial, my wife ask me what could be the worse thing that could happen and I said I could lose this case. And she said, Well, why is that important? And I thought in my career there are times that you want to do really well just for you. You don't want to be embarrassed. There's times you want to do well because it's just the right thing to do, but in this case when I thought about it, this case is about Carol, Carol Parker. This is why I'm concerned and as I stand before you and I think about what I have to do, that's the response I gave to my wife, that's why I can't lose this case, it's because of Carol. And that's what this case is all about. Last year ---

MS. PARROTT: Objection.

THE COURT: Just a second.

MS. PARROTT: Can we approach?

THE COURT: Sure.

(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

MR. HILL: Ladies and gentlemen, the defense had a

concern that we had to approach the bench about, there's nothing wrong with that. But that's what this case is all about. Because on June 23rd of last year when the most horrific thing that ever occurred in Florence County happened when the defendant, Tarus Henry, took a machete that you will see and brutally hacked her and cut her multiple times, set the apartment on fire in which they lived, left her. She managed to get downstairs. He saw her, put her in the car in which he had already placed their two young children, took her to the hospital at McLeod and left her, went up I-20 to see his mother. And then went to Kershaw County Hospital to be treated, was found by a nurse that took care of him there. She fortunately called the police, he was arrested a short time later. That's what this case is about.

It's about what happened on June 23rd in 2008. It want be a pleasant case to try with you. There will be things that you'll hear and possibly see that will be disturbing, can't do anything about that. Unfortunately, that's part of this process, but we will work through it together. And as we do that, at the end of the case, you will be asked to return to your jury room and to consider all the evidence that you've heard from the witness stand here, all the evidence that you've seen, and to determine whether or not the State of South Carolina has produced

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enough evidence beyond a reasonable doubt that Tarus Henry committed the crimes that I just described to you, that's what's going to happen today, tomorrow, maybe over into Thursday.

I appreciate the attention you given to me. I noted that you didn't choose to come. I know that you didn't stand outside the courthouse yesterday with a picket to come in and voluntary serve on jury duty. But I appreciate the attitudes that you brought. I appreciate who you are and look forward to going through this process with you. Thank you for your time and your attention.

THE COURT: Ms. Parrott, you're recognize.

MS. PARROTT: Stephen, can we approach real quick again. Sorry, Your Honor.

(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

THE COURT: Jurors, I am informed there was a story about this case on WPDE last night evening. I hope you did not see that. I hope you did not hear anything about that, but I must now posit that to you. Is there any member of the jury panel who saw the presentation on WPDE last evening? If you heard that or discussed that with anyone, raise your hand? Anyone? Let the record show, there is no response.

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You recognize, Ms. Parrott.

MS. PARROTT: Thank you, Your Honor. Good morning, ladies and gentlemen. My name is Karen Parrott as I introduced myself yesterday and, of course, as the judge is telling you now. But what's most important for me is that I represent this gentleman here. My client is Tarus Henry. And about in every courtroom certainly in this state and almost every state in this union probably this morning, there's somebody starting a criminal trial. And the State gets up and says what they have and the defense is going to basically state the same thing on every case also. And it's basically going to come down to the ideas that someone's freedom that's at stake. It affects many peoples lives and it's beyond a reasonable doubt.

Mr. Henry does not have to prove himself innocent. He is cloaked in innocence. He comes in here innocent and he stays innocent until you deliberate, until you decide. And that's what we're asking you to do is listen to us, listen to the witnesses that are brought for you. And then at the end of all this make a decision, make a decision that is veredicto, that speaks the truth. And it's going to be a few witnesses and it's at least going to be a couple of days from everything that we've got here or it should be. But throughout every single bit of that, he remains cloaked in innocence.

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The burden is on the State to prove him guilty beyond a reasonable doubt. And a lot of these are legal terms, legal jargon that will be defined for you at the end of this case. But what that -- one thing that I want to have you keep in mind as you listen, as you try to figure out where this goes, beyond a reasonable doubt is something that locks the scales of justice in place. It's something that causes a person to hesitate to act, the reasonable person to hesitate to act. It's not beyond any doubt, it's not a little bit of doubt. It is beyond a reasonable doubt though, so the reasonable person hesitates to act and the scales of justice are firmly locked against this person. I'm just asking that you listen and know that he is cloaked in innocence, that they have to prove him guilty. He does not have to do anything. Thank you for your attention.

THE COURT: Deputy, tell the lady that I need the form. I will sign the form. Tell her to come in now quietly and set up over here and follow the two rules that are in place from the State Supreme Court, come in quietly. The two rules, Deputy, under no circumstances will the jury be shown. And once she sets up, she stays until I take a recess. If that's not agreeable, leave her outside. Let the record show I'm signing that form now.

(WHEREUPON, a pause in the proceedings.)

THE COURT: Call your first witness, please.

MR. HILL: Thank you, Your Honor. I call my first witness as Scott McAleese. And I'd ask the Court for leave to have my assistant set up the screen so I can show the pictures.

THE CLERK: Place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated right there on the witness chair. State your full flame for the record.

THE WITNESS: My name is Scott Michael McAleese.

WHEREUPON,

Scott McAleese,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Okay. Mr. McAleese, did you live in Florence County up until last year?

A Yes, sir.

Q Okay. Would you tell the jury a little bit about you?

A I just graduated from Francis Marion University with a major in marketing.

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Q Where do you currently live?
A I'm currently living in Fort Mill.
Q Is that where your family lives?
A Yes, sir.
Q Do you have a sister that still attends Francis Marion?
A Yes, sir, I do.
Q All right. And if you would, I just need you to speak up a little louder for me.
A Yes, sir, I apologize.
Q No problem. When you were attending school at Francis Marion, did you live on campus or did you live in an off campus complex?
A For two years, I lived on campus and for the rest I lived off campus.
Q Okay. All right. And what apartment complex did you live on June 23rd of 2008?
A I lived in the [redacted] Apartments.
Q And just in case some members of the jury aren't familiar where that is, is it near Francis Marion?
A Yes, sir, it's right across the street.
Q Okay. Do you recall what happened on June 23rd 2008?
A I do.
Q Had you attended class that morning?
A No, sir, I was not currently enrolled in school.

Q Were you familiar with Tarus Henry and his wife Carol?
A Familiar, can you elaborate? I mean, I have seen them around.
Q Did they live in the same apartment complex as you?
A Yeah, they lived upstairs and to the right.
Q I think he'll be able to show a photograph to the jury in a few minutes. A photograph is going to be shown to you. Do you recognize this photograph?
A Yes, sir.
Q And what does it depict?
A Well, both of our apartments are on the far backside. You can't see it, it's over where the two trucks are.
Q So is this the street that goes ---
A This is actually the parking lot where all of us park.
Q All right.
THE COURT: Mr. Solicitor, for the record, we need the exhibit number. What number is that?
MR. HILL: Your Honor, I'd ask that this be presented as State's Exhibit Number 1.
THE COURT: Number 1 and the following will also be State's Exhibit Number 2. No, we've already got something marked as State's Exhibit Number 1.
MR. HILL: This will be two and three.

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THE COURT: Two and three.

Ms. Parrot, I assume without objection.

MS. PARROTT: Your Honor, if I could make sure what they are?

THE COURT: Yes.

MS. PARROTT: Thank you, Your Honor. Yes, Your Honor, without objection.

THE COURT: Thank you.

Proceed.

(WHEREUPON, State's Exhibits Nos. 2 and 3 was admitted into evidence.)

BY MR. HILL:

Q Scott, you're looking at a photograph that's been marked as State's Exhibit Number 2. Again, does this depict the parking lot outside of the apartment complex?

A It does.

Q Okay. And I believe there's another photograph marked as State's Exhibit Number 3. Do you recognize this photograph?

A Yes, sir. My apartment's the apartment on the bottom left where you can see the window of the apartment that defendant lives on the top right.

Q Okay. So the stairwell going up to the open door is the apartment which the defendant lived?

A Yes, sir.

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Q And the window on the bottom left is your apartment; is that correct?
A Yes, sir.
Q Thank you. I have a few other questions now. You slept in a little bit that morning I believe; is that correct?
A Yes, sir.
Q And you woke up around 11 maybe just a little after?
A Yes, sir.
Q Do you recall whether or not you saw Carol and Mr. Henry on that morning?
A The first time I saw Mr. Henry by himself he had gotten into his car, pulled over to the dumpster, threw something in the dumpster, and then backed his car into the first parking space.
Q All right. Were there any children with him at that time?
A I did not see any children.
Q So after you saw him throw an item in the dumpster and back the car into the parking space, what was the next thing you observed?
A He walked back up, I guess, to his apartment and the next thing I know I'm walking -- we're crossing paths, I was walking back to my apartment and he was coming down with his wife and I realize she was just covered in blood.

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And I was in complete shock.

Q So you saw her coming down the steps with the defendant and tell me her condition?

A She looked pretty bad, a picture I'll never get out of my head. She was covered in blood. I just saw the fear of God in her eyes. It was ---

MS. PARROTT: Objection.

THE COURT: I overrule the objection on the grounds that he can descriptively respond insofar as what he saw and what he observed. And I'm letting that in based on his observation. Proceed.

BY MR. HILL:

Q And as they continued down the step, what did you see?

A Well, I saw her, I thought -- I think she was in a bathing suit and she looked like from the stairs she looked wet, like she was wet. And when I got closer, I realize it was all blood. And I asked her one question, Oh, my God, are you okay? And she said -- I said what happened and she said we got into a fight. And then he took a blanket and threw it over her back and he said someone tried to break into the apartment.

Q When did you first see the children?

A I didn't see any children.

Q And after he placed the blanket around her, do you

know where they went?
A I just saw they put -- I just saw him put her into the car that was it.
Q What did you do after that?
A Went inside my apartment and grab my cell phone, called my roommate who had just left for class maybe 15 minutes before that, ten minutes before that. And I walked outside and by that time, I looked up and I saw smoke just billowing out of the apartment and it couldn't have been more than a minute at the most.
Q While you were outside that morning, did you see anyone go inside the apartment after Mr. Henry left with his wife?
A I did not.
Q Did you observe smoke before you went in to get your cell phone or after?
A It was after.
Q Did you see anyone leaving the apartment after you came back out with the cell phone?
A No, sir.
Q And did you give a statement to law enforcement about what happened?
A I did.
Q And as your testimony this morning covered the statement that you gave to law enforcement?

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A Yes, sir.
Q Is there anything that I haven't asked you that was in that statement?
A No, sir.
Q Have the questions that I've asked allowed you to tell your story this morning?
A I believe so.
Q Is there anything that I've not asked you?
A No, sir.
MR. HILL: Answer any questions that the defense might have.

CROSS-EXAMINATION

MS. PARROTT:
Q Good Morning, Mr. McAleese.
A McAleese, yes, ma'am.
Q I'm sorry, I may butcher that in the process. What time of the morning would you say this was that you were seeing Mr. Henry and Mrs. Henry?
A It was probably a little after 11, that was a year ago or so.
Q Sure. And so the testimony you're giving today is to the best of your recollection?
A Exactly.
Q Have you refreshed your memory with your statement that you gave to law enforcement?

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A I just received the statement this morning.
Q But you looked at it prior to testifying here today?
A Yes, ma'am.
Q All right. Is it what you recalled whenever you read it?
A This is -- I mean, I will remember this day for the rest of my life.
Q Okay. All right. I'm not trying to put words in your mouth, but when I was in college, sleeping until 11 o'clock in the morning wasn't necessarily out of the question for me. Had you been asleep 'til pretty close to whenever you saw Mr. and Mrs. Henry?
A Yes, ma'am.
Q Okay. And you were outside walking an animal?
A Yes, ma'am.
Q How long do you think it was before or between the times when you first saw Mr. Henry with the car backing it into the parking space and when you see him walking his wife down with a blanket over her?
A Probably a minute.
Q So pretty close in time?
A Pretty quick.
Q Everything is happening?
A It was pretty quick.
Q And what you remember is you saw a lot of blood;

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correct?
A Yes, ma'am.
Q You saw him with putting a blanket over her?
A Yes, ma'am.
Q And taking her to the car?
A Uh-huh.
Q Getting her in the car and driving off; is that correct?
A Yes, ma'am.
Q So what you saw was him helping her?
A I did.
Q Okay. And then you saw smoke from the other apartment; correct?
A From his apartment, yes, ma'am.
Q But you hadn't been watching that whole apartment whenever you were out walking your animal whatever? Was it a cat?
A No, I was at -- yeah, it was a cat.
Q Okay. Were you watching the apartments at the time?
A No, ma'am.
Q So you don't know what had happened up there?
A No, ma'am, not at all.
Q And did you ever go up there?
A Up to the apartment?
Q Up to that apartment.

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A No, ma'am.
Q Up to their apartment?
A No, ma'am.
MS. PARROTT: Nothing further.
THE COURT: Redirect?
MR. HILL: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. HILL:
Q Mr. McAleese, in response to the questions you were asked, were you fully awake and aware of what was happening on that morning?
A Yes, sir.
Q Was there anything about you that clouded your judgment or your ability to pay attention?
A No, sir.
Q While you were outside that morning, did you see anyone else approach the apartment?
A No one.
Q Were you in a position where you could have seen anyone else approach the apartment and go into it?
A I was.
Q And you didn't see that happen?
A No, sir.
MR. HILL: Thank you. That's all the State has at this time.

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THE COURT: Recross?

RECROSS-EXAMINATION

BY MS. PARROTT:

Q Just for clarification. You're saying you never saw anybody, but you also told me that you weren't watching either; is that correct?

A I was -- I mean, I was in the front, I mean, so I wouldn't have seen anyone go up the staircase, but...

MS. PARROTT: Okay. That's all. Thank you, Your Honor.

THE COURT: All right. Thank you.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Next witness, please.

MR. HILL: Your Honor, the State would ask that Mr. McAleese be excused?

THE COURT: Suitable?

MS. PARROTT: Absolutely, Your Honor.

THE COURT: He's excused.

MR. HILL: Officer Gary Pace.

THE CLERK: If you will, sir, place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated and state your full name

for the record.

THE WITNESS: My name is Gary Lawrence Pace, Jr.

WHEREUPON,

Gary Pace,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Okay. Are you employed or volunteer with the Windy Hill Fire Department?

A I am.

Q Were you employed there on June the 23rd 2008?

A I was.

Q Did you respond to a fire call that went out for [redacted] Apartments?

A Yes, I did.

Q Have you had an opportunity to review your report? Do you know the address of that fire?

A I do not without looking at the report.

Q Do you have a copy with you?

A Yes, I do. [redacted].

Q Do you know of your own knowledge who live in that apartment?

A Not other than what I was told.

Q All right. What were your duties that day in responding to the fire?

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A I assume command, I was actually in charge of the overall operation.
Q Who was the lead fireman going in to fight the fire?
A Firefighter Steven McCormick.
Q Were you involved in any law enforcement investigation within this case?
A No.
Q Was your job merely to help put out the fire and oversee the fire?
A My job was to oversee the fire operations, that is correct.
Q How many fireman responded to that call and how many trucks?
A Give me just a moment. I had ten personnel on scene, three fire apparatus and several personal vehicles.
Q Do you know how long it took to put out the fire?
A I'm sorry.
Q How long did it take to put out the fire?
A We arrived on scene at 11:52. We had it under control at 12:07 and we actually cleared the scene at 1433.
Q Did you actually enter inside the building?
A No, sir.
Q Were there any personal injuries as a result of the fire?

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A Not to any of my personnel.
Q Were you aware of any civilians?
A I was told when we first arrived on scene by a witness ---
MS. PARROTT: Hearsay.
THE COURT: Unless, it comes to the exception to the hearsay rule known as the excited utterance exception, I sustain the objection.
MR. HILL: Your Honor, I don't believe it will.
THE COURT: All right. Objection sustained.
MR. HILL: Thank you.
BY MR. HILL:
Q Mr. Pace, the rules of evidence we can't discuss what someone might have told you, but you aren't personally aware of any injuries?
A None that I saw or was aware of.
Q Who notified law enforcement regarding the fire?
A Actually, law enforcement was already on scene when we arrived Francis Marion law enforcement. I'm assuming they got it through dispatch.
Q And then the Florence County Sheriff's Department was there as well?
A Yes, sir.
Q And your main job on this day was just to oversee the operations and putting out of the fire?

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A That is correct.

MR. HILL: Thank you. Answer any questions the defense might have.

CROSS-EXAMINATION

BY MS. PARROTT:

Q Thank you, Officer Pace. I'm sorry, what's your rank?

A District chief.

Q Okay. You never ever went inside the building whatsoever?

A No.

Q You stayed outside and watched as nine other firemen took care of whatever it was inside?

A That is correct.

Q And when you're saying that you arrived at 11:47 and excuse me -- the alarm was 1147. You arrived at 11:52; is that correct?

A That is correct.

Q Okay. And then controlled you say at 12:07. What exactly do you mean by control?

A Control means the majority of the fire has been put out. We are at that stage doing what's called overhaul, which is searching for hidden fires or embers that could restart later.

Q So at that point, you're pretty confident that you

got everything under control as it were?
A That is correct.
Q You're pretty safe in the environment and safe as you can be without the possibility of flair ups?
A Yeah, that is correct.
Q And then you didn't clear it until 2:33 in the afternoon or 1433 by military time; is that correct?
A That is correct.
Q But that's because y'all actually standard of practice for what you do, you wait around to make sure that nothing else flairs up; correct?
A And it takes a considerable amount of time to actually overhaul a structure. You could possibly be pulling walls, moving furniture. It's actually the harder part of the work of the fire.
Q But that's after everything has been taken care of within where the fire first was, you're looking at the whole structure then; correct?
A We start in the room or area of involvement and spread out and make sure it hasn't spread, that's correct.
Q Did you stay there the whole time that that was occurring?
A Yes, I did.
Q Until 1433?
A Yes, I did.

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Q Did you ever see anyone besides law enforcement or fire personnel go in or out of that apartment?

A No, I did not.

Q And for clarification, you stated that it was at [redacted]?

A That is correct.

Q Is that not the address for the whole apartment complex?

A The whole apartment complex.

Q Do you know specifically what apartment this was?

A No, I do not.

Q Okay. You stated that Francis Marion police was already on the scene whenever you got there?

A That is correct.

Q Had they set up a perimeter or the crime scene tape?

A Not yet. They were actually assisting, clearing the other apartments.

Q All right. Was the sheriff's office or highway patrol or city units on scene whenever you got there?

A No.

Q So Francis Marion only whenever you got there. Anybody else comes after you?

A That is correct.

Q But nobody had actually isolated the scene?

A No.

MS. PARROTT: Nothing further, Your Honor.

THE COURT: Redirect?

MR. HILL: Your Honor, not at this time.

THE COURT: All right. You may step down.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Next witness, please.

MR. HILL: Your Honor, the State would call Steven McCormick.

THE CLERK: If you will, sir, place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes, ma'am, I do.

THE CLERK: Please be seated and state your full name for the record.

THE WITNESS: Christopher Steve McCormick.

MR. HILL: Your Honor, the State has had a conversation with defense counsel. At this time, I do not believe there's an objection and State would move to enter the following photographs into evidence sequentially.

(WHEREUPON, a pause in the proceedings.)

THE COURT: Four through 12 in evidence without objection. Is that correct, Counsel?

MS. PARROTT: It is, Your Honor, thank you.

THE COURT: All right. As you publish, identify the

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number.

MR. HILL: Yes, Your Honor.

(WHEREUPON, State's Exhibit Nos. 4 through 12 was admitted into evidence.)

WHEREUPON,

Steve McCormick,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Okay. Are you employed or were you working as a volunteer fireman for Windy Hill Fire Department on June 23rd 2008?

A Yes, sir, I am employed.

Q How long have you worked as a firefighter?

A I have two roles. I work with the city 30 years and I been seven years with Windy Hill.

Q And you're in civilian clothes this morning. But are you still with the City of Florence as well?

A Yes, sir.

Q But this morning you're testifying in your capacity as a volunteer or a fireman for Windy Hill on the date of this occurrence?

A Yes, sir.

Q Were -- how would you describe your role in fighting the fire on this date?

A My role on this date was, I guess, a senior person. There was no, what we call, coming officers available. We had somewhat unseasoned crew that day during the summer time, so it was a young crew there ---

THE COURT: Mr. McCormick, a little louder and a little slower, please. We got to take down every single word you're saying, pull the mic just a little closer. A little louder and a little slower, please.

A Yes, sir. My role as senior person on scene due to my years of experience, I came up on the second truck and I notice we had a young crew there, so I ask permission to go inside with the crew and let someone else -- usually the second truck would handle water supply to the first truck. So I ask for permission to go in with the crew. I contacted Chief Basen on the radio to say -- advise what we had in this apartment fire because on the first floor our concern with that would be getting in the attic and burn the whole complex down possibly, so, you know, we had to make hasty decisions to get into this fire quickly or it be worse damage. He gave me permission to do that. So I got off the truck, got my gear on, and started making my way to the fire apartment. There's already two firemen in front of me pulling the hose advancing what we call the tack hose up the stairwell. When I made it to the front door, they already had the door open when I got there.

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And they was waiting on me to advance the hose line on inside. As soon as I seen the door was open, we noticed what appeared to be -- I guess, what appeared to be, to my knowledge, was blood all over the floor. Notified command there was some bad situation here weren't sure yet, but we was going to advance in. But it was what appeared to be massive amounts of blood on the floor. Gave us permission to go in and make an entry. We started entering into the living room. As we went, what we do is a primary search as we advance the hose line, we search even if someone tell us the house is clear, we always search to make sure. We don't take anybody's word for it. So we started doing a quick search of the living room as we advanced down towards the hallway. We made it to the hallway and we seen the fire coming down the hallway towards us from one of the back -- appear to be one of the back rooms. We then started basically what we call attacking the fire. We opened the nods and started knocking the fire back, pushing it back to the -- from the unburn to the burn side, started pushing it back to the fire room. And then pushed it back into the room and knock it down. We call it knocks down fairily quick, I think, it didn't take us too long we had the fire down wasn't progressing. At that time, we started doing more -- more man power started coming in, started getting more help. We started doing

what we call a overhaul checking fire extensions. The main thing in that attic was we were worried about it getting into the attic and ruining the whole roof. Attics burn in multiple apartments, started pulling ceilings, started checking for extensions. We kind of stopped to figure out what we had with the first situation we saw. We ask for permission law enforcement was called and started coming in ---

MS. PARROTT: Objection.

THE COURT: Just a second.

MS. PARROTT: This is more a narrative. If we can have more of a question and answer going on.

THE COURT: I would overrule the objection in regard to the narrative as long as it stays within the rules of evidence. And right now he's staying within the rules of evidence because he is describing what he saw and what he did. So I will allow him to proceed.

But once again, Mr. McCormick, don't talk so fast. Please, a little slower, a little slower, okay.

MR. MCCORMICK: I'm trying, I do that anytime.

THE COURT: I see.

Proceed.

BY MR. HILL:

Q So the fire knock backs on and you all treated, and law enforcement been called?

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A Yes.
Q What happened next?
A After that all the particulars, I just kind of went to work. I'm the kind of person to start working, start pulling ceilings and floors, checking carpet, make sure to pull walls. And then we at one time, we did I think was communication about, you know, how much we can do because we was worried about the fire not being totally out, but there was some, I think, law enforcement not too sure the verbiage is concern about us, you know, messing up too much evidence if there was any. But most of what we saw was in the front room and the fire was in the back of the house, so it gave us permission to do a full overhaul of that room.
Q Mr. McCormick, I'm going to show you some photographs before we display to the jury. Would you look at these they're State's Exhibits four through 12. Are you familiar with the scenes depicted in those photographs?
A Yes, sir, I am.
Q While you weren't there when they were necessary taken, did they reflect what you saw in fighting the fire shortly after the fire?
A Yes, sir, I did.
MR. HILL: Your Honor, State would ask permission to display exhibits four through 12 to the jury?

THE COURT: You may do so, but once again, identifying the exhibit number as you go, please.

MR. HILL: I will, Your Honor.

BY MR. HILL:

Q Mr. McCormick, we're going to show photographs to you exhibits that have been marked. The first exhibit is State's Exhibit Number 4. Do you recognize what's contained in this photograph?

A Yes, sir, I do.

Q And do you know what it displays or what it shows?

A Yes, sir, it's the hallway of the apartment. It shows the -- where we put the hole in the ceiling check for extension and the smoke was -- the progression of it coming down the hallway when we got there.

Q Next one let me show you what's been displayed as State's Exhibit Number 5. Let's back up a minute. Do you recognize this photograph?

A Sir, I believe so.

Q Okay. I'm showing you what's been marked as State's Exhibit Number 5. Is this a photograph also of the hallway?

A Yes, sir.

Q Do you recognize what's depicted in State's Exhibit Number 6?

A Yes, sir.

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Q What is it?
A It is entry to the bathroom.
Q I'm now showing you what's been marked as State's Exhibit number 7. Do you recognize what's contained in this photograph?
A Yes, sir.
Q What is it?
A It's what's left of a bedframe, that be in the room of what we call onvorging (sic) where most of the fire was started, contained at.
Q All right. So you believe that this is a point of origin?
A Yes, sir, because it's the most damaged room.
Q Now, showing you what's been marked as State's Exhibit Number 8. Describe what's in that photograph for the jury?
A Again showing the bedframe, showing where we pull all the ceiling. We did all the ceiling pull to make sure it wasn't in the attic, shows the char, the upper area in the walls.
Q And just four more I believe. Now, showing you what's been marked as State's Exhibit Number 9. Do you recognize this photograph?
A I believe I work mostly in the back room, I believe that might be in the kitchen area is in the same

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apartment, I'm sure, but I don't know.
Q Let me show you the photograph.
A It appears to be the closet, but I can't say for sure.
Q So you believe that maybe the closet?
A Yes, sir.
Q You can't say for sure?
A Yes, sir.
Q Do you recognize that's been marked as State's Exhibit Number 10?
A Yes, sir, I do.
Q And what is it?
A It's the back right bedroom of that apartment.
Q Okay. And is the window knocked out?
A Yes, sir.
Q And what was the purpose of that?
A The purpose of that is most times if we want to -- if we have to do any rescue for ourselves, we clear out the window. Sometimes with ventilation to get the smoke out, sometimes be for if we have to rescue with a ladder. We have it for our safety to bail out. Sometimes when we remove products in side. If the furnitures in there, sometime we throw it out the window to get it out of the apartment. We open it up for other reasons.
Q Do you recognize what's been marked as State's

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Exhibit Number 12?

A Yes, sir, it's the outside of that apartment.

Q Do you know if that's the window that was knocked out of the bedroom?

A Yes, sir, it is.

Q And then finally I'm wanting to show you what's been marked as State's Exhibit Number 11. Do you recognize that photograph?

A Yes, sir, I do.

Q And what's depicted in that photograph?

A That's the belongings that we removed from the apartment.

Q Why were they -- why did you need to remove them from the apartment in that fashion?

A When we talk about overhaul, we throw like a lot of that's clothes or fabrics or mattresses. We remove the amount because they could start back, we can only soak them down so much. But the more water we apply, it's going to go downstairs too, so water damage to the downstairs apartment. So we remove that stuff and get it outside so we can soak it down that way more damage to the property.

Q The photographs that were depicted, did all of those depict the fire that you fought inside this apartment?

A Yes, sir.

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MR. HILL: Thank you. Answer any questions that the defense may have.

CROSS-EXAMINATION

BY MS. PARROTT:

Q Mr. McCormick, you're stating you came in on the second truck. First truck was already there?

A Yes, ma'am.

Q But no one from that truck had actually entered into the apartment?

A No, ma'am, not yet.

Q All right. So that's what you mean when you're saying you ask for permission from, I guess, your district chief?

A Yes, ma'am.

Q Can you go ahead and take the lead and go in first; is that right?

A Yes, ma'am.

Q All right. So when you're saying they're feeding you the line, you're still the first one up, it's just there's people giving you the line to go ahead and take it on in?

A There's someone right behind me, and there's someone at the door feeding line. So there was two of us going in at the same time for safety and there's another person at the door feeding excess hose.

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Q Who actually got to the door entry itself first then?
A It had been Adam Raynor, I believe.
Q All right. But you're still the first person who actually went in?
A Yes, ma'am.
Q All right. And you state whenever you were looking at the pictures, you said you spent most of the time in the back of the apartment?
A Yes, ma'am.
Q But you're clearing it out as you go; correct?
A We are clearing it out as we move in. Mostly say been back overall after the fire was down. And it was -- when I was clearing out, I really didn't stay in that back area the whole time. I really didn't -- we had other crews assign to different parts of the apartment. They check the other bedroom. They check the kitchen for extension and all that stuff. I just stayed in the fire room mostly and did all the overhaul in that particular area.
Q All right. And since, I don't know your terms of art, I apologize. But it's just you go in, you were heading for where the fire was worst, but you're dealing with whatever you encounter in the process?
A Yes, ma'am, we search as we go.
Q Right. And you didn't find anybody else in the

apartment?
A No, ma'am, we did not.
Q You -- as you're searching, you're noticing smoke damage; correct?
A Not necessarily smoke damage, but the smoke -- we watch the progression of the smoke as it coming more closely to the floor, is it getting thicker, blacker.
Q So you can determine where the fire is worst?
A Yes, ma'am.
Q And you can get to that first?
A Yes, ma'am.
Q And in this case, you decided that it was in the bedroom; correct?
A Well, we knew it was in the living room and we went past the living room. And, of course, we got the hallway we can see it coming down the hall, so it found us basically.
Q There is an apartment, so can you -- I mean, it wasn't anything large that you had to go rambling through?
A No, ma'am. Once we walk through the living room, we went five more feet we could see the fire in the hallway. It wasn't a long extended search.
Q So the hallway maybe 15 feet, 20 feet?
A Ten or 15 at the most probably.
Q All right. And when you got into the last bedroom,

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you're stating that the window, that that's something that y'all do, right, to break it out?

A Yes, ma'am. There's smoke coming from it. I'm not sure if -- sometimes the heat can break it. I'm not sure how. If it clears that picture, we did that usually cause there's a middle sash in there. And it would be in there and we would break that out, so we don't have to fight it. If we had to do what we call an emergency belt, wear a belt where we have to jump out of the window or something we move the sash out ---

Q Hold on. You're going so fast. I'm not sure I understood what you said.

THE COURT: You're really are going a little too fast, Mr. McCormick. Help me now. First, we have to take down every single word you say, that's our responsibility. And then the jury needs to hear every single word. If any of you jurors on the back over there cannot hear, raise your hand immediately, please.

Proceed.

BY MS. PARROTT:

Q I'm sorry I just want to make sure I understand?

A Like I said, the fire could have damaged the window, but the clearance of it we did all that for safety reasons.

Q Okay. So you would have broken the sash that you're

talking about that's in the middle of the window?
A Yes, ma'am.
Q And thrown all of the stuff out?
A Yes, ma'am.
Q That's not something that happen before you got there?
A No, ma'am.
Q And the pictures they're showing so much of where the ceilings falling a part and all this kind of stuff, that's what you mean by like pulling on the ceiling?
A Yes, ma'am, we remove all of the sheetrock from the ceiling to check for fire extension in the attic.
Q Y'all have a special tool that y'all use to...
A Yes, ma'am.
Q Okay. And you did that in pretty much every room that you thought it could have spread to?
A Yes, ma'am, correct.
Q To try and contain it or to see if you had to contain it; is that right?
A Yes, ma'am, correct.
Q And it's not only this apartment, but it's the whole building that you would do that for or at least if you saw it going for another building?
A Yes, ma'am, if we thought it was in there, we try to limit the damage as possible.

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Q Okay. Same time your hose is coming in with you, you got water coming at some point, don't you?
A Where we have a valve and we don't open it until we get too close to the fire where you want to see the fire. We hold off to open the water until we get near the fire and hit the seat of the fire.
Q Okay.
A We can cut the water on the firemen do.
Q All right. All right. But it is you and eight other guys in this apartment, right?
A Yes, ma'am.
Q That's in this case?
A Eventually, yes, ma'am.
Q Okay. You don't know what all they were doing in the back or the other part of the apartment?
A No, ma'am, as far as -- I know when you say overhaul, I know what their definition is, but I'm not sure of their every action. No, ma'am.
Q Okay. And you don't know what they may have strewn around in the apartment?
A No, ma'am, I do not.
Q Basically, I mean, you're not necessarily worried about boxes or clothes as much as you are where fire is?
A Yes, ma'am, that's correct.
Q Did you ever see anybody go in and out of the

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apartment as you were trying to prepare and get into the apartment?

A No, ma'am, I did not.

Q But the door was already open when you got there?

A Yes, ma'am.

MS. PARROTT: Nothing further, Your Honor.

THE COURT: Redirect?

MR. HILL: Yes, thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. HILL:

Q Mr. McCormick, when you first entered, did you see what appeared to be blood to you?

A Yes, sir, I did.

Q What steps, if any, did you all take to try to preserve evidence of a crime?

MS. PARROTT: Your Honor, objection.

THE COURT: I sustain the objection, that's struck from the record, Counsel.

MR. HILL: Yes, Your Honor, I apologize. It was not deliberate and I apologize for that, Your Honor.

THE COURT: I understand.

BY MR. HILL:

Q Let me rephrase it in a proper manner. Did you take any steps to avoid damaging or messing up the areas that concerned you?

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A Besides notifying command of it, not much cause we had a fire to go fight. We had to get in there, it was only going to get worse. We did notify them that we had something here, but we need to do our jobs.

Q So that was your main priority was putting out the fire?

A Yes, sir.

MR. HILL: That's all I have.

THE COURT: Recross?

MS. PARROTT: None, Your Honor.

THE COURT: You may step down. Thank you.

(WHEREUPON, the witness leaves the witness stand.)

MR. HILL: Again, Your Honor, I apologize.

THE COURT: No problem. Next witness, please.

MR. HILL: Darren Yarborough.

Your Honor, the State has no objection to Mr. McCormick being excused.

THE COURT: Suitable, Counsel?

MS. PARROTT: Certainly, Your Honor.

THE COURT: He's released.

THE CLERK: Place your left hand on the Bible and raise your right hand. Do you affirm to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

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THE CLERK: Please be seated and state your full name for the record.

THE WITNESS: Darren Demetrius Yarborough.

MR. HILL: Your Honor, as we begin, I've approach counsel for defense. I do not believe there's an objection to the admission of the following photograph. State would ask that it be admitted into evidence. I believe it would be State's 13.

THE COURT: Thirteen in evidence without objection?

MS. PARROTT: Yes, Your Honor.

THE COURT: All right.

(WHEREUPON, State's Exhibit No. 13 was admitted into evidence.)

MR. HILL: And then the State would also ask leave to be able to display the photograph to the jury with the conditions that the proper exhibit number be given during the display.

THE COURT: Proceed.

MR. HILL: Thank you, Your Honor.

WHEREUPON,

Darren Yarborough,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Mr. Yarborough.

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A Yes, sir.
Q Are you currently employed with the Florence County sheriff's department?
A Yes, sir.
Q How long have you been employed with them?
A A little over ten years.
Q All right. And during your ten years, what positions have you held?
A Started off as a patrol deputy, was promoted to investigator for six years. My last two years are in violent crimes. I was promoted from investigator to patrol lieutenant in which I'm currently a patrol lieutenant now.
Q. Do you have an independent recollection -- those are fancy words. Do you remember what happened on June 23rd 2008?
A Yes, sir.
Q Were you present at [redacted] Apartments?
A Yes, sir.
Q Were you the first deputy to arrive at the scene?
A Yes, sir.
Q Do you have your report with you that might help you testify?
A Yes, sir, I do.
Q Have you reviewed it prior to coming into court

today?
A Yes, sir.
Q Do you remember this case?
A Yes, sir.
Q Tell the jury, please, what you remember?
A I received a call from our central dispatch in reference to a structure fire. Upon arriving there, I met with a witness or someone who was there during the course of the fire.
Q And do you know if that was Scott, the young man that testified earlier today?
A Yes, sir.
Q So you met with Scott McAleese?
A Yes, sir.
Q What else happened?
A After talking with him, I went up to the apartment and was able to make my way through the front living room part, but I couldn't go in the back part because firefighters had just put the fire out and it was still kind of hot. So I just kind of looked around, notice it was some blood on the floor, some blood in the living room. At which time, I came back out and that's when I notified forensics and investigators that, you know, we had a possible arson and definitely an assault.
Q All right. I like, at this time, to show you what's

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been marked as State's Exhibit Number 13 and before I display it to the jury. Do you recognize that exhibit?

A Yes, sir.

Q Are you familiar with what's depicted in that exhibit?

A Yes, sir.

Q I'm now going to display it to the jury. What does this scene depict?

A That's what I describe in my narrative as far as a lot of blood on the floor and bloody towels inside of the living room area.

Q And was this the first thing you would have seen when you open the door to go into the apartment?

A Yes, sir.

Q Thank you. Continuing now with your testimony, after you walk through and after you spoke to Mr. McAleese, did you go anywhere else or talk with anyone else?

A I did. I responded to McLeod.

Q McLeod Hospital?

A Yes, sir.

Q And without repeating hearsay, which we know is not allowed. You received notice that you needed to go there?

A Yes, sir, that according, I believe, to our dispatchers that's where the victim went.

Q All right. So based upon dispatches telling you to

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go to McLeod, what did you find there, with whom did you speak?

A I spoke with an Officer Huggins I believe.

Q And do you know what his job was?

A He was a security officer at the location.

Q All right. And I believe he's going to testify later this morning.

A Yes, sir.

Q So without going into his testimony, did you speak with anyone else?

A No, sir.

Q Did you take any other action in regard to the case after you went to McLeod?

A No, sir, it was -- actually, it was turned over to investigations and forensics at that time.

Q And is that the normal course of procedure for it to be turned over?

A Yes, sir.

Q And did that relieve you of your responsibilities at that time?

A Yes, sir.

Q So summarize, you arrived at the scene and then you spoke to Mr. McAleese; is that correct?

A Yes, sir.

Q You walk through the apartment?

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A Yes, sir, and the living room area.
Q Did you speak to anyone else at the scene?
A Not that I can recall.
Q If you had, would it be in your report?
A Yes, sir.
Q Then you responded and went out to McLeod Hospital?
A Yes, sir.
Q And did you speak to the victim there?
A No, sir, I couldn't speak to her. She was in the back being worked on by McLeod emergency staff.

MR. HILL: Thank you. Answer any questions the defense might have.

CROSS-EXAMINATION

BY MS. PARROTT:

Q Officer Yarborough, can you estimate was it about 12:00, 12:01 whenever you arrived on scene?
A Yes, ma'am.
Q Okay. And you met Francis Marion police there; is that correct?
A Yes, ma'am.
Q And the fire department was already there?
A Right.
Q But as far as outside other law enforcement, you're the first person there?
A Yes, ma'am, as far as I recall.

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Q Did you secure the scene?
A As far as I could with the fire department on the inside, yes, ma'am.
Q You didn't set up crime scene tape, did you?
A No, ma'am.
Q In fact, you called because you thought it could have been a possible crime scene and ask for investigations and forensics to respond?
A Yes, ma'am.
Q So you weren't certain of exactly what it was you were dealing with, but you thought they needed to look at it?
A Right.
Q You stated you never even made it into the back?
A No, ma'am.
Q So the only place you saw was the door way in that living room area?
A Right.
Q With firemen around, running around?
A Right.
Q Did you take Mr. McAleese's statement?
A Mister who?
Q Mr. McAleese?
A The -- Scott?
Q Yes.

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A Yes.
Q He gave you his written statement?
A Well, I jotted it down on my notes and put it in my report and advise investigation of the witness.
Q Okay. So the actual written statement that you gave to law enforcement you didn't take that?
A No.
Q All right. And you only spoke with Officer Huggins at McLeod and you didn't take any statement from him?
A Didn't take any statements from him.
Q Is that the extent of your involvement?
A Pretty much.

MS. PARROTT: Nothing further.

THE COURT: Redirect?

MR. HILL: No, thank you, Your Honor.

THE COURT: You may step down.

(WHEREUPON, the witness leaves the witness stand.)

MR. HILL: Mr. Yarborough, would like to be excused, the State as no objection.

THE COURT: Suitable, Counsel?

MS. PARROTT: Yes, Your Honor.

THE COURT: All right. He's excused.

Next witness, please.

MR. HILL: Matthew Huggins. Your Honor, the witness is in my conference room, he's being fetched.

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THE CLERK: If you will, Mr. Huggins, come over to the witness stand. Sir, stop right there. Place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated right there in the witness chair.

MS. PARROTT: Your Honor, may we approach?

THE COURT: Sure.

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE CLERK: And state your full name for the record.

THE WITNESS: Matthew L. Huggins.

THE COURT: We've had a bench conference at this time we proceed.

WHEREUPON,

Matthew L. Huggins,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Good morning, Mr. Huggins, how are you?

A Good morning.

Q I believe this is a new experience for you; isn't it?

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A Yes, sir.
Q You look kind of nervous?
A A little bit.
Q All right. Don't pass out on us, take a deep breath. I think you will be all right. Mr. Huggins, I believe the State sent a subpoena and asked you to come testify today; is that correct?
A Yes, sir.
Q All right. Are you familiar with what happened on June 23rd 2008?
A That's the day that this incident occurred.
Q That's correct. Do you recall talking to investigators, the police officers about what happened what you saw at McLeod that day?
A Very vaguely. I did an incident report on it.
THE COURT: Mr. Huggins, keep your voice up now. We need to take down every single word you say. Please help in that regard.
A Very vaguely I wrote down the incident report as to what I saw and what happened.
MR. HILL: Your Honor, may I have permission to approach the witness?
THE COURT: Sure.
BY MR. HILL:
Q Mr. Huggins, I'm going to hand you a sheet of paper

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and ask if you review it and then ask if you recognize it?
A Yeah, I recognize it.
Q And what is it?
A That's the incident report I wrote that day.
Q Does it help refresh your recollection about what happened that day?
A Yes, sir.
Q Okay. As we begin, where are you employed at this time?
A I'm not currently employed at the hospital at this time.
Q Okay. Are you working anywhere at this time?
A Yes, sir.
Q Where?
A I rather not say at this time.
Q All right. But moving on, you were employed at the hospital, McLeod Hospital on June 23rd 2008?
A Yes, sir.
Q All right. Would you tell the jury what did you see that day regarding Carol Parker and Mr. Henry?
A Just go ahead and tell what I saw?
Q Yeah, what did you see?
A Basically, what I saw was a car had pulled up and a male had jumped out and said I need a wheelchair, my

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girlfriend's been stabbed. So I got up and went and got a wheelchair and brought it out to the car. And he open the door, there was this female, Miss Parker, she was covered in a blanket. At first, I didn't see any stab wounds or anything like that, but as I was assisting her getting into the wheelchair, that's when her blanket opened up and I saw stab wounds and cuts and whatnot.

Q How about blood?

A Yes, sir.

Q Did you help her into a wheelchair?

A Yes, sir.

Q So what happened next?

A As I was helping her wheeling her in, I ask from both of them I said, well, what happened to you. It was kind of unusual for somebody just to come up and be cut up like that. There was no reply from neither one of them. I helped wheel her into the ER, got her up to the ER desk and got the nurse's attention and they started helping her. After that, they got her back to the ER and I went back to the desk. As I got back to the desk, the car was gone and the male that was with her was gone.

Q Did you see any children in the car?

A I couldn't tell the windows were too tinted or whatnot.

Q The focus was -- what were you focusing on

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primarily?
A Miss Parker.
Q It was pretty horrific what you saw?
MS. PARROTT: Objection.
THE COURT: Sustained. Don't describe it yourself, Counsel, let him do it.
MR. HILL: Yes, sir.
BY MR. HILL:
Q Do you have a memory about how long you were with Miss Parker until you walked outside and discovered that the car was missing?
A Matter of minutes.
Q But it wasn't there?
A It wasn't there, it was gone.
Q Did anyone tell you that they were going to park the car, that they be right back? Any indication about where they were going and what they were going to do?
A No, sir.
Q Is there anything else that you remember about that day that I haven't asked you to tell us?
A No, sir.
Q Have you in your own mind told us everything you remember about that day?
A Yes, sir.
MR. HILL: Thank you. Answer any questions the

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defense may have.

CROSS-EXAMINATION

BY MS. PARROTT:

Q Mr. Huggins, I can't help but notice the uniform. You are involved with the National Guard?

A Yes, ma'am.

Q But you were involved in this case was because of your employment at McLeod at the time; correct?

A Yes, ma'am.

Q All right. You were a security guard. And at this particular date, you were actually working the ER desk?

A Yes, ma'am.

Q Which is the desk right there inside the doors as you enter the ER; correct?

A Yes, ma'am.

Q Okay. Is it fair to say that people pull up to the ER doors right there try -- will sometimes try and get people in pretty quickly, so that they would go ahead and get in the ER after all it is an emergency room?

A Yes, ma'am.

Q And you said that whenever you saw -- I guess, you saw this person trying to get a wheelchair; was that correct?

A No, ma'am. When the car pulled up, the gentleman got out and said I need a wheelchair.

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Q Okay. But he told you that he did need a wheelchair?
A Yes, ma'am.
Q All right. And that was for her, right?
A Yes, ma'am.
Q To get her into the ER?
A Yes, ma'am.
Q And so you assisted him with getting the wheelchair and getting her into the wheelchair?
A No, ma'am. I went and grabbed the wheelchair and actually he was kind of just -- I'm not sure if it was shock or what.
Q So but she gets into the wheelchair and goes -- and I believe, it was probably set up. I know it was set up the same way, goes over to the left over to the ER desk?
A Yes, ma'am.
Q And you got the nurse's attention and she needs to go on back?
A Yes, ma'am.
Q And people can't just leave their cars right there in front of the ER doors, can they?
A No, ma'am. But in some cases depending on how bad the emergency is, you know, we will make exceptions.
Q But you can't block that entrance for any extended period of time?
A Not an extended period of time.

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Q You wrote this statement for law enforcement; correct?
A Yes, ma'am.
Q In fact, it's addressed to Investigator Bert Turner; correct?
A Yes, ma'am.
MS. PARROTT: Nothing further.
THE COURT: Redirect?
MR. HILL: None.
THE COURT: You may step down. Thank you.
(WHEREUPON, the witness leaves the witness stand.)
MR. HILL: Your Honor, at this time, may the State and defense approach the bar?
THE COURT: Sure. You want to excuse him?
MS. PARROTT: Exactly, Your Honor.
MR. HILL: No objection.
THE COURT: He's excused.
(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)
THE COURT: Jurors, we'll take a morning recess here now, 20 minute recess.
(WHEREUPON, the jury retire to the jury room.)
(WHEREUPON, a break was taken.)
THE COURT: You ready to proceed, Mr. Hill?

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MR. HILL: I am, Your Honor.

THE COURT: Ms. Parrott?

MS. PARROTT: Yes, Your Honor.

THE COURT: Proceed. Bring the jury out.

(WHEREUPON, the jury return to the courtroom.)

THE COURT: All jurors, okay? Everybody all right? Next witness, please.

MR. HILL: Thank you, Your Honor. State would call Captain Brett Camp.

THE CLERK: If you will, sir, place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Please be seated and state your full name for the record.

THE WITNESS: Bret Stewart Camp.

WHEREUPON,

Brett Camp,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Captain Camp, in June of 2008, were you assigned or were you the supervisor over the investigation that we discussed here in this trial?

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A Yes, I was.
Q Did you have any -- what were your responsibilities in regards to this case?
A Well, as lieutenant over criminal investigations, our responsibilities at that particular time were the day to day operations of what goes on in investigations. I responded to the scene that day in actually two capacities. Number one, as again the lieutenant over investigations to give support to the investigators that were there on the scene. And as well as, I was acting public information officer for the sheriff's office at that time as well.
Q Were you responsible for providing directions or orders for your investigators during this time?
A That's correct, I was.
Q Okay. Did you -- who were the investigators working with you in this case?
A At that time, it was Investigator Kathleen Streett and Investigator Bert Turner. Kathleen was working the domestic violent portion of it. Investigator Turner was working with the arson, fire portion of it. And I was also there with Lieutenant Keith Lutcken and Corporal Adam Moore.
Q Was there another investigator involved as well?
A Yes, later on during the investigation, they needed

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assistance and I knew it was going to go late into the evening, so I contacted the on-call investigator, which was Investigator Calvin Timmons.

Q Is Calvin Timmons still with the sheriff's department?

A No, sir, he is not.

Q And could you tell the jury where he is?

A He is presently -- he resign from the sheriff's office and went on a security detail with a corporation and he is in Afghanistan. Afghanistan serving in that capacity at this time.

Q So he is unavailable?

A Yes, he is definitely unavailable.

Q The other officers involve though will they testify during this trial?

MS. PARROTT: Objection.

THE COURT: Sustained.

Q Is he the only other officer that's not available?

A To my knowledge, yes, sir.

Q And so your job was to supervise those individuals that were working on this case?

A Yes, sir. Again, support them in anything they needed to get them any further assistance. And I was also as well one of my primary duties is I am there to relay information to the sheriff to let him know of any major

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crime scenes. I was there to relay information to him that was going on during this particular case.

MR. HILL: Thank you. Answer any questions that the defense may have.

CROSS-EXAMINATION

BY MS. PARROTT:

Q Did you prepare any report in this matter?

A No, I did not.

Q Did you deal with any evidence in this case?

A No, I did not.

Q You went to the scene and you talk with the people that work for you is that it?

A That's correct.

MS. PARROTT: Nothing further.

THE COURT: Redirect?

MR. HILL: No, thank you, Your Honor.

THE COURT: You may step down.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Next witness, please.

MR. HILL: Your Honor, the State would have no objection to the witness being excused.

THE COURT: Suitable?

MS. PARROTT: Yes, Your Honor.

THE COURT: He's excused.

MR. HILL: Your Honor, the State would call Ms. Amy

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Corbett.

THE CLERK: If you will, ma'am, place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Please be seated and state your full name for the record.

THE WITNESS: It's Amy Anderson Corbett.

WHEREUPON,

Amy Corbett,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Okay. Good morning, Ms. Corbett.

A Good morning.

Q Are you employed at the Kershaw County Medical Center?

A Yes.

Q And what is your title?

A Charge nurse, one of the charge nurse there.

THE COURT: Ms. Corbett, you got to give me more volume then that now. Get a little closer to the mic and speak up, please. The jurors need to hear you and we need to take down every word you say. Please, a little more

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volume.
A I am one of the charge nurses at the emergency room.
THE COURT: Charge Nurse?
MS. CORBETT: Yes.
BY MR. HILL:
Q What differentiates the charge nurse from another -- from any other nurse I might see?
A Now, at this time, I was not a charge nurse, I was one of the staff nurses.
Q Okay. So you were a staff nurse at the time that this happened?
A Yes.
Q All right. And how long had you been at Kershaw County Medical Center?
A Since February of '05.
Q And did you work in the trauma unit or emergency room?
A I've always worked in the emergency room.
Q So during that time, I assume you seen lots of different things walk through that door?
A Yes, sir.
Q All right. Do you have an independent recollection or memory of what happened on June 23rd 2008, in the afternoon at your hospital?
A Yes, sir.

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Q All right. That's what we need to talk about.
A Okay.
Q Did you bring any notes with you that you made in regards to this case?
A I did.
Q And have you reviewed those notes prior to coming today?
A Yes, sir.
Q Now, how did you become involved in this case? Why did I call you to testify?
A I was Mr. Henry's nurse that day.
Q All right. So you know what time he arrived at your hospital?
A He arrived at 1355 to the triage area.
Q And what time would that be in civilian time?
A 1:55.
Q Was anyone with him?
A Yes.
Q Who?
A His mother and two small children.
Q And tell us what happened when you met him?
A He came back to one of my assigned rooms. I went in to do my assessment.
Q And what did you find?
A In my assessment, I always ask open-ended question

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basically what happened.
Q And is that important for you to treat the patient?
A Yes, I have to do my assessment in two parts. I have to know what happened from their point of view or what their symptoms are from their point of view. And then I have to obviously look at the patient and take in my own assessment from a nursing point of view. And he explain to me that -- and showed me that he had wounds on his hand.
Q Would you tell the jury about those wounds?
A They were on the palmer side of his hands. There were approximately four to five lacerations, two that needed to be repaired by the doctor and the other ones were very superficial, so he only needed two repairs and those were the most extensive, but were sutured that day. And that was basically the extent of the wounds. On his left hand ---
Q How many needed to be sutured for or stitched?
A Two.
Q How many were total?
A I believe there are four or five.
Q Did you contact law enforcement after you met with Mr. Henry?
A Immediately after I talk with him.
Q And who did you call first?

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A I contacted Kershaw County dispatch that is our obligation to report the incident that I called in an error because it didn't happen in Kershaw County.
Q So who did you call next?
A I after I spoke with Kershaw County and they informed me that it did not happen in Kershaw County, so they wouldn't be able to get involved. I found out exactly where it happened and the county that it happened in. And I called my dispatch back to see if I could get the number to Florence County dispatch that's who I called.
Q All right. And were you present when law enforcement officials arrived from Florence County?
A Florence County, no.
Q Was he arrested by Kershaw County deputy?
A I believe he was arrested by Camden police.
Q And that's Kershaw County?
A Well, it's different. They have a Kershaw County deputies and Camden City police and we're in their jurisdiction.
Q So after you called Florence County, police officers from Camden came to the hospital and arrested Mr. Henry?
A They basically came and stood by at my request because I was worried about the staff in the ER.
Q And what concerned you?
A The concern was that I found out from Florence County

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dispatch that ---

MS. PARROTT: Objection.

THE COURT: Sustained.

BY MR. HILL:

Q We can't talk about what they told you?

A I was concerned because I felt like he was a suspect and he was a suspect in -- you know, these wounds that took place on him and just everything that was involved, I just felt like the staff was in danger. I wanted the police there to stand by, so that if anything did happen, the police would be there because we were waiting on everything to go through Florence County so that they could detain him.

Q So I can't put words in your mouth.

MS. PARROTT: Objection.

THE COURT: I sustain the objection. Mr. Hill, posit pristine query now. You're on direct exam, please.

MR. HILL: I'm about to and I wasn't going to suggest hearsay or lead her.

BY MR. HILL:

Q Bearing all these rules in mine and not wanting to suggest an answer to you, I'm not doing that. What were your feelings while you were dealing Mr. Henry?

MS. PARROTT: Your Honor, could we ---

MR. HILL: That's a wide open of a question as I can

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ask.

THE COURT: I would allow that query. What were your feelings. Proceed.

MR. HILL: Thank you.

THE COURT: No hearsay just your feelings.

A My feelings in regard to what exactly?

Q Dealing with Mr. Henry?

A We were treating Mr. Henry for his wounds. And at the same time, I felt like there was something not being said. I -- what we call in my business red flags went up every where.

Q Such as?

A He was there from a different county with wounds on his hand, with two small children telling me that him and his wife got into a fight, and someone attacked him with a machete. His wife's friend is what he said. And telling me that she went to a different hospital and he's in Kershaw County, a county that he does not live in. He has no business in really. Telling me that the only reason he came there was because he spoke with his brother who works for Lee County sheriff's department is what he told me. And that he told him to come to Kershaw County because it was closer. And I'm thinking closer to what. So it was just not consistent and I felt like it's just that gut feeling. I thought that something was wrong.

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Q So those are the motions or things that concerned you and prompted you to call the police?
A Yes, absolutely.
Q Do you know what became -- do you know whether or not the children were taken into custody for their own safety and protection for a while?
A Yes, while he was being treated and while they were waiting on the police to do whatever they had to do, the children mainly remained with his mother, but Investigator Corey from Kershaw County got involved and he was the one that called DSS. And he was the one that basically took it from there. The children remained in his custody and DSS custody. And from that point, I was out of the situation.

MR. HILL: Please answer any questions that the defense might have.

MS. PARROTT: Thank you.

CROSS-EXAMINATION

BY MS. PARROTT:
Q Ms. Corbett, you said he got to you I'm sorry -- was it about 1:55 in the afternoon?
A Yes, ma'am.
Q And the notes that you're referring to that you said you used to refresh your memory is that the medical records in this case?

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A It is.
Q Okay. All right. Whenever you first took his blood pressure was it not higher than normal?
A Well, I didn't take his blood pressure initially the triage nurse did.
Q Okay. But you reviewed those records as part of your taking care of Mr. Henry, didn't you?
A Yes, ma'am.
Q All right. And did you not find his blood pressure to be higher than normal?
A Higher than normal. The normal being less than 140 over 80.
Q 120 over 80, 130 over 80, yeah.
A Yes.
Q And you said his mother was also there with him?
A Yes.
Q And what you found were defensive wounds on his hand, wound that be true?
A I don't know if they were defensive wounds, I just know that they were lacerations on the palm side of his hand.
Q But wounds to the palms of the hands as oppose to the front of the hand; correct?
A Correct.
Q And on the left hand would be the only hand I believe

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you stated?
A Right.
Q All right. And as your chart reflected, there's at least a three centimeter laceration to the left index finger?
A To the left index finger.
Q Yes, ma'am.
A Are both one and a half centimeters.
MS. PARROTT: Excuse me permission to approach, Your Honor.
THE COURT: Sure, yes.
BY MS. PARROTT:
Q Is this your signature, ma'am?
A Yes.
MR. HILL: May I see what ---
A Three centimeters for both, it's all inclusive.
Q So the three centimeters I'm sorry -- you said was all inclusive?
A Each laceration was separate, but three centimeters altogether.
Q All right. So one and a half centimeters approximately for the two that you said need sutures?
A On the left index.
Q Thank you for clearing that up. Treated it with Betadine dressing and isotroin (sic); is that correct?

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A Yes.
Q And you state that part of your job as a staff nurse that you try and ask questions for the person to find out what their story is and also it allows you time to look at the person and make your own observations; correct?
A Yes.
Q How long did you talk with his mother?
A Not very long.
Q And when you state that red flags went up, those are things that you determine were things that scared you; correct or things that made you alert?
A Yes.
Q That's your opinion of it, right?
A Yes, that is my opinion.
Q And yet you felt comfortable with the children staying with mom outside in the waiting room?
A She was sitting directly in front of the triage nurse. I made the triage nurse aware of what was going on. And it wasn't very long with Kershaw County getting there and Investigator Corey getting there and they went to our conference room.
Q All of them?
A All of them while he remained in the treatment room.
Q But they didn't place him under arrest, did they?
A Not at that time they didn't.

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Q And they didn't arrest his mother for anything?
A Not that I'm aware of.
Q And you didn't check her story against his?
A She wasn't there, she told me she wasn't there.
Q As far as how he got to the hospital since that was one of your red flags? Did you check her story as to how they got there?
A I asked her if she knew anything about the wounds and she said no and that was pretty much the end of my assessment with her.
Q Did you know where she worked?
A No.
Q How far is it between Bishopville and Camden?
A 25 miles, 30 miles, I'm not sure exactly.

MS. PARROTT: Nothing further.

THE COURT: Redirect?

MR. HILL: None, thank you, Your Honor.

THE COURT: All right. You may step down. You want to excuse her?

MR. HILL: No objection.

THE COURT: Suitable?

MS. PARROTT: None, Your Honor.

THE COURT: Thank you very much.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Next witness, please.

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MR. HILL: Lieutenant Keith Lutcken.

THE CLERK: You will, sir, place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated and state your full name for the record.

THE WITNESS: My name is Keith Lutcken, L-U-T-C-K-E-N.

WHEREUPON,

Keith Lutcken,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Mr. Lutcken, what is your title with the Florence County sheriff's department?

A Lieutenant.

Q And how long have you been employed with that department?

A I've been with the sheriff's office for 24 years.

Q And over the last few years, what have been your duties particularly?

A I am lieutenant over the forensics in the crime scene division.

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Q Are you familiar with the case in which we are trying today?
A Yes, I am.
Q Okay. So you were involved in the investigation in this case?
A Yes.
Q Have you had an opportunity to review your notes or the records in this case?
A Yes, sir.
Q Moving ahead to what your involvement. What did you do, what was your job, what were your responsibilities in regard to this case?
A My main responsibility was responding to the scene. I was the supervisor that was in charge of the scene. I acted more in a supervisory capacity toward the crime scene personnel that would be responding to the scene.
Q Now, was there someone that assisted you that you supervised?
A Yes, sir, Corporal Adam Moore.
Q All right. And did Mr. Moore join you at the scene?
A Yes, sir, he did.
Q Did the two of you work together in assessing the scene and gathering evidence or did you divide responsibilities?
A Pretty much supervised him as he was going to the

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scene and relying information back to me.
Q Okay. Did you enter -- did you go inside the apartment.
A Yes, sir, I did.
Q And in that regard, do we know who lived in this apartment?
A At that time, I do not believe we did at that point.
Q Okay. Did you subsequently find out who lived in that apartment.
A Yes, sir, we did.
Q Who lived in that apartment?
A Tarus Henry, his wife and two children, I believe.
Q And is Tarus Henry the defendant in this case?
A Yes, sir, he is.
Q Okay. And do you happen to know the exact address of that apartment?
A Right off top of my head, no. It's [redacted] Apartments on Highway 76 east.
Q But we do know that that's where he lived?
A Yes, sir, that's correct.
Q That's where she was living?
A Yes, sir.
Q In regards to the collection of evidence in this case, did you receive any evidence or take possession of any evidence yourself in this case?

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A Yes, I did.
Q What was that item?
A I responded to McLeod Regional Medical Center at a later point in time. Corporal Moore was still processing the scene. As I responded up there, I collected the blanket and some clothing articles that she was clothed with.
Q Now, you done this a long time?
A Yes, sir.
Q Would you explain to the jury while we are concerned about who retrieves evidence and what happens with it?
A Main concern with the evidence is maintain the integrity of that evidence for the later analysis. The more hands that touch it, the more chance for destruction of any type of evidence that may be present on the articles. Furthermore, the destruction of evidence can take place, you know, if it's not handled properly or packaged properly, so time is of the essence in this those cases.
Q And there protocols that you all follow -- do you know if those were followed in this case?
A Yes, they were.
Q And so you retrieve items from the hospital?
A Yes, sir.
Q And do you know what you did with those items?

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A Those items were taken back to the Florence County sheriff's office to be air dried in the evidence drying cabinet and to be packaged for later analysis.
Q And do you know the name of the officer that was in charge of the evidence -- collecting evidence at the sheriff's department?
A Our evidence custodian was Kim Cockfield at that time. And also Adam Moore would be handling most of the evidence in the case.
Q All right. Does that conclude your involvement in this case?
A Yes, sir, it does.
Q Is there anything I neglected to ask you?
A No, sir.
Q Anything that you need to add?
A No, sir.
MR. HILL: Thank you. Please answer any questions that the defense may have.

CROSS-EXAMINATION

BY MS. PARROTT:
Q Thank you, Lieutenant. As part of forensics, you take the crime scene as you find it; correct?
A Correct.
Q It's not something that you're trying to contribute to whatever it is, you just simply are processing the

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evidence that you find and what you believe to be evidence; correct?

A That's correct.

Q And did you actually touch anything on the scene at Patriot's Place?

A No, I did not.

Q The only time that you ever came into contact with evidence on this case would be at McLeod Hospital?

A That is correct.

Q And do you know how it got to you at McLeod?

A Yes.

Q How many people touched it before you?

A We maintain chain of custody, you know, as to what they stated on their chain of custody only one individual touched the clothing and it was turned over to me.

Q Okay. But you weren't there to see how it was being processed from the time she went in the ER to when it got to you; correct?

A No, it was not.

Q So you relying on what they say?

A Yes.

MS. PARROTT: Nothing further, Your Honor.

THE COURT: Redirect?

MR. HILL: Yes, Your Honor. I just need a moment to withdraw the evidence from its packaging.

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THE COURT: Okay.

REDIRECT EXAMINATION

MR. HILL:

Q Hand you a box of gloves and a pair of scissors. Ask if you would to open the container.

A I'm only going to need one glove.

THE COURT: Do you want to tell how you got hurt like that? I mean, was it at home?

MR. LUTCKEN: We want go into that right now. I will plead the fifth on that one.

A The form that I remove from the box is Florence County sheriff's office it's an evidence log sheet, it's what we record everything on that we take into evidence. And we turn in the evidence the way we can also maintain chain of custody on this stuff. Inside the bag itself is a one bra, a pair of panties, and a black tank top. You want me to remove these from the bag.

Q At this time, I just ask if you would examine the contents of the bag let us know if you have everything?

A In the biohazard bag is a blanket that she was wrapped with, that she went into the ER with.

Q Okay. Mr. Lutcken, are those the items that you recall receiving from the McLeod emergency room?

A Yes, sir, I received them from a Becky Green.

Q Okay. And do you know Ms. Green's position at the

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hospital?
A She's an RN.
Q You may have a seat. So the items that were in that box were items that were taken into evidence from McLeod Hospital?
A Yes, they were. As I said, it is a bra, a pair of panties, a black tank top and also the blanket that she went in with.
Q And do you know what you did with those items?
A Those items were taken back to the sheriff's office to be processed in our laboratory. First process would have been to air dry them and then package them to be analyzed.
Q So in terms of the people that handle them, they came to you from the nurse at the hospital. And then you took them to the evidence room Florence County sheriff's office?
A Yes, sir.
MR. HILL: Your Honor, I just would request at this time I'm not sure if there's an objection. I can continue through other witnesses to lay a foundation, but would there be an objection at this time to admitting the evidence that we had discussed with Officer Lutcken?
THE COURT: Well, you offered into evidence and then she will have a chance to object. You offer it into

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evidence?

MR. HILL: I do.

THE COURT: You object?

MS. PARROTT: I do, Your Honor. I believe we're going to need the ---

THE COURT: Objection is sustained. The chain of custody is a strict rule in terms of chain by chain, link by link. Proceed.

MR. HILL: Thank you. With that in mind, that concludes questions I have for Mr. Lutcken.

THE COURT: Okay.

MS. PARROTT: I'm sorry excuse me, nothing further.

THE COURT: Okay.

MS. PARROTT: And no objection to his being excused either.

THE COURT: He's excused.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Next witness, please.

MR. HILL: Your Honor, in terms of schedule, my next witness is Corporal Adam Moore.

THE CLERK: Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated and state your full name for the record.

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THE WITNESS: Adam Moore.

WHEREUPON,

Adam Moore,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Officer Moore, were you involved in the investigation of this case?

A I was.

Q And was Lieutenant Lutcken your supervisor during this investigation?

A He was.

Q All right. And do you have with you your reports and logs and evidence sheets with you to testify today?

A Yes, I do.

Q Were you responsible for the collection of evidence at the scene?

A Yes, sir.

Q Okay. Did you also take numerous photographs during your investigation?

A I did.

Q And you had a chance to review those paragraphs?

A I have.

Q Mr. Moore, I need to show you copies of photographs. Would you examine those quickly and just let us know if

you recognize those. And if they're photographs that you took?

A All of those are photographs that I took.

Q Did you also take photographs of an automobile that was collected as evidence in this case?

A I did.

Q And ---

MR. HILL: Your Honor, the numerous photographs with which we reviewed with the Court, there's no objection to the photographs that I've shown defense counsel.

THE COURT: Numbers, please?

MR. HILL: The next number will be 14.

THE COURT: Fourteen through 49 in evidence without objection, Counsel?

MS. PARROTT: Yes, Your Honor.

(WHEREUPON, State's Exhibits Nos. 14-49 was admitted into evidence.)

THE COURT: Proceed.

BY MR. HILL:

Q Okay. In regards to your training, what instruction have you received in the handling and processing of evidence in crime scenes?

A From 2001 until 2004, I interned with Florence County sheriff's office as an intern in the evidence room. I learned a great deal about packaging and handling of

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evidence through that. When I graduated from Francis Marion University in 2004, I went full-time with the sheriff's office in evidence room capacity. I was the evidence technician from 2004 through 2006. In 2006, I was promoted to the forensic technician, which is basically crime scene investigator. So I've had from 2001 until present day hands on numerous classes regarding to preservation, collection, processing of evidence.

Q The numerous boxes here are you responsible for the items in these boxes?

A Initially, when I collect them, I'm responsible for them. Once I take them and turn them whether it be drying them out if they're wet, wet clothing, bloody clothing, has to be tried out or it will mold and therefore, ruin potential evidence. Any evidence that is wet or mold or bloody will be dried out in our drying cabinet at our laboratory at the sheriff's office. Then it is turned over to the evidence technician. At that time, the evidence technician was Kim Cockfield. So the evidence I would have collected it, plus taken it to the lab, air dry everything in our drying cabinet. And then turn the evidence over to Kim Cockfield in the evidence room. And then she's responsible for maintaining it after that.

Q I like at this point to show you the items. As we did with earlier witnesses, just ask you to -- if you can

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identify the contents of each package?

THE COURT: Don't pull it out officer just look at it.

MR. MOORE: It's inside of another package.

THE COURT: All right. You understand we haven't got into the point of in evidence yet.

MR. MOORE: Yes, sir.

THE COURT: Known as chain of custody.

A In this package is a stack of napkins that was taken by me from the car at -- during a search warrant at our impound yard.

Q All right.

A In this package is a pair of black leather gloves also taken from the vehicle's trunk during that search warrant at our impound yard. This is one pair of blue jeans taken from the apartment at [redacted] apartments by me on June the 25th 2008.

THE COURT: Counsel, so that you will be aware of the ultimate ruling on this matter for purposes of inculcation, right now I'm following the rule in State vs. Robert Carter, that is chain by chain, link by link chain of custody rule. It may be at some point we hit the case of Freeburger. And obviously, when we get to Freeburger, we talking about fungibility as juxtapose to non-fungibility. Maybe some of these items forward in the

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non-fungibility rule articulated and enunciated in Freeburger, just where we are.

MR. HILL: Yes, sir.

A In this box and bag is clothing from the defendant, Tarus Henry, taken by myself from -- after he had been booked in at our detention center in Effingham. It's one charcoal lighter fluid bottle taken from the trunk of the vehicle at our impound yard during the search warrant. It is one hammer taken from the apartment at [redacted] Apartments on June 23rd. Those are two 20-pound dumbbells also taken from the apartment on June 23rd at [redacted] Apartment. In this bag is one pair of Nike shoes taken when the subject was booked into the Florence County detention center from the defendant, Tarus Henry. One tan colored shirt taken from the apartment at [redacted] Apartments. Two wash cloths, rags taken from the apartment. It's one pair of blue jeans taken from the apartment. And one wallet containing ID of driver's license of Tarus Henry that was in the pants collected from the apartment.

Q I'm sorry this is such a laborious task.

A That is one machete taken from the apartment at [redacted] Apartments.

THE COURT: Let the record show, I'm handing that to the bailiff. Lock it in the evidence room until we need

it again. Hand it to the bailiff.
BY MR. HILL:
Q Moving on with the evidence. Corporal Moore, which items of evidence were not delivered to SLED for testing? Do you have those items listed?
A The dumbbells, the two 20-pound dumbbells, one hammer, one purse, the bra, pair of panties, black tank top, and blanket from Miss Parker taken from McLeod. Those are not sent to SLED. The bottle of charcoal lighter fluid was not sent to SLED. The clothing that was taken from Tarus Henry except his shoes were not sent to SLED. His shoes were sent to SLED. The pair of blue jeans from the apartment taken on June 25th 2008, that were the victim's jeans were not sent to SLED -- well, they were sent to SLED I'm sorry. So those were the items not sent to SLED.
Q And the items that you just listed that weren't sent to SLED you examine those this morning?
A Yes, sir.
Q And are those items in the same condition they were in at the time you took them into evidence and placed them into evidence room Florence County sheriff's office?
A Yes, they are.
MR. HILL: Your Honor, based upon that representation and testimony, the State would move those following items

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be admitted into evidence.

THE COURT: What says defense?

MS. PARROTT: Your Honor, I object.

THE COURT: What grounds?

MS. PARROTT: To one, just one item. And I would like to approach if we could on that.

THE COURT: Well, let me take care of the items. There is no objection in terms -- can you tell me the numbers of the items that there are.

MS. PARROTT: No objection to the purse, the bra, panty's, tank or blanket, charcoal fluid or Mr. Henry's clothes at booking.

THE COURT: All right. Can you give me those numbers? Do you know them?

MR. MOORE: They haven't been entered into evidence.

COURT REPORTER: They are not marked.

MS. PARROTT: Your Honor, may I approach, so I can know what...

THE COURT: Sure, yes, yes.

(WHEREUPON, a pause in the proceedings.)

THE COURT: Clothing number 50. All right, in evidence without objection. Proceed.

(WHEREUPON, State's Exhibit No. 50 was admitted into evidence.)

THE COURT: Fifty-one, 52.

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MR. HILL: Your Honor, there's no objection to the machete being entered into evidence as well.

THE COURT: All right, Miss Court Reporter, the machete is marked into evidence without objection at the recess. Please, place a number on that item. Fifty-three is the machete.

(WHEREUPON, State's Exhibits Nos. 51 and 53 was admitted into evidence.)

MR. HILL: And, Your Honor, while we're at the bench, I believe there is an objection to one of the items. It's been referenced. At this time, the State does not intend to offer that item into evidence.

THE COURT: Draw it back get it away from the pile.

MS. PARROTT: Thank you, Your Honor.

MR. HILL: Your Honor, since these items have been admitted into evidence, the State would ask permission to present those to the jury.

THE COURT: You may do so.

MR. HILL: Thank you, Your Honor.

THE COURT: Jurors, you probably understand this, but let me make it crystal clear. In regard to items that are presented into evidence, you will have all of those in the jury room when I give you the case for decision. So as you look at photographs or items in evidence, just bear in mind you will have the right to inspect those personally

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in the jury room. Proceed.

A This is the charcoal lighter fluid bottle that was taken from the trunk of the vehicle during a search warrant. It, of course, was not found in that condition. It has been processed by myself with cyanoacrylate fuming, which is superglue fuming for fingerprints. And then I applied black fingerprint powder to the bottle attempting to find any type of fingerprints that may have been on the bottle. There were no fingerprints found on this bottle. Charcoal lighter fluid...

Q What's your next itemed?

A Okay. This is the clothing from the Florence County detention center booking. This is what the defendant, Tarus Henry, was wearing when he was booked in our detention center. This is a shirt. There are a pair of underwear and a pair of black socks in the box as well, a pair of blue jeans. That was all we marked.

Q Officer, at this time, I also like to publish to the jury the following photographs.

THE COURT: Seriatim by number, so that the record will be pristine.

MR. HILL: Yes, Your Honor.

BY MR. HILL:

Q Beginning what's been marked as State's Exhibit Number 14, you recognize this photograph?

A I do, that is a photograph of the front license plate of the vehicle during the search warrant at our impound yard.
Q Do we know that that was the vehicle driven in this case?
A Yes, sir, we do.
Q Next photograph is State's Number 15. This is the door leading into the apartment?
A Yes, sir, that is. It was apartment [redacted] [redacted] [redacted] Apartments.
Q And the following will be State's Exhibits 16 and 17. What does that show?
A That is a close-up photograph of the entrance way. There was some linoleum, a little small square, that is a partial shoe impression in blood or a red substance. I scaled and photographed that for -- in case shoes were found we could try and do a comparison to see if the shoes were similar and to eliminate any type of -- if the fireman may have entered in with wearing those shoes, we could also eliminate them as walking through since there were numerous firemen in and out of the apartment as well.
Q And while we're on that subject, what can you tell us, if anything, about work that was done with a shoe impressions in this case?
A As far as shoe impressions go, we haven't entered the

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shoes as evidence.
Q But were shoe impressions made?
A No, impressions made as far as warrant from our known sample. They were examined, there's not enough to make an affirmative to say, yes, these shoes that subject Henry was wearing were the same.
Q All right. And next line, please?
A That was a second photograph of a separate shoe impression on the linoleum tile at the front little area at the front door.
Q Next is State's Number 18?
A That is a photograph of the -- if you're standing at the door to the left of the entrance way once you step inside, is a dining room type area that is looking to the left of the door into the dining room area of the apartment.
Q State's Exhibit 19?
A That is a photograph of the shirt, tan shirt, blue jeans that contained a wallet with the ID's of Tarus Henry, a rag, and the machete that was also the picture that was previous to this one that was in the floor in that area in the living room in a pile. We had moved the blue jeans and the tan shirt out of the way to photograph what was under it and that was under it.
Q And those items went to SLED, I believe; is that

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correct?
A Yes, sir, they did. They did go to SLED.
Q Number 20, State's Exhibit 20?
A That is a photograph in our laboratory doing a scale of the machete. I took everything and photographed it separately with scales to show what it look spread out instead of in a hep.
Q Next is State's Number 21?
A That is a pair of the blue jeans that were in the two pictures previous on the floor. Those are the -- I can't tell from looking, I don't know if that's the front or the back of those jeans kind of a glare.
Q Next is State's Exhibit Number 22?
A That is a picture -- once again, I can't tell if it's the front or the back of the tan shirt.
Q Next is State's Exhibit Number 23?
A That is a picture again looking to the left, that is the left corner where the right corner of the dining room looking to the left of the entrance way.
Q So we progress from the door around to the left?
A Yes, sir.
Q Next is State Number 24?
A That is a photograph of the kitchen area of the apartment.
Q Next is State's Number 25?

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A That is a picture of the kitchen sink and what appears to be blood in the kitchen sink.
Q Was a swab made of that?
A Yes, sir, a swab was taken from that area.
Q And that was taken to SLED?
A Yes, sir.
Q Next is State's Number 26?
A That is a picture looking into the kitchen at another angle, that is actually from the living room of the apartment, that would be to the right. And then the hallway looking at that picture, the hallway is immediately to the right, kitchen is straight ahead. The front door would be to your left if you're standing looking at that picture.
Q So we gone through the photographs, we turn to the left, walk through the dining room, through the kitchen and now back out in the den; is that correct?
A Yes, sir.
Q Okay. Next is State's Number 27.
A That is a picture showing the living room floor. The doorway is actually the doorway to the left walking through that hall would be the kitchen, straight ahead is the -- through that doorway is the hallway leading back to the bedrooms and the bathroom, that is a -- those are piles of different clothing and towels on the floor. The

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victim's jeans can be seen in that picture on the floor beside the pink tube. You want me to point to it?

Q That's fine. What else the significance was in that picture?

A There right under where the towels are is a blood pool. There were three distinct pools of blood on the floor from where a body would have been bleeding for few minutes, not just moving. It would been -- the victim would have had to been there for a few minutes and bleed. And then was moved to a different area and bled, move to a different area and bled to create pools like that.

Q Next State's Number 28?

A That is looking through the front door to the right is the -- that's the front door -- standing at the front door that's looking straight ahead. And this is the right-hand corner where that window and then all of the furniture is there.

Q Next is State's Number 29?

A That is just to the right of the front door, that is a smaller dresser and a little -- a children's toy. All of that has a considerable amount of blood spatter on it to the left. You can see the John Deer little toy tractor is in the paper or towel under that is a pretty soaked in blood spatter.

Q Next is State's Number 30?

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A That is the -- right there to about the center left, that's the little linoleum landing right in front of the front door, that is one the second or third blood pools in the apartment and that's showing one of the 20 pound dumbbells.

Q Next is State's Number 31?

A That is a picture of the inside of -- the front door has been closed and that is a picture shooting from -- taken from standing behind the close door shooting towards the front of the apartment.

Q Next are State's Numbers 32 and 33?

A This is in the Florence County detention center booking area, that is a picture of the left shoe of Tarus Henry.

Q Next will be State's Number 36?

A Again, in the detention center, that is a picture of the right shoe of Tarus Henry.

Q Next is State's Number 35?

A You have the hard copy? State's Exhibit 36 is the bottom of the left shoe showing the tread pattern on the bottom of that shoe.

Q Next is State's Number 37? Next will be State's Number 38, this will be our number 70?

A That is a picture of the vehicle. Again, you can see the front license plate was the very first picture, that

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is at our impound facility in Florence.
Q Next will be State's Number 39?
A That is a picture showing the front seat of the vehicle that's the driver side.
Q Next will be State's 40, our number 74?
A That picture is showing the passenger side front seat of the vehicle, the red notebook, and the napkins on top of that. The napkins did have what appeared to be a red substance.
Q Next will be State's Number 42, our 77?
A That is the backseat passenger side of the vehicle.
Q Next will be State's 44, our number 79?
A That is the left side of the trunk compartment of the vehicle.
Q Next will be State's 45, our number 80?
A That is the right side of the trunk compartment of the vehicle.
Q Next will be State's 46, our number 82?
A That is a close up of the left side of the trunk showing the charcoal lighter fluid bottle.
Q And then next is State's 47, our number 83?
A Again, a close up of the charcoal lighter fluid bottle.
Q State's 48, our number 84?
A That's a picture showing the front of the charcoal

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lighter fluid bottle.

Q And finally, State's Number 49, our number 100?

A That is a photograph of the victim in McLeod Regional Medical Center taken July the 1st one of 2008.

Q Thank you. Officer Moore, did you make a diagram in reference to the investigation in this case?

A I did.

MR. HILL: Your Honor, the State would move into evidence the next consecutive number, this is a diagnose prepared by Officer Moore. It's a large version of it. However, there's no objection from the defense.

THE COURT: Fifty-four in evidence without objection; correct, Counsel?

MS. PARROTT: Yes, Your Honor.

THE COURT: Thanks.

(WHEREUPON, State's Exhibit No. 54 was admitted into evidence.)

BY MR. HILL:

Q Mr. Moore, would you step down, please. And would you describe to the jury what we're looking at?

A This is a, of course, not to scale diagram of the apartment, that in the very just a brief sketch of what all was on scene as I -- when I found it. The address is here [redacted] Apartment [redacted]. I documented areas where I had collected and photographed selected evidence.

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The -- of course, the front door of this is where the shoe impressions were in blood, I think the second or third photographs that we looked at. The three blood pools that I was describing are here along with the victim's pants that were also in the photographs described. The blood stains in this corner would have been the shoe cubby, the little John Deer toy tractor that would have been here with the little small chester drawers or dresser there in this area.

Q Officer Moore, in regard to the blood pools or blood stains that you noted, how was evidence taken and how was that processed and where is that evidence and what are we...

A The blood evidence was process or collected by myself. We take sterile swabs, which are basically Q-tips, long single ended Q-tips. They're sterile until the packages open. And then, of course, they become exposed to the environment. We use -- if it is wet blood, we just take the swabs and get a blood sample off the evidence, whatever we need to collect on the swabs. They're then taken back to our office in a secured capacity and air dried. After that, they're packaged in envelopes and sent to SLED for processing for DNA. They can do a number of different DNA processes at SLED. In this case, it would have been blood DNA to determine who's

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blood it was. At the blood pool here, I collected a set of swabs at the blood stains around the shoe. I also collected a set of swabs. I have to refer to my notes.

Q We will do that in just a moment.

A But all of the samples were collected in that manner. The dried blood stains that were like around the shoe cubby, we used sterile water and dip the Q-tips in sterile water and then rub it on the area to remoisten it and that way we can actually collect a good sample of the blood. And that's how those were taken from here and the blood drops at the kitchen and the kitchen sink were also collected in that same manner.

Q Were there other areas were you located blood?

A Yes, sir, blood was located from basically the entire house. There was -- the majority of blood was here. There was blood in the kitchen. There was an electrical outlet in the hallway and just -- I choose that as a sample. We can only submit a certain number of samples to SLED, so we kind of are limited in how much we can actually collect. They only take a certain number of samples, so I had to kind of pick and choose where I needed to take samples from. But I collected samples from the majority of the house even back into this back bedroom in the pictures you saw looking down the hallway a very small two-door, two-drawer filing cabinet that had actual

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smears on it that was -- it was sent to SLED as well. And there was blood located from the bedroom on the bathroom door, all the way down the hallway, the kitchen, and then the majority was in this front living room area.

Q And I think there is also -- when was the machete found?

A The machete was here where the clothing and the machete was altogether in a pile here.

Q All right. Thank you. You may have a seat. Mr. Moore, regarding the evidence that was taken and collected sent to SLED, have -- has that been presented to you so far in your testimony or is that elsewhere? The evidence that was sent to SLED has that been presented to you to testify about yet?

A The evidence that was sent to SLED? Oh, yes, sir, some of it has been returned and it was -- we did go through it today.

Q Okay. All right. Some of it however has not been entered into evidence; is that correct?

A That's correct.

Q All right. And is that because possibly another person handled it as well?

A Yes, that is correct.

Q And some of it was tested as well; is that correct?

A Yes.

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Q And are you able to testify about that evidence or would that need come from the person that actually handled it and tested it?
A I can testify that I actually collected it and that it was turned over to our evidence technician and then our evidence technician transported the evidence to SLED. And after that, we cannot testify to anything that happens at SLED.
Q All right. I believe -- I know this is a lot of evidence and I just -- did you collect swabs from a file cabinet in a front door?
A Yes.
Q And a kitchen sink?
A Yes, sir.
Q And locations inside the automobile the passenger side seat and the driver side door handle?
A Yes.
Q Okay. Was there an occasion where you took a swab of DNA from the victim Carol Parker?
A I did. On Tuesday July the 1st of 2008, I had gone -- I went to McLeod Regional Medical Center to meet with the victim. And I talk to her and told her who I was, why I was there what I needed to do is actually take -- again, the sterile swabs, Q-tips, and get a set of mucle (sic) swabs, which is basically just cheek skin cells for DNA.

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SLED can take DNA either from blood or from mucle swabs and I collected a set of mucle swabs from the victim, Carol Parker, on July the 1st. And those were submitted to SLED as a known comparison sample.

Q Was blood taken from the defendant in this case?

A It was.

Q And what role, if any, did you have in the collection of processing of that item?

A On -- the investigator in the case got a Schmerber order, which is basically a court order for the subject to give us his blood. You can either -- there's certain ways that you can go about getting blood, you can ask someone if you'll give us permission to get blood from you and consent. In this case, the investigator got a Schmerber order or a court order. It's a order issued from a judge, so that the person has got to give us his blood. And I had that court order given to me and I executed the court order on 8-1-2008, August the 1st 2008. Basically, the way we go about getting a court order is for a purple top tube of blood, that's the little glass vials with purple tops that they draw blood from like at hospitals, like at doctor's offices that type of thing. A certified nurse has to perform that. And on August the 1st, I took that court order to our nurse's station in the detention center and in Florence County and I gave it to her and Subject

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Henry was brought up to the nurse's station and presented with a court order. He gets -- got a copy of it so that he could have it for his records. And our nurse, Maurene Nogy, actually draw the blood while I was present. I observed her draw the blood from Subject Henry, that blood was then -- as soon as it was drawn, it was put in a bag, a bubble wrap type, so it want bust. And it's given to me as evidence. And then I took it and put it in our refrigerator in the evidence room and logged it in so that we can take it to SLED as the known DNA comparison sample for the defendant.

Q So all of the blood swabs were taken by you and placed into evidence; is that correct?

A Yes.

Q And then later delivered to SLED by one of your agents; is that correct?

A Yes.

Q You took all the photographs that we viewed today; is that correct?

A Yes.

Q To your knowledge, was there anyone else other than Nurse Nogy that took the evidence, the blood, and a nurse at McLeod that took the victim's clothes that were involved in the handling of the evidence here in Florence County?

A The victim's clothing was again like as Lieutenant Lutcken said it was collected by Becky Green, but I took the mucle (sic) swabs from the victim myself and I transported them back to the sheriff's office as evidence.
Q And you handled all the other evidence; is that correct?
A Yes, sir, except for the ones aforemention by Lieutenant Lutcken.
Q There's a lot to go over. Do you recall testifying about the charcoal lighter fluid bottle that you found?
A Yes.
Q Tell us about the fingerprints, were any found?
A No, no fingerprints were found.
Q Why not? Do you have an answer for that?
A Fingerprints are basically water and proteins and sweat that is secreted from pores in your fingerprints. They are fairly resilient at times, but they also can be very easily wiped away. They can be destroyed very easily, wiped away numerous ways to get rid of fingerprints.
Q Was there any items submitted to SLED regarding fingerprints?
A The black machete was submitted for latent fingerprints at SLED.
Q All right. Is -- there's so much evidence that we

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looked at. To your knowledge, is there anything that you handled that we have not discussed with you?

A Not that I have seen.

Q Other than the evidence that went to SLED and it's still there; is that correct?

A Yes, sir.

Q Officer Moore, did you make any comparisons of shoe prints based on what you saw on the linoleum?

A The only thing that we could do because they were partial shoe impressions was just kind of look to see if the impressions were similar. And the patterns on the shoes collected from the subject at the detention center appeared to be a similar pattern to the shoe impressions in blood on the linoleum floor at the front porch. But I can't say, yes, these are the exact shoes, but they are a consistent pattern with the -- the pattern in blood.

Q Are you able to say that -- what can you say regarding exclusion, if anything?

A The shoes certainly could not be excluded. It is a very -- I mean, the same type of pattern of shoe, so the shoes that Subject Henry was wearing very well could have made those impressions.

MR. HILL: Your Honor, at this time, that's all the State has on direct.

THE COURT: Cross-exam.

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CROSS-EXAMINATION

BY MS. PARROTT:

Q And again, you work forensics, but what you do is you take the scene as you find it; correct?

A That's correct.

Q Okay. But in this case, you also said that you're only allowed to submit so many samples to SLED?

A That's correct.

Q So you choose what to send by what you believe to be evidence or what you think might be evidence; is that correct?

A I conferred with Lieutenant Lutcken and we collected the best samples from the apartment that would enable us to go forward with prosecution with the case.

Q Okay. But you're saying you collected the best samples for prosecution, but you're still making that determination as to what you think you need to prosecute the case; correct?

A Yes, from based on experience combined with Lieutenant Lutcken and myself.

Q You knew the firefighters had been in there. In fact, you arrived when firefighters were still on the scene; correct?

A Yes, there were still firefighters there when I arrived.

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Q So you don't know how the scene looked prior to them being in there?
A No, ma'am.
Q Whenever you go and you take pictures of things when they're even not at the scene of it as it is, but like the car in this case. Again, you're taking it as you find it, right?
A Yes.
Q But you have no idea who might have had access to that scene or that car?
A In certain cases, we may know who was in the car with this case. The subject arrived in Lee County with the vehicle and his two children and left it at his brother's house.
Q So you can account for a day -- a day or so or the date of this occurrence or at least once we're in Lee County, but you have no idea who had been into it prior to that?
A Previous?
Q Right.
A No.
Q And same thing for the apartment you have an idea who may have been around?
A No, ma'am.
Q And since you arrived after firefighters, you don't

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know what happened prior to them or prior to you, would you?
A No.
Q Be outside of what you would have any idea of, right? Okay. You collected some things, but not everything was sent to SLED?
A No, again, we're limited by SLED only what we can send.
Q But as the investigation progresses also, you kind of still make more determinations about what you believe to be evidence; correct?
A Yes.
Q And that's the reason you went back on June 25th?
A Yes.
Q And collected what were her jeans, I believe?
A Yes.
Q Do you have any idea who had been in there between the 23rd when this occurred or after you left after closing out the scene?
A On the 23rd?
Q Right.
A No, the scene was secured and locked until we got back.
Q You say on your crime scene data sheet you say you leave at 4:12 p.m; is that what you recall?

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A That is what my sheet says we left from there and then proceeded to Kershaw County Medical Center and then went to Lee County to get the vehicle and then back to Florence.

Q But -- and can you define -- can you tell everybody what a CAD report is?

A CAD report is a sheet generated by dispatch that has times and numerous things. I really don't know exactly how it works, but...

Q But this is something that details how people arrive and how ---

A It has what their computer says or the time of arrivals and departures and time the cases are completed and that type of thing.

Q Do you know what time the scene was actually closed out on the CAD report?

A I do not.

MS. PARROTT: Permission to approach?

THE COURT: Sure.

MR. HILL: Your Honor, as a technicality and objection, he can testify as to his own knowledge. I would object to his testifying as to what someone else may have given.

MS. PARROTT: I'll rephrase.

THE COURT: Okay.

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BY MS. PARROTT:
Q Do you consider the scene close when you leave even though firefighters may still be checking in on it?
A There were no firefighters there when I left.
Q Okay. You've talked about fingerprints on this charcoal lighter fluid bottle?
A They were none on the lighter bottle.
Q And you say that sometimes they get destroyed, but it just may be that the surface itself just want record them; correct?
A It can be. There are certain surfaces that do not hold a fingerprint the -- in some cases, yes, that is true.
Q So it may be that a bunch of people have held this bottle, it may be that no one has held this bottle. It just -- you don't have any idea when you have no fingerprints; correct? It doesn't mean that it was destroyed?
A Well, rephrase the question.
Q You have no idea how many people have handled that charcoal bottle excuse me -- lighter fluid bottle many or none?
A It's possible.
Q It's not that the evidence may have been destroyed, it's just it may not even be there?

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A That could be.
Q The shoe impressions that you talked, you said that it's a partial that you couldn't make a full impression of it because it was a partial; isn't that right? You can't make an actual mold of the impression?
A No, it was on a flat surface.
Q Okay. And you said you also can't make a certain determination as to it because it was a partial; correct?
A That is correct.
Q So all you can say is that this shoe is consistent with something that was there on the scene that may be even mass marketed?
A Well, it is, there's tons of Nike shoes out there that have that same tread pattern.

MS. PARROTT: Nothing further.

THE COURT: Redirect?

MR. HILL: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. HILL:

Q Corporal, were all the items that were collected that required testing was sent to SLED for testing?
A Yes, they were.
Q So every item you collected was tested?
A It was. We were limited to our -- what the SLED policy stated, but they actually went around their policy

and actually tested more than what we're allowed to send.
Q So they tested everything?
A They did everything that we needed tested, they would test it.
Q So everything you collected was -- everything was tested.
MR. HILL: That's all I have. Thank you, Your Honor.
THE COURT: Recross?
MS. PARROTT: Yes, Your Honor.

RECROSS-EXAMINATION

BY MS. PARROTT:
Q You stated that somethings you did not send to SLED; correct?
A Not everything was sent to SLED. The items that we needed tested that were sent to SLED and items that were not needed to be tested were not sent to SLED.
Q And again, it's your determination as to what you need to be tested?
A Yes.
Q In fact, in this case didn't you send dumbbells and a hammer; correct?
A Yes, that's correct.
Q And determine that those aren't even evidence of the case; correct?
A No, found no cause to have those that they were used

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in any capacity in this case?

MS. PARROTT: Thank you.

THE COURT: All right. You may step down.

(WHEREUPON, the witness leaves the witness stand.)

MR. HILL: Your Honor.

THE COURT: Yes.

MR. HILL: Regarding Corporal Moore, I'd ask if possible that he not be excused. He may be needed just in terms of chain later on in order to put in some evidence.

THE COURT: Hang with us.

MR. HILL: So we'd ask that he be allowed to be recalled simply for those purposes.

THE COURT: Jurors, we'll stop here for the lunch respite. Please remember my instructions from yesterday concerning the two rules. Do not discuss the case among yourselves under any circumstances. Do not let anyone discuss it with you, any outsider. And today there has been television coverage of the trial from Channel 15. Do not watch Channel 15 during your lunch break. 1:45, can everybody be back by 1:45? It's almost 12:30 that gives you a little more than an hour. And this afternoon, I'll run it down to five o'clock make as much progress as we can. You may leave now. No one but the jury, please.

(WHEREUPON, the jury was excused for a lunch break.)

THE COURT: The State need to put anything on the

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record?

MR. HILL: Not on the record.

THE COURT: 1:45, 1:45.

(WHEREUPON, a lunch break was taken.)

THE COURT: I hope everyone had a nice lunch.

Next witness, Mr. Hill.

MR. HILL: Thank you, Your Honor. At this time, the State would call Ms. Kim Cockfield.

THE COURT: Okay.

THE CLERK: If you will, ma'am, place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes, ma'am.

THE CLERK: Please be seated and state your full name for the road.

THE WITNESS: Jennifer Kim Cockfield.

WHEREUPON,

J. Kim Cockfield,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

MR. HILL:

Q Okay. Ms. Cockfield, were you employed by the Florence County Sheriff's Department in 2008?

A Yes, I was.

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Q In what capacity?
A I was the evidence technician.
Q All right. And did that require you to take possession of the evidence that's been collected in this case?
A Yes, sir.
Q Have you had an opportunity to review documents containing your signature prior to your testimony today?
A Yes, sir.
Q Have those help refresh your recollection about what happened in this case?
A Yes, sir.
Q What particular training did you have in regards to evidence collection and or handling at the sheriff's department?
A Prior to being an evidence technician, I was a crime scene technician at the sheriff's office.
Q And so you been certified through SLED and those sorts of things?
A Yes, sir.
Q Did you have an opportunity to receive evidence that was collected in this case?
A Yes, sir, I did.
Q Ms. Cockfield, I'm going to show you documents, I believe, copies of which you have. Would you examine that

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document and tell me if you recognize it?
A These are items that were submitted to SLED.
Q All right. I'm going to show you this as well?
A It's a submission form for items that were sent to SLED.
Q Okay. Would you describe the process that you have to follow for delivery of these item at SLED for testing?
A They're log out the evidence computer, taken by me to SLED in Columbia, it's on Broad River Road. They're logged in to a particular person, their evidence technician.
Q And once they are collected by the evidence technician at SLED, do you have any other involvement with those items?
A No, sir, not once I return them from SLED.
Q How many items -- how many trips if you could estimate did you make to SLED involving deliveries of evidence to SLED?
A It's usually every week if not twice a week for the entire time I was the evidence technician.
Q All right.
MR. HILL: Your Honor, I've had discussions with defense counsel and based upon testimony from Ms. Cockfield, I'd ask lead to enter these into evidence as State's Exhibits? These are forms showing that the

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items that were placed into evidence or will be placed into evidence were delivered to SLED.

THE COURT: Fifty-five and 56 in evidence without objection. Suitable?

MS. PARROTT: Yes, sir.

THE COURT: Okay.

(WHEREUPON, State's Exhibit Nos. 55-56 was admitted into evidence.)

MR. HILL: Please answer any questions that the defense may have.

CROSS-EXAMINATION

BY MR. PARROTT:

Q Ms. Cockfield, when you handled the evidence, you did not in anyway tamper with any seals that may have been on the evidence; is that correct?

A Correct.

Q Would have tried to open it up even at SLED?

A No, ma'am.

Q You just -- you were basically the delivery person taken it from where you received it in Effingham up to SLED for SLED to test it?

A Yes, ma'am.

Q And then possibly coming back with it?

A Yes, ma'am.

MS. PARROTT: Nothing further, Your Honor.

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THE COURT: Redirect?

MR. HILL: None, Your Honor.

THE COURT: You may step down. You want to excuse her out right.

MR. HILL: Yes, Your Honor.

THE COURT: Thank you very much.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Next witness, please.

MR. HILL: Officer Larry Quick.

THE CLERK: Do you swear to tell the whole truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated and state your full name for the record.

THE WITNESS: I'm Larry Howard Quick.

WHEREUPON,

Larry H. Quick,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Mr. Quick, prior to working with the sheriff's department, where were you employed?

A I was employed with the detention center, I work there for almost approximately six years.

Q Okay. And when did you go to work with the sheriff's

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department?
A July 1st.
Q All right. In what capacity, do you work there?
A I am the evidence technician.
Q All right. And you began your work there on July 1st?
A Yes, sir.
Q All right. Did you have any involvement in the case that we're trying today?
A Just one time -- well, actually twice where I kind of showed like each of the items to each of the lawyers and also when one time went to Columbia to carry some swabs to Columbia to Broad River.
Q All right. I'm going to approach you and show you a document as if you recognize this one?
A Yes, sir. This is a copy of the swabs that we carried.
Q Were these items that are listed on the report items that were contained in the Florence County sheriff's office evidence room?
A Yes, sir.
Q And did you take them -- well, describe to the jury what you did with them?
A The items were pulled and they were sealed and each was kind of logged out of our computer stating it as

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carrying it to SLED in Columbia and basically just took it up there and dropped it off to the SLED technician when she logged them in.

Q And did you sign a document indicating that you delivered them and dropped them with an evidence technician at SLED?

A Yes, sir.

Q And is that your signature on this document?

A Yes, sir.

MR. HILL: Your Honor, at this time, the State would move to have this document, SLED Laboratory Forensics Request, admitted into evidence I believe without objection.

MS. PARROTT: Without objection.

THE COURT: Fifty-seven in evidence.

(WHEREUPON, State's Exhibit No. 57 was admitted into evidence.)

BY MR. HILL:

Q Mr. Quick, does that conclude your involvement in this case?

A Yes, sir, it does.

MR. HILL: Answer any questions that the defense may have.

CROSS-EXAMINATION

BY MS. PARROTT:

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Q Officer Quick, basically, the same thing you don't tamper with any evidence whatsoever, do you?
A No, ma'am.
Q You open some evidence myself, as well as for Mr. Hill so that we could expect it for the trial?
A Yes, ma'am.
Q But it was sealed back?
A Yes, ma'am.
Q And then placed right back -- all it stayed in the evidence room; correct?
A Correct, yes, ma'am.
Q And when you took the request and the items up to SLED, same thing you never opened it?
A No, ma'am.
Q And never touched any of it except to hand it to a tech up there?
A Correct, yes, ma'am.

MS. PARROTT: Nothing further, Your Honor.

THE COURT: Redirect?

MR. HILL: Nothing, thank you, Your Honor.

THE COURT: You may step down.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Next witness, please.

MR. HILL: Your Honor, no objection to Mr. Quick being excused.

THE COURT: Suitable?

MS. PARROTT: Yes, sir.

THE COURT: He's excused.

MR. HILL: Next witness, Your Honor?

THE COURT: Yes.

MR. HILL: Thank you. The State would call Ms. Becky Green.

THE COURT: If you will, ma'am, go to the witness stand. Place your left hand on the Bible, raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated and state your full name for the record.

THE WITNESS: Becky Joe Green.

WHEREUPON,

Becky Green,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

Q Okay. Ms. Green, I can see by your clothing that you work as a nurse; is that correct?

A I do.

Q And which hospital were you employed at?

A McLeod Emergency Room.

Q Were you employed ER there in -- on June 23rd of

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2008?
A Yes, sir.
Q In what capacity?
A I'm a registered nurse.
Q Okay. And which department were you working in on that day?
A I'm in the emergency room.
Q Thank you. Ms. Green, I'm going to show you a document and ask if you recognize that document?
A I recognize what I put on the document.
Q Okay. Is this a document that is furnish by the hospital?
A Yes.
Q Okay. And describe for me why this was completed and what items were taken and listed on that document?
A The police wanted her stuff and we have to write the stuff down and I did.
Q And what items did you take?
A Miss Carol Parker's items. She showed up in the emergency room in bra, a black tank tube top, her panties and a blanket, that's how she showed up in the emergency room.
Q And do you know what happened to those items?
A I had to put them in a bag and they had to be sealed.
Q And did -- to whom did you give the items?

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A I gave the items to Keith ---
THE COURT: Lutcken.
A Lutcken.
Q And is your signature on those -- on these documents?
A Yes, sir.
Q And is this complete just as you recall filling it out?
A Yes, sir, that's me printed and signature. And I also relinquished it and gave it to her.
Q Thank you.
MR. HILL: Your Honor, I don't believe there's an objection State would ask ---
THE COURT: Fifty-eight in evidence without objection.
(WHEREUPON, State's Exhibit No. 58 was admitted into evidence.)
MR. HILL: Your Honor, based upon the testimony from Miss -- we would ask that the items previously inspected by Corporal Moore be admitted into evidence leaving the chains been properly established at this time.
THE COURT: What say you for defense?
MS. PARROTT: I believe we're talking about the items in State's 52?
MR. HILL: Yes.
MS. PARROTT: I have just a couple of questions, Your

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Honor, regarding.

THE COURT: Of this?

MS. PARROTT: Yes, Your Honor.

THE COURT: Proceed.

CROSS-EXAMINATION

BY MS. PARROTT:

Q Ma'am, whenever you got the items from whom did you get them?

A The patient arrived in the emergency room with those items on her. When she had to be assisted from the wheelchair, she was placed on the stretcher. When we had to remove some of the clothing, that's where those items came from.

Q Okay. So you were actually part of the team that ---

A I was right smack dab in the middle of it.

Q Okay. So you just got them straight from her to you?

A That's correct.

Q Into a bag?

A That's correct.

Q And then to Lieutenant Lutcken?

A That's correct.

MS. PARROTT: No further questions for her on that.

THE COURT: All right. You may step down.

(WHEREUPON, the witness leaves the witness stand.)

MS. PARROTT: And, Your Honor, because I think we

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established chain, I would have no objection to number 52 coming in at this time.

THE COURT: All right. Is that the multiple exhibit, three items? What's involved?

MR. HILL: Yes, Your Honor.

THE COURT: You want them marked separately ---

MR. HILL: We marked them collectively since they are stored that way.

THE COURT: Collectively?

MR. HILL: Yes, Your Honor.

THE COURT: What number? Is it 56?

MS. PARROTT: Fifty-two, Your Honor. We're talking about the bra, the panties, the tank top, and the blanket. I mean, please check behind...

THE COURT: Court reporter says 52, she rules around here.

(WHEREUPON, State's Exhibit No. 52 was admitted into evidence.)

MR. HILL: We ask that she be allowed to be excused?

THE COURT: Suitable?

MS. PARROTT: No objection, Your Honor.

THE COURT: She's excused, have a nice day.

(WHEREUPON, the witness leaves the witness stand.)

MR. HILL: Next witness?

THE COURT: Yes.

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MR. HILL: Maureen Nogy.

THE CLERK: Place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated and state your full name for the record.

THE WITNESS: Maureen Nogy.

WHEREUPON,

Maureen Nogy,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Okay. Ms. Nogy, are you employed at the Florence County Detention Center?

A Yes, sir, I am.

Q And are you a nurse at the detention center?

A No, sir. I'm a phlebotomist.

Q Okay. And for my information, what does that mean?

A A phlebotomist is -- I collect -- a blood collector.

Q Okay. And under what circumstances or why would you be required to collect blood?

A At the detention center usually -- sometimes it's for the DNA that is and other times just for -- if someone

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is ill and we need to collect a blood sample to send it to the lab for testing.

Q All right. As the phlebotomist, did you collect blood in this case?

A Yes, sir, I did.

Q I'm going to ask you to review this document. Do you recall drawing blood from the defendant in this case?

A Yes, sir, I did.

Q Do you know what day that blood was drawn?

A Yes, it was August the 1st of 2008.

Q And can you tell the jury why it was drawn?

A We had a court order to do a -- get a blood sample from Mr. Henry to send to the state lab for testing.

Q All right. And where was the blood drawn at the detention center?

A In the medical department.

Q And was anyone present other than you and Mr. Henry when that blood was drawn?

A Yes, I had Officer Adam Moore was with me and I'm not sure if there was maybe Mr. Officer Lutcken.

Q Okay. When the blood was drawn, to whom did you give it?

A I gave it to Adam Moore.

Q Did that conclude your involvement in this case regarding a blood draw?

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A Yes, sir, it did.
Q Did you have any other dealings with the blood in this case?
A Not that tube of blood, no, sir.
Q When you draw it, to your knowledge was it contaminated in anyway?
A No, sir, it was not.
MR. HILL: No other questions of Ms. Nogy.
MS. PARROTT: Okay.

CROSS-EXAMINATION

BY MS. PARROTT:
Q Ms. Nogy, ma'am, correct me if I'm wrong. For you to draw blood, it's immediately going into the tube; isn't it?
A Yes, ma'am, it is.
Q All right. You never touch it in anyway if you do it; correctly?
A No, ma'am. Drawn out through vacuum in the tube?
Q Okay. And then all you have to do is somehow seal off that tube as well?
A The tube is already sealed. And when you pull the tube off the vacuum off, the needle is automatically sealed, so it has a rubber top.
Q And that's what you gave to Corporal Moore?
A Yes, ma'am.

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Q All right. Have you had any other interaction with Mr. Henry?
A Yes, ma'am, I work in the medical department and numerous occasions he comes in for checkups.
MS. PARROTT: All right. Thank you.
THE COURT: Redirect?
MR. HILL: None, Your Honor.
THE COURT: You may step down. Thank you.
MR. HILL: No objection to her being excused.
THE COURT: Suitable?
MS. PARROTT: Yes, sir.
THE COURT: She's excused.
(WHEREUPON, the witness leaves the witness stand.)
MR. HILL: Your Honor, may we quickly approach?
(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)
THE COURT: Next witness, please.
MR. HILL: Thank you, Your Honor. Your Honor, at this time, the State would call Investigator Bert Turner.
THE CLERK: If you will, sir, place your left hand on the Bible and raise your hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?
THE WITNESS: I do.

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THE CLERK: Please be seated and state your full name for the record.

THE WITNESS: My name is Bertrum Lee Turner.

WHEREUPON,

Bert Turner,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Okay. Mr. Turner, were you employed at the Florence County Sheriff's Department in June of 2008, as an investigator and an arson investigator?

A I was.

Q Were you involved in the investigation in this trial?

A I was.

Q And at the time, what was your rank and position?

A My position or current duty assignment at that time was that of fire investigator or arson investigator with the criminal investigation division.

Q And how long did you have that position and what kind of training did you have regarding arson investigation?

A At that point, I had that position for eight years training to include fire investigation, arson investigation conducted at the Criminal Justice Academy in Columbia as well as training through various organizations that I have memberships with them.

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Q How many arson investigations have you been involved in?
A I don't have a specific number. I been involved with many investigations initially fire investigation and through the investigation of those particular scenes determine whether it's arson or not.
Q Have you been ask to testify as a expert regarding arsons?
A I have.
Q Have you been so qualified?
A I have.
Q And have you given expert opinions in the past during trials regarding the existence of a fire being set by an arson?
A I have.

MR. HILL: Your Honor, at this time, the State would ask that Mr. Turner be accepted as a expert in arson investigations for purposes of this trial and able to give his opinion in that regard.

THE COURT: The defendant has a right to voir dire before I rule. Do you desire to exercise voir dire?

MS. PARROTT: I do, Your Honor.

THE COURT: Proceed.

VOIR DIRE EXAMINATION

BY MS. PARROTT:

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Q Mr. Turner, you said that you had worked in that capacity as an arson investigator for eight years?
A That's correct.
Q And that was primarily what your investigation duty was, but you did continue other investigations?
A That is correct.
Q Like when you were the on-call investigator, I would assume?
A Well, that particular position was considered on call all the time.
Q All right, certainly. Have you written any articles regarding arson or arson investigations?
A I have not published any articles if that's what you're asking.
Q Certainly. No books?
A No books.
Q Have you conducted trainings regarding arson investigation?
A I have attended many trainings and participated in some, but I wouldn't consider me as the trainer for arson investigations.
Q So you haven't led arson education program?
A That would be a correct statement.
Q Okay. And I'm sorry cause I miss the answer. How many arson investigations do you believe that you may have

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conducted over all these years?
A It would be speculation on my part to give you any particular number. I've never actually researched, but I can tell you over the course of eight years many.
Q Okay. Help me quantify it if you can. We're talking like 25 to 50 do you think over a period of eight years? Are we talking even more than that?
A I would say even more than that. The majority of the cause by far start with contact of law enforcement by a fire department and some of that fire department needs aid in trying to determine origin of a fire and not all of those fires are arson some in fact are accidental.
MS. PARROTT: Okay. Nothing further.
THE COURT: You want to be heard in regard to the ruling?
MS. PARROTT: Your Honor, I have a problem with him actually been qualified as an expert in this matter because I don't have necessarily the substance of what it would take to be that expert. He can't tell me exactly how many he's worked over the period of eight years while that may have been what his job was, it wasn't his sole job. And the fact that he's participated in trainings, but not lead any doesn't necessarily lend itself to having been an expert either, so I would simply ask that obviously have no problem with him being someone who

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testifies in this case as the investigator, but not as an expert.

THE COURT: The objection goes to the weight of the testimony rather than to admissibility based on his testimony under Rule 702, 703 and 704, he may give opinion testimony posited under the rule. Proceed.

MR. HILL: Thank you, Your Honor.

BY MR. HILL:

Q Okay. Investigator Turner, in regards to your involvement in this case, how did you -- what led you to become involved in this case?

A Actually, when I received notification about the details of this particular incident myself as well as Investigator Streett happen to be riding together that day and we both responded to the scene at the request of law enforcement on the scene.

Q And while preparing to demonstrate what you found, what acts, if any, did you take in order to determine whether or not this fire was deliberately set or accidentally set?

A Well, upon our arrival at the scene, actually I wanted to take a look at the specific location of the fire that basically started once I exited the vehicle there in the parking lot actually taking a look at the exterior or structure and then gradually and working my way to the

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interior.
Q Okay. Was the fire still hot when you arrived?
A I can tell you that the apartment was still very warm, that's correct.
Q All right. Was it possible to easily detect the origin of the fire and where it begin?
A Yes, sir, it was.
Q All right. However, prior to your investigation, had you received information -- can't allow you to tell me what someone told you, but had you already received information regarding the origin and or information that might have been fluent to your initial work in this case?
A Not for a particular determination as to how the fire occurred, no.
Q At this time, there photographs that have been taken and admitted into evidence I like to review with you. Beginning with what's been marked as State's Exhibit Number 20 our number 57, do you recognize this area, this scene?
A Could we dim the lights a little bit? This is what I considered to be the room of fire origin. It's also considered as the master bedroom in that particular apartment.
Q All right. And State's Number 6 our number -- is there anything significant about that photograph?

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A That is the bathroom of the apartment. I can tell you that there is a good bit of heat damage, heat and smoke damage in that particular room. But that's not what I consider to be the room of fire origin.

Q How much heat would it take in order to generate the kind of damage that you observed there?

A Well, understand, you know, that is the bathroom. What you have there is a bath tub and a tub surround. Lot of those materials are plastics and what you actually are looking at in that photo is some of that tub surround that has been exposed to some radiant heat and actually started to melt.

Q Next I like to show you what's marked as State's Exhibit Number 9 our number 56. Do you recognize that area?

A I do. Actually, that is the closet located in the room of fire origin which match the bedroom closet. What you'll see actually notice some of the hanging bars for the hangers, which clothes would have been hanging on and directly opposite the door or the shot from where that photo was taken, you will see some damage to the wall that's not cause by the fire, but actually that's from the fire department suppression efforts and to make sure there was no extenuation of any fire beyond that room.

Q Do you have an opinion as to what caused the black

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coloration on the walls? Were they that way naturally or did something else cause it?
A My opinion would be that they were not that way naturally and that is from smoke and soot.
Q Next, I like to show you what's been marked as State's Exhibit Number 7 our number 34. And is this also the bedroom?
A That's correct. That is the master bedroom or the room of fire origin.
Q And in your opinion is there any evidence -- what was the cause of the damage that we see in that room?
A Cause of the damages you see primarily in that room is going to be the fire that was set to the bedding or the mattress and bedding materials.
Q All right. Thank you. Officer Turner, as you begin your investigation and you found the point of origin in the fire, did you look for a source of ignition something that would have caused it?
A We did. Actually, during the course of that investigation as I stated earlier, it's not just -- you're looking at one particular area, but the whole picture in general tried to make a determination location of the fire or fires as well as any cause accidental or incendiary.
Q Okay. You mention accidental, was there any evidence that this fire may have been accidental?

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A I wasn't able to determine that there was any evidence to indicate that this fire was accidental in nature.

Q What steps did you take in order to make that determination?

A Well, what we do is make -- do a as thorough of scene investigation as we can, naturally on different scenes you different amounts of evidence. Naturally, the most important issue is the fires suppression and extinguishment to prevent any further damage. Sometimes some scenes give more evidence than others simply because of the duration of the fire, the destruction of any evidence consume by the fire as well as destruction of evidence or any problems with anything due to conditions of the fire departments extinguishment or suppression of the fire.

Q Okay. Were there any conditions regarding the structure of an apartment that would have cause this fire?

A None that I could come up with, no. Naturally, we look for, like I said for any accidental and that involves examining various things trying to come up with a cause for the fire.

Q Lots of times, we as civilians -- what about the wiring, was there any wiring or electric problem that would have caused this fire?

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A There was nothing to indicate that there would have been any problem whatsoever with any electrical problems particularly in that room nothing stood out. There was no indication to me that this fire involved anything electrical.
Q Was there any indication that this was accidentally set by somebody playing with matches?
A Based on the evidence that I have at that point and still to this day, no. No indication to me that this would have been an accidental fire or negligent fire set from somebody playing with misuse of matches, no.
Q So negligence is also another criteria that you examine?
A Sure. It's not always a conclusion of arson or accidental. Sometimes, you have fires that are set by human, but they are accidentally set or negligently set.
Q Did that exist here?
A Not that I could indicate or not that I could come up with, no.
Q All right. In examining the evidence, was there anything -- well, you saw the evidence that had been thrown out of the window; is that correct?
A That's correct.
Q Was there any action based on your experience taken by the firefighters that compromised your investigation of

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the fire or the cause of the fire?
A Not at all. Naturally, it would have been nice to have those materials still in, but considering the -- all the factors that day, the protection of structure as well as protection of people living within the structure nothing that the fire department did that day compromise the investigation whatsoever.
Q In which room was most of the fire contained?
A This is what I consider or what I call a room of contents fire, that is the master bedroom.
Q Okay. Did you prepare a diagram to assist you?
A I did.
MR. HILL: Your Honor, there's no objection the State would ask that the following diagram be admitted into evidence.
THE COURT: Fifty-nine in evidence without objection. Mr. Hill, you going to let my court reporter mark it?
MR. HILL: Yes, sir, that be nice.
THE COURT: Thank you.
(WHEREUPON, State's Exhibit No. 59 was admitted into evidence.)
BY MR. HILL:
Q What was the purpose of this diagram, that's been marked as State's Exhibit Number 59?
A The purpose of this particular diagram was to show

the area of origin of the fire.
Q And you determine that to be which area?
A That would be this room here, which is also identified as the master bedroom the fire of origin.
Q And is it that particular room marked with pencil to darken it as oppose to the other rooms?
A It is that area is shaded there is actually the mattress and bedding in that particular room.
Q Now, also on the drawing is the kitchen. Ms. Joe is going to hand you a ruler. In regards to the kitchen, did you determine if the fire began in the kitchen?
A The kitchen as well as the rest of the rooms in particular apartment always -- and there was no indication that there was a fire set in the kitchen.
Q But they're really black and smokey?
A They are, they are. I can tell you that anybody ever experienced a fire realizes that it doesn't take very long for fire to burn to start generating some real oily sooty blood smoke. It's not necessarily like we see it on TV. A lot of times TV likes to show, you know, bright flames and no smoke. Actually, it's quite just the opposite, there's the bright flames for just a brief period, but everything gets so sooty and smokey and dark where you really can't see, that's why our fire department members actually had to crawl around on the floor way because

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smoke is heated from the fire. And it actually has a lot of people realize hot air and warm air rises, so the hotter temperature air which contains the smoke and the soot actually goes up at the ceiling and starts coming down and that's the reason that you see the rooms, the walls throughout the apartment smoke and soot.

Q All right. Was there anything actual burning in the kitchen?

A No.

Q And which rooms was the burning confined?

A In the master bedroom, that would be this room here.

Q How about what we saw in the bathroom there any burning there?

A What you saw in the bath if you'll notice the doorway to the master bedroom and the bathroom are pretty much opposite the hallway. This is the bedroom of the master bedroom is where the fire is at. This is where all the flames are it. The damage that you get over here is going to be primarily from that photo, which that photo shows the tub surround. It's actually melting or softening up and dripping or dropping down, that would have been directly across from the room with all the flames. If you ever been at a bond fire or if you live out in the country and farmers burn off any of the fields, you realize you don't have to be very close to feel the heat or the

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effects from a fire that's what they call radiant heat.
Q Thank you. You may have a seat. We going to have to interrupt your testimony in a few minutes, but were you able to eventually determine what caused the fire?
A I was able to determine what the first materials ignited in the room of origin and specifically a area of fire origin in that room.
Q And were you able to find an object that might have cause that?
A Be a little more specific.
Q We'll get to that later. Let me with draw that question.
MR. HILL: Your Honor, at this time that would conclude the State's testimony -- let me back up.
BY MR. HILL:
Q Were you able to form an opinion to a reasonable degree of certainty because of your expertise in arson investigation as to the cause of this fire?
A I was.
Q And what is that opinion?
A That this fire is in fact arson and not accidental in nature.
MR. HILL: Your Honor, at this time that would conclude the State testimony. At this time, we'd ask to be allowed to recall him at a later time.

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THE COURT: I understand that. I may finish cross-examine query on this point. What do you say, Ms. Parrot, you want to do the cross-examine? You got SLED witnesses ---

MR. HILL: We don't have any problem with cross-examine. As the State, I think it would be actually proper to continue on cross exam on this point.

MS. PARROTT: However, Judge.

THE COURT: Let's cross-examine.

CROSS-EXAMINATION

BY MS. PARROTT:

Q Mr. Turner, at what time did you arrive on the scene, do you know?

A I don't have that information in front of me, but I can tell you that it was what I consider to be early afternoon or just after lunchtime.

Q You think you got called within an hours time of fire the department arriving on scene?

A That would probably be safe to assume so.

Q The fire department was still there whenever you arrived?

A That's correct.

Q Did you discuss this fire with firemen?

A When I arrived on the scene as a fire investigator, naturally the first person that I want to speak with is

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the fire chief or whoever's in command or in charge of the fire.

Q And is that to get kind of an idea of where the layout of things is and where the hot spots are?

A Well, that would be inclusive of the information that I like to receive. I like to get any and all information pertaining to a particular location or fire that they could offer me.

Q All right. So did they go ahead and tell you that it's a two bedroom, two bath structure and so that you can know what you're walking into?

A I don't recall if they told me exactly how many bedrooms or how many baths. No, I don't recall.

Q So this is the diagram that you did all on your own?

A That is my diagram specifically to show the area of fire origin, that's correct.

Q And the 930 square feet where are you getting that number from?

A That number comes from actually the brochure or pamphlet provided to me from the park management itself, that is their actual blue print or for that particular unit.

Q So this whole unit then is 930, we're not excluding any territory or any information that you got here?

A I can tell you that that's not going to be to scale

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and I don't -- I didn't intend for it to be, but actually that is the best depiction of the floor plan for that particular unit. I didn't measure every room to come up -- make sure it did come up with 930 square feet, if that's what you're asking.

Q Okay. But as far as it goes, you're saying the point of origin is solely right here in the master bedroom?

A I said the area of fire origin is in the bedroom, that's correct in the master bedroom.

Q So you don't believe that fires were set in multiple places in this apartment?

A There was nothing that I saw indicated to me that we had multiple fires set in other rooms of the apartment, no.

Q And you stated that the smoke has traveled and, of course, in 930 square feet it probably wouldn't take it that long either to travel the full length of the apartment would that be correct?

A That's correct depending on what fuel consumed by the fire.

Q And mentioning that, some materials actually burn at higher temperatures and faster than other materials might, wouldn't they?

A That would be a safe assumption, that's correct.

Q And you're saying that the materials in the bathroom

are such that with them being plastic base, it doesn't take much for them to dealt down?

A Well, not only for the temperatures themselves, but also as I stated a little earlier from radiant heat.

Q Okay. Such that that would come from maybe this master bedroom?

A That's correct.

Q Okay. Did you determine what the bedding was set on fire with from on this scene?

A Not from that scene, no, I did not.

Q And was there anything that told you from this scene who you believe to have set it?

A No, other than the fire was actually arson and not accidental.

Q Okay. But there wasn't -- sometimes you hear about somebody having a signature way that they do a crime or a signature way that they might set a fire. There's nothing about this that makes it -- makes it set with a signature is it?

A Not as what you see on TV, no.

MS. PARROTT: Okay. Thank you.

THE COURT: Redirect?

MR. HILL: Not on this issue, Your Honor.

THE COURT: All right. And as I understand it, you're reserving the right to call him later on another

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issue?

MR. HILL: Yes, Your Honor.

THE COURT: All right. You may step down.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: All right. Mr. Hill, it may be we need a short recess here now because some of the next testimony in order to provide continuity will be lengthy want it?

MR. HILL: Potentially.

THE COURT: Twenty minute recess for everyone.

(WHEREUPON, a break was taken.)

THE COURT: Bring the jury out.

(WHEREUPON, the jury return to the courtroom.)

THE COURT: For the record, Counsel, to buttress my ruling in regard to the qualification of the arson expert, there are three cases that are the bottom and premise of my ruling. The first seminal case of great significance in regard to arson is Rutledge vs. St. Paul Fire Insurance, Smoak S-M-O-A-K vs. Lieberher America is the second one. And the third one is Knoke K.N.O.K.E. vs. South Carolina Department of Parks and Recreation. All three are fire cases, all three relate to expert testimony in regard to fires.

Mr. Hill, call your next witness, please.

MR. HILL: Thank you, Your Honor. Your Honor, the State would call Mr. Jeff Parrott.

THE CLERK: If you will, sir, place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated and state your full name for the record.

THE COURT: Full name?

THE WITNESS: Yes, sir. My name is Jeff Parrott, last name spelled P-A-R-R-O-T-T.

THE COURT: You got that, Ms. Parrott?

MS. PARROTT: I do and for the record, I don't think we related.

THE WITNESS: First time I ever met another Parrott.

THE COURT: I hope y'all feel comfortable now.

WHEREUPON,

Jeff Parrott,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

Q Okay. Mr. Parrott, were you employed at the SLED in September of 2008?

A Yes, sir.

Q And in that capacity, did you examine evidence in this case?

A Yes, sir, I do.

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Q And what was your position at SLED at that time?
A I was a senior agent assign to the latent print crime scene unit.
Q And in that position had you examined fingerprints numerous occasions?
A Yes, sir, been involved with either crime scene fingerprinting, crime scene reconstruction, crime scene processing, evidence process now for 17 years, over 4,000 hours of training, over 66 hours advance courses in those areas, those fields of science as well.
Q You been qualified as an expert in that area and testified as such?
A Yes, sir, both state and federal courts.
MR. HILL: Based upon Mr. Parrott's testimony at this time, the State would request that he be accepted as an expert in the area of latent prints and forensics.
THE COURT: What says defense?
MS. PARROTT: No objection, Your Honor.
THE COURT: He's qualified.
MR. HILL: Thank you, Your Honor.
BY MR. HILL:
Q Mr. Parrott, do you have a copy of your report?
A I do, yes, sir.
Q Did you examine it?
A Yes, sir.

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Q What items were you ask to examine in this case?
A I was ask to examine -- it was SLED item 12 which was a black machete in this case.
Q All right. And from whom did you receive it?
A I received it from what is called our lay-in box. It's a box where evidence is placed for the agents to receive it. It comes from evidence process, evidence log into that box and I receive it from there.
Q So then how did you test it?
A I first received that item of evidence notice that that particular item was wrapped inside a paper bag bound by tape and opened that particular item up, looked at it carefully under oblique lighting, just regular lighting and cross lighting, that we have there in the lab with forensic light sources. I notice that it had a coding on it somewhat which in my experience would appear to be blood or other types of contaminates, sweat, oils that sort of thing and that's when I started processing it first for the purpose of DNA. Took two swabs, one swab from the handle area of the machete and the other swab from the blade area of the machete. I collected those and then transferred those to DNA. Then I begin my latent print processing, which is the process to try to find fingerprints on that particular item.
Q Just define latent print for us?

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A Latent is actually a Latin term. It's a term which you have to actually use some sort of developed type of developer whether it's powder or chemical to enhance that to where you can see it.

Q And so you use some type of chemical or powder or scientific process to discover if prints were on the item?

A Yes, sir, on this particular item once I did collect the swabs from the machete. I fumed it sand, which you may have seen on TV. We're famous now for CSI where you see them looking into the little box and it's a cloud. What that is is the superglue that is heated and it forms a vaporous cloud, which adheres to any type of moistures or moisture or liquid on the item that you process it, we did that first. If you should find something, it will form like a white-type impression of a latent fingerprint. It quite often does that. Then the next step -- of course, I visually examine that. Then I try to use black powder to try to enhance anything else that might be on there from the cyano technique. From that point, I visually examine again and there was no ridge detail that could be developed on that item.

Q What does no ridge detail mean and why is that important?

A The fact it's no ridge detail. The terminology is that there's no ridge detail developed that can be used

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for the purpose of any type of identification or comparison in a particular case, so therefore it's of no value.

Q So what was your final conclusion?

A My final conclusion was that there was item 12 the black machete was of no value for identifications as far as latent print.

Q And is that in your experience would that be usual or unusual?

A It's quite common. Unfortunately, fingerprints are very fragile. Just because you hold something, doesn't mean that you going to leave fingerprints and especially if it does have a lot of contaminates blood, sweat, it really varies.

Q So there's something about the nature of the fingerprint that will cause it not to last or stay somewhere?

A That's correct. It could be forms of heat, could dry it because it is moisture, water, 98 percent is water. Then you have oils that are there. And, of course, both of those dry. And could be as far as packaging if it's package improperly, it could rub those areas off as well. The matrix the -- whatever you have on your hands at the time, you touch that item whatever that is could have, you know, vary in your ability to actually develop some sort

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of usable latent print at that point. It's difficult, it's not like TV you don't get it every time.

Q Okay. So as a worker and expert in this area, is it still important to examine the item whether it has prints or not?

A Most definitely. You do everything you can on every item of evidence. Again, that's what -- seeing that it had the liquid, potentially blood to me throws up a red flag right there, you're liable to get some good DNA off this particular item. And because of that too, I'm thinking it's a probability of latents might not be high, but still do that to try to get everything you can off that item of evidence.

Q And it is still important to do it for -- is it still important to do it for justice reasons too just to make sure?

A You should do it for all reasons. You should do everything 100 percent, that's the only way to do it.

MR. HILL: Thanks. Answer any questions the defense might have.

CROSS-EXAMINATION

BY MS. PARROTT:

Q Mr. Parrott.

A Yes, ma'am.

Q Agent Parrott, whenever you actually tested the

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machete, you said you also did DNA testing on it?
A I actually did the DNA testing first on that. It's what our evidence processing unit would normally do, but given the fact we had a latent print request on it as well in latent, that's our unit, so it's given to us and we do the evidence processing portion as well. We're crossed trained there at the latent prints department. We're actually cross -- have to be considered competent in seven fields of forensic science and then we're also crossed trained in several fields of forensic science. And then we're as cross trained in several fields of forensic science as far as evidence processing, the collection of trace evidence, DNA serology. We're a one stop shop. We pretty much have to do it all and then we dish it out to the correct departments.
Q So is it fair to say then that you are -- you're using every bit of knowledge you have from all these various fields to test what has been submitted to you for any evidence that you think?
A That's correct, we have that ability.
Q Okay. But, again, it's whatever is submitted to you, it's not what you go out and get?
A Well, if we go out and get it, of course, we'll follow the same rules as well, but that on this particular item this was something that was delivered to us to

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process with that request.
Q Okay. And you're stating on this one that you did try and process it for DNA you did the handle and the blade?
A Yes, ma'am.
Q And what did you find?
A Well, I collected swabs from each of those areas. Now, when I do that, I don't do the analysis on the actual swab that I collect. I just simply collect that item, collect it in a way that it will be safe, free from contamination and then I submit it to the DNA department for the actual analysis.
Q So the results from this test are not necessarily yours, it's just whatever evidence you think you found you're submitting to another department within SLED?
A That is correct. Based on my experiences, I see something I collected maybe something, it might not be, but I collected it just to be on the safe side.
Q Okay. And for the machete, you doing the handle and the blade, you also doing to bottom, I guess?
A I've actually typically on the cards that I collect the swabs -- well, actually on the cards in which I put the swabs, I typically draw a little diagram as to where I actually collected that swab from. I don't have those in front of me to be able to give you.

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Q But it's safe to say that you would at least -- you would look at the whole item?
A Correct. The area that I feel has the evidence I need, yes. Keeping in mind, of course, the potential for latent evidence print as well.
Q But sometimes you're from what you're saying prints maybe -- they my just evaporate or they may have problems keeping it on the item just because of what fingerprints are made out of, but it's also sometimes is it not that the item itself just want hold prints?
A It's possible. It's possible.
MS. PARROTT: Thank you nothing further.
THE COURT: Redirect?
MR. HILL: None, Your Honor.
THE COURT: You may step down.
(WHEREUPON, the witness leaves the witness stand.)
THE COURT: Next witness, please.
MR. HILL: Your Honor, he like ---
MR. PARROTT: Sir, I'm sorry am I excused?
THE COURT: I'm sorry.
MR. PARROTT: I was just asking if I was excused?
THE COURT: Well, are you riding with the other group?
MR. PARROTT: No, sir.
THE COURT: Riding alone?

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MR. PARROTT: Yes, sir.

THE COURT: Have a good trip back to Columbia.

MR. PARROTT: Thank you, sir.

MR. HILL: Lori Giles.

THE CLERK: If you will, ma'am, place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth to so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated and state your full name for the record.

THE WITNESS: Lori Giles, G-I-L-E-S.

WHEREUPON,

Lori Giles,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Ms. Giles, I need to use this podium because there's a lot of paper work I need to look at as we talk together. Are you currently employed with SLED in Columbia?

A Yes, I am.

Q And that's the South Carolina Law Enforcement Division?

A That's correct.

Q And how long have you been so employed?

A A little over a year.
Q And what is your job there?
A I'm a evidence lab technician for the DNA department.
Q And what qualifications have you received in order to work in that job?
A I have been trained through SLED for the evidence processing. I done proficiency testing for competency in that area. Prior to my employment with SLED, I also performed evidence processing techniques for the Alabama Department of Forensic Sciences for four years.
Q Okay. So you've worked in Alabama as well?
A Yes, sir.
Q In similar position?
A That's correct.
Q Were you allowed in given evidence to examine in regards to this case?
A Yes, I have.
Q Do you have your reports and notes with you today?
A Yes, sir, I do.
Q And you examine those prior to coming today?
A Yes, sir.
Q In regards to this case, I like to discuss what you did. How did you come into possession of the evidence that you examined?
A I received the evidence from evidence control. They

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receive the evidence from an officer that brought the evidence in. From that point, I receive the evidence, took it in my custody and I began examination on the items that I received.

Q And do you have a list of the items that you received in this case?

A Yes, sir, I do.

Q Would you tell the jury what items you received?

A Okay. I received clothing items, jeans belonging to the suspect, shirt belonging to the suspect, shoes belonging to the suspect, also rags, jeans belonging to the victim, pairs of gloves -- a pair of gloves, stack of napkins, and also a wallet belonging to suspect.

Q All right. Now, I've learned some things in working on this case. We've had several scientists from SLED that have come today to testify. We've had one in latent prints that just testified Mr. Parrott. And we'll have another in a few minutes about DNA. Where do you fit into the work that's happening in these cases?

A Okay. Initially, I'm in the prescreening stage for DNA.

Q What's that mean?

A I get the evidence initially and I also when I open up the evidence, I do a visual examination. I can use magnification or alternate light source, whatever the

request is from evidence control whether it be for trace hair, possible hair, possible body fluids I look for that.
Q All right. And that's what you did on the items you just told us that you examined?
A Yes, sir.
Q All right. What do you do?
A First of all, I do a visual. And if there's any staining, I would test it, do a presumptive chemical test to see if possibility there's a body fluid there blood or possible semen. And that point on if the test proves positive in a since it's not confirmatory test, it's a presumptive test, I would do cuttings or swabs and send those items to the DNA analysis for further process of that.
Q All right. The items that you examined you performed test on those then to determine if there was a substance that needed to be further examined for DNA?
A Yes, sir, if there's a possibility of a substance there, yes.
Q The items that you examined how many of them contain substances that appeared to be positive for DNA?
A Actually, there were several items that were positive possibly positive. All the items that I listed had potential evidence collected on those.
Q All right. And what happened to those items of

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potential evidence?
A I submitted them to the DNA analyst, that was running the test on that case.
Q All right. How did you protect these items from being contaminated in anyway?
A Each item is treated separately. I enclosed in a separate container as far as envelope or something like that. I, of course, wearing gloves and all that. Then I take the seal out and initial it and date it and put in a heatseal pouch or some kind of container, so each thing is secured before I transfer out of my custody.
Q Okay. So your testimony -- well, so the items of evidence that you tested in this case were then sealed and delivered to SLED -- I mean, to DNA; is that correct?
A That's correct.
Q For purposes of our record, I need to ask you specifically about the items and there aren't too many. First item you have listed is item number three jeans belonging to a suspect. Did you make a cutting from those jeans?
A Yes, sir, I did three cuttings.
Q That means that you take out fabric and test those to see if there's DNA?
A Yes, sir, I do a presumptive test on those.
Q Okay. And were those cuttings taken and sent to the

DNA lab?
A That's correct.
Q Okay. And were those preserved as they should have been?
A Yes, sir.
Q All right. Item number four, did you make a cutting from a shirt that belong to the suspect?
A Yes, sir, I did.
Q And after your presumptive test, was that cutting collected and preserved and sent to DNA?
A Yes, it was.
Q Was the same done for shoes that belong to him?
A That's correct.
Q You said the shoes weren't cut; is that correct?
A Right, I also utilize swabs for that also.
Q What about the rags and the dish towel items six and 6.1?
A Yes, those were cuttings also?
Q And were those collected and properly sent to the DNA lab?
A Yes, sir.
Q There were jeans item number 11, item 13 and a pair of gloves, and item 14 a stack of napkins and finally item number 15 a wallet belonging to suspect. How were those items collected and how did you preserved those?

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A Yes, sir, I use the same procedure and all of those items and collected the cuttings and the swabs for all those items and submitted them.

Q Okay. And that was done because you had presumptive test that appeared to be positive for DNA?

A That's correct.

Q Or that might be helpful in some way in further analysis; is that correct?

A That's correct.

Q Does that conclude your involvement in the investigation of this case?

A Yes, it is.

Q Did you do anything else that I haven't asked you about?

A No, sir.

MR. HILL: Please answer any questions the defense might have.

CROSS-EXAMINATION

BY MS. PARROTT:

Q Good afternoon.

A Hi.

Q Whenever you receive these items from -- I'm sorry, where did you say you received them from?

A Evidence control.

Q Okay. Are they sealed at the time you received them?

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A Yes, ma'am.
Q So evidence control doesn't try to open anything so you don't have to do that?
A No, ma'am.
Q You unseal it and then do this preliminary testing?
A Right.
Q Are you the only person who is then touched it from the unsealing it to testing?
A Yes, ma'am.
Q And then you say you send it on to the next part of the process?
A Right.
Q But it's -- are you told where to test or is it something that you're doing whenever you do your visual examination?
A Through my training, we look for whatever's requested on those items and we look for that particular request also. And like I said, we do also trace possible hair to see, if anything, that would be probative for the case.
Q Okay. So then forensics from the sheriff's office ask for specific testing to be done on this item delivers it to you and you then do a preliminary test, but you're saying you also may look it for other test that might be possible as well?
A Only for trace, do we collect also trace possible

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hair, items like that maybe fiber if it's -- it might be a trace request on it also, we would possibly be involve with that.

Q But again, you're doing the test -- mainly, you're doing the test that they're asking you to on the item that they're asking you to, but you're choosing what part of it you test?

A Well, we look at the whole item, yes.

MS. PARROTT: Nothing further, Your Honor.

THE COURT: Redirect?

MR. HILL: None, Your Honor.

THE COURT: You may step down.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Next witness, please.

MR. HILL: Your Honor, the State has no objection to her being excused.

THE COURT: She is excused. Suitable, Ms. Parrott?

MS. PARROTT: Yes, sir, Your Honor.

MR. HILL: Jasper Humbert.

THE CLERK: Place your left hand on the Bible, raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but truth so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Please be seated and state your full name for the record.

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THE WITNESS: Jasper Humbert, H-U-M-B-E-R-T.

WHEREUPON,

Jasper Humbert,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Okay. Are you employed with the South Carolina Law Enforcement Division?

A Yes, I am.

Q All right. And how long have you been working with them?

A Approximately three and a half years.

Q All right. And what's your job there?

A I'm a forensic DNA analyst.

Q Sounds fancy, but where did you receive your training?

A I received my training for forensic DNA analysis at SLED.

Q How about did you graduate from a university or college before you got to that point?

A Yes, I had.

Q Where did you go?

A My educational background is I have a bachelor's of science from Armstrong Atlantic State University in Savannah, Georgia. I have a master's degree in biology

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from the University of Iowa. And I have a further three years of graduate of education in genetics program at the Pen State Medical College.

Q Have you been qualified as an expert in DNA analysis and testified as an expert before?

A Yes, I have.

Q Have you worked in that area in any other states besides South Carolina?

A No, I have not.

Q How many times have you testified as an expert?

A Twice before.

MR. HILL: Your Honor, at this time based upon his testimony, the State would request that Mr. Humbert be allowed to testify as an expert in the area of DNA analyst.

THE COURT: Counsel, do you desire to voir dire?

MS. PARROTT: I'm sorry, Your Honor.

VOIR DIRE EXAMINATION

BY MS. PARROTT:

Q How long have you been working at SLED, sir?

A Approximately three and a half years.

MS. PARROTT: Yes, Your Honor, if I could just ask a couple more questions.

THE COURT: Proceed, yes.

BY MS. PARROTT:

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Q Have you written any articles in this matter?
A I worked on -- I've written probably 100 reports involving DNA analysis. As far as scientific publications, no, but I have -- do have approximately four publications in scientific literature involving DNA, but not in relation to forensic science.
Q Okay. So just in the whole area of DNA not necessarily as it relates to just this?
A That's correct.
Q Okay. But you have four articles there you done?
A Last time, I checked I believe it was four.
MS. PARROTT: Nothing further, Your Honor.
THE COURT: You desire to be heard?
MS. PARROTT: No, sir.
THE COURT: He's qualified in the area of DNA analysis. You may posit query that will elicit opinion testimony in regard to DNA.
MR. HILL: Thank you very much, Your Honor.
BY MR. HILL:
Q Mr. Humbert, let's begin if you don't mind with an explanation of DNA and why we're even concerned about it?
A Okay. The letters DNA stand for deoxyribonucleic acid, which is a chemical in every one of our cells. DNA is basically a blue print for who we are. So if we get brown hair or blue eyes, our DNA determines that because

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how we are made is basically determine by our DNA. And we get half of our DNA from -- basically each parent, so you get half from your mother, half from your father. So if someones says you look like your mother and father, there's a good reason. As far as DNA in relation to what I do, I basically examine evidence items and DNA standards to develop what's called a DNA profile from those items. And basically, a DNA profile is a set of numbers that I get from an item that corresponds to the item or the standard.

Q Let's dig a little deeper.

A Okay.

Q You explain what DNA is, but how does it exist? How do we obtain it from an object? How does it get there?

A Well, for instance all of -- for each individual basically all of our cells contain DNA, so if someone say cuts themself or is cut and bleeds somewhere or say certain cells on their body are released on an item, you can get DNA from their cells on those items.

Q And so the cells can be taken from blood. Can the DNA be obtained from any bodily fluid?

A Essentially, yes.

Q It can come from the saliva inside the mouth?

A Yes.

Q Or it could come from blood?

A Yes, it could.
Q We've heard testimony about mucle (sic) swabs are those used to obtain DNA?
A Yes, they are.
Q And just what is that?
A It's basically a swab taken from the inside of someone's mouth and you basically get cells and saliva on it from their mouth and that's how we get DNA from it because it has cells on it.
Q All right. So once a cell containing DNA is delivered to you, how do you determine who's cell that is or to whom that DNA belongs?
A Well, what I do is I match it to say a standard, so I'll get an item -- so first let's deal with standard, let's take a standard from a person.
Q So let me -- define a standard for me. I think we know what that means?
A A DNA standard is just a known sample taken from an individual, so for instance a buckle swab from a person will be used as a DNA standard to compare to evidence items in a case.
Q Might it be compared to what use to be used as blood samples? Could you compare a DNA sample to a blood sample?
A Yes, blood samples are used as well.

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Q Okay. So you've obtained a DNA sample from a known person?
A Yes.
Q Is that that first thing you do?
A Well, I don't obtain them, I extract DNA from those standards, but I do them separately. I do the standards and the evidence separately and get the DNA from those items.
Q So you take a known standard from DNA from a person you know it belongs to; is that first step?
A Yes. It's submitted to me as -- from a person.
Q So you're given something, you know, came from say John Smith and then you test his DNA to see what it looks like?
A Yes, that is correct.
Q How do you do that? You use the word extraction and testing what's all that about?
A Well, the extraction is basically where we subject those cells to chemicals and it breaks down the cells, the walls and membranes of the cells. Then the DNA comes out. Once we have that DNA out of the cells, then we can do a test on that DNA to get the DNA profile. So when I say I extract it, that's just basically breaking down the cells. And then to get the DNA profile, you further test to get a DNA profile, which is basically a series of numbers that

correspond to all the different locations I tested on the person's DNA.

Q All right. So you break it down and then numbers are assign to specific parts on this DNA?

A Yes, that I tested.

Q That still seems a little complicated. Can you help me understand a little better?

A Sure. I can attempt to. So I'll start with a DNA profile, so a DNA profile is essentially numbers that you get from testing 15 different areas on a person's DNA and 16 if you count the sex chromosome. Because you get half your DNA from your mother and half from your father you have two numbers, one from the chromosome that your mother gave you or the DNA that your mother gave you and one from your father, so you should have two numbers at each location. Okay. So when we test the DNA, we do it -- basically, we look at the DNA of each of those locations and we get two numbers. And at the end, all the DNA profile is a series of numbers that correspond to those 15 locations on their DNA that I tested. So once I done that and I done a standard, then I have a set of numbers an item, then I can compare them and say whether they match each other. So if I have a match, all the numbers from the standard will be the same as all the numbers from the item.

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Q So forgive me if this is too simplistic, so is it a matching game of the item that you don't know against the standard?

A That's basically what I'm doing.

Q And if numbers from the standard match to the unknown specimen, what conclusion can you make?

A If it matches the other DNA profile, I call it a match.

Q All right. Now, you've given a good explanation in terms of helping us understand. Is there anything else we need to know to help us understand your testimony in a few minutes?

A I do not believe so.

Q Okay. So you feel like you might have explained it given us a good enough background to go forward with your testimony?

A I do believe so.

Q Okay. All right. I notice in front of you there a lot of envelopes. What's in those envelopes?

A These are the items that I received for testing.

Q All right. And do you have a report that list those items?

A Yes, I do.

Q For legal purposes, we need to first just examine how you receive those items. How did you receive the items

that you're testing or that you're going to testify about?
A I receive them in these heat-seal pouches.
Q All right. And who delivered them to you in that manner in those heat-seal pouches?
A A technician in the lab delivered them to me.
Q All right. So those items -- do you know how those items arrived in the lab at SLED?
A Yes, they -- well, I didn't observe them, I received them. And the technician their job is to give them to me and they will be -- basically, they will scan it into their custody when they bring the item to my holding box in our DNA lab, which is a secured area. And then I get them from there and take them into my custody.
Q To your knowledge, was there any compromising of any of the evidence that you examined?
A No, when I receive them, they appeared to be well sealed.
Q Okay. In regarding your laboratory, is it accredited and it is reviewed and made -- what steps are taken to make sure it is up to standards that it should follow?
A Well, we have a national accreditation every five years from the official accreditation agency for DNA labs in this country, it's called ASCLAB (sic). And every year each analyst is required to do two DNA proficiencies, which are unknown samples. And we do that information

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submit it to make sure that we have submitted the correct results on those items. And we do a serology proficiency once a year to make sure that we can do the correct presumptive test.

Q And have you been subject to those tests?

A Yes, I have.

Q And what were the results of your test, did you pass them?

A They were passed.

Q Okay. To your knowledge, is the lab in good standing?

A Yes, it is.

Q When you receive the items for testing, they arrived to you in a sealed container that had not been open prior to examining it; is that correct?

A That is correct.

Q Do you have a list of the items that you examined?

A Yes, I do.

Q I understand that it's quite a lengthy list. So for our purposes, could you tell the jury the items that you examined?

A Yes, I can.

Q What are those?

A I analyzed a blood standard from Tarus Henry, which is item one on my report, a buckle swab from Carol Parker,

three cuttings from jeans from Tarus Henry, two cuttings from a shirt from Tarus Henry, swabs from shoes two swabs, cutting from a dish towel, cutting from a wash cloth, swabs from apparent blood pool in the living room, swabs from a hallway electrical outlet, swabs from the front doorknob, swabs from the kitchen floor, cuttings from jeans from living room, which I indicated Carol Parker based on analyzing the paperwork that I received. A swab from a blade or black machete, a swab from the handle of a black machete, a swab from the outside -- from of the outside of a right glove, swab from the outside of a left glove, a swab from the inside of a right glove, swab from the inside of a left glove. I also analyzed cuttings from a stack of napkins. A swab from the outside of a brown wallet belonging to Tarus Henry and swabs from a file cabinet, swabs from floor at the front door, swabs from wall at a shoe cubby, swabs from kitchen sink. Swab from passenger side front seat and swab from a driver-side door handle inside.

Q Prior to us continuing with your results, after you tested these items, were they reviewed -- were your results reviewed?

A Yes, they were.

Q And why is that done?

A They are reviewed to ensure that the report and

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everything in it was done correctly and the results are correct.

Q Was that done in this case?

A Yes.

Q All right. Was that report deem to be correct and done properly?

A Yes, it was.

Q You tested the items that you just described to us. The first question is not the proper question forgive me, but based upon your examination, did you form an opinion as to whether or not the defendant's blood was found on any items in this case?

A Yes, I did.

Q And what is that opinion?

A Well, if I go back to my report, I did for item 3.1, which is the cuttings from his jeans, I had a presumptive test for blood that was positive and the DNA matched him. I also received had the presumptive test for blood on several other items that matched it as well. Cuttings from his shirt, cuttings from a dish towel, swabs from an electrical -- from hallway electrical outlet, swabs from the kitchen floor, cuttings from the stack of napkins -- from a stack of napkins, and swabs from the kitchen sink, they all gave a positive presumptive test for blood and they matched his DNA profile. The DNA profile developed

from those items matched his DNA profile that I developed.
Q Were you able to develop an opinion regarding the existence of DNA for the victim, Miss Carol Parker, in this case?
A Yes, I was.
Q Were items -- were numerous items found to have her DNA on them?
A Yes, they were.
Q Okay. In that regard, is there something known as a mixture?
A Yes, there is.
Q And what's a mixture?
A So -- normally like if you had a single source of DNA you only get one set of numbers. So like because we get one number from our mother and one from our father at each location of the DNA, you're only expected most two numbers. And if you get the same number from your mother and father, one number. Okay. When you have more than two contributors of DNA to an item, then you have additional numbers. So instead of having only two numbers and most two numbers, you can have three or four or if you find that it's a mixture of even more people, you could have even more numbers. So mixture of DNA contains DNA from more than one source.
Q In that regard of all the items that you tested, was

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there any DNA that was found that did not belong to either the defendant, Tarus Henry, or the victim, Carol Parker?
A Yes, there was.
Q Okay. And on what item was that DNA found and could you explain in regarding that item?
A The item was item number 51 -- 15.1, which is a wallet that was listed belonging to the suspect, Tarus Henry.
Q And did you find DNA on that wallet that belong to Mr. Henry?
A No, I did not.
Q Did you find DNA on that wallet that belong to Miss Parker?
A No, I did not.
Q Did you find DNA on that wallet that belong to a third person?
A Yes, I did.
Q And based upon your knowledge and experience, were you able to determine who may have contributed or to whom that DNA might belong?
A Based on the DNA profile that that item had, in my opinion it is consistent with an offspring of these two people. Like I said previously, when you get one number from mother and one from your father for your DNA profile, on this wallet at every location in that DNA profile,

there was a number that came from either Tarus Henry or Carol Parker. And because of that in my opinion, that DNA profile is consistent with coming from the offspring. This case specifically a son because it has a Y chromosome.

Q So what is your expert opinion regarding the DNA mixture found on item 15.1 the wallet?

A In my expert opinion, the major contributor, which is the only one that I can make a determination on is sufficient with being an offspring of those two individuals.

Q You spoke a few minutes ago and explain that opinion. Going on to the other findings that you made, do you have an opinion regarding the DNA that you found on the items belonging to Mr. Henry? What is your opinion regarding DNA that belong to Mr. Henry?

A Which items do you want me to...

Q 3.1 through 19?

A Which items again do you want me to speak on?

Q 3.1, 4.2 through 19?

A All right. If item 3.1, which was a cutting from jeans belonging from my paperwork to Tarus Henry, that again a profile developed from that matches Tarus Henry. Item 3.2, which was cutting from the jeans of Tarus Henry, which is one of the three cuttings from his jeans. I will

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read from -- I will paraphrase from my report. The DNA profile came from item 3.2, which is that cutting is a mixture of at least two individuals. The DNA profile of the major contributor matches the DNA profile of Carol Parker. The partial DNA profile of the minor contributor also matches the DNA profile of Tarus Henry. Item 3.3 just to speed things up, I received the same opinion as 3.2. The major contributor matched Carol Parker and the minor contributor also matched Tarus Henry.

Q If I might, in regards to your final analysis, do you have an opinion or is there possible to place a numerical value on the likelihood or unlikelihood that the DNA in this case did not belong to Tarus Henry?

A All I can say is -- I can say that it's a match to the item and I can give a probability of a random person given that DNA profile.

Q Okay. How many items -- were there seven items that you were able to give an opinion stating that that DNA only belonged to Tarus Henry?

A Yes, I was.

Q And what was your opinion regarding the profiles on those seven items?

A I paraphrase from my report. The DNA profile developed from items 3.1, which is cutting from his jeans, 4.2 which is cutting from his shirt, 6.11 which is

cuttings from dish towel, eight which is swabs from hallway electrical outlet, ten which is swabs from kitchen floor, for 2.1 cuttings from a stack of napkins, and 19 which is a swab from kitchen sink. The DNA profiled developed from these items matches the DNA profile of Tarus Henry. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately one and 620 quadrillion.

Q Do you know how many people there are in the world?

A Approximately six billion.

Q I believe there were two items that matched Carol Parker only. And those were swabs from a blood pool in the living room item seven and item 16 a set of swabs on the file cabinet. Do you have an opinion or can you attach a number to probability that those DNA samples from those two areas belonged to anyone other than Carol Parker?

A Yes, I can.

Q And what is that number?

A The DNA I wouldn't paraphrase in my report here. The DNA profile developed from items seven and 16 matches the DNA of Carol Parker. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately one and 370 quadrillion.

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Q In all the items that were tested other than the ones that we just discussed regarding specifically Mr. Henry and Miss Parker and the wallet that we discussed belonging in your opinion to a son, were any of the items tested, any of the other items tested contained DNA that belong to a third unknown individual?

A Everyone that -- every one of the items besides those, I did not pick out another individual. One of the profiles that I developed was the DNA level, that I wasn't able to make an opinion. But of the other items that I developed DNA profiles except for the wallet, they were consistent with being from these two individuals.

Q Is it possible for you to give an opinion regarding the existence of other DNA in this case? Let me rephrase that question. Do you have an opinion to a reasonable degree of forensic DNA matching certainty in DNA profiling as to whether or not there was DNA from any other individual contained on the items that you examined in this case?

A I can't say whether there was if it was, I didn't detect it. It was below my level of testing, that's all I can determine.

Q So you're testing -- so what was the ultimate conclusion of your testing?

A Well, I received all of my -- aside from the items

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that were only one DNA profile that I was able to match to individuals, I also receive -- had some items that were mixtures, okay. And some of those mixtures I mean I can go through each individual item. I was able to pick out a major contributor. And what that means is that when you have a mixture of two DNA's sometimes one person gives a lot more DNA than the other. And when I finish my test, I can tell that one amount of DNA is a lot higher because two of the numbers that come from the profiles appear to be higher in my test. So I can say this person's a major because they have much more DNA amplified then the other and I can also tell whether it's minor. And in each of the cases where I was able to do that, the results were consistent with these two individuals, so they cannot be excluded from these mixtures.

Q Because my questions may not have been very clear sometimes, what is your professional expert opinion in conclusions regarding the test that you made in this case.

A Well, I can paraphrase my report ---

Q Don't need do that?

A I do not -- of the items I tested, the only other profile that I could say conclusory was not from these two individuals was the profile from the wallet. The ones that were mixtures were those two individuals could not be excluded Tarus Henry and Carol Parker. Some of the items

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look like that one item that I mentioned, the DNA was too low and my DNA profile was too loo for me to make a valid conclusion, so it was insufficient for an interpretation meaning there were so few numbers returned to me, that I can't say whether the -- the validly matches one or the other. I also had one item where I received no DNA profile at all meaning I got back no result. And one item I stopped after extraction because when I tested to see if there was any DNA at all except no human DNA was there, it was just no DNA, so that is essentially a summation of my results for this case.

Q The envelopes in front of you do those contain the items that you tested?

A Yes, they do.

Q All right.

MR. HILL: Your Honor, at the time, the State would request that the items tested at SLED for DNA purposes be admitted into evidence. I think a sufficient chain has been established to show that those items were taken by Adam Moore with the Florence County Sheriff's office. They were then delivered to the evidence room at the Florence County Sheriff's office. They were delivered either by Kim Cockfield or Officer Larry Quick to the drop box at SLED for which they were either given to Lori Giles or delivered to Mr. Humbert for testing. And they --

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there's no testimony at this point that they been tampered with and that they are -- the condition which they should have been in at the time either Ms. Giles or Mr. Humbert received them and ask that they be admitted into evidence and that a sufficient chain has been established.

THE COURT: Defense.

MS. PARROTT: Your Honor, is he planning on doing that as a collective thing or we going to go through this one by one?

THE COURT: One by one, simply marking each package with a separate number for purposes of the record.

MS. PARROTT: Thank you, Your Honor.

THE COURT: Pass them to the court reporter, let her mark them starting with exhibit 60.

(WHEREUPON, a pause in the proceedings.)

THE COURT: Sixty through 65 in evidence without objection.

(WHEREUPON, State's Exhibits Nos. 60-65 was admitted into evidence.)

BY MR. HILL:

Q Mr. Humbert, I just have a few -- hopefully, a few more questions. For purposes of the record, I believe the items marked as State's Exhibit 60 through 65 are labeled and you're able to read and tell us what's inside each of those; is that correct?

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A With my paperwork I should be able to.
Q All right. Just what items did you examine? I just need to be able to identify each exhibit?
A May I have some scissors and possibly some gloves.
THE COURT: We can get you some and pass those to him ones we've used here before, some scissors and some new gloves. And Mr. Humbert, when you undue the package, make sure what you take out goes back in.
MR. HUMBERT: Yes, sir. I will keep these separate.
THE COURT: I would suggest you do that.
MR. HUMBERT: Yes, sir.
THE COURT: Don't want to get me upset this afternoon.
MR. HUMBERT: I don't want to do that.
THE COURT: Thank you, I don't want it either. For the record, the packages are simply being opened with scissors and gloves and the packages will remain in that condition in an evidentiary state. You lawyers agree to that?
MR. HILL: Yes, sir.
MS. PARROTT: Yes, Your Honor.
THE COURT: Thanks.
A This contains item 21.
MS. PARROTT: For clarification is that State's 60?
THE COURT: I'm interested in that. Is that ---

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A State's Exhibit 60 on the sticker.

THE COURT: All right. Sixty is a court's exhibit and what you're referring to inside the package is the inner marking.

A Yes, these are -- I put my number and the case number and my initials on each of these items that I tested.

THE COURT: And for the record, so it will be crystal clear these are little packets.

A Yeah, they contain a swab. I can open them up and look at the swab.

THE COURT: Once again, put it back in pristine form.

A So that was item 21, which was a swab from driver-side door handle. This is a regular package it came in. This is item 16 swab from a file cabinet. You want me to open it? Item 19 swabs from the kitchen sink. Item 20 swab from passenger side front seat. Item 17 swabs from floor to front door. Item 18 swabs from wallet shoe cubby. That was all of this container.

THE COURT: That completes item 60, Court's 60.

A Should I continue?

Q My only concern is whether or not you were able to just identify the items in the package as the items that you tested. And I believe I do so; is that correct?

THE COURT: From the outside of the package?

MR. HILL: Yes.

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A Well, some of them I may have to open the inside because in our case managing, it has each item -- each bag with a letter, but I don't have that directly in front of me. I have my evidence worksheet, but if I open every one, I could identify every item.

Q That's fine. But is it your testimony that everything you tested are in those bags, it's been marked as State's Exhibit 60 and 65?

A Yes. And they also have the case number on it, so it's identified to this case and it has a package number.

Q Okay. Promise just a few more questions. If you have your report, was Carol's blood found on Mr. Henry's jeans, on the defendant's jeans?

A You have a paper napkin?

THE COURT: I believe she had some. Ms. Bailiff, where did you put those Kleenexes. Will that do it? I got some Florence County paper?

A That's too fancy for me. The cuttings from his jeans are items 3.1, 3.2 and 3.3. Items 3.2 and 3.3 I had a strong or a presumptive test, a positive presumptive test for blood. And I receive a mixture of DNA between Carol Parker and Tarus Henry. Because I received a mixture of DNA, I really can't tell you whether the presumptive -- the blood that I had a presumptive for is for one individual or another because it's a mixture of those two

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people, the DNA. There could be sweat from one person or blood from the other or vice versa because there's a mixture of DNA I cannot tell you...

Q But their DNA was -- both DNA's were found on that item?

A Yes, both DNA's were found on those items.

Q Regarding the machete item 12.1 and 12.2, I believe a mixture both DNA for Miss Parker and Mr. Henry were found on these items; is that correct?

A Yes, item 12.1 and 12.2 Tarus Henry and Carol Parker cannot be excluded as possible contributors to that mixture.

Q And finally, items seven of the set of swabs from a blood pool in the living room?

A The DNA profile developed from item seven matches the DNA profile of Carol Parker.

MR. HILL: I know it's been a long process, please answer any questions that the defense might have.

CROSS-EXAMINATION

BY MR. PARROTT:

Q Mr. Humbert, you talked pretty much over my head a little bit. So let me see if I can try and do this a little bit too. You're saying DNA is indicated on this item, this item, that doesn't mean it's all blood, does it?

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A Well, for the -- some of the items I did serology testing, which mean I tested them to see if I had a test for blood, which is a presumptive test meaning I can't be 100 percent certain. It's just a strong indication meaning blood gives chemical reaction that is positive in this test. And I visually limit it to see if it's the color of blood. If it's red, I do the presumptive test.

Q But again, it could be a skin cell, it could be something from saliva, it's just your finding DNA, right?

A On some items I get just DNA from a swab, it's not tested for blood.

Q And on some of these items even that were submitted to you that were even prescreened before they got to you, you didn't even find any DNA; is that correct?

A Well, they screened -- some of the items that screened positive for blood, I did not get a DNA profile or I got a insufficient for interpretation and that just means I didn't get enough DNA to get a valuable result.

Q Which means it's not enough for you to stand behind, right? It means you're not willing to testify to it and put it on a chart and say this is what it is?

A I'm not willing to say it matches anyone ---

Q Okay.

A --- from that item.

Q And even if you find DNA on something, you don't know

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the circumstances of how it got there, do you?
A No, I only receive swabs. I don't know how -- I didn't see -- witness the crime scene or the crimes.
Q You mentioned that -- and this is under the big idea of DNA, I guess. That you test 15 different locations to come up with what you use for your standard to then compare your samples to?
A Yes.
Q How many locations are there on DNA?
A As far as -- these are -- what we test are called repeats, they're called short tandem repeats and we only test 15 of those locations. There are probably thousands or more.
Q So out of thousands within each cell, you're picking out 15?
A We pick 15 ones that are tested and there have been studies on, yes.
Q You said also that once you've prepared your report that somebody else will look at to see whether or not your comparisons and what your results are, is that somebody else who's in your own SLED; correct?
A Yes, there are two, actually two reviews after me.
Q So ---
A There's a technical review and an admen review, so there's three -- two more reviews after me.

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Q But it's all done by your same agency, it's not like it gets shopped out?
A Yes, it's done by other analyst in the department.
Q All right. Given that you're finding DNA, but these two people live together, it wouldn't be unusual for somebody to have DNA on items where they live, would it?
A Well, it wouldn't be unusual if they had live there. I mean, yeah, if they live there.
Q Even I'm putting my hand right here on this podium today and this is where I work, by me having a sweaty palm or skin cell, I could leave my own DNA on this podium, would I not?
A You could leave you cells on that podium.
Q So even somebody just visiting an area could leave DNA?
A It's possible although it probably -- I don't know how much it would leave. I can't tell you.
Q Okay. In some of these items, you're calling them a mixture and some things you go on to say that they can't be excluded as possible contributors to it?
A Yes.
Q That doesn't mean it's only them, does it?
A Based on my opinion which I get from looking at the mixture, when I say it cannot be excluded the reason because the numbers from their profile are present in that

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mixture and that is why I'm saying they cannot be excluded.

Q Okay. But their numbers aren't necessarily their own numbers. There are other people could have those same numbers on those same 15 locations out of the thousands that are out there, right?

A Well, we only test these 15 locations and the numbers from the other locations are not going to be tested in these locations. Could you repeat the question again?

Q What I'm saying is that you're looking at it and saying these people can't be excluded, right?

A Yes.

Q But that doesn't mean it is just them, it means they can be part of a huge group or a much larger group because you're only testing 15 locations?

A No, the reason I'm saying that they cannot be excluded is because there's -- in those locations there are not numbers that do not apply to those individuals.

Q Okay. Double negative in what was your answer just then, so let me switch it back to you. You're saying their numbers match something that popped up there in what you tested?

A What I'm saying is the numbers from their standards are present in that mixture.

Q Okay. But they're not the only people in this whole

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universe who will have just those numbers, are they?
A There are other people with numbers at all these locations.
Q Okay. Thank you. On the machete though, it's just a mixture; isn't it?
A 12.1 and 12.2.
Q Correct.
A I can read off the results for them. The DNA profiles obtained from items 12.1 and 12.2 are mixtures of at least two individuals. Tarus Henry and Carol Parker cannot be excluded as contributors to these mixtures.
Q Okay. And what you found solely that you attribute to my client, Tarus Henry, you say are the cutting from his jeans, the cutting from his shirt, dish towels, and a rag or wash cloths excuse me, the hallway electrical outlet, the kitchen floor, the kitchen sink and a stack of napkins; is that correct?
A I believe that's correct.
Q And all of those things as far as you know are his or were found where he lives?
A Well, those were the only ones that only contain just the numbers from him. The other ones contain his numbers, but they contain more numbers of the mixture.
Q And again though you have no idea the circumstances upon how this happened or how it got DNA, it's just given

to you to test?
A That's correct.
Q Okay. You talked about the wallet in this matter that it came up in this item 15.1 for your notes as a mixture at least two individuals; is that correct?
A Yes.
Q And what you were stating was that you believed it to be from a third person with some DNA like theirs?
A I will say it's consistent with being an offspring.
Q A male offspring?
A A male offspring.
Q Given that they have a daughter and a son that's present here is only his son and not her's, do you have contamination in your lab or have you made a mistake?
A Well, it's not a mistake, I can walk through the profile with you and explain how it's consistent with from those two individuals.
Q But what you stated was you thought it was a male offspring to these two people, so I'm asking ---
A I'm saying it's consistent with being from those two individuals.
Q Okay. But given that there is no such child, you must be wrong; correct?
A No, that doesn't mean that I'm necessarily wrong, it just means that that profile is consistent with being from

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those two people.
Q Okay.
A Meaning that if you look at the profile each number from each of those standards is present in that profile.
Q Okay. And that gets back to what I was just asking you about a little bit ago, which is that just because they have those numbers doesn't mean there's not a huge group of people out there that wouldn't have the same?
A Well, the probability of them having the same is about one in a very large number because when I did the matches, I was doing the probability of someone having the same profile.

MS. PARROTT: Thank you. I have nothing further, Your Honor.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. HILL:
Q Mr. Humbert, would you like to finish your explanation to last question?
A Sure. I was trying to explain that when a profile matches another profile, we get a statistic for each location or for the profile and it's not -- it's typically a very rare number.
Q All right. How certain and confident do you feel about the results that you returned in your report?

A I am very confident in them.
Q And they were review and passed on and supported by your superiors; is that correct?
A Yes, they were.
Q The items that you tested, they either had -- is it correct that the items you tested either had the defendant's blood, the victim's blood or a mixture of the blood or the DNA of those two I'm sorry, I misspoke?
A Yes, that is correct.
Q All right. And they cannot be excluded as a donor of the DNA in those -- they cannot be excluded as the donors of the DNA on the items that you tested; is that correct?
A On ones that I stated, yes.
Q And is it your opinion that there is no DNA from a third person on the items that you test other than DNA belong to Miss Parker or the defendant?
A None that I detected or was able to get a profile from.

MR. HILL: Thank you. I appreciate your testimony.

THE COURT: Recross?

MS. PARROTT: No, thank you, Your Honor.

THE COURT: You may step down.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: I assume you want to excuse him?

MR. HILL: I do, Your Honor.

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THE COURT: Have a nice trip back to Columbia.

MR. HILL: Your Honor?

THE COURT: Yes.

MR. HILL: Might we take fair brief respit.

THE COURT: Yes, we'll do it in this fashion. I have been assign by the Chief Justice of the State Supreme Court what is called a possible class action activity of cases, 53 cases against various hospitals around the state alleging improper pricing. They are entitled to so-called hospital pricing cases. Some of those lawyers from as far away as Greenville, Charleston, Columbia, Greenwood and around are coming here at five o'clock today to do some preliminary motions. I don't want to waste 30 minutes, but if you need a recess right now ---

MR. HILL: I don't, I just needed to tell my witness goodbye and that was it. The jury been sitting here I didn't know if they needed a break.

THE COURT: Well, let's see if the jury's okay.

Are you jurors okay for 30 minutes? If you're not, raise your hand now. Are you okay for 30 minutes? All right, once again, five o'clock I'm going to stop and go to this hospital pricing litigation cases that are assigned to me.

MR. HILL: Thank you, Your Honor. At this time, the State would recall Officer Adam Moore.

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THE COURT: He remains under oath retake the stand.

WHEREUPON,

Adam Moore,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Officer Moore, primary purpose for your testimony at this point is really clerical or ministerial, you testified earlier and presented evidence that had been collected in this case. According to your records and the testimony that's been presented, is there any evidence outstanding that has not been admitted into evidence according to your records?

A Yes, there is.

Q What are those items?

A The items that the SLED agent spoke about the jeans belonging to suspect, shirt belonging to suspect, shoes belong to suspect, the rags which are a dish towel and a washcloth, the jeans belonging to the victim, one pair of gloves, one stack of napkins, and one wallet containing the ID of Tarus Henry.

Q And are those items present and did you examine those and are those here today?

A Yes, they are here today.

MR. HILL: Okay. Your Honor, at this time based upon

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the chain being established after the testimony from all witnesses, I think a sufficient chain has been established for those items to now be admitted into evidence.

THE COURT: What say the defense?

MS. PARROTT: Without objection, Your Honor.

THE COURT: In evidence. How shall we mark them as a unit or separate and distinct?

MR. HILL: Whatever's most convenient for the Court and purposes of the record.

THE COURT: Probably separate and distinct. How many items are there four?

MR. HILL: Your Honor, while he's looking at this point, the State doesn't need to demonstrate them to the jury.

THE COURT: No.

MR. HUMBERT: Nine items.

THE COURT: Nine items?

MR. HUMBERT: Yes, sir.

THE COURT: List them.

MR. HUMBERT: There is jeans belonging to suspect.

THE COURT: That's 66.

MR. HUMBERT: Shirt belonging to suspect.

THE COURT: Sixty-seven.

MR. HUMBERT: Shoes belonging to suspect.

THE COURT: Sixty-eight.

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MR. HUMBERT: Rags, there is a dish towel and washcloth.

THE COURT: Two rags 69.

MR. HUMBERT: Jeans belonging to victim.

THE COURT: Seventy.

MR. HUMBERT: One pair of gloves.

THE COURT: Seventy-one.

MR. HUMBERT: One stack of napkins.

THE COURT: Seventy-two.

MR. HUMBERT: One wallet belonging to suspect.

THE COURT: Seventy-three the wallet. Let her mark them.

(WHEREUPON, State's Exhibits Nos. 66-73 was admitted into evidence.)

THE COURT: Madam Forelady and members of the jury, these items marked in this fashion will be with you in the jury room. You may extricate them from the box, but please keep items separate and distinct as they are numbered. Thank you.

DIRECT EXAMINATION CONTINUED

BY MR. HILL:

Q Corporal Moore, while you were at the scene, did you observe what any law enforcement terminologies known as blood splatter?

A Spatter, yes, sir.

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Q Okay. Is that an area in which you have been trained?
A It is. I've had a class on blood spatter and the class went into detail.
Q All right. We looked at photographs earlier based upon your testimony and the review of the photographs, do you recall a particular area inside that apartment where blood spatter was evident?
A Numerous areas inside the apartment.
Q Why is blood spatter important and what does it indicate?
A Blood spatter can indicate where someone was shot, punched, kicked, stabbed, slashed any number of violence to the body that causes someone to bleed will create blood spatter.
Q Why is that significant in this case?
A In this case, the victim was violently attacked and the -- she was cut numerous times and there was massive amounts of blood throughout the apartment where she was attacked.
Q Would it be indicative of hard blows?
A The as far as ---
Q How much force would it take to cause blood spatter?
A A minor cut will bleed and may have like what we call 90-degree drops, which straight down drops. If there's

any kind motion to the blood say a slashing wound coming across would leave what we call castoff, which would be directional blood. High velocity spatter is equivalent to like a gunshot victim. If they been shot when the bullet hits, it releases blood and then it shoots out. So it's very fine particles, which is very fast moving with the way a bullet will be traveling through a body and it exits and creates blood spatter.

Q In what areas of the apartment, did you notice each of those types of blood spatter?

A The -- just to the right of the door where the shoe cubby was, the photographs you saw earlier where the John Deer little children's toy tractor was, that was consistent with castoff blood and directional blood if somebody just being beaten and or slashed at that area. The directional, you can show direction in the picture. The -- there was also 90-degree drops in the kitchen, which is consistent with someone standing and bleeding straight down. And the kitchen sink was also a 90-degree blood drop which would be consistent with someone standing and bleeding straight down, they're not moving. The hallway there was directional blood spatter is very low velocity to medium velocity blood spatter, which is consistent with again a beating, slashing, swinging of any kind of movement. On the file cabinet, there was also

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blood spatter which is consistent with a smear. And what a smear is is if I'm bleeding and I rub my face up against something or rub my arm up against something, I'm not going to leave just drops. I'm going to leave like an impression of my arm on the wall. On that filing cabinet was a smear, which is consistent with someone either -- whatever part of the body that's bleeding has rubbed up against that and that is what was found on the filing cabinet in the very back bedroom.

Q The blood that was collected and sent to SLED that was taken by you in each of the areas that you pointed out on the diagram earlier?

A Yes, it was.

MR.HILL: Please answer any questions that the defense may have.

MS. PARROTT: I have none, Your Honor.

THE COURT: You may step down. Thank you.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Next witness, please.

MR.HILL: Your Honor, the next witnesses I have would regard areas in which we had motions yesterday afternoon.

THE COURT: Yes.

MR. HILL: Officer Streett, Officer Bert Turner and then the physician.

MS. PARROTT: Your Honor, may we approach?

THE COURT: Sure.

(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

THE COURT: Jurors, we'll stop here in regard to this case. Please remember my two instructions to you as to the rules that govern your conduct, please, please help in that regard. And add the additional factor that Channel 15 did in fact have some television coverage of some nature of the trial. Do not watch Channel 15. Please be back at nine o'clock in the morning, nine o'clock in the morning. I'm told it's on South Carolina Now, I don't keep up with all that, but anyway some of you people know where that is, don't go there.

(WHEREUPON, the jury was excused for the day.)

THE COURT: In this case, what matters do you need to put on the record, Mr. Hill.

MR. HILL: Your Honor, I don't know that it needs to be on the record, but we did redact a statement according to agreement yesterday afternoon. That redaction is available for the Court to listen to if it would like to do so prior to it being presented to the jury, actually make the State comfortable to do so to make sure that there aren't any problems in presenting it to the jury if the Court would like us to do so. And I can do that in

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the morning, that will be ready in morning.

THE COURT: I don't want to start first thing in the morning with the Court spending time outside the presence of the jury. What is the length of that redaction?

MR.HILL: All we would need to do is show you the statement. Play it is probably 30 seconds.

MS. PARROTT: It's only a page and a half as far as the transcription goes.

THE COURT: May we do that now?

MS. PARROTT: Certainly.

THE COURT: Let's do that now.

MR. HILL: I have to get my IT guy to come up, so we can play it for the Court.

THE COURT: Okay, where has he gone?

MR. HILL: Your Honor, may we approach?

THE COURT: Sure.

(WHEREUPON, a bench conference was held.)

THE COURT: Mr. Turner, would you please stand. You are subject to being recalled. We have unusual specific rules in regard to witnesses who have already testified, but are subject to recall. During the nighttime hiatus, do not discuss this case with any lawyer. Do not discuss it with anyone in regard to your possible testimony tomorrow. You understand?

MR. TURNER: Yes, sir.

THE COURT: Thank you.

MR. HILL: Your Honor, I called and Mr. Godbolt is on his way.

(WHEREUPON, a pause in the proceedings.)

MR. HILL: Judge Anderson.

THE COURT: Yes.

MR. HILL: While we're waiting, I just like to advise the Court of the State's anticipated witness schedule for tomorrow.

THE COURT: Okay.

MR. HILL: Mr. Turner and then Officer Streett, Donna McDaniel, who you recall testified in the Jackson vs. Denno hearing. Mr. Henry's statement will be presented to the jury probably through Mrs. Streett's testimony. Then I have Miss Parker, the victim, and then Dr. Reynolds.

THE COURT: Okay.

MR. HILL: I'm not sure how long that will carry us into the day, but I thought the Court might like to know.

THE COURT: Yes, just have them ready to go because I plan to run without stopping, so we can complete.

MS. PARROTT: Your Honor, then on that note should the defense choose to put up a case, obviously, Mr. Henry and his mother will be here. But one of the witnesses I did list is a gentleman from out of Columbia. I have him on telephone standby for tomorrow, but to be here

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absolutely on Thursday if he didn't hear otherwise. Would you rather me go ahead and have him...

THE COURT: Tomorrow, tomorrow.

MS. PARROTT: Would it be okay with the Court then if I just told him maybe two o'clock tomorrow afternoon given the number of witnesses they have?

THE COURT: Yeah, I'll go with that.

MS. PARROTT: Thank you, Your Honor.

THE COURT: But definitely two o'clock tomorrow.

MS. PARROTT: Yes, sir, thank you.

THE COURT: And, of course, Ms. Parrott, I expect you to visit the Fifth Amendment issue with gargantuan specificity. And before we come to the point of his decision whether he will testify or not testify, I will engage in the procedure that is articulated in State vs. Orr and that will be done on the record under oath, so please during the nighttime hiatus spend sometime with him on that issue in reference to the Fifth Amendment Privilege.

MS. PARROTT: We were already doing that, Your Honor.

THE COURT: Thank you.

(WHEREUPON, a pause in the proceedings.)

THE COURT: What is the nature of the redaction? Counsel, give me your attention, Ms. Parrott.

MS. PARROTT: Yes, sir.

THE COURT: What is the exact language that we're talking about or something that is identifying what has been redacted?

MR.HILL: Your Honor, it's right here and I can mark it.

MS. PARROTT: Here he is.

THE COURT: Okay, all right. Put it up for me.

MS. PARROTT: Your Honor, just for your information, this is something that Mr. Hill and I actually did yesterday afternoon and agreed upon where it should start to be redacted and where it should end, so as long as that's what's been done, then it was agreed upon by counsel for the State and counsel for defense.

THE COURT: Well, I accept the redaction. I don't have to review it for my purposes as long you two officers of the Court have redacted the statement and it's going to be presented in a pristine form.

MR. HILL: It will. I just remember the Court's admonition to me and I wanted to make sure that I abided by it and let the Court know that I understood my directions.

THE COURT: Well, my admonition was simply do the redaction in a correct fashion and, Ms. Parrott, you agree it's been done?

MS. PARROTT: I know we agreed upon where it is in

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the transcript, I haven't myself heard it, but I know that's what it was.

MR. HILL: They haven't heard it and that's what I was attempting to do.

MS. PARROTT: We will.

THE COURT: Listen over the nighttime hiatus, make sure it's done correctly and I will leave that alone.

(WHEREUPON, the proceedings were concluded for the day to be reconvened on July 29, 2009.)

THE COURT: Good morning, everyone. Bring the jurors out.

(WHEREUPON, the jury return to the courtroom.)

THE COURT: Good morning, jurors. Everyone feeling, okay, today? I hope so. Jurors, let me discuss something with you in regard to news coverage of this trial. There was some news coverage on at least one television station. There was an article in Morning News this morning. Did any of you come in contact with the Morning News or the television reporting, if so raise your hand? Anyone come in contact? Let the record show that there is no response in regard to any kind of news coverage concerning the matter.

Mr. Hill, call your next witness, please?

MR. HILL: Your Honor, we like to call Bert Turner once again, he's already been sworn.

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THE COURT: Bertrum Lee Turner is the full name Miss Court Reporter, he has been sworn. Proceed.

MR. HILL: Thank you, Your Honor.

WHEREUPON,

Bert Turner,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Okay. Mr. Turner, we began with your testimony yesterday regarding the arson, but were you also involved in other aspects of the investigation in this case?

A I was.

Q And would you describe for the jury the other actions that you took in this case?

A Of course, as I stated yesterday during testimony, Investigator Streett and I happen to be riding together, we responded together to the scene. We arrived at the scene not only was I investigating the fire scene, but also we were trying to determine the location of the two small kids that were reportedly at the scene earlier that day. The investigation continued with statements from witnesses that were at the scene as well as information that we were receiving from the hospital, I believe, from Lieutenant Lutcken or Lieutenant Yarborough regarding the victim being dropped off at the hospital and the defendant

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then leaving the scene with the two kids in the vehicle. We were actually trying to determine what type vehicle and get as much information on that as we could to proceed with an Amber Alert.

Q Did you reach the point where an Amber Alert actually had to be given?

A No, we did not.

Q And was that because the children were found in Kershaw County?

A That is correct. We had received information that the defendant as well as the children were in Kershaw County.

Q And as a technical point, do you know the ages of the children?

A I do not recall the ages specifically. I can tell you they are small young children.

Q And did you arrive in Kershaw County?

A I did.

Q What roles or activities did you engage in while you were there?

A When we left the scene and proceeded to Kershaw County, at that time the on-call investigator who's duties began at 4:00 p.m., Investigator Timmons. Myself, Investigator Streett proceeded to Kershaw County in my vehicle. Investigator Timmons in his vehicle. And we

were followed by Crime Scene Technician Adam Moore in his vehicle. The purpose for that was to try to locate the vehicle that was used in this incident, locate the children try to attend to their welfare, as well as locate the defendant. We arrived in Kershaw County at the hospital, I believe in Camden there. At that time, Mr. Henry, the defendant, wasn't there, but actually, I think at the police department in Camden.

Q And you did not see him there?

A I did not.

Q In fact, you did not see him until you returned to Florence County?

A That's correct.

Q Did you locate an automobile believed it had been driven by Mr. Henry?

A We did.

Q Will you explain how you came to find that car?

A Sure. While we were at the hospital, the defendant's mother as well as the small kids were there at the hospital. Myself, as well as Investigator Streett spoke with her and the kids as well as a DSS worker in one of the conference rooms at the hospital. And she in turn relayed to us where the location of the vehicle was. The vehicle was located I think -- or initially the vehicle had been taken to the defendant's brother's house. And my

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understanding was the brother had had it towed from his yard and it was located in a impound yard or a wrecker yard.

Q And who took possession of that vehicle once you found it in the wrecker yard when you found where it been towed?

A When we located the vehicle, we -- the sheriff's office actually made arrangements for the vehicle to be towed from there back to the impound yard in Effingham at the Florence County sheriff's office impound yard.

Q At some point, did you receive a search warrant to have permission legally to go through the automobile?

A We did. It wasn't that day, it may have been the next day or so. I don't recall exactly, but we did a search of the vehicle wasn't conducted until a search warrant was obtained.

Q And have you had an opportunity to review the photographs that were made in this case?

A I have briefly reviewed the photograph, yes, sir.

Q Were you present when photographs were taken by Corporal Moore of the vehicle at the impound yard in Florence County?

A I was.

Q And were you present whenever the vehicle was searched?

A I was.
Q Let's discuss a few items that were found inside the car. Beginning with the compartment, what, if anything, do you know was found in the front passenger compartment?
A The front passenger compartment, of course, you know the items that naturally were in the vehicle the seats and things like that. They displayed some -- what I -- what appeared to me as blood. So there was some blood evidence that was photographed as well as most likely taken for analysis by Corporal Moore.
Q So do you know if that -- do you agree that that evidence had been taken and submitted to SLED for testing for DNA purposes?
A That's correct.
Q What was found in the rear compartment, the rear passenger compartment?
A The rear passenger compartment, I believe we found probably the child seats, as well as other materials and other common...
Q And are there photographs, I believe, there are photographs of both of these sections of the automobile; is that correct?
A That is correct.
Q All right. And eventually, you searched the trunk of the automobile; is that correct?

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A That's correct.
Q What, if anything, of significance, did you discover in the back -- in the trunk?
A During the search of the trunk compartment of the vehicle, there were several items some of which particularly stood out. One being a charcoal lighter fluid container as well as some other items with some -- what appeared to be blood evidence on those.
Q Were you present during testimony yesterday when the charcoal lighter fluid bottle as displayed to the jury?
A I was.
Q And is that the bottle that was recovered from the automobile?
A It is.
Q And were you the person that took custody of that bottle or did Corporal Moore take custody of it?
A That would be Corporal Moore.
Q Did you later determine that the charcoal lighter fluid bottle was important in your investigation?
A We did.
Q Okay. Now, at the time that you were searching the automobile, had Mr. Henry already been taken into custody?
A He had.
Q And had he already made a statement to law enforcement?

A He had.
Q And had you been present when that statement was reported and transcribed for the court?
A I was.
MR. HILL: Your Honor, I just need a moment to retrieve a piece of evidence.
(WHEREUPON, a pause in the proceedings.)
BY MR. HILL:
Q Mr. Turner, I'm going to display to you what's been marked as State's Exhibit Number 1. Would you examine that and just let me know if you're familiar with that form?
A Sure. This is the Miranda Warning form with a -- what we refer to as the waiver of rights section at the bottom of it.
MS. PARROTT: Your Honor, objection as previously raise in prior hearing.
THE COURT: Let the record show that we have heretofore held an in-camera hearing in regard to these issues. The objection is posited by the defendant. The defendant's objections run throughout this particular presentation. You agree, Mr. Solicitor?
MR. HILL: Yes, sir.
THE COURT: Suitable, Counsel?
MS. PARROTT: Yes, Your Honor.

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THE COURT: Thank you.

MR. HILL: May I continue?

THE COURT: Yes.

BY MR. HILL:

Q Officer Turner, now let's focus on what happened after Mr. Henry was returned to Florence County. When you met with Mr. Henry, was anyone else with you?

A Yes, sir.

Q And who were those people?

A That would have been Investigator Kathleen Streett as well as Calvin Timmons.

Q Do you know if Mr. Timmons is available these days?

A My understanding that he is presently out of the country working security contract.

Q And do you know which country he's working in?

A Afghanistan, I believe.

Q So he's unavailable?

A I would say he's presently unavailable, yes, sir.

Q Were you present whenever Mr. Henry was given what we commonly refer to as our Miranda warnings?

A I was present for at least one of those, yes, sir.

Q Okay. Were you present when he had the opportunity to sign the form waiving his Miranda warnings and gave a statement?

A I was.

Q So what's been marked as State's Exhibit Number 1 was signed and executed in front of you; is that correct?
A That's correct.
Q Just ---
THE COURT: Just a second, Mr. Hill. Madam forelady and members of the jury, the testimony that has been presented now relates to Miranda warnings and a possible statement. I will give you a detailed charge on the law in that regard and that law will be very very specific concerning Miranda warnings and the issue of whether the statement is free and voluntary. I will cover that with you in the charge.
Proceed.
MR. HILL: Yes, sir.
BY MR. HILL:
Q You stated earlier that you been with the sheriff's department for a number of years?
A I was hired on in 1993, 1993 through November 2008, that's correct.
Q As a part of your experience, were you required to attend certification training to be certified as a law enforcement officer?
A That is correct.
Q And who provided the certification for you?
A Certifications as far as law enforcement officer are

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through the South Carolina Criminal Justice Academy. I also hold certifications through other associations.

Q And during your work with the sheriff's department, did you receive continuing training in particular to our rights under the constitution, the laws that were to be followed and the taking and giving of statements?

A That is correct, continuing training and education pertaining to the field of our investigation as well as interview techniques and detective or investigator classes that is true.

Q All right. Some -- perhaps when the term or interview techniques is heard might raise some questions. What do you mean by that term and is there -- what techniques are employed is that a negative term -- just explain that term?

MS. PARROTT: Objection compound.

THE COURT: Proceed.

A No, there's no negative connotation whatsoever to interview techniques. This is well as myself, you know talking with anybody to gain any information that can very well -- you know, those techniques or procedures be applied to, you know, a witness who may be on the scene that we need to gain information from as well as, you know, a suspect or a defendant in a case.

Q Are you aware if there any sanctions that can be

imposed if you violate the rules in the taking of your ---

MS. PARROTT: Objection, bolstering.

THE COURT: Sustained.

Proceed, Mr. Solicitor.

MR. HILL: Yes, sir.

A I'm sorry would you repeat the question.

THE COURT: No, no.

BY MR. HILL:

Q I can't repeat that. During the taking of the statement in this case, did you follow all the procedures that you were trained to follow?

A I did.

Q When the statement was given -- well, let me back up. Do you know what time the incident in this case occurred?

A My understanding and I can't quote you exactly without the CAD report or the incident report in front of me, but my understanding it would have been around the lunchtime or early afternoon of the day.

Q Do you recall what time the statement was taken from you -- by you?

A Not right off, but I can tell you that would have been in the evening hours of that day.

Q During your time with the defendant, did you have an opportunity to observe him and to determine whether or not

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he suffering from any problems, if there was anything that concerned you prior to your taking the statement?

A Sure. I had an opportunity to observe him as well as Investigator Streett and Investigator Timmons who were also present.

Q Is there anything that concerned you that would have made you pause before you continued with a statement or interview?

A Not at all. In fact, the defendant had already received medical attention for I think maybe some wounds to his hand or injuries to his hand at that point.

Q Are persons of physical or mental condition something that are important to you when you take a statement?

A Sure.

Q Okay. Did you inquire about those either prior to or during the taking of the statement?

A Sure. It's very important to try to determine whether or not a person is under the influence of any alcohol or drugs at the time of a statement actually that would bear.

Q And was he?

A He stated, no, and didn't appear to be, no.

Q Describe the room or area in which the statement was taken?

A Room at the sheriff's office, we call it an interview

room. It's actually probably a room that was designed to be an office initially if you look back at the floor plans of the building. It's very non-threatening. There's a small desk, you know, with a tape recorder. There is a sofa-type couch as well as maybe a couple of other soft chairs or easy chairs kind of like what you had in your den at your home.

Q Was it well lit or was it dim?

A It was well lit.

Q Was there anything about the set up of the room or any materials in the room that would tend to make the defendant uncomfortable or purposefully make him uncomfortable?

A No, not at all. In fact, like I said a little earlier that is an interview room, that room is used to take statements from not only defendants involved in cases but witnesses or sometimes as used as just a conference room. There's nothing that could be perceived as intimidating from that room whatsoever.

Q Did Mr. Henry, the defendant, ever request that the interview stop or that he no longer wanted to speak with you?

A No, he didn't.

Q At any time, did he request the ability to leave to use the restroom to have some food or water given to him

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or to seek further medical attention?
A No, he did not, but should he had, I mean, he would have been allowed to. We were right across the hall from a canteen as well as the restroom and water fountain.
Q Were you involved in other actions in this case besides the arson investigation which you testified and the interview process?
A My involvement in this case initially was the fire scene investigation or the investigation of the apartment because of the fire. Then as an investigator not necessarily the fire investigator, but as another criminal investigator. You know, I followed-up with other things involving the case. As I stated earlier, you know, primarily to locate the children and then the defendant or suspect.
Q All right. What were the concerns regarding the children?
A Well, you know, when we notify to respond to the scene, you know, naturally we were looking in an apartment that had not only sustained some fair damage. I mean, but there was a huge amount of blood, so naturally, you know, that gave us cause for concern. The victim was at the hospital with some pretty severe and what I would say life threatening injuries, so naturally, you know, that gave us a lot of concern for the welfare of the kids.

Q So did you feel the children that their safety was in peril or in danger?
A Absolutely.
MR. HILL: Excuse me just a moment.
Q Were you involved in any other interviews in this case?
A I was actually -- as I recall, I think I may have been one of the prime interviewers of Mr. McAleese initially at the scene.
Q And were you present when he testified yesterday?
A I was.
Q Did you take a written statement or ask him to provide a written statement?
A I did.
Q Were you also involved in interviewing Carol?
A I was.
Q Were you present, I believe, with Investigator Streett during her interview?
A I was. Actually, as I recall it, it was a period of some days before we were able to actually speak with the victim and that was because of her injuries that she had sustained during the attack.
Q In reviewing the statement from the defendant, we need to examine this area. Were you made aware of error in the transcript -- error in the transcription of the

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statement or possible eraser in the statement that Mr. Henry gave?

A As I was reviewing the transcripts, I did notice that, yes, sir.

Q Okay.

MS. PARROTT: Your Honor?

THE COURT: Yes.

MS. PARROTT: Just to make sure that my objection previously also goes to this issue as well.

THE COURT: I want to make sure that is correct. Obviously, those appellate rules sometimes are difficult to apply. The objection has been posited by the defense counsel, that was done in the in-camera hearing. Rather than having the objections continued here in open court, I'm going to reserve those rights. Do you agree with that, Mr. Solicitor?

MR. HILL: Yes, sir.

THE COURT: No question about that is there?

MR. HILL: No.

THE COURT: All right. The objection runs to the entirety of this testimony including the issues surrounding the so-called statement.

MS. PARROTT: Thank you, Your Honor.

THE COURT: You welcome.

Proceed.

MR. HILL: Yes, sir. Please answer any questions the defense may have.

CROSS-EXAMINATION

BY MS. PARROTT:

Q Investigator Turner, this interview and this investigation actually went over a period of quite a few days, did it not?

A Which particular interview are you asking about?

Q The whole process of this investigation went over a period of days, did it not?

A Yes, it did.

Q And you were involved in it basically from start to finish would you say that?

A I think that that would be most likely a safe assumption. I don't -- I'm a little hesitant to say about finish because naturally should any new evidence or anything arise, you know...

Q At least until November of 2008 whenever you left sheriff's office; correct?

A That is correct.

Q Okay. But there is something that you and Investigator Timmons and Investigator Streett all worked on together; correct?

A That is correct.

Q And actually forensics as well, SLED -- there's a

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bunch of communication with a bunch of law enforcement in this case?

A Sure. We like to call it a team effort, that's correct.

Q All right. But the investigation and the interview of Mr. Henry was the three of you with just him in the room, was it not?

A If you're asking who was present during his statement, that is correct. It was myself and Investigator Streett and Investigator Timmons along with the defendant, that's correct.

Q And you had already met him up at Camden -- at the hospital at Kershaw County?

A No, ma'am, I hadn't met nor had I ever seen Mr. Henry until we arrived back at Effingham.

Q Okay. So Investigator Timmons was the only one who did that?

A That is correct.

Q And as far as you know, Investigator Timmons is the only person that transported him back to Effingham?

A When we arrived, that is correct. When we arrived at the medical center or the hospital there in Kershaw County, Investigator Timmons was directed to proceed to the police department and transport the defendant back to Effingham.

Q And as far as you know, he's the only one in the car with him?
A That's a pretty safe assumption, that's correct.
Q And could you approximate for me the amount of time it takes to travel from Camden to Effingham and the detention center?
A Well, it depends on what speed you drive. I would say ---
Q Let's go with the speed limit?
A I can tell you if there was a since of urgency or exigency, it takes a little less time to get there, but on the way back, it should be normal. I would say maybe 45 minutes to an hour, I'm not sure.
Q Okay.
A And that would just be a guess.
Q Okay. So we're going from like Exit 98, 92 depending on which one you use I-20 to Effingham; correct?
A I'm not sure what route Investigator Timmons took, so I'm really not sure how much time that's just an approximation. I would think that it would probably take around that time.
Q All right. So an hour give or take?
A An hour give or take, maybe.
Q Okay. And you don't know -- you can't testify as to what kind of conversations were held during that time that

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those two were alone in a car, were you?
A I cannot, no.
Q And you're stating that you got involved in this case in -- if I told you 11:40, 11:50 in the afternoon when it's first called in would that seem about right for you?
A Well, I don't have any reason to doubt you that would probably be in the time frame that I got in mind.
MS. PARROTT: May I approach, Your Honor?
THE COURT: Yes.
BY MS. PARROTT:
Q Would you identify this for me, please?
A Sure. This appears to be the report from the Florence County central dispatch center.
Q And that's commonly known as a CAD report?
A It has been referred to as a CAD report, that's correct.
Q And the CAD report reports times and arrival of certain people; is that correct?
A It does.
Q At times of dispatch?
A It does.
Q And what time does it have for dispatch on the list?
A Looking at the highlighted area for the incoming 911 call that is 11:46, that would be 11:46 a.m.
Q All right. And according to the information that

even what you said, the fire department arrived first; correct? They were already on scene when you got there?

A That is correct. I can't tell you that they actually arrived at the scene first, but they were present when I arrived; that's correct.

Q Okay. Do you know -- can you read from that CAD report about what time you arrived? Would the incident detail be necessary for you determine that?

A Sure. The CAD report shows -- and what I'm looking for, I'm looking for my radio call number on here and shown on scene and that looks like it was 1351, which would have been 1:51 p.m.

Q Thank you. And do you know what time it was that you got to Camden?

A I don't recall exactly. Naturally, we would have been out of radio communication with our dispatch center, so the CAD sheet wouldn't necessarily show a time that we called in on the scene.

Q Okay. Do you know how long you met Mrs. Resia Henry, Mr. Henry's mother?

A I can't give you an approximate or exact time, but I can tell you we were long enough to feel certain that the welfare of the children was being attended to.

Q And that is the conclusion you came to is it not? That the children were safe?

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A That is correct at that time.
Q Had the children -- did the children have any cuts or bruises or scraps on them?
A No, they did not appear to have any injuries.
Q And when you inspected the car, you found the children's car seats in the car, did you not?
A That is correct.
Q So children weren't upset or agitated any more than a child might normally be being in a hospital?
A Well, I can't attest ---
MR. HILL: That's speculation for which I don't believe ---
THE COURT: I'm gone let her inquire in regard to some of this because we are looking at 63-5-70 and the subsections that may or may not be applicable, so I would overrule the objections. I'm going to allow some liberality so as to see if we come within the ambit of the statute.
Proceed.
BY MS. PARROTT:
Q If you can't answer, I mean, that's fine. I'm just asking did they seem to be any more agitated than they might be in -- like a child in a normal setting, in their normal home?
A I really can't say.

Q Okay. That's fine. His mother was taking care of them at that time?
A My understanding was that that is true.
Q And when you interviewed her, you found out that they had -- he had met her in Bishopville; is that correct?
A Actually, I think Investigator Streett probably spoke with the mother a little more than I did.
Q Okay. Were you not present at the time that that was occurring?
A Actually, I was trying to make an effort to locate the vehicle at that time and Investigator Streett was probably attending to the children's welfare and speaking with the mother along with the worker from DSS.
Q All right. So what you would have then are simply your visual observations and maybe a little bit of listening then to what -- how the children were?
A Correct.
Q Okay. You didn't ever have to issue that AMBER Alert for those children, did you?
A Thankfully not.
Q Right. Because you found out that they were being taken care of?
A That is correct. If it hadn't been for the notification from the Kershaw County Medical Center, most likely there would have been an AMBER Alert issue.

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Q Okay. You were also involved in finding the car as you just referenced; is that correct?
A That is correct.
Q And when you did one of the things that you pointed to and had collected as part of this investigation was a lighter fluid bottle, is it not?
A The lighter fluid bottle was found at the execution of the search warrant, which occurred the day after or days after while the vehicle was located at the impound yard in Effingham.
Q You don't know what had happened with the car between or before it got to your impound, do you?
A I can tell you my understanding what was told to me, but I can testify that nothing happened to the vehicle other than it loaded up on a roll back and taken to the impound yard once we located the vehicle.
Q All right. So once you find it in Camden excuse me -- in Bishopville or where it was taken in Bishopville ---
A Actually, I think it was Brown Town maybe a little community where ---
Q Right outside of Bishopville, okay. In that area then, from that impound yard or lot it was towed to your impound yard and then thereafter, that's the only time you can vouch for who had access to this car, is it not?
A That would be a safe assumption, yes.

Q Okay. When you did find the charcoal -- the charcoal lighter fluid bottle, did it have any blood on it?
A It did actually appear to me to have what look like some blood.
MS. PARROTT: Beg the Court's indulgence, Your Honor.
THE COURT: Yes. It's got to stay back like that when you put it back.
MS. PARROTT: I certainly will, Your Honor. Thank you.
THE COURT: Okay.
BY MS. PARROTT:
Q Is this the item that you believe was collected?
A It is.
Q And you were present whenever Crime Scene Technician Moore would have taken this?
A That is correct.
Q Okay. And would you tell me where you believe you saw blood on this bottle?
A Sure.
Q Certainly.
A If you will see these spots on the side of it red in color from looking at just this portion, there appear to be five different spots?
Q So orange in brown color at this time?
A That's correct that's what I was referring to.

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Q Okay.

MS. PARROTT: Permission to at least show the jury, Your Honor?

THE COURT: Yes.

BY MS. PARROTT:

Q And we're talking about if you were looking straight on at the bottle what's on the left side of it?

A It depends on how you reference the bottle.

Q If I'm looking straight at it and turn it, would it not be on the left side?

A You're displaying the correct side to the jurors.

Q All right. And this bottle is also covered in black dust, which it's indicative, but it's not a new bottle, is it?

A Well, the -- what you see on there and refer to as the black dust that was done during processing at the crime lab.

Q Okay. Thank you. That's the only spots that you see that you refer to what you thought might be blood?

A Would you like me to examine it more closely look for more?

Q Did you ask for any of it to be tested?

A I don't recall whether or not we ask it excuse me -- whether I ask that to specifically be tested for blood.

Q But if it was something that you thought was

important, you would have sent it would you not?
A Well, I mean, it actually did go through processing as you can see not only for latents but...
Q But you would have specifically ask for that to have been done, would you not? You would want that to be tested?
A I would, yes.
Q Thank you. You state that you had no concerns about Mr. Henry and his ability to answer questions whenever you did the interview; is that correct?
A That's correct.
Q Do you ever check behind what someone tells you is there level of education whenever they're giving you this statement?
A Well, that is part of the job description trust but verify.
Q Okay. So let me be clear as part of this not only the Miranda form, you also did a statement and interview form; is that correct?
A That is correct. As a matter of fact at the beginning of the transcript, the questions that are asked name, address, age, date of birth, social all that is on the interview form. And actually, Investigator Timmons was asking those questions, you know, on that form and that was recorded in the transcript.

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Q But you're taking that person's word for it, are you not?
A To an extent. We try to believe until it just doesn't make any sense any more.
THE COURT: Just a second, Counsel.
(WHEREUPON, a pause in the proceedings.)
THE COURT: All right, thank you, Counsel.
MS. PARROTT: Thank you, Your Honor.
BY MS. PARROTT:
Q Refreshing my memory also. You're taking their word for the answers they're giving you as part of that interview sheet or that interview start; correct?
A Well, naturally, we want the truth and we want them to tell us the truth, that's correct.
Q Okay. But you're not immediately, you know, taking a break and going and verifying everything that they're saying?
A No.
Q Okay. And you're saying you had no concerns about his physical or mental health at the time?
A Well, I didn't say that. Naturally, we have concern that's the reason that we ask those questions.
Q And you did state that he had been treated at Kershaw County, you saw some evidence of that?
A Sure. As a matter of fact, he had bandages on his

hand. We didn't remove the bandages and expect -- or inspect his injuries at that time during the interview, no. But it was pretty apparent that he had receive some medical treatment for some injuries to his hand.

Q Did you know the extent of the injury that he had received?

A I do not other than evidently medical personnel didn't see fit to keep him at the hospital and a bandage suffice.

Q So you don't know if they gave him any medication as part of the treatment at Kershaw County?

A Nothing other than what the defendant said and his response was no.

Q Okay. But you continued in the interview to then ask him if he was prescribed to take any medication, did you not?

A Sure, that's pretty much standard question during the course of an interview conducted by myself anyway.

Q And do you recall what his answer was?

A I believe that he said at one point, I think, there may have been made a couple references during the statement to some things. I think maybe immediately know and then maybe a pause. I have to look back at the transcripts to tell you exactly, but he made reference to some medications. But as I recall, the defendant stated

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that it had been some years. In fact, I think maybe back in 2004 since he had been taken off the medication.

Q Do you recall -- and tell me if this is provided to you, but do you recall who told you that he had been on Zyprexa?

A I can't say -- he did -- if you're asking me was that the specific drug without looking back at the transcript, I couldn't tell you, but that very well may be the drug that he mentioned.

MS. PARROTT: Permission to approach?

THE COURT: Yes.

BY MS. PARROTT:

Q Does this look like a portion of the statement that you took from Mr. Henry?

A It does. This appears to be page six, seven and eight of the transcripts from the interview that day.

Q Okay. And if you could look towards the bottom of that page when you're asking him if he's on any medication and I believe you do ask it multiple times, but does he not tell you that he was on Zyprexa?

A He says he was on Zyprexa.

Q And what other medication?

A Some diabetes medication. He states metamoric (sic). I'm not sure that's -- appear -- I'm not sure if that's the correct pronunciation.

Q All right. And did he then go on to tell you why he had been prescribed Zyprexa? Did he not tell you that he been diagnosed as schizophrenic or maybe even psychotic previously.
A I think his statement was that he was prescribed for schizophrenia. I think he said he had problems sleeping and then psychosis, I think he says.
Q And at that point with him having told you that he has been at least diagnosed as schizophrenia and treated for it in the past, you didn't see fit to seize the investigation or the interrogation?
A No, actually, it did give me some cause for concern, you know, I wanted to make sure in my mind, you know, that we were proceeding and he wasn't under the influence. In fact, we asked him, you know, was he suppose to be taking any medications. And I think his statement was, no, his doctor took him off that medication back in 2004.
Q Okay. And also with him being diabetic, that's also a concern I would think and something that you need to be aware of as an investigator making sure that someone's insulin and everything is staying at the right level, so that they can give their interview?
A Sure. If he had any symptoms of, you know, going into any kind of diabetic condition naturally that would have gave us some cause for concern.

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Q But you never offered him water or food as part of this whole interview process?
A Well, you know, we're there to speak with him, interview him and obtain the statement, not to necessarily feed him. But at any point, you know, he'd ask for, you know, any water or any food. You know, naturally, we would oblige. And I can't say for certainty that, you know, he wasn't offered a drink.
Q You just know you didn't do it; is that correct?
A Well, to be honest with you, I don't recall if I offered him a drink or not. I may have or I might not, I just don't recall.
Q Okay. You've had an opportunity to review your statement prior to today's testimony though, have you not?
A I have.
Q And do you recall seeing it in that -- in any of that 50-page statement as to your offering him such?
A No, I do not, but naturally that's something that would have probably occurred once we entered the room and made preparations for his statement.
Q So all of your conversations with Mr. Henry were not recorded?
A Well, as I walk in the room and formalities, you know, I'm Investigator Turner and this is Investigator Streett, would you like something to drink or do you need

to use the restroom before we get started, no, that wouldn't necessarily be on tape.

Q Do you know if he was already booked in at the time that you were taking this statement from him?

A I don't know for sure, but I don't think so.

Q Your sheriff's office puts information out there on the web, is it not as to people who get booked and what they're booked for?

A They do.

Q And is this not the booking information for Mr. Henry?

A Well, I can tell this looks like a screen shot from -- if you went to the sheriff's office web site to their bookings page.

Q All right. And what time does it say that he was booked in?

A Booking date time 6-23, 2008 at 1926.

Q Okay. So 7:26 in the evening?

A 7:26 in the evening that's correct.

Q I'm sorry, thank you. And do you know what time your interview started with Mr. Henry?

A No, I do not right off without looking back at the statement.

Q Would you identify that information for me, please?

A We have the Miranda warning as well as the waiver of

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right section on one sheet. There is the statement and interview form. Then we have looks like the cover sheet from the statement of Tarus Henry as well as page one and two of that statement.

Q And could you tell me the time that is actually recorded there on the interview sheet page one for what Investigator Timmons says at the time?

A Says June 23, 2008, time is now 2005 p.m., that would be 8:05 p.m.

Q And these are all done at the same time are they not or as part of the same process?

A Well, it's all part of a process I can tell you that.

Q Okay. So this statement and interview form does it not say 2005 as well?

A It does.

Q And yet on this waiver of rights form, what times are recorded on that?

A Down at the bottom of the sheet it has 2000, which would be 8:00 p.m. At the time, it's got 2015, which will be 8:15 p.m.

Q Thank you. By that time, would you not agree that he's already been in police custody for a few hours?

A No, I wouldn't say that not for a few hours.

Q Okay. He's been at Kershaw County with an officer there in the -- at least in the presence of, booked in

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upon his release and taken by Investigator Timmons from Camden to Effingham, booked in at 7:26 p.m. and then the interview started at 8:05, you don't see that that might be a few hours time?

A I can tell you that my understanding that he was actually at the Camden police department. I would say well less than an hour before Investigator Timmons actually transported him back to Effingham. So hours, plural, I would say most likely not.

Q But he was not free to leave even at Camden, was he?

A No, while he was at Camden actually I think the police department had actually served a hit, an NCIC hit where they detained him pending our arrival.

Q And do you know how long your interview with Mr. Henry lasted?

A No, not looking back at the transcripts, I can't tell you exactly. I can tell you with a reasonable degree of certainty it was more than ten minutes less than two hours.

Q There's a lot of difference between ten minutes and two hours; isn't it?

A There is. Maybe, I can help clean that up for you a little bit. This is page 50 from the statement.

Q And what time does it report, does it have as the investigation or the interview having ended excuse me --

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the interview having been ended?
A 9:02 p.m.
Q Thank you. So at least, it's 8:05 to 9:02 p.m. that it's the three of y'all and just him in a room with no breaks, no water, no food, no restrooms, and his having an injury and also having been told you that he has some sort mental illness in the past?
A I can tell you that the defendant received more breaks and more attention than the investigators who work this case.
Q In that hours time?
A Excuse me.
Q In that hours time, that he's doing the interview?
A During the interview, no, I'm talking about during that day.
Q Okay. I ask the question, sir. One last question you said mention something about the room and its contents. You said you something about that you would describe the chairs as a soft chair or an easy chair like you might have in your living room. You don't mean a La-Z-Bo, do you?
A No, naturally not a recliner, no.
Q So it is something that a person is comfortable in, but not too comfortable; correct?
A Something you can seat on and go to sleep.

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Q Some of us can do that about anywhere, but at this point, what you're saying it's something that -- it's a sheriff's office, you're not going to be spending a lot of money on the contents therein unless y'all are blowing money, but it's a chair fit for an interview, is it not?
A It is.
Q Okay.
MS. PARROTT: Thank you. Nothing further.
THE COURT: Redirect?
MR. HILL: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. HILL:
Q Mr. Turner, there were questions during the cross-examination regarding time, what was your first -- when did you first see Mr. Henry?
A The first time that I saw Mr. Henry was when Investigator Streett and I arrived back at the sheriff's office and then that was after locating the vehicle and seeing that it was impounded and towed to our at facility in Effingham.
Q Had Mr. Henry already been booked into the Florence County detention center prior to your arriving?
A That I can't say for sure. Like I stated earlier, I don't know, but I don't think so.
Q Was your first contact with him in the interview room

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however?
A It was.
Q How soon after you arrived in the interview room did the statement begin?
A I would say probably within five minutes or less.
Q Did you have any conversation with Mr. Henry prior to the formal statement being taken?
A Nothing other than possible formal introduction, who I was and as well as Investigator Streett.
Q Did you seek to gain any information from him prior to the statement being taken?
A No, I did not.
Q I like now to focus on the charcoal lighter fluid bottle. What information did you receive that made that important for you to take into evidence?
A It's actually the defendant's statement stating that he had use charcoal lighter fluid to facilitate or set the fire at the apartment.
Q Is that something for which you were aware or did you know that that was the case prior to your taking this formal statement?
A No, we did not.
Q So is it correct that based upon his statement during the interview that that was the reason for that piece of property being seized?

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A That is correct.
Q During the interview process, there have been questions concerning the safety and welfare of the person being interviewed. What, if anything, did you do to affirmatively on your own initiative do to make sure that the person being interviewed, Mr. Henry, was all right. I know that is a large big term, but that he was okay?
A Sure. Well, naturally just from observation, you know, looking at Mr. Henry he was much as just as he appeared in court yesterday and today. You know, no outward appearance of any problems whatsoever. And then naturally, we also ask, you know, if they're currently under the influence of any alcohol and or drugs.
Q Was there an urgency to take the statement at that time or could it have been taken at another time?
A From my past experiences, it's always the sooner the better.
Q And why is that?
A Well, simply because it's a freshly committed incident. Naturally, you know, the longer the amount of time draws out, the less that a person or persons are likely to remember.
Q So it's important to solve the crimes as quickly as possible?
A Absolutely.

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Q During the interview process with Mr. Henry, was there any affirmative action taken on his part to cease the interview?
A No, there was not.
Q Did he ever ask for an attorney?
A No, he did not.
Q Did he ever ask to use the restroom or water or food or any other break or necessity?
A Not that I recall, no.
Q When you arrived at the interview room, did you observe any other injuries to him other than to his hand?
A The bandage to the hand primarily was, you know, most obvious, I don't recall observing any other injuries.
Q Did he speak in a coherent voice, did he appear tired?
A He did not appear tired nor did he appear excited, he was, I guess, you could say pretty indifferent.
Q All right.

MR. HILL: Please answer any questions the defense might have on recross.

MS. PARROTT: Beg the Court's indulgence, Your Honor.

RECROSS-EXAMINATION

BY MS. PARROTT:

Q You were there during the whole time this interview was conducted; correct?

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A That is correct.
Q And all three of you were asking questions all at the same time basically; correct? Or had opportunity to?
A I agree all three of us had the opportunity to that's correct.
Q And sometimes y'all bleed over on to one another, did you not?
A That would probably be a safe assumption at times. There may be instances where two of us are trying to talk at the same time.
Q But you're saying even with three of you in there two of you possibly going at the same time. You think you made sure of that -- and he was okay?
A Sure.
Q Do you not recall not only you, but also Investigator Timmons making observations about his state of being at the time and asking him questions about his state of mind at the time?
A I need for you to be more specific exactly what you're asking.
Q I present to you page 40. Were you not there when Investigator Timmons was making that comment about just look at him? Again, see that there's a problem. And I'm paraphrasing, I can read it directly.
A If you would, if you don't mind, I'll try to follow

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where you talking about on the page.
Q All right. It's the highlighted portion right here where it says -- and this is Investigator Timmons; correct?
A That is correct.
Q Says, Tarus, you need some help man too, okay, I mean, I mean, I'm not a psychiatrist or a doctor or anything, you know, but I, I from just sitting across the table I can see you need some help, okay. Were you not there when that was said?
A I was there when that was said.
Q Okay.
A But I do agree with Investigator Timmons he is not a doctor.
Q But you also agree that as an investigator in having had years of experience in interviewing people, you can tell when somebody is uncomfortable?
A Absolutely.
Q And you can tell whenever you got somebody that might need some help?
A Absolutely.
Q Especially, if they told you that they been on medication?
A When they tell me that the medication ceased four years ago, that doesn't give me a lot of cause for

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concern.
Q But you also know that people cease medication don't even take all their medication?
MR. HILL: Objection, Your Honor.
THE COURT: I'll allow some leeway in regard to the matter. Rephrase the question, it's cross exam.
MS. PARROTT: Thank you, Your Honor.
BY MS. PARROTT:
Q You know that some conditions lend itself to where people don't necessarily comply with the medical treatment?
A Sure. But the way I understood it and I think that the way that the transcript showed is actually -- he states that it was at is doctor's request and the doctor took him off of the medication.
Q But again, you don't always expect everybody to tell you the truth in everything they're saying, do you?
A I would like that they tell me the truth, we try to give everybody the benefit of the doubt.
Q Especially somebody with a mental condition. You're looking for the truth in all of their answers?
A I can tell you and to rephrase Investigator Timmons, he's not a doctor and I'm not a doctor. Evidently, the doctor made the decision to take him off the medication.
Q Had he previously told you that he also tried to cut

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his wrist? This is not page 23?
A He did make that statement as well as some statements to a fire that occurred at his home when he was younger.
Q Okay. And all those things tend to go with mental illness, do they not?
A Not necessarily.
Q But they can, right?
A I would say they could. Of course, a doctor would be more oblige to testify as to that, but I would say that is possible, yes.
Q Okay. And during this whole interview time, do you maintain that you never put any pressure on Mr. Timmons whatsoever?
A No pressure whatsoever.
Q Yes, sir.
A That's what I maintain. I mean, there was no pressure, you know, whatsoever. Actually, it was a conversation much like what we're having now. There were no moments of any yelling or anything such as that, if that's what you're referring to as pressure.
Q Okay. He told you he was still bleeding, did he not?
A I don't recall if he said he was still bleeding or not, that doesn't... I can tell you naturally if we observed him bleeding we would have taken care to get that attended to.

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Q This portion I underlined in blue down at the bottom. Does it say I'm still bleeding?
A He does make that reference to, I think, a conversation that he had had earlier that day with his brother. I can tell you that we observed no blood or any wounds. Like I said, he was bandaged if that's what he's referring to where he was bleeding at.
Q Okay. But the exact quote is I told him -- and he's talking to his brother. I told him I was bleeding real bad, which I'm still I'm bleeding. So I'm still I'm bleeding would be that time, would it not?
A I guess, you could see that as that, it's hard to understand if he's referring to the time earlier in the day when he was talking to his brother or then, but I can tell you we observed no blood.
Q Did you not tell Mr. Henry you don't, you don't want us to end up in the courtroom, you know, with 12 people, you know, listening, and hanging on to every word we say is that while we know this is a lie that you told us, you know, when we ask you this believe me, you know, we don't want that for you. You don't want that for you because I can tell you that our judge and a jury they have absolutely no problem with handing down a guilty verdict excuse me -- handing down a guilty verdict and a pretty sever sentence when we make people out, you know, to be

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lying in court. We don't want it to go that far. Did you not tell him that?

A I can tell you that there is a word in there that is totally out of character for me to say and I think that is the our judge. I would really like to listen to the portion of the audio. I think that is a judge instead of our judge.

Q Okay. But you would maintain that you still told him that, so that you're trying to persuade him or at least coax him even possibly threaten or cause duress into how he gives his statement?

A I want him to understand that it's better to tell the truth because if he is made out to be a lier in court, that judge and or jury tends to feel better about the outcome of the case.

Q But you weren't concern with him lying; isn't that what you told me?

A What concern with him lying?

Q Right.

A I don't understand.

Q You told me you took his word for things?

A I told you that we try to give everybody the benefit of the doubt. We like for them to tell us the truth.

MS. PARROTT: Again, beg the Court's indulgence, Your Honor.

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THE COURT: All right.
BY MS. PARROTT:
Q Didn't you ask him about why he wouldn't just go ahead and tell you basically what you thought had happened?
A I'm sorry can I look at the transcript again to refer to what you're asking.
Q Okay.
MR. HILL: Page, please.
MS. PARROTT: Sorry, this is page 31.
Q Why don't you go ahead and tell us what happened. Isn't that what you said?
A I don't deny saying it, I'm just trying to find it on the sheet exactly what you are talking about.
Q Going back, that's why what happen happened, why don't you go ahead and say it. I mean, I can understand that think anybody else will to.
A Sure.
Q And you're telling him -- tell me what you think as long as I understand it, right?
A Tell the truth that way we can all understand it, that's true.
Q And again, you would have been present when Investigator Timmons says, but, I mean, if you gone tell a story like what you just told us, the jury would say, Man,

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this guy he's not working with a full deck. Okay, but you have to be real with us because the people -- we real people and in the jury box is real people. Do you recall that statement?

A I can tell you that the transcript shows that that's what Investigator Timmons said and I believe that is in fact what he said because the transcript shows it.

Q Okay. Would you maintain that's just a normal part of questioning then to tell somebody about y'all can do with juries and judges and all that?

A It's common. I had made that statement to a person during the course of an interview before absolutely. I want them to understand that it makes them look bad in court when they lie and I proved that that is in fact a lie.

Q But you're telling them that after they been locked into a room with you and at least in this case two other investigators after they been booked possibly in this case and under all these afore-mention conditions with the mental state and no respit, no changes or nothing; is that right in an hour worth of questioning?

A I can tell you that if the defendant had shown any symptoms of any medical condition, physical or mental, the interview would have ceased and we would have attended to him.

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Q He told you he was bleeding?
A We observed no blood. He was bandage at that time.
Q So it's what you believe and not even necessarily what he tells you?
A If we can't see any blood, you know, all he had to do is point it out to us. I don't recall that being a key issue during the statement. It's not like I'm bleeding, you know, or I need medical attention right now. He had already receive medical attention to his hand at that point had already been bandage and attended to.
Q But you're the one who control the keys to the door, do you not?
A I had heard that phrase before. I wouldn't necessarily say that I'm the key master or I control the keys to the door. I'm a small part of a process.

MS. PARROTT: No further questions.

THE COURT: Redirect?

MR. HILL: None, Your Honor.

THE COURT: You may step down.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Next witness going to be lengthy? You want to take a recess here or you want to ---

MR. HILL: Your Honor, the next witness is Donna McDaniel, who was the transcriptionist. You might recall her testimony during the Jackson vs. Denno hearing. I

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don't expect it will be any longer than that.

THE COURT: Is everybody on the jury, okay? Everybody, okay?

Proceed.

MR. HILL: Thank you, Your Honor. Donna McDaniel.

THE CLERK: If you would place your left hand on the Bible and raise your right hand to be sworn. Do you swear the testimony you give in this case will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Be seated and state your name for the record.

THE WITNESS: My name is Donna McDaniel.

WHEREUPON,

Donna McDaniel,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Okay. Ms. McDaniel, are you employed at the Florence County sheriff's office?

A Yes, I am.

Q And do you work specifically in the investigations division?

A Yes, I am the office manager.

Q And are you often asked to listen to recorded

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interviews and to transcribe them into writing?
A Yes, I do transcribe them.
Q And were you asked to transcribe the defendant's statement in this case?
A Yes, I was.
Q During the transcription, did you discover that a area of the tape was erased?
A Yes.
Q Would you please explain to the jury your knowledge about that incident and the eraser?
A Can I have the dictaphone, please.
MR. HILL: Your Honor, permission for the witness to step down and display to the jury?
THE COURT: Yes.
Q If you would step down, please.
A This is a dictaphone this is what I transcribe ---
THE COURT: Ms. McDaniel, you got to talk a little louder now. All of us need to hear and especially the court reporter needs to take down everything help me.
A This is a dictaphone and this is what I transcribe tapes on. This is -- you stop, you forward and this is a recording button. I was very busy that day. I don't know quite what I was doing that day, but I was answering the phone. And I also have the radio on. So I'm thinking when I turn back around to press the listen button, I

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accidentally hit the record button. Soon as I discovered that I hit the recording button, I stopped it and I noted in my hard copy that I made that mistake. I noted two places, I noted where I thought I stopped and also noted at the end of the statement that a proof reader of the statement would have problems because I press that button recording.

Q Is that the machine you used in this case?

A Yeah, this is the machine and it does have a peddle to it I also have that, but this is the machine I use to transcribe.

Q All right. You might have a seat in the witness box. You can hold that with you. Ms. McDaniel, how long have you been employed with the sheriff's department?

A Approximately 12 years.

Q When you discovered what happened with this transcript, did you report it to anyone?

A I immediately documented and I spoke with the investigator who was handling the case.

Q And the name of the investigator?

A Kathleen Streett.

MS. PARROTT: And again, Your Honor, since this is a different witness, I maintain my objection as well.

THE COURT: The objection is continuing. The objections are preserved for purposes of appellate review.

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Proceed.

MR. HILL: Thank you.

BY MR. HILL

Q Ms. McDaniel, I'm going to show you a copy of the statement you wrote. Would you review it to make sure it is your statement and then read that to the jury. Would you read it to the jury?

A Please be advised that the record erase was pressed on the machine erasing a portion of the statement. Although, I believe the portion was already typed. The portion erased was unable to be proofed by a proof reader, Office Manager Ms. Donna McDaniel. The location of the erased portion is on line up on side B and then I put my initials DM.

Q Were there any punishments or sanctions given to you because of this?

A No, because it was an accident.

Q Did anyone discuss your method of transcribing this prior to you actually -- taking a tape and beginning your transcription. Did anyone give you instructions?

A No, basically she just told me that she needed this tape transcribed.

Q Were you aware of any -- had you been involved in any investigation in this case?

A No.

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Q Have you discuss the case with any witnesses?
A No.
Q Had you discuss the case with any investigator?
A No, only that I made that error.
Q So the record or recording of the statement was given to you with no instructions just a request to transcribe?
A Just request that it be transcribed immediately.
MR. HILL: Thank you. Answer any questions that the defense might have.

CROSS-EXAMINATION

BY MS. PARROTT:
Q Good morning, Ms. McDaniel.
A Good morning.
Q Can you approximate how much time it was maybe that this space is on the tape?
A I'm not sure -- as soon as I -- I just turned over to do a couple of things probably was the radio going on, the phone going on and I just started back transcribing, so it was not much time.
Q Maybe two minutes give or take a little bit?
A Yeah, maybe two or three.
Q Okay. And you using the dictaphone it goes ahead a little bit, I believe?
A Yeah, it fast forwards back and it goes ahead for you to have a peddle also on the machine.

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Q Okay. So did you hear any portion or even just on memory were you able to transcribe any of the portion that was transcribed?
A No, I didn't try to do it by memory because it has to be exact in what he says.
Q So although what is here and what you transcribed is what you know was on that tape?
A Yes.
Q But you also know there's a portion missing?
A Yes.
MS. PARROTT: Nothing further, Your Honor.
THE COURT: Redirect?
MR. HILL: None, thank you, Your Honor.
THE COURT: You may step down.
(WHEREUPON, the witness leaves the witness stand.)
THE COURT: Respit the morning recess, twenty minutes.
(WHEREUPON, the jury retire to the jury room.)
(WHEREUPON, a break was taken.)
THE COURT: Bring them in.
(WHEREUPON, the jury return to the courtroom.)
THE COURT: Everyone, okay. Everyone all right? Next witness, please.
MR. HILL: Your Honor, at this time, the State would call Investigator Kathleen Streett.

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THE CLERK: If you will place your left hand on the Bible and raise your right hand to be sworn. Do you swear the testimony you give in this case to be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Be seated and state your full name for the record.

THE WITNESS: My name is Kathleen Vargovchik Streett.

WHEREUPON,

Kathleen Street,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Mrs. Streett, are you employed with the Florence County Sheriff's office?

A I am.

Q And are you a certified law enforcement officer?

A Yes, sir, I am.

Q Had you been trained at the South Carolina Law Enforcement Division?

A Had I been trained by the South Carolina Law Enforcement Division?

Q Right.

A In what regard?

Q Well, have you gone through training in certification

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with the South Carolina Law Enforcement Division?
A Due to South Carolina Criminal Justice Academy.
Q Had you worked as an investigator -- how long you worked as an investigator for the sheriff's department?
A Since 2000.
Q And what other duties have you had in law enforcement?
A I was a uniform patrol deputy since -- from 1994 until 2000.
Q Have you been employed by any other agencies other than the Florence County sheriff's office?
A Yes, sir, the Georgetown County sheriff's office.
Q What areas of investigation are you assign to work?
A Primarily criminal domestic violence, stalking cases, and also homicide cases with domestic implications.
Q Is that the reason you were called on this case?
A Yes, sir.
Q Do you have your notes and or reports with you as you testify today?
A Yes, sir, I have the transcribed statements and also the incident report.
Q And you reviewed them I trust?
A Yes, sir.
Q Let's talk about what happened on that day. You were notified and you reported to the scene at [redacted]

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apartments; is that correct?
A That's correct.
Q And do you know who resides at that apartment?
A We learn once we were on the scene that it was the residence of Mr. and Mrs. Tarus Henry.
Q And just to be clear for technical point, what was that address?
A It was [redacted].
Q Who resided in that home?
A It was Mr. Henry, Mrs. Henry and their two small children, an infant and a four-year-old son.
Q Who was the mother of the four-year-old son?
A That would have been someone other than Mrs. Henry someone that resided in another town.
Q But the four-month-old was the child of the defendant and Miss Parker; is that correct?
A I believe she was six or seven months old at the time, but she was an infant, yes, that was their child.
Q After you arrived at the scene, what was the first thing that you did?
A The first thing that I did myself?
Q Uh-huh.
A When we first got the call, we actually had gone to lunch. I was riding with another investigator, which was actually the arson investigator. We were in the same

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vehicle at the time. And when the call came out, it came out as an arson call. And so naturally, since I was riding with him, a lot of times when you get to a fire scene, you need an extra pair of hands depending on whether or not the fire department's there. So instead of him carrying me back to the office and then, you know, going all the way back to the scene, I just rode with him down there. And while we were in route, we got additional information the lieutenant had called asking me also to respond not knowing that I was already with the arson investigator, due to some information that Lieutenant Yarborough had ascertained from the hospital about there being an assault that had occurred also.

Q After you arrived and receive that information, were you directed to go elsewhere?

A Yes.

Q And by whom? Well, who gave you the order to direct you to go to Kershaw?

A We received information that Mr. Henry had been located in Kershaw County at the Camden -- or in Camden actually at Kershaw County Medical Center.

Q And so you -- did you do any actual forensics work at the scene of the fire?

A I walk through the scene and I also located a couple pieces of evidence that I pointed out to Corporal Moore.

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Q And what were those items?
A The machete was one and there were also several areas of blood pooling and some other things we had discussed?
Q So you were the officer that discovered the machete?
A Yes.
Q Was it hidden or was it in plain view?
A It was partially hidden, it was under some clothing items on the floor in the dining room.
Q Had those items been displayed or entered into evidence?
A Yes, they have.
Q Do you know who's -- what those items were and to whom they belong?
A It was a pair of blue jeans and also a T-shirt that I believe belong to Mr. Henry.
Q And was there anything else next to the machete that you found?
A Not that I personally found. There were several things there, there were some rags and some other items that I believe that had some blood on it. But, you know, basically what I did was we had gotten information from Lieutenant Yarborough I believe had called me and told me that what we were looking for was an edged weapon perhaps because the injuries he had been told by the ER staff were of that nature knives, cutting instruments anything like

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that. And so I was on my way from the living room into the kitchen, went to the dining room and saw the tip of the machete, so I pointed that out to Corporal Moore.

Q And the machete that is entered into evidence is the one that you recovered at the scene?

A That's correct.

Q After you did that walk through and pointed out areas of evidence, is that -- did that conclude your work at that scene?

A Yes.

Q All right. And after you finished your work at the scene, is when you went to Camden?

A We were very -- yes, we were very concern at that point about the children.

Q And why were you concerned?

A Because there was blood everywhere. I mean, just about -- I mean, just about every room I went into there was blood evidence everywhere, it was pooled in the living room blood, blood everywhere. A lot of children's toys, there was blood all over the children's toys and so I knew that we had at least an infant and we had a four year old and want to know where the kids were at, who had the kids, what was going on the with the kids. We had received information and it was sketchy at that point whether or not when Mrs. Henry was deposited at the hospital, whether

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or not the children were actually in the car. We didn't know at that time. So we were trying to compile the vehicle information and possibly post an AMBER Alert to see if we could locate the children.

Q And what type of vehicle were you looking for?

A It's a silver Buick, I believe.

Q And that vehicle was found; is that correct?

A That's correct.

Q And is that the vehicle that was taken into custody and searched at the impound yard at the Florence County sheriff's department?

A It was.

Q Did you have any information that the children were inside of the home during this allege assault?

A At that time when I was on scene?

Q Right.

A That was an assumption on my part. Nobody had seen anybody remove the children before anything else happened, so we were going on the assumption that, yes, the children were there.

Q Now, prior to your leaving, were you aware of any -- let me ask it this way, so it's a proper question. Prior to your leaving the apartment complex, had you developed any suspects?

A Yes, we did.

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Q At that time, who was your primary suspect?
A Mr. Henry.
Q All right. Did that preclude or prevent you from considering the possibility of any other suspect?
A Not at that time.
Q So were you open to the possibility of someone else being involved in this case at that time?
A At that time, yes.
Q Did you have any information regarding some -- another person being involved in this case entering into the house, did you have any information about that?
A One of the witnesses had told one of the other investigators that Mr. Henry had alluded to the fact that there had been somebody else there that had hurt his wife.
Q And was that Scott McAleese?
A That's correct.
Q He was the first witness that testified?
A I believe so.
Q And according to your information, the defendant told him someone else had come in. I don't want to put words. What did -- what was the information you received from Mr. McAleese?
A Can I refer back to his statement?
Q Yes.
A Mr. McAleese stated that he encountered Mr. and

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Mrs. Henry. He asked her what happened because she was covered in blood and she stated that there had been a fight. He was shocked didn't know how to respond to her. And then the man who she was with, who was later identified as Mr. Henry, stated that somebody had tried to break into the apartment and that was all that he would say as he was taking her to the vehicle.

Q So at that point, the story was a third person had come into the house?

A Correct.

Q And so when you left the scene and went to Camden that was still a possibility; is that correct?

A That's correct.

Q As well as searching for the children and making sure they were safe?

A The children were number one priority. We knew where Mrs. Henry was, we knew she was receiving medical treatment. We knew she was being tended to. We wanted to know where the children were and what was going on with the children. And then also we needed to account for Mr. Henry and find out what happened in the apartment that day.

Q So what's the process that you followed in your investigation?

A The process?

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Q Yes, after you left.
A First, when we were notified that he was there at the medical center in Camden, we went there with another investigator, Investigator Turner, Investigator Calvin Timmons, who was the on-call and myself, plus Adam Moore from forensics we went up there. Investigator Turner was focused on trying to located the vehicle number one. I was focused on trying to locate the children, which I did in the hospital. And they were in the care of Mr. Henry's mother. We also contacted DSS or requested that Kershaw County call DSS. They did, they had a DSS worker from their jurisdiction respond to the hospital, who in turn put a safety plan into effect allowing Ms. Henry to tend to the children until DSS -- since, they were residence of Florence County. Florence County office could get involved and they could tend to the issues with the children in their care.
Q Might we pause right there for a moment. When you arrived, the children were in custody of his -- of the defendant's mom?
A That's correct.
Q And the department of social services was also notified because the incident of the children being so young?
A That's correct.

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Q And did DSS take a role in providing for the care of any of the children?
A They did. They initiated what they call a safety plan, which is basically a contract between the caregiver. They make sure that the caregiver doesn't have a criminal history and that there's no other issues in the home that could be detrimental, you know, to that person caring for the child. And once they're deemed acceptable to take custody and charge of the child, then there a written contract that signed between the two of them.
Q Now, Officer Streett, you've testified many times before; is that correct?
A Several times.
Q And understanding the rules that prevent us from entering a hearsay, I need for that to guide our testimony at this point. Did you have an opportunity to observe the children?
A I did.
Q Where did you see them?
A At the hospital there in Camden.
Q Okay. What there -- what room were they in?
A They were in like a conference room, private office type conference room if I remember correctly.
Q What did you observe?
A The -- Minor 1 , the baby naturally she was the

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infant. She was fine. I mean, she was acting like any other normal six or seven month old would. The four year old was a different story, he was bouncing off the walls, very very, couldn't -- almost to the point of being uncontrollable. He was very very agitated about the whole thing. Couldn't carry much of a conversation on with him that you would think that you would be able to talk to a four year old, you know, in that same manner just wasn't able.

Q Can you describe any other aspects of his emotional state? Was he tearful, was he happy, just describe it for me?

A Agitated and bouncing off the walls is about the best descriptive way that I can say to try to describe how he was.

Q As an investigator especially dealing with the children, what concern did that give you or why was that important to you or what might that have indicated?

A Based on what I saw at the apartment and based on the demeanor of the child, the way that the child was acting, I was very very concerned about what he might have possibly seen or what he might possibly have been involved in, that's the only way I know how to put it.

Q After you spent time with the children, did you leave them in the care and custody of DSS?

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A No, Ms. Henry. DSS turned the custody and the care over to their grandmother.
Q And where did you go after that happened?
A We went back to Brown Town, I think, it is where the vehicle had been towed to.
Q At that time, had you seen or talk to Mr. Henry?
A I don't recall seeing him at the hospital. I don't know if he was there or if he had already been taken to the police department. I honestly cannot remember if he was there or if I saw him or not.
Q After you went to Brown Town, was the vehicle secured?
A It was within a gated fence like an impound fence.
Q Did you have any responsibilities at that point regarding the car?
A No.
Q And after you finish your work there, where did you all go?
A Came back to the sheriff's office.
Q All right. And were you still traveling with Officer Turner?
A That's correct.
Q And was Officer Moore with you?
A He was in his own vehicle.
Q So at this point, he wasn't involved directly with

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you at this point?
A Correct.
Q Do you know who had -- with whom the defendant was traveling?
A That would have been Investigator Calvin Timmons. When we were at the scene and we received the information about where he was, the lieutenant at the time, Brett Camp, had told us if we needed any more help to let him know. And he -- it was decided at that time that Calvin would help us with some of what we deemed leg work, some of the running around, and some of the other stuff that we had to do. And once we got a location on him, we were -- we went ahead and sent Calvin on to Camden also, so he left before we did and he actually got there a little bit ahead of us. We went to the hospital and then I believe he went to either Kershaw County to the sheriff's office or to Camden PD one or the other.
Q And then you came back to the sheriff's department in Effingham?
A In Effingham, yes.
Q And at that point, what were your -- what were you focusing on at that point?
A We were getting ready to interview Mr. Henry.
Q Had you been given instructions to do that by anyone else or was that something that you took upon yourself?

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A No, that's the normal course of things. We usually once we have somebody that we need to talk to, we talk to them as soon as we can.

Q Were you involved in the booking process of Mr. Henry?

A No.

Q Have you booked someone in before?

A Have I formally booked someone in?

Q Right.

A No, I've taken prisoners to the jail to the booking counter and what we do is we bring them in and stand them at a particular point in the area in front of the counter. And then we fill out the paperwork, which is the warrant numbers and what they're charged with and the other information that booking needs and then the booking officer comes around and actually does the search, removes the handcuffs and then does all of the rest of the paperwork, hands us our handcuffs back and we leave.

Q Based on your experience, how long might that normally take?

A It depends, depends on how busy they are. If they got five or six people, it could take a little while. If they've only got one person that's standing at the counter and they've got plenty of booking personnel, it can go rather quickly.

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Q Do you know where Mr. Henry was placed after he was booked?
A No.
Q Did you see him after he was booked?
A In the interview room.
Q Did you or any -- Officer Turner have any contact with him prior to seeing him in the interview room?
A No.
Q What's the distance from the booking area to the interview room?
A If you come through the back way, it's probably from -- if you left the jury box and went down the hall to solicitor's office at the end of the hall.
Q All right. And it's all enclosed in the same building and you don't have to go outside?
A That's correct.
Q And the room has been described and we know who was present during the interview process. Were you aware of any information or any statements that Mr. Henry had given or made before you began the interview with him?
A As far as any type of formal statements or anything? Calvin Timmons said that he read him his Miranda rights in the vehicle, but he didn't go into detail about if anything was discussed or what was discussed.
Q So you are not aware of what was discussed in that

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vehicle with Officer Timmons and Mr. Henry?

A Not in the car, no, sir.

Q Before you took this formal statement, did anyone tell you what they discussed in the car?

MS. PARROTT: Objection.

THE COURT: On what grounds?

MS. PARROTT: Did anyone tell ---

MR. HILL: I'm just curious about whether or not she was told anything -- not what she was told, the purpose of which is to elicit whether or not she was influenced by other information prior to her taking the statement.

THE COURT: I will allow that query. Proceed.

A No, sir.

Q Were you present when Mr. Henry was given his Miranda warnings?

A I was.

Q And for the -- you're familiar with those, of course?

A Yes, sir.

Q Would you tell the jury what those are?

A Basically, those are everybody's rights under the constitution, that basically says that you're questioned by police and in your custody or custodial situation, that you have the right to remain silent. You have the right to have an attorney with you and that you do not have to make a statement if you don't want to.

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Q And are you required to give those statements?
A Yes.
Q And do you -- how do you assure that someone understands those statements when they're given to them?
A We have a Miranda form, it's a eight and a half by 11 sheet of paper that say Miranda Warning on the top. It list out all the Miranda rights and then it also has several questions on the bottom. And before we interview anybody in that sort of an interview, we fill this out with them, go over it, and read it to them, and then they sign off on it and they also initial. We cite each right and then they answer the questions on the bottom.
Q Is State's Exhibit Number 1 the form that you are discussing?
A That's it.
Q Were you present when that form was signed?
A Yes, sir.
Q After that form was signed, will you tell the jury what happened?
A After the form was signed, Mr. Henry was told that we were going to start the interview process and the audio cassette player was turned on with a microphone. In the room where we were, it -- there's a desk with a chair on either side and then you've got four or five upholstered chairs down one end. And then you have a sofa, a

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three-cushion sofa down the other end in the back, so you got ample seating and they're also low to the ground. We use it a lot sometimes when we interview children, so the seats are lower than normal. Where we were positioned in the room, we basically told him Calvin was behind the desk, Mr. Henry was here. I was sitting over here and Investigator Turner was over here. We told him we were going to ask him some questions about what happened at the apartment that morning. He was then Mirandized again on tape once we turn the tape recording on. Investigator Timmons went over the Miranda sheet with him again and we proceeded to ask him question.

Q Is this interview room isolated from other areas in the sheriff's department?

A No.

Q Are there other offices around or near it?

A Yes, sir.

Q Is it connected to a hallway that is often used or seldom used?

A The main hallway.

Q So this interview room is on the main hallway in the sheriff's office?

A Correct.

Q Is there a window into that room?

A There's one on the door.

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Q Now, there's been testimony regarding transcription error or problem with recording the recording of this statement. Were you made aware of that?
A I was.
Q You were present during the entire taking of the statement; is that correct?
A That's correct.
Q Do you have any independent recollection notes or anything to help you remember what was contained in that area that was accidentally erased?
A No, I'm sorry, I don't.
Q Regarding the eraser, was there any -- did you direct that that take place?
A Did I direct for the tape to be erased, no, sir.
Q To your knowledge, did anyone do that?
A No, sir.
Q Do you view this as purposeful or accidental?
A Accidental.
Q Do you have -- so we do not know what was erased or what was discussed during that eraser?
A I don't know, no, sir.
Q What is your belief regarding whether the erased material was helpful or beneficial for Mr. Henry?
A I don't know anything about what was erased, so I can't make any determination on whether it was beneficial

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or not.

Q Were there any -- at any time during the interview process, was Mr. Henry abused or hurt or threatened and would that have been contained in the erased portion of this tape?

A At no point during the interview was he threatened, harassed, coerced or anything in any manner. And as far as the erased part, I don't know what was there, but I can tell you that he was not threatened, coerced or in anyway abused in the interview room.

Q So that was unplanned and accidental?

A That's correct.

Q Did anyone enter the interview room after the process began?

A Not that I recall, no.

Q Have you listen to the recorded interview?

A Not recently.

Q But you have listen to it?

A Correct.

Q And does that recording fairly and accurately depict and contain the interview that you were a part of?

A Yes.

Q Was there anything added to it that did not happen?

A No.

Q What concerns, if any, did you have regarding

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Mr. Henry as you met him, interviewed him and recorded his statement?

A Concerns as far as?

Q You're correct, it's more specific. First regarding his ability to understand his rights?

A He didn't give any indication that he was confused. Didn't give any indication that he was anything other than absolutely like he is in the courtroom right now.

Q Was there any concern about his ability to fully understand what he was giving up?

A No, he answered questions and he actually answered them twice because he was -- not only was the sheet completed, but it was gone over again on tape when the tape was turned on. So he was actually -- and then plus in the car. If he was Mirandized in the car like Calvin indicated he was, then that's the third time.

Q At any time did you feel it was necessary to cease or interrupt the questioning and interview to allow him to seek some type of comfort?

A No. Usually -- and I'm pretty certain that I did when I first went into the interview room. I usually take a drink in with me and I usually ask anybody that I'm interviewing whether they're defendants, victims, witnesses or whatever. If they need to go to the bathroom or if they need a, you know, a drink, a Pepsi, Coke,

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water, coffee whatever. And I believe I asked him if he wanted something to drink at that time.

MR. HILL: Your Honor, at this time, State would request that it be allowed to enter into evidence the recording of the statement that was made in this case.

THE COURT: It is entered into evidence over objection, rights are reserved as hereto for stated with specificity number 74.

MR. HILL: If I might confer with my IT.

THE COURT: I got to give it some marking 74.

(WHEREUPON, State's Exhibit No. 74 was admitted into evidence.)

MR. HILL: Your Honor, permission to publish this to the jury?

THE COURT: You may do so.

MS. PARROTT: Your Honor, may we approach?

THE COURT: Sure.

(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

(WHEREUPON, the recorded statement of the defendant is played for the jury.)

BY MR. HILL:

Q Investigator Streett, the statement that we heard is that the same statement that you were a part of what was

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played to the jury, what was recorded during your interview?

A Yes, it was.

MR. HILL: Please answer any questions that the defense may have.

CROSS-EXAMINATION

BY MS. PARROTT:

Q You were present whenever obviously with Investigator Turner at the scene and then also in Kershaw County and then back again at Effingham from what you stated; is that correct?

A Yes, ma'am.

Q Okay. And can you estimate that you got on scene probably maybe 12, 12:30 that afternoon?

A Without looking at the CAD report I don't know. I know it was after lunch.

Q All right. And then this statement is actually done and finished at 9:02 in the evening; is that correct?

A Later on that night.

Q So that's a pretty long day for you and for anybody involved in the case, is it not?

A I work two days straight on cases before without sleep.

Q But there's multiple hours that were involved in this even just on this one day that you were involve with

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Mr. Henry, wouldn't you say that?
A As far as the interview process?
Q And the whole interview, I guess?
A The whole interview from the time that it started until the time that it ended.
Q Okay. And you state that you offered him somethings or you think you may have because that's just your usual process of doing things, but you don't know for certain in this case?
A I can't tell you for certain, but I usually do.
Q And you also heard him going through all of these medical conditions that he's had in the past, but you also didn't feel the need stop the tape or stop the interview in anyway?
A No, he was answering the questions coherently didn't appear to be under the influence of anything and this was 2008. He had said the medication had been discontinued since 2004 or 2005 which was several several years prior to him being interviewed.
Q And you also noticed that he had the bandage at least on his left hand.
A He did.
Q Okay. And did look into how much treatment or what the level of treatment was that he received in Kershaw County?

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A No.
Q So you don't know what kind of medications he was prescribed there either?
A He was treated and released that was the only thing that I knew.
Q Okay. When you got to Kershaw County, you said that you interviewed Mrs. Resia Henry, which is Mr. Henry's mother?
A Spoke with her.
Q Okay. And you were looking at the children who were there under her care at the time; correct?
A Yes, ma'am.
Q Cause they're at the hospital whenever you meet with them, are they not?
A Yes, ma'am.
Q Okay. And you state that the seven month old was fine?
A Yes, ma'am.
Q Okay. And -- but you're stating that the four year old was acting agitated, I believe is your word; is that correct?
A That is correct.
Q He's not in a normal place that he might be or at least we would hope not as a hospital, wouldn't you agree?
A That's correct.

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Q Okay. So children outside of their normal circumstances sometimes just can't behave; correct?
A Depends on the child.
Q And especially, if there's been traveling or going from place to place for a little bit, would that be accurate?
A It could be.
Q And you didn't know this four year old prior to this case, did you?
A No, I did not.
Q So you wouldn't know is normal level of behavior or actions would be, did you?
A No, but I've got five children and two grandchildren, so I'm familiar with children.
Q Do they have any scrapes or bruises or marks on them?
A Not that I noted, no.
Q Any blood?
A Not at that time.
Q So they look like they were being taken care?
A At that time, when I say them, yes?
Q And as a matter of fact, DSS was called in from what you stated; correct?
A That's correct.
Q And if DSS had thought there was a real concern about the safety of those children, they would have taken them

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into what's called emergency protective custody, wouldn't they?

A At that particular time.

Q But they didn't choose to do that, did they?

A No, and I really didn't deem that -- actually, DSS doesn't do EPC's law enforcement does. And if I had felt that there was a need, then I would have contacted Kershaw County Law Enforcement and had them do the EPC, but I had no problem whatsoever with Mr. Henry's mother taking custody of those two children.

Q Okay. And you're referring to it as an EPC and that's what -- I was just asking emergency protective custody?

A That's correct.

Q All right. So as far as you were concerned then, it was okay to leave the children with Mrs. Henry and DSS when they were called, just did a safety plan or contract with her about this is what we need for you to do with these children?

A Yes, ma'am.

Q When you were on the scene -- I'm sorry let me back up. When you were on the scene at the apartment at [redacted], firefighters had already been in the apartment had they not?

A Yes.

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Q Okay. So whenever you got there everything was kind of disheveled and the hoses had already been in all this sort of thing; is that correct?
A It's a fire scene, yes, ma'am.
Q So it's not necessarily the scene as it was at the end of this incident, is it?
A It was as I saw it when I first arrived there. I can't tell you what it look like before I got there and saw it.
Q But you know the firefighters did alter at least the appearance of the apartment by pulling down pieces of Sheetrook and all these sorts of things; correct?
A In their attempts to extinguish the fire, I'm sure they did, but I wasn't present didn't see them do that. I don't know what they did.
Q Okay. You got to him probably somewhere around eight o'clock that night since you're saying you didn't actually meet up with him until right before this taking of this statement occurred; would that be correct?
A Correct.
Q Okay. But while he was being booked and while he was then waiting for after booking to be interviewed, he had been cuffed that whole time, had he not?
A When they're brought into booking and they're processed, the cuffs are taken off of them at that time.

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And they're either put in a little holding area on a seat or in a holding cell.
Q Okay. But they're still deprived of their freedom of movement by being locked into a place, are they not?
A Well, the holding cell is rather large and then the lobby area is a lobby area just like you would have in a lobby with several seats around a television.
Q But he just can't go where he wants to go, can he?
A No.
Q And just cover this again, the erased portion now that you've heard this full tape, you had nothing to do with that portion approximately about two minutes maybe or so?
A No, ma'am.
Q And you have nothing -- no recollection whatsoever of what might have been in that time period?
A No, ma'am, I am sorry.
Q And again, you were with him this whole time, but you never took a break and he never took a break in that whole hours worth of interview?
A It was just an hour, no.
Q And you don't know what kind of treatment he had received prior to being in there with the three of you, do you?
A No.

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MS. PARROTT: Nothing further.

THE COURT: Redirect?

MR. HILL: None, Your Honor.

THE COURT: You may step down.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Jurors, it is lunchtime. I hope that we can do lunch in an hour because we got a lot of things left to do, got some medical people coming, a trauma surgeon coming, some other medical people being brought in. Can you be back at 1:30? Be back at 1:30 p.m.? Please, do that for me if you can. And, of course, now please be very careful about your contact when you go this kind of thing. The trial is being covered, there two television reporters in the courtroom as I speak. There other news accounts apparently out there, just please be careful for me. Please be back at 1:30, 1:30. No one leaving out, but the jury. No one but the jury.

(WHEREUPON, the jury was excused for a lunch break.)

THE COURT: Anything from the State you need to put on record?

MR. HILL: No, not at this time.

THE COURT: Defense?

MS. PARROTT: No, Your Honor.

THE COURT: We had discussed briefly in chambers the scheduling and you're next witness would be?

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MR. HILL: My victim and then the trauma surgeon.

THE COURT: The victim and then the trauma surgeon?

MR. HILL: Yes, and then the State will rest.

THE COURT: At that point, okay. Everybody understand where we are? Thanks 1:30. You lawyers be careful about the length of time.

MS. PARROTT: Yes, Your Honor.

THE COURT: 1:30.

(WHEREUPON, a lunch break was taken.)

THE COURT: All right, ministerial matters before I bring the jury out?

MR. HILL: Yes, Your Honor.

THE COURT: What is the matter now, Mr. Hill?

MR. HILL: Your Honor, the first matter would be that the State would request the ability to use a mannequin for demonstrative purposes only during the doctor's testimony to show to the jury the places of injuries suffered by the victim.

THE COURT: What says the defense in regard to demonstrative evidence?

MS. PARROTT: Your Honor, again, I would argue the same thing as I'm doing with the pictures, the doctor is going to testify as to exactly what the injuries were. It would seem that a mannequin would certainly be cumulative, since we may be dealing with pictures as well. So I think

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we're overwhelming the logic of the jury and asking absolutely for them to go with the passions and prejudices as they may have.

THE COURT: What is so prejudicial about a mannequin in terms of simply identifying the points of injury sustained by a victim?

MS. PARROTT: Your Honor, I think it's with everything. It's the mannequin with the pictures, with his testimony that worries me.

THE COURT: What about that, Mr. Hill?

MR. HILL: Your Honor, with all due respect to the defendant's argument, the State believes that it would be helpful for the jury and that's the reason for our request.

THE COURT: The ruling is as follows: The mannequin will be allowed with the caveat the doctor says under oath that it will be of assistance to him in describing the matters to the jury.

MR. HILL: Yes, sir.

THE COURT: Posit query to him before we get to the mannequin being brought in.

MR. HILL: Yes, sir.

THE COURT: Additionally, Mr. Hill, please remember that I had ruled in regard to some of those pictures that contain blood will not be admitted unless the doctor says

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that he needs those photographs to accurately and fully explicate to the jury the injuries.

MR. HILL: I understand, Your Honor.

THE COURT: Okay.

MR. HILL: If I might, that was the other ministerial matter needed to address with the Court and defense. I know the jury is back there. The State would request that since these are legal issues or require a legal ruling from the Court as to whether or not those items are admissible, might the State call the doctor for the testimony only regarding those issues at this time and not have to do -- go through that in front of the jury.

THE COURT: I don't think that's necessary. What I'm asking you to do is simplistically posit query to the jury in this fashion. Doctor, do you believe and attest to the fact that the mannequin is of help, aid and assistance to you in describing the injuries to the jury?

MR. HILL: Yes, sir.

THE COURT: And in regard to the photographs, I want the doctor to look at the photographs and posit the same query and I'm ready to rule. I don't need any further argument. I don't need any further explication. I'm ready to say yes or no.

MR. HILL: Yes, sir.

THE COURT: And I will with alacrity rule.

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MR. HILL: And I'm ready to go right now.

THE COURT: Okay. All right. Anything at this time?

MS. PARROTT: No, Your Honor.

THE COURT: Now, here's the way it works folk. When the victim testifies, when the victim testifies, I'm not going to let you go in and out, not so. The French phrase pas du tout is efficacious, means not at all. So if you're in the courtroom now and you need to leave, leave now, anyone? Anyone? Anyone lead to leave, leave now? I repeat again, folk, you're not going to go out during this testimony. Anyone? Anyone need to leave? And, Mr. Bailiff, I don't want anyone alive coming in, if you can just take care of that. Anyone alive not coming in. Deputies over here, I don't want anyone coming in, I don't care who it is. I don't -- I'm not interested in their status from President Obama on down.

MR. HILL: Judge Anderson.

THE COURT: Yes.

MR. HILL: There's one item 11 that's the machete, which was being held in a safe location that item will be needed during testimony. Should we retrieve that now or keep?

THE COURT: Ms. Bailiff, retrieve that now and put it in this location over here by the wall. No one will know where it is for the time being.

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MR. HILL: Your Honor, there's one other item I like to bring to the Court's attention.

THE COURT: Yes.

MR. HILL: In reviewing my witnesses, I have decided to call my physician first and let my victim be the last witness for the State, so my next witness will be Dr. Reynolds.

THE COURT: That's fine, that's good. No problem whatsoever.

MR. HILL: The State's ready.

THE COURT: All right. Everybody situated in the courtroom? Bring them out.

(WHEREUPON, the jury return to the courtroom.)

THE COURT: I hope you had a nice lunch. Everyone, okay? Everyone all right?

Call your next witness, please.

MR. HILL: Your Honor, the state would call Dr. Mark Reynolds.

THE COURT: Come around, Doctor.

THE CLERK: If you will, sir, go to the witness stand, stop right there, place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes, I do.

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THE CLERK: Please be seated right there in the witness chair and state your full name for the record.

THE WITNESS: Mark Andrew Reynolds.

THE COURT: All right, Doctor, pull up a little closer to the mic please for me. And please speak slow enough so we can take down every single word you say.

THE WITNESS: Yes, sir.

THE COURT: Thanks.

WHEREUPON,

Dr. Mark Reynolds,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Dr. Reynolds, did you treat Carol Parker for her injuries sustained as a result of an event on June 23rd, 2008?

A Yes, I did.

Q Where did that treatment occur?

A At McLeod Regional Medical Center.

Q Okay. And what is your job there?

A I'm a surgeon, I'm a trauma surgeon at McLeod.

Q And how long have you been employed there?

A Since September of 1997.

Q And how long have you worked as a -- well, how long have you been a physician?

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A Since 1986.
Q Would you describe for the jury just your qualifications and your experience?
A Well, I went to Temple undergraduate in Philadelphia. I went to Temple Medical School in Philadelphia 1982 through 1986. I was intern or resident at Temple University Hospital and I completed my general surgical training at the graduate hospital in Philadelphia. Then I performed two years of post-graduate training in trauma surgery and surgery critical care in Louisville, Kentucky. After which, I was on staff as a assistant professor at West Virginia University Hospital in Morgantown, West Virginia for three years. I then came to McLeod and I been here ever since.
Q And are you in charge of the trauma unit there or do you work in a -- with a group of doctors that assist the emergency room?
A Yes, I'm the director of trauma services at McLeod. And I work in concept with Pee Dee Surgical Group and we all take care of the critically injured patients that come in. And, of course, we do it in concept with a number of other physicians.
Q Have you had an occasion to testify in court before?
A Yes, I have.
Q Have you ever had the occasion to be qualified as an

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expert witness before?
A Yes, sir.
MR. HILL: Your Honor, at this time, the State would move that Dr. Reynolds be accepted as an expert in the area of trauma surgeon -- trauma surgery and treatment in ER, emergency room procedure.
THE COURT: What says defense? You're entitled to voir dire before I rule.
MS. PARROTT: No objection, Your Honor.
THE COURT: He's qualified. You may proceed to posit query, that will elicit opinion testimony from the surgeon.
BY MR. HILL:
Q Dr. Reynolds, as a part of your treatment of Miss Parker, did you make notes in records which you brought with you today?
A Yes, I do.
Q As a part of your treatment, did you take photographs of the injuries that you observed?
A Yes, sir, I did.
Q Let me hand you a folder with photographs and ask if you would review and let me know after you've looked at them. Would these photographs be helpful for you in explaining and giving your testimony today?
A Yes, sir.

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MR. HILL: Your Honor, in response to that ---

THE COURT: Yes.

MS. PARROTT: Your Honor, please note my objections previously stated.

THE COURT: I certainly recognize you have objected previously.

And, Mr. Hill, let me see that composite.

Doctor.

DR. REYNOLDS: Yes, sir.

THE COURT: Do you say now under oath that it is necessary and essential to use these photographs to demonstrate with clarity the injuries sustained by the victim?

DR. REYNOLDS: Yes, sir.

THE COURT: The objection is overruled. All rights are reserved. All rights are protected in that regard. The surgeon may use the photographs and simply identify them as you go in regard to numbers, Counsel.

MR. HILL: Yes. Your Honor, that in that regard as we begin our testimony...

BY MR. HILL:

Q Doctor, would it also be helpful or what manner might it be helpful to use a mannequin to display injuries that you observed and treated?

A Well, it would be helpful, we had so many injuries

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sustained that it was difficult to keep track of all the different injuries.

MR. HILL: Your Honor, at this time, the Court -- I mean, the State move for the leave to use for demonstrative purposes only a mannequin to allow Dr. Reynolds to demonstrate the injuries he observed and treated.

THE COURT: Well, what says defense?

MS. PARROTT: Again, I am renewing the previous objection as stated and for the reasons stated previously.

THE COURT: All right. Have those been marked by my court reporter?

MR. HILL: No, not yet.

THE COURT: All right. Let her mark them, please.

MS. PARROTT: Your Honor, may we approach?

THE COURT: Sure.

(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

THE COURT: In regard to prior objections posited by defense counsel, additional objections are now presented in regard to a response concerning a position that the evidence would be cumulative in that regard; is that correct, Counsel?

MS. PARROTT: Yes, Your Honor.

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THE COURT: All right. Thank you and that's overrule respectfully.

MS. PARROTT: Thank you, Your Honor.

THE COURT: All right. The photographs marked?

COURT REPORTER: No, sir.

MS. PARROTT: And, Your Honor ---

THE COURT: Wait, she's marking photographs.

MS. PARROTT: I'm sorry.

(WHEREUPON, a pause in the proceedings.)

COURT REPORTER: They're 75 through 78 and 80 through 82, we're going to skip 79.

THE COURT: Seventy-five through 78 and 80 through 82 in evidence over objection rights are reserved, rights are protected. And for the record, 79 is an omission intentionally in regard to the marking of exhibits.

(WHEREUPON, State's Exhibit 75-78 and 80-83 was admitted into evidence.)

THE COURT: Anything further, Counsel?

MR. HILL: Nothing further, Your Honor.

THE COURT: All right. The final part of my ruling, Counsel, is that the mannequin that is used is at the present time in a pristine state IE no markings of any nature whatsoever at this time?

MR. HILL: That is correct.

THE COURT: You may proceed.

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MR. HILL: Your Honor, leave to -- it's right here in the cubby, I need to ---

THE COURT: Proceed.

(WHEREUPON, a pause in the proceedings.)

THE COURT: Mr. Hill, in order to buttress the trial record, Miss Court Reporter, we will mark this as Court's Exhibit Number 3. It's not in evidence, not in evidence, but simply for recordkeeping purposes for utilization at a later time. Is that suitable?

MS. PARROTT: Yes, Your Honor.

THE COURT: And, of course, it will remain with the court in terms of custodial capacity, number 3.

(WHEREUPON, Court's Exhibit No. 3 was marked for the record.)

THE COURT: Ms. Bailiff, would you come help us there and just mark it down at the bottom. Thank you.

All right, proceed.

MR. HILL: Thank you, Your Honor.

BY MR. HILL:

Q Dr. Reynolds, do you have your report with you?

A Yes, I do.

Q When you first saw Miss Parker, did you see her in the emergency room at McLeod?

A Yes, I did.

Q What was her state when she first appeared in the

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emergency room?
A She was an extremist, she was very very unstable.
Q What does that mean?
A Close to death.
Q How many wounds were you able to find on her?
A Approximately 28 wounds.
Q And on what side of the body were they located?
A They were located, the majority of them ran the left shoulder around the left axilla, the left neck, face, scalp. She also had lacerations down the left arm and major lacerations on the right arm, stab wounds to the right chest and to the left leg.
THE COURT: Please, keep your voice up for me please.
DR. REYNOLDS: Yes.
BY MR. HILL:
Q Would you mind stepping down to show the jury? You may need your report as well. Doctor, if you would, I'm going to hand you a roll of painter's tape ask if you would to place a piece of tape on each -- on this mannequin Court's Exhibit Number 1 for demonstrative purposes -- demonstrate where each injury occurred.
A Yes, sir. In order to keep track of all these injuries, we numbered them. And the first was a stab and slash wound approximately here.
THE COURT: Doctor, please give me a little more

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volume. Please help me.

DR. REYNOLDS: Yes, sir.

THE COURT: Okay, all right.

A Approximately located here this is along the anterior aspect of the -- what we call the axilla. It exits through the pectoralis below the breast and did not enter into the thoracic cavity, but it did expose the axillary vessels in that location. The one that I have marked as injury number two was located by itself. And this is along the anterior lateral aspect of the deltoid muscle and that slice right through it. The one I have listed as a three is located just overlying the clavicle, the collar bone. And it was a stabbing sort of wound entering towards the base of the neck, but injuring some venus vessels, but not anything else. The one I have listed as number four was a stab type incision up on the right chest, but it did not enter the thoracic cavity. Number five was a long slash and shop wound on the left neck, sort of up towards the base of the skull and this went through the -- many of the muscles of the neck. It was all the way down to the cervical spine. In fact, you could feel that depths of the wound. And this was what transected the T-bow artery (sic), which cause the stroke that she suffered. The one that I have listed as number six was a stab and slash wound, that lay just anterior to

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the ear. Number seven extended above the ear. And these were fairly superficial down to the skull, but they did not take off the ear. Going on to number eight and this was also a superficial wound just through the skin along the top of the trapezius muscle at the base of the neck. Going on to number nine, this was all along the armpit all the way around to the back and this was about seven inches long extending around. This subdivided the metizmus (sic) muscle, where it goes to attach to the humerus of the ear and again expose the axillary vessels. Fortunately, did not cut them. Laceration number ten was on the back of the left arm. And then we had laceration 11, 12, and 13 and these were through the skin subcutaneous tissue and through the muscular fashion, but did injure anything else. There was number 14 was on the thorax. Fifteen was another laceration on the back of the deltoid, so almost had circle of lacerations around her left shoulder. Number 16 back on the shoulder blade region. Eighteen and 19 were on the scalp. Seventeen was at the base of the neck towards the spine. Twenty was on the right arm in the back trapezius region. Twenty-one was a large laceration of the hand that's center to her extensive tendons all the way down to the bones on the back of the hand. Twenty-two was a smaller laceration on her hand. And then 23, 24, and 25 was smaller lacerations on the

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fingers and thumb. The -- and that's all the lacerations that are listed.

Q You can have a seat. Doctor, did you require assistance from other physicians in treating?

A Yes, I did.

Q Why was that needed?

A Well, there were a lot of injuries to take care of. Plus, we had some tendon injuries and specialist who handles that kind of thing and that was Dr. Watford, I believe.

Q Describe in a little more detail what type of injury that was and what was required?

A That was injury to the right hand, which was transected all the extensor tendons. Those are the tendons that straighten out the fingers.

Q So they were cut?

A They were cut and required repair.

Q If the repair had not been made, what would the result have been?

A Her hand would be deformed as a sort of a fist or hook.

Q All right. There were numerous injuries that you demonstrated. Other than the one to the hand, what was another that most alarmed you as a physician?

A The -- I think the worse injury she suffered was the

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lash to the base of the skull that entered the cervical spine and transected the vertebral artery.

Q So ---

THE COURT: What number is that one?

DR. REYNOLDS: That is number five.

BY MR. HILL:

Q What made that injury so severe?

A Well, she had a stroke and that was in her base ganglia of her brain, but it was most likely due to that vertebral artery being transected.

Q So an artery was cut by that blow?

A Yes.

Q And what -- when the artery was cut how might that cause a stroke?

A In her state, she had lost a lot of blood. She had very little blood pressure, sort of like if you have a hose and you don't have full pressure, it makes it very difficult to reach all the way to the back loin. And so those areas that don't get sufficient blood during that period of time, may suffer some damage and that is what occurred and manifested as a stroke.

Q How long did your treatment ---

THE COURT: Before you leave that, Mr. Hill. What is a stroke? Describe that for the Court, a stroke?

A A stroke is an area of the brain, which has received

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insufficient blood. And as a result is either ischemic and that it's not functioning due to lack of blood and oxygen or it is dead because it did not receive sufficient blood or oxygen. And if this happens to your heart, you don't have the ability to pump blood. If it happens to your brain, you have areas of the body that become weak or become numb. In this victim's case, it was weakness of the left side of her body.

Q How many day was she hospitalized?

A She was at the McLeod Regional Medical Center from 6-23-2008 through 7-11-2008, eighteen days.

Q Was she instructed to receive any aftercare regarding after her discharge?

A I believe she was discharged to a rehabilitation facility.

Q And did you continue to follow her after her discharge?

A Yes, I did.

Q Is that continuing or been fortunate enough to discontinue that treatment follow-up?

A She's welcome back any time she needs assistance.

Q All right. How long did you see her after discharge?

A I think the last time I saw her as a patient was probably in February 10, 2009.

Q How long did it -- would assume that she underwent

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surgical operations and repairs; is that correct?
A I'm sorry.
Q She under went surgery; is that correct?
A That is correct, yes.
Q How many surgeries was she required to undergo?
A The major procedure for that day in that she went to the OR and we washed and fixed every laceration and tried to repair the injuries that we found including the extensive tendon injuries, but she also required chest tubes on both sides. She also required large wall IV's for aggressive resuscitation. She was on the ventilator for a day and that's it.
Q I'm sorry, I didn't mean to interrupt you.
A Well, I was just reading the -- there was some extensive orthopedic repairs performed by Dr. Watford.
Q And what were those?
A These were pin fixations of the fractures of the right hand and this occurred under the same anesthesia same day.
Q The bones were broken in that hand as well?
A Yes.
Q Requiring orthopedic surgery?
A Correct.
Q Were there any other -- what other medical procedures was she required to undergo that perhaps you haven't

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testified about?

A She has received rehabilitation services, I think it was the major problem in recovering from the stroke.

Q And, Doctor, you said that -- how severe were her injuries? Were they life threatening?

A Yes, they were.

Q Doctor, did you take photographs of her after she arrived at the hospital?

A Yes, I did.

Q For what purpose?

A This is something that fairly routine. I like to document the injuries as they are when they present, so that we can ensure that we take care of all the injuries that are there. We can sort of monitor how well the injuries are recovering and healing over the course of time.

Q So there was nothing unusual about taking photographs?

A No, no.

MR. HILL: Your Honor, if I might just have a moment to move this Court's Exhibit 1.

THE COURT: While you are doing that, Doctor, the last visit was February 10, 2009?

DR. REYNOLDS: Correct.

THE COURT: What residuals were present at that

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particular time, would you describe those for the Court?

DR. REYNOLDS: I can review the note?

THE COURT: Please.

DR. REYNOLDS: At the time of the visit, she was ambulating, walking with some difficulty. And she had some difficulty moving the left upper extremity. The lacerations are healed. She had some keloid formation. Continues to have para-seizures that is numbness of the left upper extremity and weakness of the left lower extremity. But overall, she was doing well and appeared to be recovering from her post-traumatic stress disorder.

THE COURT: As I understand it, keloid is a special type of scarring; is that correct?

DR. REYNOLDS: That's correct. It's when scar forms very exuberantly and forms a mounding mass.

MS. PARROTT: Your Honor, may we approach?

THE COURT: Sure.

(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

BY MR. HILL:

Q Doctor, I'm going to show you photographs and I'm not sure if you can see them from where you are seated. If you would position yourself to a place where you might see them on the screen. And I believe it would be proper if

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you needed to stand. Doctor, State's Exhibit 75 our number is 86?

THE COURT: Well, our number is 75, let use our number for the record.

MR. HILL: We are.

THE COURT: Thank you.

BY MR. HILL:

Q Doctor, do you recognize this photograph that's marked as State's Exhibit Number 75?

A Yes, I do.

Q What does that display?

A That is -- illustrates the view of the patient axilla and that's with the arm raised and lacerations of the trapezius region and that's the slash, the bone goes all the way around. And at the base of that, you can see exposed vessels and that transected.

Q Is there also a wound on the upper bicep or lower bicep?

A Yeah, that's actually the back of the arm, it's raised up, so that's the trapezius region?

Q What other wounds are visible?

A And then if I can approach?

THE COURT: Yes.

A This is the one I illustrated as number one. This is the pectoralis region and it's stab towards the chest.

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This is the one of the upper neck and she's sort of faced away, so it's over here. And this is the one that went down to the cervical spine. This is one anterior to the ear and one above the ear.

Q Doctor, next I like to display what's been marked State's Exhibit Number 76?

THE COURT: Doctor, we have very up-to-date equipment here.

BY MR. HILL:

Q This is State's Exhibit Number 76. Doctor, will you described the injuries displayed in this photo?

A This is the left arm extended out and these are lacerations along the forearm and also the upper portion of the...

Q Next I like to show you State's Exhibit Number 77?

A This is a view of the neck again. And this is across the top of the neck and this is actually a portion of the carotid. And then this is a deep portion of the laceration extended towards the spine or so more superficial lacerations on the face.

Q Is the injury depicted in this -- the injury that you stated stroke?

A Yes, this is a deep wound extending through here and you could actually run your fingers all the way into the spine right there.

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Q Doctor, I next like to show you State's Exhibit Number 78. Doctor, what do we see here?
A This is a view of the dorsal of the right hand and this is the laceration across like that. And these are the, actually the bones of the hand exposed and these are cuttings that the -- of the tendons, the extensive tendons. And then more minor lacerations here.
Q Finally, I like to show you State's Exhibit Number 80. State's Exhibit number 80?
A And this is a view same wound to the hand, but now with the tendons have been repaired, so these are the suture, at least the tendons which have been repaired. This is prior to placement of the pins to stabilize the bones and closure of the skin.
Q And the objects that you pointed out as tendons, those were cut?
A Yes, they were.
Q And they were not -- and this after the repair?
A This is immediately after the repair of the tendons prior to stabilization of the fracture, the fractures and the closure of the skin.

MR. HILL: Thank you, Doctor. You might have a seat, please. Doctor, I appreciate your testimony and your time. Please, answer any questions that the defense may have.

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THE COURT: Doctor, I have a bifurcated question. In regard to the permanency of any injuries, would you describe that in the way of impairment and disfigurement?

DR. REYNOLDS: Your Honor, as we go through life, we all pick up some scars. I think this disfigurement is in the eyes of the beholder and impairment is in the eyes of the beholder. However, there will be some permanence and residual scarring and some permanent residual impairment of function. And she has demonstrated tremendous spirit and has recovered wonderfully. And I would say that she is in access of 95 percent of her original capacity and she is doing wonderful.

THE COURT: All right. Ms. Parrott, you may cross-examine.

CROSS-EXAMINATION

BY MS. PARROTT:

Q Dr. Reynolds, I notice on your notes from February the 10th you have her coming back in six months; is that correct?

A Correct.

Q And that's just so that you can continue to monitor what her health condition is even though you believe her prognosis it sounds like probably fairly good?

A I believe it is, yes.

Q Okay. And if I'm understating that, then please

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correct me?

A As I stated, disfigurement and impairment is in the eyes of the beholder. It will be some scarring. There will be some impairment, but it is up to her to be positive.

Q When you have people who come in and you work as a trauma surgeon, you don't necessary know the whole story behind what happened, do you?

A Correct.

Q And it is not necessary even your concern as much as what the injuries are in dealing with them?

A I take care of the injuries.

Q And you stated -- and I want to be clear about what the -- what I believe the standard to be that you believe that the cut caused the artery to be severed, which then -- this was in the basal ganglia of the brain from what you stated I believe; is that right?

A Correct.

Q And then that is what then led to the ischemic stroke?

A Well, when I state that the stroke was in the basal ganglia just stating where it was.

Q Right.

A The stroke is the area of ischemia.

Q Right. And the stroke -- and the stroke in just

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simple terms is kind of brain attack as oppose to a heart attack; isn't it?
A Exactly, yes.
Q Okay. Can you state to a reasonable degree of medical certainty that that injury caused that stroke?
A Yes.
Q Okay. All right. And as far as the rest of the injuries that she had, you're saying she is 95 percent healed at this time?
A I believe so, yes.
Q But you still have hope that she may continue to progress, is that true?
A Yes, people continue to progress, yes.
MS. PARROTT: Nothing further.
THE COURT: Redirect?
MR. HILL: No, we would ask that the doctor be allowed to be excused.
THE COURT: Certainly, and thank you for coming, appreciate your time.
DR. REYNOLDS: Thank you, Your Honor.
(WHEREUPON, the witness leaves the witness stand.)
THE COURT: Next witness, please.
MR. HILL: Carol Parker.
THE CLERK: Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

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THE WITNESS: I do.

THE CLERK: Please be seated and state your full name for the record.

THE WITNESS: Carol Denise Parker.

WHEREUPON,

Carol Parker,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q You ready? Okay. I need you to speak up nice and loud just like you did a few minutes ago -- a few seconds ago. Miss Parker, are you still married to the defendant?

A No.

Q Okay. You were married?

A Yes.

Q Were you married to the defendant on June 23rd 2008?

A Yes.

Q What was the date of that marriage?

A August 30th 2007.

Q And I believe you all met while you each were attending Florence Darlington Tech; is that correct?

A Correct.

Q And were you fortunate enough to mother a child?

A Yes.

Q Was the defendant the father of that child?

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A Yes.
Q And what's the child's name?
A [redacted] Minor 1
Q And she was how old on the date of June 23rd?
A Seven months.
Q When you first met the defendant -- let me back up. During the time that you knew him and lived with him, were you aware of his -- did you ever see him take any medication?
A The only medication that I ever see him take was glucose pills for his diabetes.
Q Were you aware of any other medicines?
A No.
Q We need to get straight to the point about what happened on June 23rd. Beginning early that morning, what did you and the defendant do?
A I remember we were in bed and I got up out of bed and he got up out of bed. And we got the two children up because he said he wanted to go to the magistrate office.
Q Why did you need to go to the magistrate's office?
A Cause something to do with the eviction notice.
Q So there had been an eviction notice that's the purpose for the visit at the magistrate's office?
A Yes.
Q And which magistrate's office did you visit?

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A Not sure.
Q You're not sure?
A Not sure.
Q Did you stop anywhere else after you left the magistrate's office before you got home?
A No.
Q Do you recall what you and the defendant discussed or talked about after you left the magistrate's office?
A We talked about the wellbeing of the children.
Q Was that a nice discussion, was it hard to discuss, was it -- just describe it for me?
A It was really hard to discuss.
Q Was there yelling or fussing?
A No.
Q What happened when you got home?
A When I got home -- when we all got home, we decided just to lie back down in bed, you know, just to get some extra rest and the children we put them down and put them in the bed.
Q Okay. Now, the bedroom that you used was that the master bedroom?
A Yes.
Q Was that the one that was the origin of the fire?
A Yes.
Q Is that the one where the fire began?

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A I believe so.
Q There was another bedroom and who slept in that bedroom?
A Tarus' son.
Q Okay. And what was his name?
A Minor 2 [redacted].
Q And how hold was he?
A He was four at the time.
Q And where did Minor 1 sleep or stay?
A She was in my bedroom in her bassinet.
Q After you all arrived home laid down for a nap, what happened next?
A I remember getting up out of bed and I see Tarus is still asleep. I remember getting up and I call my mother on the phone.
Q I need to ask you about the phone, okay?
A Okay.
Q How many telephones were in the house?
A Just one.
Q And the telephone that you used to call your mother was located where?
A In the last master bedroom.
Q Okay. Was it on a nightstand next to the bed?
A Yes.
Q So you called your mother?

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A Yes.
Q What happened as a result, what happened next?
A I call my mother I ask her would she take care of my daughter Minor 1 and she said she would. And I told her that I was going to bring her by her home and that was the end of the conversation.
Q After you hung up with your mother, where did you go or what did you do?
A I remember leaving the master bedroom, walk down the hallway, and I went into the living room and I remember taking some clothes out and that's when I saw ---
Q I need you -- would you mind repeating that for me again? What did you do with the clothes?
A I just remember taking some clothes out of the living room.
Q Now, before we go another step, I like to ask you this question.
A Okay.
Q Prior to that phone call, did you call anyone else other than your mother?
A No.
Q Were you dating anyone else?
A No.
Q Were you, the vernacular, running around on your man?
A No.

Q You weren't seeing anyone -- were you seeing anyone behind his back?
A No.
Q Do you recall how much you weighed at the time?
A I say maybe 120, 130.
Q And how tall are you?
A 5'3, 5'4.
Q So you didn't call anyone that morning except your mom?
A Right.
Q After you go in the living room in the den and begin sorting clothes, what happened next?
A I saw Tarus Henry standing behind me. When I turned around, and I saw him.
Q You saw who?
A Tarus.
Q Where were the children?
A Minor 2 was in his room. I remember leaving the living room.
Q You left the living room where did you go?
A In the master bedroom.
Q Back to the bedroom?
A Uh-huh.
Q All right. Then what happened?
A I remember taking Minor 1 out of her bassinet, my

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daughter.
Q And where did you and Minor 1 go?
A I went back into the living room.
Q All right. And what happened then?
A I put her in the car seat carrier.
Q Okay. And we seen a diagram photos of -- where was the child carrier?
A In the living room.
Q In the living room?
A Uh-huh.
Q If I'm looking at the house from the front door, would it be on the left side where the desk and the dining table are or on the right where the dresser and Minor 2 's toys were located?
A It would be on the left.
Q On the left?
A Uh-huh.
Q So you put her in the child seat on the floor?
A Yes.
Q And then what happened?
A I put her in a car seat carrier. I see Tarus in the living room. Tarus he started arguing with me for no reason.
Q So after you place Minor 1 in the car seat, the defendant showed up in the living room and began arguing

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with you?
A Yeah.
Q Is that what you said?
A Yes.
Q Do you recall why he was arguing or the subject of the argument?
A I told him that I wanted to take my daughter to my mother's home. He said, no. Tarus said, no. He said I couldn't take my daughter to my mom's house. I ask him why, he said because she sick and she needs to be home and needs to be on medication.
Q Was she taking medicine at that time?
A Yes.
Q All right. What else -- tell me about the rest of the argument?
A Basically, he just kept going on and on about my daughter she needs to be home. She doesn't need to go to my mother's house. And I told him -- he just kept saying the same thing over and over about she can't go because she sick. And I said, Tarus, I want to go for a job. I said, I just want to go find a job. And then I told him, you know -- I'm sorry so much -- I'm sorry.
MS. PARROTT: Your Honor.
THE COURT: Yes.
MS. PARROTT: Would she like to have recess for a

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minute?

THE COURT: Miss Parker, you want to let's take a recess?

(WHEREUPON, the witness is crying and nodded head in the affirmative.)

THE COURT: All right. Jurors, please go to your jury room.

(WHEREUPON, the jury retire to the jury room.)

(WHEREUPON, a break was taken.)

THE COURT: All right. Does anyone need to go? Anyone need to go? Anyone? All right. Close the door. I'm not going to have in and out while she testifies. Bring the jury out.

(WHEREUPON, the jury return to the courtroom.)

THE COURT: You may proceed.

MR. HILL: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. HILL:

Q Miss Parker, before the recess we were at a point where you were discussing an argument that begun between you and the defendant in the living room after you place Minor 1 in the car seat. And I believe you stated that that argument regarded your wanting to go to a job service and that the defendant did not want you to do that?

A Right.

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Q Is that where we were with your testimony?
A Yes.
Q All right. When you went to the master bedroom to take Minor 1 out of her bassinet, did you notice anything that was different in that bedroom?
A Well, I was gone try to see if I can, you know, call my mom back and tell her that I wasn't going to make it to her house. So I'm in the master bedroom, I'm sitting down on the bed and usually, you know, the phone, you know, is on the stand next to the bed. So I notice that phone was not there on the stand, so something, you know, in my mind told me to look down on the floor. So I look down on the floor, I see that the phone line is cut.
Q And then you walked back out in the living room with Minor 1 or was that after you had gone in the living room and place Minor 1 in the car seat?
A I think, I'm not sure.
Q Okay. So picking back up with the argument that you are having in the living room, what happened next?
A Well, once I notice that the phone, you know, was on the floor. I was still sitting in the bed -- on the bed and I yelled and I ask Tarus did he cut the phone line. He said, no, I didn't cut the phone line maybe one of the children did it.
Q Okay. Continue.

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A So at that point, I left out of the master bedroom, I'm walking down the hallway and now I'm going in the living room again. And at that point, I just remember turning around the opposite direction and my back was towards the living room door.

Q And what happened next?

A Tarus was in front of me and he just kept saying you can't take your daughter over to your mom's house because she's sick. I said, my daughter is not sick. And I said something is obviously wrong with you because the way you're acting. I said something is obviously wrong with you. And he said you need to stay home and be a family, that's what he said.

Q So what did you do after that?

A I just remember my back was towards the door and I remember trying to open the door and he was trying to block me from opening the door and I said, Tarus, I got to leave, I got to go. I said, there's no need for more me to be here anymore, I got to go.

Q And what happened?

A I said, Tarus, I love you, but I got to go. I need to take my daughter over, so I can try to find me a job. And I said, Tarus, I need to go. And the next thing that happened was I remember the room was getting very very dark at that point. And I know I felt something around my

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neck, the left side of my neck, and I just happen to look down at myself and I see that I'm bleeding. And at that point, I fell. I remember falling on the floor in the living room right near the door.

MR. HILL: Your Honor?

THE COURT: Yes.

MR. HILL: I need to fetch an exhibit that's behind the court reporter.

BY MR. HILL:

Q Carol, I need to show you an exhibit marked as State's Number 53.

A Okay.

Q Do you recognized this?

A Yes.

Q What is State's Number 53 that I just displayed to you?

A A machete.

Q Did you see it that day?

A No, I saw it, you know, that was like mainly a little after he cut me.

Q While you were there and you felt blood coming down your throat, what do you remember next?

A I remember, I'm still on the floor. I'm still bleeding. And next the thing, you know, I felt some blows on my back, on the left side in my back and he's

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repeatedly cutting me.
Q Is he saying anything?
A Yes.
Q What?
A Are you going to tell on me? Are you going to tell on me? Need to be here and be a family, be here with the family. Those were his words.
Q Where was Minor 1 ?
A Still in her car seat carrier.
Q How near was he to Minor 1 while this was happening?
A He wasn't like too far from each other.
Q Using my walking towards you, tell me when that approximates the distance?
A Okay.
Q This distance?
A Not really.
Q Closer, further?
A Just little bit closer.
Q Tell me when to stop?
A Right there.
Q Did you observe the photographs in this case?
A Yes.
Q How many times do you recall being hit or cut or stabbed?
A Not really sure.

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Q Did you do anything to cause this?
A No.
Q Did you have wedding rings?
A Yes.
Q Did you take them off at some point?
A Yeah, I did.
Q And when was that?
A That was at the point where he was trying to take me to the hospital.
Q What did you do with them?
A I place them in a compartment in the passenger side.
Q In the door handle?
A Yes.
Q After he knocked you to the ground ---
MS. PARROTT: Your Honor, objection.
MR. HILL: I'll rephrase.
THE COURT: Yes, that's struck from the record.
BY MR. HILL:
Q After you fell to the ground, what did you do?
A Well, you know, at that point, you know, I'm still lying there on the floor. Tarus he stop what he was doing and he put the weapon excuse me -- he put the weapon -- I remember he put it down near the dining area. And I just remember -- he just walk pass me and my little girl she's crying in her car seat carrier.

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Q Where is Minor 2 .?
A He's in his room at that point. And that's when I -- Minor 2 -- little Minor 2 comes in the living room and he said let me go back. At that point, Tarus is cutting me. His son, Minor 2 . comes in the living room and he said, Daddy, what are you doing? Daddy, what are you doing?
Q Where does little Minor 2 go?
A I remember, Minor 2, his father says, son, go to your room, go to your room.
Q Who else was in the house? Who was in the house while this was happening?
A It was just myself, and Tarus and his son and my daughter, seven-month-old child.
Q After Minor 2 went to his room, where did the defendant go or what did the defendant do or what -- do you know what he did or where he went?
A At that point, my daughter she was crying. I remember he went in the kitchen. And at that point while he was in the kitchen making my daughter some formula, I was still on the floor near the door. And I remember just trying to move over in another spot in the living room and I told Tarus that I was hot. I remember saying I'm hot, I'm hot. I'm trying to take these jeans off because my jeans were kind of tight. I needed some room.
Q Did someone remove your jeans?

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A Yes.
Q Okay. Who might that have been?
A The defendant.
Q After he removed your jeans, where did he go or what did he do?
A I remember he said, Minor 2., let's go, let's go and I remember he picked up my daughter in her car seat carrier also and he open the living room door. I saw when he open the living room door and took the kids out. I can tell from the knob, you know, that was shaking I could tell that he locked the door from the outside.
Q Were you standing or were you?
A No, I was on the floor in other area, another spot.
Q What happened after they left?
A After they left, I just -- something just told me to try to get up at that point, I was so weak, so weak.
Q Carol, were you aware of how -- were you aware of the injuries that you suffered at that point?
A Not really. I was so focus on thinking about my children. I really wasn't thinking a lot about myself. I was thinking about the wellbeing of those children.
Q What did you see or hear while you were trying to get off the floor?
A It was God. I remember being on the floor and I remember he came to me at that point because I was going

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to give up. I was going to give up at that point and I was so weak. And I remember hearing God's voice and He said, my child, He said, my child get up. My child you can do this. You can do it. And I remember getting up very very slowly. And I walk down the hallway and straight across and I went into Minor 2 .'s room. And I open the blinds and I see where he put the children in the car at that point. And then I remember trying to walk back to the living room and that's when I look down at myself and I just begin to cry, nothing else that I could do and I cried. And I remember just sitting back in the same spot I was in in the living room and that's when I see Tarus comes in this house. He walk pass me and at that point, I see he's walking down -- he's going to the hallway and at that point, there I don't know what room did he, you know went into.

Q So you don't know where he went when he came back in?

A No.

Q Okay. What is the next thing you recall?

A Him walking back, coming back from whatever he was doing. He just walk pass me.

Q And where did he go if you recall?

A Out the door.

Q Okay. Was -- did the door remain open or was it closed?

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A Close.
Q All right. Then what happened?
A And I remember laying on the floor and I was sniffing. I sniff something smell like smoke. I say it smell like smoke in here, how I'm going to get up, how I'm going to get back up and I was so weak. God came back to me and he said, my child you can do this. You can do this my child, anything that you put your mind to you can do it.
Q So did you get up?
A Yes.
Q And then what happened?
A I remember seeing my blanket, I can't remember what I had on, but I remember seeing my blanket and I wrap myself in the blanket.
Q Where did you go?
A I open the door, I open the door. I close the door from behind me and that's when I look down and I see I had to go down a flight of stairs and that's when I saw Tarus coming. I saw him coming the opposite direction while I was trying to come down, he was trying to go up the stairs. So I'm trying to go down the steps and I stop where I was and Tarus came up the steps and he turn around the opposite way I was trying to go and he grab my arm and try to help me the rest of the way down.

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Q And did you eventually -- did you see anyone when you got to the bottom of the steps?
A Yes, I did.
Q Who did you see?
A I seen a white car, which I think Scott was driving.
Q Was that, Scott McAleese, your neighbor?
A Yes.
Q Did you see him or just his car?
A I seen his car at that point.
Q Okay. Did you ever see him?
A Yes.
Q Okay. Do you remember if you said anything to him?
A Yes. At that point, I remember me and Tarus were walking towards the parking lot at [redacted] Apartments and I remember looking over my left shoulder and I see that Tarus is gone. He's not even beside me anymore. So at that point, he must be ran, you know, somewhere. And as I'm walking with my blue blanket on, I see Scott come up to me and Scott ask me what happened. I remember telling him in my words that me and my husband got in a fight. And I remember Scott just ran away. He must be ran in his home, I'm not sure, but I remember seeing him run away. And at that point, I'm near the parking lot now. And I see Tarus pull up in his car and I see that the two children are in the backseat. Tarus got

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out of the car. He open the passenger side door of the car and put me inside the car. And then he got back on the driver seat and then he took off slowly, not usually, you know, driving fast like he usually would be, but he was driving slow.

Q Okay. What route would you normally take to go to Florence if you were going to the hospital?

A Well, at [redacted], we usually just take a right and we take another right -- near Francis Marion school that will be the shortest route to go to the hospital.

Q On Palmetto Street?

A Right.

Q Did he take that route to go to the hospital?

A No.

Q What route did he take if you recall?

A Yes. U.S. 378.

Q What was unusual or odd, if anything, about that?

A I know it was a long ride.

Q Did you eventually arrive at a hospital?

A Yes.

Q Which one?

A McLeod Regional Medical Center.

Q What happened when you arrived there?

A Well, Tarus got out of the car and ran in the hospital. And I see that he came back out, you know, with

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a security officer and the security officer had a wheelchair.

Q What happened when they arrived with a wheelchair?

A I remember the officer opening the passenger door side.

Q Was that the security guard?

A Yes.

Q All right.

A And then he put me in the chair and he close the passenger side door. And I see Tarus is going back on the driver side. And at that point, that's all I know.

Q Carol, is there anything that I haven't asked you about this incident that you need to tell me?

A No.

MR. HILL: Your Honor, that's all the State has on direct.

THE COURT: You may examine her.

MS. PARROTT: Thank you.

CROSS-EXAMINATION

MS. PARROTT:

Q Do you go by Miss Parker now?

A Yes, ma'am.

Q And if anytime you need to take a moment, please do, okay. That's fine. How long did you actually know Taurus?

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A From '05 to '08 maybe, almost three I say.
Q Okay. And then you actually got married though in August of 2007; is that what you said?
A Yes, ma'am.
Q So about two years after you met?
A Two or three, yes, ma'am.
Q Had y'all lived together prior to getting married?
A Yes.
Q How long do you think that was?
A I don't recall.
Q And then you had the one child together that's Minor 1, right?
A Yes.
Q And you were basically a step mom to Minor 2 is that right?
A Right.
Q And since Minor 2 was about four when this happened, you known him since maybe he was around two?
A Maybe three. Maybe, he was three.
Q Okay. It sounds like you and Tarus tried to be pretty good parents to both of them, would that be fair?
A Yes.
Q And tried to take care of them by taking them to the doctors?
A Yes.

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Q And giving them their medication?
A Yes.
Q And both of you were unemployed; is that right?
A Right.
Q But you did want to have some money so that you could take care of your family; right?
A Yes.
Q And that would be both you and him; right?
A Yes.
Q It sounds like in what you're saying that money was a pretty big issue for the two of you; is that fair to say?
A Yes.
Q Because you had gone to the magistrate's court?
A Yes.
Q Just that morning?
A Uh-huh.
Q And I believe -- wasn't there also a problem with the car?
A I don't recall though.
Q You don't remember that maybe y'all were behind on the car payments?
A Yes, yes.
Q And was the insurance caught up the way it should be paid?
A No.

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Q And was the tag that was on the car the right tag for that car?
A I don't recall, I am not sure.
Q But it's safe to say that maybe y'all were struggling over some issues that pretty much all revolved around money, would be that be accurate?
A Not really.
Q Okay. All right. But y'all were arguing fairly -- I think if you're arguing over money it's not just one time, is it?
A No.
Q Okay. Can you even tell me maybe about what time the argument started that morning?
A I'm not sure.
Q Okay. Did y'all have insurance, health insurance I'm sorry?
A Health insurance, I had Medicaid.
Q That would take care you and the baby?
A Yes.
Q Or everybody in the family?
A Everybody.
Q All right. And you tell me that you had only ever seen him take some glucose pills for the diabetes?
A Yes.
Q You never knew anything about any of his other

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medical conditions?
A No, the only thing he told me was about the Zyprexa thing that he was -- he told me about that medicine that he previously taken. But, you know, mostly just the Zyprexa name. And he told me it was some kind of lawsuit involved, you know, with that.
Q And because you known him so long I assume you knew his mother as well?
A Uh-huh.
Q He knew your family?
A Yes.
Q And even in the time that y'all had been married and known each other, got to know each others families, no one ever had mentioned any kind of mental illnesses in his past?
A No.
Q Was that partially because maybe the families just didn't get along that well and so you didn't know each other that way well?
A No, we didn't.
Q You didn't get along?
A No.
Q All right. Did y'all argue about the children often?
A Yes.
Q Did argue about where you lived?

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A No.
Q Had you had a previous argument about where you were going to live?
A Yes.
Q How long do you think the argument -- was it just a matter of moments that the argument lasted this -- on this morning before things took a pretty drastic?
A Yes.
Q Or is it a few minutes, is it something ---
A Maybe a couple minutes or so.
Q Was it something that started -- was it something that started as maybe a part of a fight earlier then gets continued later?
A I'm not sure.
Q Okay. But regardless, y'all both been having a pretty good argument about whether or not you could leave the apartment?
A Yes.
Q And take the baby with you?
A Yes.
Q And if the baby's even healthy?
A Yes.
Q This apartment that you lived in does this look like a accurate depiction of ---
MS. PARROTT: I'm sorry, Your Honor, may I approach?

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THE COURT: Yes.

BY MS. PARROTT:

Q Does that look like an accurate depiction of where you were living?

A Yes.

Q And so at Patriot's Place?

A Yes.

Q And so that 930 square feet you think that's probably about right?

A Yes.

Q With two small children in the house and one of them being four, you probably tried to keep things up from his reach and -- was she crawling?

A Well, a little, not really, but a little.

Q Baby trying to roll around but not getting anywhere?

A Yeah.

Q But with a four year old, you probably still might be trying to keep things out of his reach; wouldn't that be safe to say?

A Yes.

Q Did you know about any kind of weapons that were in the house?

A No.

Q You had never seen that machete before?

A No.

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Q Didn't know where it was kept?
A No.
Q But you're the one who cleaned the house?
A Yes.
Q When y'all got to arguing then, one of the things that you stated in response to Mr. Hill was that you were looking at him saying something's wrong with you, something's wrong with you. You had notice already that there was something that wasn't quite right with his demeanor that day?
A Yes, because he normally don't look at me like that. He looked at me in a strange way.
Q Okay. And it wasn't anything that you ever seen before?
A No.
Q Had you seen him take any kind of medication on that day?
A No.
Q You looked out and the children were -- after this event has occurred and even when the child -- did you put Minor 1 in the car seat carrier?
A Yes.
Q All right. But he took Minor 1 on down in that carrier; is that correct? And the child Minor 1 was in her carrier in the car seat in the car and TJ was in the

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car in the backseat as well when you got in?
A Yes.
Q And both remain so?
A Yes.
Q While you were going to the hospital?
A Yes.
Q Did he ever threaten either of the children?
A No.
Q Did he ever raise his hand to any of the children on this day?
A No.
Q Did he get even close to hurting either of the children on this day that you saw?
A Can you repeat that?
Q Did he ever get close to even hurting the children on this day?
A No.
Q He did take you to the hospital, right?
A Yes.
Q And he got the McLeod ER guard to come out with a wheelchair to help you into the ER; correct?
A Yes.
MS. PARROTT: Nothing further, Your Honor.
THE COURT: Redirect?
MR. HILL: None, Your Honor.

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THE COURT: You may step down.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Next witness, please, Mr. Hill.

MR. HILL: Your Honor, I believe the State rest.

THE COURT: The State rest. Jurors, I must take up matters of law here now. Please, if you will go to your jury room.

(WHEREUPON, the jury retire to the jury room.)

THE COURT: Ms. Parrott, you're recognize.

MS. PARROTT: Your Honor, I would make a motion for a directed verdict in regards to this case and with the understanding that it's about any evidence going towards the charges on the indictment. I would specifically direct the Court's attention to Counts 3 and 4. And in fact, Count 3 has her listed as being the mother of the four-year-old child which refers to TJ as he's been called here in court. And in fact, that would be a mistake because she would be or would have been a stepmother for that child. But beyond all that as well, I don't believe there's been any testimony given that supports that there was any kind of abuse or negligent that was directed at either of the two children.

And in fact, it appears that all steps were taken to try and take care of the children no matter what the circumstances were in the apartment and in the transport

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and care of the children even between Florence, McLeod, Bishopville and Camden. And I believe further information that goes to that, Your Honor, would be the fact when DSS was called and law enforcement did meet up with the grandmother and the children, that they did not see fit to take the children into emergency protective custody nor did they -- nor did DSS feel like that it was necessary for them to get involved beyond more than just simply a safety plan and leaving the children with the grandmother. There were no scraps, no bruises, no cuts or any other signs of any kind of hurt for these children. And I don't believe that any intent was there to cause any harm, any abuse, any neglect to either of these children. And in fact, I think it's -- it's the unfortunate circumstance, Your Honor, where if the children hadn't been in the house, if they had been elsewhere and not in the care of someone, then we would have the possible case for neglect of them if they hadn't been being cared for properly. In this case, they were under adult supervision even though the adult supervision in the apartment may not have been what it needed to be.

THE COURT: Mr. Hill.

MR. HILL: Thank you, Your Honor. First addressing Counts 3 and 4, the State would request that there be a finding that there has been enough evidence presented to

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go forward at least on Counts 3 and 4 as taking the evidence like most favorable to the State, that the actions taken allegedly on the part of the defendant by using a knife or a machete what the State would characterize as a deadly weapon in such a manner near a small child.

THE COURT: What subdivision are you contending that should be used by the Court 1, 2, 3?

MR. HILL: Subsection one places the child at an unreasonable risk of harm affecting the child's life, physical or mental health or safety.

THE COURT: One?

MR. HILL: Yes, Your Honor.

THE COURT: Order, the defendant moves for a direct verdict under Rule 19 of the South Carolina Rules of Criminal Procedure.

It is apodictic that when ruling on a motion for directed verdict the trial court is concerned with the existence or non-existence of evidence, not it's weight. State vs. Williams cite omitted and State vs. Brannon cite omitted.

If there's any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, then the case is properly submitted to the jury. State vs. Kelsy cite omitted.

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Addressing the pending charges seriatim, the first pending charge of assault and battery with intent to kill, the second pending charge of arson in the second degree, the Court comes to the ineluctable conclusion, that the motion for directed verdict must be denied. There is overwhelming testimony and evidence in regard to these two pending charges.

Counts 3 and 4 are troublesome in the applicability of section 63-5-70 unlawful conduct toward a child. The State contends that subsection 1 is efficacious. The State contends that subsection 1 is efficacious i.e. "Place the child in unreasonable risk of harm affecting the child's life physical or mental health, or safety." Analyzing in reviewing the evidentiary record in totality, the Court concludes that the motion for directed verdict should be denied. The Court will revisit this issue at a later time before actual submission of the matter to the jury.

Counts 3 and 4 are to say the least causing the Court a great degree of concernment in regard to the submission of those pending counts to the trial jury. But in summation, the Court readily denies the motion for a directed verdict as to assault and battery with intent to kill and arson in the second degree and denies the motion for directed verdict as to Counts 3 and 4 recognizing

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those counts are subject to further judicial scrutiny. And it is so ordered. We'll all take a recess here now.

Ms. Parrott, visit with the defendant the Constitutional Rights of the Fifth Amendment because I'm going to take that up next on the record under oath.

MS. PARROTT: Thank you, Your Honor. If we could just also address the fact that the indictment does state that it is the mother of the four-year-old child as oppose to it being the stepmother of the child, if you see fit to?

THE COURT: I will address it, that causes me absolutely no concern because the law is crystal clear that we are talking about a defendant who had charge or custody of the child, was the parent or guardian of the child or was responsible for the care and support of the child. The verbiage used in the indictment can be easily amended to conform to the trial testimony and so that is certainly not a matter that I would sustain an objection on.

MS. PARROTT: Thank you, Your Honor.

THE COURT: Yes.

We'll take a recess here now.

MR. HILL: How long, Your Honor?

THE COURT: Fifteen minutes.

(WHEREUPON, a break was taken.)

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THE COURT: Ms. Parrott, I will allow you leeway in regard to -- if you have a physician here, we'll take the physician before we take up the Fifth Amendment issue.

MS. PARROTT: Yes, sir. With the understanding though, Your Honor, if I put up any evidence then we have issues that affect juror arguments and everything. I was discussing all that with my client and we still don't have quite an answer to that.

THE COURT: Okay, have a seat.

MS. PARROTT: Thank you, Your Honor.

(WHEREUPON, a pause in the proceedings.)

MS. PARROTT: Yes, Your Honor, I will be calling Dr. Frierson.

THE COURT: Okay.

MS. PARROTT: And then the rest of the issue we'll deal with after that, I guess, Your Honor.

THE COURT: Yes.

Bring them.

(WHEREUPON, the jury return to the courtroom.)

THE COURT: Everybody all right?

You may proceed, Ms. Parrott.

MS. PARROTT: Thank you, Your Honor. The defense would call Dr. Richard Frierson to the stand, Your Honor.

THE CLERK: If you will, sir, stop right there and place your left hand on the Bible, raise your right hand.

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Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I so affirm.

THE CLERK: Please have a seat. State your full name for the record.

THE WITNESS: My name is Richard Lesane Frierson.

WHEREUPON,

Dr. Richard Frierson,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PARROTT:

Q Thank you, Dr. Frierson. Could you tell me where you're employed?

A I am a processor of clinical psychiatry at the University of South Carolina School of Medicine in Columbia.

Q Okay. And as part of that, what are your job duties?

A A great percentage of my time is spent with a contract with the department of mental health in Columbia where I conduct court ordered evaluations for competency to stand trial in what's called criminal responsibility for courts throughout the state of South Carolina.

Q Are you also a treating physician?

A Yes, I also provide treatment at a clinic at the University of South Carolina also at a clinic at the

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department of corrections.
Q How many facilities do you have patients in or that you go visit for these evaluations, do you know?
A These evaluations?
Q All of your work?
A All of my work probably three or four facilities.
Q You based out of Columbia; correct?
A Yes, for the medical school.
Q How many times have you testified in court?
A Since, I began my career probably over 200 or 250 times somewhere in that ballpark.
Q Tell us how you got your medical degree? What is your background on your education?
A After high school -- I'm from Sumter. After I graduated high school from Sumter High School, I went to the University of South Carolina where I received a bachelor of music degree at the music school there and that was in 1984. I then entered medical school at the University of South Carolina School of Medicine and graduated with my MD in 1988. I subsequently completed four years of residency training in general psychiatry at William S. Hall Psychiatric Institute in Columbia in 1992. And a one-year fellowship in forensic psychiatry in 1993.
Q Are you member of any organizations as part of your professional stats?

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A Oh, yes. I'm a member of the American Psychiatric Association, the American Medical Association, the American Academy of Psychiatry in Law and the South Carolina Psychiatric Association.

Q Have you published any articles or any -- been part of any journals or anything like that as part of your...

A Yes.

Q How many do you know?

A I don't know. Publications, I would say somewhere around 25 to 30.

MS. PARROTT: At this time, Your Honor, I would move that Dr. Frierson be ---

MR. HILL: No objection.

THE COURT: He is qualified. You may proceed to posit query, that will elicit opinion testimony.

MS. PARROTT: Thank you, Your Honor.

BY MS. PARROTT:

Q Dr. Frierson, have you had the opportunity to meet with my client, Mr. Henry?

A Yes.

Q And what was the occasion upon which this was done?

A As part of my work at the department of mental health, we had received two separate court orders requesting evaluation. The court orders are from this court. One court order requested an evaluation of

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Mr. Tarus Henry's competency to stand trial, that means can he work with an attorney, can he understand what's going on in the courtroom and assist in his defense. I was also asked to evaluate his mental status at the time of the alleged offense both for the issues of criminal responsibility, which has to do with whether he knew right from wrong and capacity to confirm and did he have a mental disease or defect which impaired his ability to conform his conduct to the requirements of the law.

Q And what were the conclusions that you drew as part of this evaluation?

A The first conclusion was that Mr. Henry does have the ability to assist his attorney in cooperation of defense to understand what's going on in court. The roles of the jury, all the court officers, the evidence. So he in my opinion was competent or would be competent to stand trial.

Related to the issue of criminal responsibility, it was my opinion that Mr. Henry would have been capable of distinguishing right from wrong and therefore would have been criminally responsible pursuant to McNaughton standard. And the last issue of capacity to conform it was my opinion that Mr. Henry would have been capable of conforming although I did note in my report that because of a medical condition, there was some symptomatology that

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might cause some impairment and capacity to conform, but no substantial impairment, so that he would totally lack the ability to conform.

Q Okay. And let's delve further into what you just stated. You were able to review what records in preparation for your evaluation?

A First of all, I reviewed the arrest warrants, so I knew exactly what happened, the indictment, a summary from the police about what actually transpired. Then I reviewed medical records from several places. Number one, there were two hospitalizations at Bryan Psychiatric Hospital in 2001 that I was able to review. There were medical records from the Tri County Mental Health Center that I was able to review. And finally, there were medical records from the Duke University Medical Center in Durham, North Carolina, where he had neurosurgery operation on his brain that I was able to review.

Q All right. And that operation on the brain was -- what was the actual name of that? Do you recall?

A Yes, there's some unclarity in the record, but what we do know is that Mr. Henry as a child had irretractable seizures, that means seizures that do not respond to medication. And those seizures were a sufficient frequency in severity that he was a candidate for removal of whole or part of one lobe of his brain. So he had a

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neurosurgical procedure where part of his right non-dominate hemisphere, not the part of the brain that controls speech, was removed, the temporal lobe. And one part of it reports the entire lobe and another part of the record it suggest that maybe part of that lobe was surgically removed, so this was a open your head up. He has a scar on the right side of his head, that's quite visible and part of his brain was taken out.

Q And it's called a temporal lobectomy; is that correct?

A Temporal lobectomy. Temporal meaning the name of the lobe. Lobectomy take out a lobe. Like appendectomy take out your appendix. Lobectomy take out lobe.

Q And what are the side effects or possible side effects for such a surgery?

A Well, it is very interesting because there's a lot written about this. And I do have some evidence and a lot of people with severe seizures -- seizures themselves that are uncontrolled can interfere with brains function even when you're not having a seizure. So some people can actually have improvement in intellectual functioning, you know, your intelligence, your memory those sort of things once the lobe is removed, if that's the sort of seizures. But one of the side effects or the side effect that I was able to read about in the literature is particularly on

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the right side of the brain when that lobe is removed is it can impair a person's ability to recognize fear in other people. In other words, if someone appears afraid or fearful, their ability to recognize that emotion in other people can be impaired.

Q So in a situation where there is an assault that is an ongoing or continuing assault, it may be that the person that's committing the act may not fully understand what they're seeing?

A The emotion that they're seeing in the other person's face, specifically fear. It's interesting because happiness, the recognition of happiness in other people's faces, there's some evidence that that improves after right temporal lobectomy. The brain is an incredibly complex organ. And once again, this is relative small studies. We have a ton of people undergoing this procedure. There's not a tone of people that have part of their brain taken out, it's not that very capriciously -- it's done very carefully.

Q And only in certain cases ---

A There's not a whole lot of people that have it done, even with seizures most people with seizures don't have their brain cut, part of their brain cut out. So having said that, I think that one could make an argument that there maybe -- you know, one of the things when you have a

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fight with somebody or you're in an altercation, you see fear, that's one of the things that might be somewhat of a stopping mechanism, so you can control your behavior certainly not all. I mean, you know, it's my opinion that he may have some of this. However, I did not opine that it was to such -- that that in and of itself would totally impair his ability to resist the urge to commit an assault.

Q But you did find that he does have some mental illnesses that are in addition to these -- what would have been injury to the brain?

A Yes, I did. In 2001, he had a episode of depression. This followed a break up of a relationship with a -- I believe a fiancée. And let me refer to my notes, so that I don't misspeak to the jury. Looking at the records, he had been working very long hours at that time. This was in October of 2001. He'd been working six days a week, 18 hours a day at a packing company in Bennettsville. And he caught his fiancée at that time being unfaithful. And he cut his wrist and drink some Clorox, had some symptoms of depression, was hospitalized from October 19th through October 30th of 2001. As part of his treatment in the hospital, he was placed on an antidepressant medication called Sertraline. We know that the trade name you probably seen advertise called Zoloft. And then in

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December of 2001, this is approximately six weeks, seven weeks later, he was admitted to Bryan Psychiatric Hospital very differently in a what we would call having visions of God. He had been hallucinating. He had evidence of an increased sex drive, had had decrease need for sleep, been exercising all night, could not sleep and had become very much religiously preoccupied, very concern with religion quoting the Bible. All of those symptoms at the time it was felt that those might be the early symptoms of a major mental illness called schizophrenia. However, then also consistent with what we call mania or where your mood gets the opposite of depressed, we call it a manic episode. In periods of manic episodes and depressant episodes if you have both, you qualify for a diagnosis of bipolar disorder.

So it's my opinion that based on those records, he met the criteria for bipolar disorder. The interesting thing is that the manic episode happened when he was on a large dose of antidepressant. He has had no further episodes that I know of that required hospitalization since that time, which is somewhat unusual for the course of this illness. It usually happens -- you have more episodes than just two. And I note for some period of time, quite a long period of time, he has been off all medications. So there is the possibility that in someway

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these mood symptoms are related to the fact that he had part of his brain removed. If I could tell you yes or no to that, I would be working somewhere more important than the University of South Carolina.

THE COURT: Well, that is important.

A It is. Yes, I take my work very seriously. But basically, we don't know and so I diagnose bipolar disorder not otherwise specified. And what that not otherwise specify means is I don't know that this is a functional mental illness like other people develop bipolar or whether it's to be someway related to the brain surgery.

Q As part of the treatment though for the bipolar disorder, do you not put people on medication?

A Yes, we put people on medication, on mood stabilizing medication. There's lots to choose from, but basically we recommend the person continue that lifelong because without it, it's likely that they will develop future episodes.

Q So in other words if somebody -- if they stopped taking their medication, they're more likely to have another problem or another episode that was manic depressive?

A Yes, that's general for most mental illness, major mental illness.

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Q Including schizophrenia?
A Yes.
Q And do you find as part of your work that it's not uncommon for schizophrenics or manic-depressives-bipolar-disorder people to stop their medicine whenever they're feeling good?
A Yes, that's unfortunate. It happens with people with mental illness. There's a lot of stigmas associated with mental illness in our society. People don't want to be seen that way and will stop medicines. In his case, I will say that I think that if you go through the medical records, which are the outpatient records, he was stable for a long time. And I think there's some suggestion in the record does he really need to take this or could that manic episode have been somehow triggered by the Zoloft that he been placed on for depression.
Q Okay. But you do have him on medication at this time; correct?
A He was on some medicine in the jail at the time that I saw him and I don't have him on anything because I don't prescribe medicines. I was just an evaluator. But at the time that I saw him, he was on some medication in the jail that helped him sleep.
Q Do you know how long the jail had already been giving him medication before he saw you?

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A I do not recall that, but it was really not a mood stabilizer or anti-psychotic medication. It was mainly some medicine called Trazodone, which is -- it is an antidepressant, but it cause people to sleep.

Q He saw you on September the 4th; would that be correct?

A I'm missing my first page, but that's sound -- yes, September 4th of 2008.

Q Did you review his records for what his prior symptoms may have been strike that I am sorry, Your Honor -- you notice, I guess, the general way to say it is you notice that he had been diagnose previously with mental illnesses and multiple ones; correct?

A I knew that he had been diagnosed with schizo-phreniform disorder, which is the precursor of schizophrenia and depression.

Q And obviously, you took that into conversation whenever you came up with your bipolar?

A Yes, diagnosis in psychiatry is frequently made over time and we look at the course of an illness over several years, that's how we know this is working for bipolar rather than schizophrenia. He's functioned, he's held jobs. People with schizophrenia don't function that well normally after they had a psychotic episode or they lose contact with reality. He's function fairly well much more

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consistent with someone with bipolar disorder.
Q Is it possible for someone to have a break where they either black out or don't fully recognize what they are doing for just a few minutes in time and then they come back?
A I mean, are you specifically referring to this case?
Q Yes, sir.
A I been at this a long time and let me just say that bipolar disorder is not people -- do not cause people to have a period of time briefly all of sudden where they don't remember something. Certainly alcohol or drugs can do that for a period of time. We have no history in this case that there was alcohol or drugs involved. But it's been my experience that people end up involved in situations where they lose control, where they do something that violent that's not the typical thing they normally do or do something where they had cause serious injury to somebody else, that after that their mind as a defense block outs part of it, so they don't remember or they remember bits and pieces. But it would be too painful for their mind to remember what they did, so they -- when they lost control sometimes, they don't fully remember.
Q Okay.
A And we would not necessarily consider that that

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normal.

Q All right. So that's not necessarily a symptom of mental illness ---

A Correct.

Q --- it would be even something on top of a mental illness possibly?

A It's the phenom that is observed. People sometimes, for example, where people on the battle field. People that are at combat in Vietnam or whatever parts of what they have when they kill people and they were involved in warfare, that their mind blocks out and they can't remember part of it later. Doesn't happen to everybody, but some people reported that experience.

Q Would stress exacerbate any of these illnesses and by that, I mean, abnormal amounts of stress?

A Certainly stress is not good for anyone with an mental illness. It can exacerbate depressive symptoms.

MS. PARROTT: One moment, please.

(WHEREUPON, a pause in the proceedings.)

MS. PARROTT: Please answer any questions that the State may have.

THE COURT: Dr. Frierson, you have referenced the McNaughton rule in your testimony is that he has the capacity to distinguish right from wrong under McNaughton.

DR. FRIERSON: Yes, Your Honor.

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THE COURT: And in regard to 17-24-20 let me follow up on your testimony, so as to have a very pristine record here. Your testimony is that he does not have lack of sufficient capacity to conform his conduct to the requirements of law?

DR. FRIERSON: That is correct. My opinion is that he may lack some, but not sufficient capacity.

THE COURT: Thank you.

Cross?

MR. HILL: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HILL:

Q Good afternoon, Dr. Frierson.

A Good afternoon.

Q I'm Stephen Hill, I'm with the prosecutor's office. I like to follow up your examination with some questions of my own. Based upon your experience, did you form an opinion to a reasonable degree of psychiatric certainty -- forensic psychiatric certainty as to the mental capacity of the defendant on the date this incident occurred?

A I formulated an opinion about his ability to distinguish right from wrong and his ability to conform his conduct.

Q Okay. Why are those two -- explain for us the difference between those two ideas and why they are

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important?

A In South Carolina, there is -- I feel sort of uncomfortable doing this because I'm not an attorney, but I'm sure if I get it wrong someone's going to correct me. There's two statutes related to mental illness and criminal behavior. There may be more, but in this -- what we're dealing with are two. One of them is a statute that's called criminal responsibility and that states that a person is not criminally responsible if at the time of the allege offense because of mental disease or defect, they lack the ability to distinguish legal or moral right from legal or moral wrong or to recognize the particular act charged that's legally or morally wrong. Furthermore, there's some other side piece that the defense has to prove it by a preponderance and certain illnesses are excluded like antisocial personalty disorder, other illnesses, that's it in the shell, that's criminal responsibility. And if I were to opine that or not if the not me -- if the judge or a jury were to opine ---

THE COURT: You got that definition completely correct in regard to McNaughton.

A If the jury or the judge would opine that a person did know their right from wrong or couldn't or didn't recognize particular act charges wrong, they are eligible for a verdict of not guilty by reason of insanity. The

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other issue is the capacity to conform that you ask me about. If we were opine that someone knew right from wrong, but because of mental disease or defect could not conform their conduct to the requirements of the law. If that were to be the finding of trier of fact, the jury or the judge, they'll be eligible for a verdict of guilty but mentally ill.

Q What is your opinion then regarding the defendant's capacity to understand right from wrong?

A It's my opinion that he would have been able to distinguish both legal and moral right from wrong at the time of the offense.

Q During your testimony, you commented on a history of possible difficulties. Based upon your understanding of his history in your review, is there anything in his background that would affect your opinion regarding his ability to conform his conduct or to understand the difference between right or wrong?

A Now, those are two separate things.

THE COURT: Yeah, keep them separate, Counsel. I do agree with that. Now, here we're dealing with McNaughten, stay with McNaughten or stay with GBMI one or the other. I'm not expecting to have any difficulty.

BY MR. HILL:

Q Regarding McNaughton, was there anything in his

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history that would have prevented his ability to understand right from wrong?

A There is -- the way I would answer that is this, there is something in his history as bipolar disorder, which potentially it's a severe enough illness that in some people it could cause them to lack the ability to know right from wrong. However, we look at the facts of the case. The fact that from his report to me he hasn't report any symptom of mental illness at the time of the offense that impairs his ability to distinguish right from wrong. He gives a self-protected story allegedly to a witness and to the police initially that he didn't do it.

Q Dr. Frierson, at this point, did he take steps or acts after this incident that would negate an argument that he didn't understand right from wrong?

A Yes, he did.

Q What steps did he take that would negate an argument that he didn't understand right from wrong?

A Things like if -- the size of the fire, if he allegedly set a fire that it was just to destroy evidence. If he tells the police initially there was an intruder, it wasn't me. That would indicate that he would -- if he knew that that was not true and he lied to the police, that would indicate knowledge of wrongfulness. I'm protecting what I did, so they don't know. He said in an

interview to me when he drove his kids, for example, to his mother's house that he knew he was going to jail. That's why he did it. Clearly, that's ---

Q What did he say?

A That he knew he was going to jail. Those statements would indicate to me that regardless of whether or not Mr. Henry has a mental illness, those statements would indicate that he would have the ability to distinguish right from wrong.

Q So the acts that he took part in after the -- during or after the incident indicate that he understood right from wrong?

A Yes, and we do not have a history that before the incident that he was having symptoms, significant symptoms of depression or mania. He doesn't report a lawful contact with reality. He doesn't report a delusion about his life.

Q All right. Regarding delusions, why is that term important, what does it mean? Why should we be concern with it now?

A A delusion is a symptom of major mental illness. We see it in schizophrenia, bipolar disorder, the more severe mental illnesses. And delusions is a fixed-false belief when someone tells you something that they believe to be true, that it's not true and you can't convince them

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otherwise. For example, this may seem sort of weird to you, but, for example, I come in contact all the time is schizophrenia is that, well, the CIA or someone has implanted a computer ship in my head and they're sending me messages. And they're reading my thoughts and they're broadcasting it out on the television.

Q That's a delusion?

A I don't think the CIA normally goes around and planting computer ships in peoples' minds to track their thinking, but people can be very convinced of this.

Q Was there evidence that Mr. Henry was operating under a delusion?

A I did not find evidence of delusion. And what I would specifically been looking for would be evidence of delusion about his wife, like she's doing something to me or she's the Antichrist or that's not my wife. That's someone looks just like my wife who's a look-a-like imposter. All these are types of delusional or I hate to use the word crazy because -- the thoughts seriously mental ill people can have and they believe they're true. Just like you believe, I was born on this day this year. They believe it, you cannot convince them otherwise. You can do a CAT scan on these people and say look there's nothing in your head. And they would still believe that it's there. It's cloaking device or something. I mean,

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it's a fix-false belief by definition. And that's what we look for for legal insanity for something that impair knowledge of right from wrong.

Q So there was no fix-false belief a/k/a a delusion?

A Correct. I could find no fix-false belief for Mr. Henry about his wife. Plus, we look at the behavior around the time of the crime. Does their behavior -- is the behavior of someone that looks like they knew it was wrong or someone who doesn't look like they knew it they were wrong.

Q Did he take self-protected measures which are also an indication that he knew right from wrong?

A Yes.

Q And think you might have testified about that a couple minutes earlier in that he gave you a statement that he knew he was going to jail?

A Yes.

Q Is that a self-protective or an indication of ---

A It's not self-protected, but it's an indication that he might have known his actions could be viewed as wrong.

Q All right. Did he express remorse? And isn't that a indication of an understanding of wrongfulness?

A Yes. I'm sorry for what I did, that is an indication of knowledge of wrongfulness.

Q So in terms of the elements that you would look at to

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determine if he understood right from wrong or took self-protective actions, we know that he gave self-protective statements and first didn't he state that someone else came into the apartment and committed the crime?

A Yes.

Q And then didn't he flee, didn't he leave the scene?

A Yes.

Q Is that also a self-protective act?

A Well, it would be if you didn't take the victim with you. I think having the victim along doesn't necessarily imply that in and of itself is self-protective. But he left the hospital, he dropped her there and then left.

Q So far, we got at least two self-protective acts claiming that someone else was involved and then fleeing the hospital after he dropped his wife off?

A Yes.

Q Are there any others?

A Well, if we would view cutting the phone lines, could be viewed as evidence of knowledge of wrongfulness prior to an act, and that he realized that someone would potentially want to call the police because you're about do something wrong.

Q How does the arson fit into this?

A And that's what I was getting ready to say also, that

if one sets a fire at a crime scene to damage evidence, to conceal evidence, I mean, I think that's common sense, but that might mean you did something wrong and you needed to destroy evidence so you could not be caught.

Q And I understand that you made a diagnosis that he may have bipolar disorder as oppose to the beginnings of schizophrenia. In terms of formulating your opinion, does it matter what diagnosis he suffers from?

A No.

Q And why not?

A Because it's really the symptoms that impair knowledge of wrongfulness not the actual diagnosis.

Q Were any symptoms present that would have affected his ability to do those things?

A Not that I could determine.

Q During your career and -- are you -- because you work for state, are you required to formulate opinions that are more helpful for the state or more helpful for just...

A I call it like I see it, okay. And let the chips fall where they may, so because I'm court ordered, I mean, I work essentially for the courts is the way I approach this.

Q So you don't work for the prosecution?

A No, nor the defense. Most times, my opinion is more helpful to the prosecution, that's only because it's a

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hard standard to reach to try to say someone -- I mean, our definition of legal insanity in South Carolina is very very narrow.

Q But you're not obligated to make a -- to formulate an opinion for one side or the other, are you?

A No.

Q In fact, that would probably be unethical; is that correct?

A Correct. I think even if I were retained by the defense paid, paid -- I don't get paid by either side, I'm paid by the university. Even if I were paid by one side or the other, I think you have to still be objective and call it like you see it, that's the way I operate.

Q Is there anything in the history regarding his lobotomy that concerns you?

A Well, only I think what I've already testified to and that is that people with a nondominant hemisphere, that's the right side. And we call it nondominant is the right side of the brain is not at all involved in speech. It's the left side of the brain, that's involved in speech. We got cutting things out the left side hardly ever, but the right side is structured, stay tuned -- like if I cut my left temporal lobe, I'd have great difficulty understanding speech, what you told me, answering your questions, understand what you're trying to say. The

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right side involves speech. It causes more subtle type of defects when you start damaging the right side of the brain. And in his case, there's reports and literature that people with right temporal lobectomies, that part of the brain that's been cut out may have problems recognizing this specific emotion of fear in other people.

Q Did you formulate an opinion though regarding the existence of that -- regarding this case, how that might affect this case?

A Well, that wouldn't affect wrongfulness, but that would affect -- it could potentially be a factor let me put it that way and capacity to conform.

Q Which is a second prong?

A The ability to resist doing the alleged events.

Q And what is your opinion regarding that?

A It's still my opinion that it's not sufficient to impair his ability substantially to conform, but I do think that when you have arguments with people, one of the ways that you might realize you're getting out of control is based on appearing afraid of you in the course of argument. That is a thing that might be -- it's like one break. Let's say you have a 100 breaks, but a few of them might be that recognition though of people being afraid of you, maybe others back down. Maybe, I'm going too far here.

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Q But how does the fact that he took what we -- what you would term in self-protective measures affect that possible conclusion?
A Well, taking self-protective measures to me doesn't really deal with capacity to conform that's more of the knowledge of right from wrong. And once again, I don't want to confuse the jurors, those are two separate things. Just because you can't recognize fear in my opinion, doesn't mean that he could not have resisted committing assault and battery with intent to kill, arson and unlawful negligent of a child.
Q So the fact that he might have had that problem, we're not saying he did, doesn't in my vernacular, trump his ability to understand the rightfulness or wrongfulness of his act?
A Correct.
Q And by history wasn't the lobotomy performed in order to elevate problems with seizures and wasn't that extremely successful?
A Yes.
Q And that was the only reason that was performed?
A Correct. The lobotomy was performed because he had irretractable seizures that did not respond to medication that you see in people with epilepsy. And after that, I mean, he describes it on the interview as pretty much

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miracle cure. He had no further seizures. He was able to return to work. He was working -- he was -- that was back in '99 or he was working at Carowinds, but he was able to go back to work 20 days later.

Q So forgive me for being repetitive, but as I conclude because I asked a lot of questions, I just need to make sure I understand.

MS. PARROTT: Object asked and answered then.

THE COURT: Yes, I sustain the objection to the form of that query. If you have question ---

MR. HILL: I will rephrase my question.

BY MR. HILL:

Q Doctor, is it your opinion to a reasonable degree of forensic psychiatric certainty that the defendant was capable of understanding right from wrong?

MS. PARROTT: Objection asked and answered.

THE COURT: I overrule that because there has been query after query and there needs to be a definite response in that regard. And he's already given a definite response I think, but I'm going to add certitude to the record.

A I think -- let me hear the question again. Can it be read back.

THE COURT: Yes.

BY MR. HILL:

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Q What is your opinion to a reasonable degree of forensic psychiatric certainty regarding the defendant's capacity to conform his conduct to the law?

A It is my opinion that he had sufficient ability to conform his conduct.

Q And the second prong, what is your opinion to a reasonable degree of forensic psychiatric certainty regarding his ability to appreciate the rightfulness or wrongfulness of his act?

A It's my opinion that he would have been capable of distinguishing the rightfulness and wrongfulness of the act.

MR. HILL: Thank you.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. PARROTT:

Q Very simply, sir, but you also diagnosed him as having a mental illness again on top of having had a temporal lobectomy?

A Yes.

Q Which -- and the temporal lobectomy certainly could have affected his brain function?

A Yes.

MS. PARROTT: Nothing further, Your Honor.

THE COURT: Recross?

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MR. HILL: None.

THE COURT: Thank you, Doctor, have a nice trip back to Columbia.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Jurors, I must take up a short matter of law here now, will not take me very long. I will not leave the bench. Let me take up this matter and then I'll bring you back out, please.

(WHEREUPON, the jury retire to the jury room.)

THE COURT: Mr. Henry, would you come forward please and be sworn?

THE CLERK: Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE DEFENDANT: I do.

THE COURT: Have a seat, please.

THE CLERK: Will you state your full name for the record.

THE DEFENDANT: Tarus Tremaine Henry, Sr.

THE COURT: Mr. Henry, if you would turn and face me now, please. Under the constitution, you have the absolute right not to testify, that's referred to as the Fifth Amendment Privilege. And if you do not testify, it will not be used against you. And I will instruct this trial jury that they cannot use that against you and they cannot even discuss it in the jury room. Do you

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understand that?

THE DEFENDANT: Yes.

THE COURT: You also have the absolute right to testify. If you elect to take the stand and testify, you must answer all questions that I rule are proper questions. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Sir?

THE DEFENDANT: Yes, sir.

THE COURT: I would not let you take the Fifth Amendment Privilege on the stand itself. You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: What is your decision in this case, are you going to testify or not testify?

THE DEFENDANT: I testify.

THE COURT: You are going to testify?

THE DEFENDANT: Yes.

THE COURT: And is that decision to testify made freely and voluntarily on your part?

THE DEFENDANT: Yes, it is.

THE COURT: Has anyone put any pressure on you in any way to cause you to testify?

THE DEFENDANT: No.

THE COURT: Anyone threaten you in any way to make

you testify?

THE DEFENDANT: No, sir.

THE COURT: Your decision to testify is made of your own freewill and accord?

THE DEFENDANT: Yes.

THE COURT: You talk to your lawyer in detail about this; is that correct?

THE DEFENDANT: That's correct.

THE COURT: Are you satisfied with the conferences you've had with her on this issue?

THE DEFENDANT: Yes.

THE COURT: You satisfied with her discussions with you on this issue?

THE DEFENDANT: Yes.

THE COURT: Would you like to ask me any questions concerning the Fifth Amendment Privilege or the right to testify?

THE DEFENDANT: No.

THE COURT: You understand it?

THE DEFENDANT: Yes.

THE COURT: Thank you, please, go back around. Order, under State vs. Orr 304 S.C. 185, 403 S.C. Second 623 and Brown vs. State 340 S.C. 590, 533 S.C. Second 308, I have conducted a hearing with the defendant concerning his Fifth Amendment Privilege. In the hearing, the Court

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has had colloquy with the defendant and has apprised the defendant of his Fifth Amendment Privilege and the Court has explicated to the defendant his right of testifying.

The Court concludes that the defendant has made the decision in this case to testify. The Court rules that the decision of the defendant to testify is made freely and voluntarily on his part with a full and complete understanding of the Fifth Amendment Privilege. Finally, the defendant has conferred with able trial counsel in this regard and completely understands this process. And it is so ordered.

All right. Counsel, I would like to proceed with his testimony this afternoon. Are you ready?

MS. PARROTT: Yes.

MR. HILL: Your Honor, he does have a bit of a criminal record. I think that that's an issue we need to address just as to whether or not it would be admissible.

THE COURT: All right.

MR. HILL: Your Honor, my records from the national -- from NCIC showed that he has a criminal domestic violence first offense conviction that happened in October 13th of 2005.

THE COURT: What jurisdiction?

MR. HILL: South Carolina, Bennettsville.

THE COURT: What is the offense?

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MR. HILL: Criminal domestic violence first.

THE COURT: That does not fall within the one year rule. How do you contend that it is efficacious?

MR. HILL: Your Honor, we would contend that that act in and of itself shows conformity with the conduct that happened in this case.

THE COURT: What do you say to that, Counsel, in regard to that particular offense?

MS. PARROTT: That's exactly for that reason, Your Honor, that I would argue that it's so prejudicial, but it should not be allowed to be used to go against him.

MR. HILL: Your Honor, if I might make one more statement regarding it?

THE COURT: Yes.

MR. HILL: Your Honor, according to the defendant's statement, this part of the statement was redacted out of a precautionary measure. The State would contend that the circumstances pertaining to the CDV in 2005 are quite similar to those in this case. The defendant's testimony during the interrogation was that he was upset with his wife because he had been embarrassed and was upset. It delved out a financial problem. This case also -- there's been testimony of potential financial problems and concern about her leaving. And the State would offer that those are sufficient similarities that might justify him being

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asked on cross-examination about this particular offense, not to go into any other details, but that's the basis for the State's requesting that it be admitted.

MS. PARROTT: Your Honor, that would seem to be more of a prior bad act argument as oppose to just simply an impeachment of his character. And I think what you're then having to get to is a question of whether or not we're going for habit or some sort of argument such as that. And I would argue against that, Your Honor, that this is something that this one incident needs to be seen as something on its own. It's far too prejudicial to delve into what the information was from the prior incident and given that we only have one person's perspective on that matter nobody has done -- as far as I know, no one's done any research into the exact facts of that. I would simply ask that the Court not allow it.

THE COURT: Let's get back to 609. Now, first and foremost, 609 has a time limit and it also has a sentence limit.

MR. HILL: Yes, sir.

THE COURT: The sentence for this offense would not be more than one year.

MR. HILL: I understand.

THE COURT: So it doesn't come within the rule unless you contend it comes within A2 and that does not seem to

be efficacious.

MR. HILL: No, sir.

THE COURT: Sir.

MR. HILL: I agree.

THE COURT: All right. The objection is sustained based on Rule 609 A, B and the juxtaposition of that rule in terms of 403.

So called legal scholars, and they are abundant in regard to their self-effacing contentions. State vs. Alexander is a seminal case in South Carolina adopting what is now Rule 403. Alexander inculcates the bench and bar in regard to the utilization of testimony that would in fact impair the ability to receive a fair and impartial trial.

Conflating those two rulings with the evidentiary record at bar, I conclude without doubt or question that the offense should not be used in this case. And it is ordered.

MR. HILL: Your Honor.

THE COURT: Yes.

MR. HILL: Perfectly understanding your ruling and I'm not being argumentative, I'm asking this for clarification. Would the Court's ruling also cover my request that it be admitted under Rule 404? I understand the Court's ruling. I'm not attempting to argue with it,

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that would have been the other basis for our admission, request for admission.

THE COURT: Counsel, I understand your argument, but in my judgment that exacerbates the matter. What I'm interested in doing is trying this case so that at a later time if the matter is reviewed in Columbia by either entity i.e. the State Supreme Court or the Court of Appeals that the record with will be quote, quote, quote affirmed. There are a legion of cases in South Carolina that are "reversed". And when the cases in that position, there's always blame to go around. Who did it? Why? How did it occur? And so hopefully, I will not fall within the penumbra of that last adjective. What's the next matter?

MR. HILL: That's all from the State.

THE COURT: All right. You ready to proceed?

MS. PARROTT: Your Honor, I was just simply -- let me ask one more question of my client, please.

THE COURT: Okay.

(WHEREUPON, a pause in the proceedings.)

MS. PARROTT: Yes, your Honor, we are ready.

THE COURT: Bring them out.

(WHEREUPON, the jury return to the courtroom.)

THE COURT: Jurors, give me your attention. I did not lose my watch even though it's Timex. I do understand

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it's a quarter to five. But what I like to do is finish the testimony today. Is everyone okay with that? If you got a problem just raise your hand up and we'll consider changing the matter? Is everybody okay? Yes.

JUROR: I don't have a problem with that, but I do need someone to pick up my daughter by 6:30 from daycare, so if I could call my mom and let her know to come get her.

THE COURT: May we call your mom for you?

JUROR: Uh-huh.

THE COURT: All right. Mrs. Clerk, would you get the telephone number from her and the identification of the person.

(WHEREUPON, a pause in the proceedings.)

THE COURT: Thank you. Is that going to solve the matter now or should I go to the alternate? You gone be all right? You okay? If we can't get through on the telephone, I'll revisit. How about everybody else? Everybody, okay?

All right. Proceed, defense.

MS. PARROTT: Yes, Your Honor, I would call Tarus Henry to the stand.

THE CLERK: If you will, sir, place your left hand on the Bible, raise your right hand. You swear to tell the truth, the whole truth, and nothing but the truth so help

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you God?

THE DEFENDANT: I do.

THE CLERK: Please be seated and state your full name for the record.

THE DEFENDANT: Tarus Tremaine Henry, Sr.

WHEREUPON,

Tarus T. Henry, Sr.,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PARROTT:

Q Okay. And, Mr. Henry, what name do you go by? You go by Tarus?

A Say that again?

Q You go by Tarus that's your name?

A Yes.

Q Okay. And how do you know Miss Parker?

A She was my wife.

Q How long have you known her?

A Three years.

Q How long were you married?

A About a year.

Q And do you have any children together?

A Yes, a little daughter.

Q What is her name?

A Minor 1 .