

20421

ORIGINAL

VOLUME ONE OF TWO

ANDERS

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM UNION COUNTY

Robin B. Stilwell, Circuit Court Judge

No Respondent's Brief Filed
APR 26 2013

NO DEFENDANT'S BRIEF

THE STATE,

RESPONDENT,

V.

LEAH FOREST

APPELLANT

APPELLATE CASE NO. 2012-211826

RECORD ON APPEAL

ROBERT M. PACHAK
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT (APRIL 10 – 13, 2012)	1
INDICTMENT	622
CERTIFICATE OF COUNSEL	624

STATE OF SOUTH CAROLINA)
COUNTY OF UNION) IN THE COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUIT
11-GS-44-932

State of South Carolina)
VS.) Transcript of Record
Leah Forrest) (Pages 1 - 170)
Day 1

April 10, 2012 (Tuesday)
Union, South Carolina

B E F O R E:

The Honorable Robin B. Stilwell

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

John Anthony, Deputy Solicitor
Union, South Carolina

Attorney for the Plaintiff

Erik Delaney, Assistant Public Defender
Union, South Carolina

Melissa Inzerillo, Esquire
York, South Carolina

Attorney for the Defendant

SHIRLEY G. BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

I N D E X

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS

Jackson v. Denno:

Robbie Hines				
By Mr. Anthony	42			
By Mr. Delaney		56		

Opening statements	73			

Jeff Lawson				
By Mr. Anthony	80			
By Mr. Delaney		92		
By Mr. Anthony			99	

Ron Dipietro				
By Mr. Anthony	103			
By Mr. Delaney		130		
By Mr. Anthony			165	

EXHIBITS

EXHIBIT NO.	DESCRIPTION	ID	EV
S-1*	Miranda form and statement	42	56
S-2	Photo	79	86
S-3	Photo	79	86
S-4	Photo	79	86
S-5	Photo	79	86
S-6	Photo	79	86
S-7	Photo	79	86
S-8	Photo	79	86
S-9	Photo	79	86
S-10	Photo	79	86
S-11	Photo	79	86
S-12	Photo	79	86
S-13	Photo	79	86
S-14	Photo	79	86
S-15	Photo	79	86
S-16	Photo	79	86
S-17	Photo	79	86
S-18	Photo		
S-19	Photo		
S-20	Photo		
S-21			
S-22			
S-23			
S-24			
S-25	Rifle		92
C-1	Motion In Limine	41	

* Marked for purposes of Jackson v. Denno

1 The Court - All right, ladies and let's get
2 started. We're going to call to bar the case of State of
3 South Carolina vs. Leah June Forrest and that is case
4 number 2010-GS-44-932. Now, ladies and gentlemen, I'm
5 going to read to you the indictment. The indictment is
6 the charging paper that has the allegations that the State
7 has made against the Defendant, Ms. Forrest. Now, before
8 I do that, I want to tell you something very important.
9 In the United States of America, in the State of South
10 Carolina and in the County of Union, a defendant is
11 presumed innocent until proven guilty beyond a reasonable
12 doubt by the State. The State has the burden of proving
13 each and every element of the offense beyond a reasonable
14 doubt. So understand that when any person walks into a
15 courtroom as a defendant, that person is presumed innocent
16 until proven guilty. That is not just a mere legal
17 theory. That is the cornerstone of our justice system,
18 and you must keep that in mind. When a defendant walks
19 into the courtroom, he or she wears a cloak of innocence
20 and retains that cloak of innocence until such time as
21 twelve jurors make a determination that the State has met
22 its burden of proof. Now, the reason I tell you that now
23 before we get started is so that you will be mindful of
24 that while we conduct this trial and so that also when you
25 hear me read the allegations you will recognize that these

1 are allegations, and just because I am as the Court am
2 reading to you these allegations, it does not mean that I
3 am presenting to you that they are factually accurate or
4 the facts of this case. The jury will make that
5 determination. However, ladies and gentlemen, I will tell
6 you that the State of South Carolina would allege that the
7 Defendant, Ms. Forrest, in Union County, South Carolina on
8 or about June 7th, 2010 did with intent to kill, attempt
9 to kill with malice aforethought Ronald C. Dipietro by
10 shooting the victim with a rifle. Now, ladies and
11 gentlemen, the reason I ask -- read that to you is so that
12 you can intelligently answer the next question that I'm
13 going to pose to you, and that is this. Is there anyone
14 among you who has any prior knowledge of, any prior
15 disposition regarding the allegations or the parties in
16 this case?

17 (No response)

18 The Court - All right, let the record reflect no
19 affirmative response. Ladies and gentlemen, the
20 solicitor's office is prosecuting this case. Mr. Kevin
21 Brackett is your solicitor and Mr. John Anthony will be
22 prosecuting this case on behalf of the State. Mr.
23 Anthony, is there anyone else that you would like to
24 introduce who will be assisting you in the prosecution of
25 this case?

1 Mr. Anthony - There's no one from our office
2 that will be prosecuting the case except me.

3 The Court - All right. Ladies and gentlemen, is
4 there anyone among you who has a personal, professional or
5 family relationship with anyone in the Sixteenth Circuit
6 Solicitor's Office?

7 (No response)

8 The Court - All right. Let the record reflect
9 no affirmative response. Ladies and gentlemen, the
10 defendant in this case is Ms. Leah J. Forrest. Is there
11 anyone among you who has a personal, professional or
12 family relationship with Ms. Forrest?

13 (No response)

14 The Court - All right, ladies and gentlemen, Mr.
15 Erik Delaney and Ms. Melissa Inzerillo will be
16 representing Ms. Forrest in this matter. Is there anyone
17 among you who has a personal, professional or family
18 relationship with Mr. Delaney or Ms. Inzerillo?

19 (Juror stands)

20 The Court - Yes, ma'am? Name and juror number?

21 Juror - Juror number 5.

22 The Court - And what's your name?

23 Juror - Denise Alexander.

24 The Court - Okay. And what's your relationship?

25 Juror - I just know Mr. Delaney.

1 The Court - Okay. How do you know him?

2 Juror - From having to go to Court.

3 The Court - Okay. All right. Okay. Do you
4 think the fact that you know him would affect your ability
5 to be fair and impartial and render a verdict in
6 accordance with the law as I give it to you?

7 Juror - No, sir.

8 The Court - Okay. Thank you for telling me. I
9 do appreciate it. All right. Is there anyone among you
10 who is employed by law enforcement or has an immediate
11 family member who is employed by law enforcement?

12 (Jurors stand)

13 The Court - Yes, sir? Name and juror number.

14 Juror - James Tesner, 261. I work part-time for
15 Pacolet Police Department. My sister works for
16 Spartanburg County.

17 The Court - Okay. Given that fact, do you think
18 you could be a fair and impartial juror in the trial of
19 this case, sir?

20 Juror - To be honest with you, I feel like I
21 would lean toward the State.

22 The Court - Okay. Good enough. Take your seat.
23 All right, yes, ma'am?

24 Juror - Kristie Wix, number 293, my --

25 (inaudible) --

1 Court Reporter - I can't hear her, Judge.

2 The Court - Say that one more time. It's not
3 your fault. The acoustics are kind of bad. That's why
4 I'm yelling at everybody. Little bit louder please.

5 Juror - Kristie Wix, 293. My uncle works at
6 Union -- here -- and he's a detective.

7 The Court - Okay. Given that fact, do you think
8 you could still be a fair and impartial juror in the trial
9 of this case?

10 Juror - Yes, sir.

11 The Court - Okay. Thank you for letting me
12 know. I appreciate it. Yes, sir?

13 Juror - 248, Timothy Smith. I got a cousin that
14 works on the police force.

15 The Court - Okay. You think you'd still be fair
16 and impartial?

17 Juror - I'm not sure.

18 The Court - All right, sir. I appreciate it.
19 Sit down. Yes, ma'am?

20 Juror - Juror number 64. I work at Spartanburg
21 Public Safety Department.

22 Court Reporter - I didn't get what she said.

23 The Court - She works for Spartanburg Public
24 Safety Department. Is that right?

25 Juror - (Indicating yes)

1 The Court - And did you get her name and juror
2 number?

3 Court Reporter - Yes, sir, 64.

4 The Court - All right, you think you could still
5 be fair and impartial in the trial of this case, ma'am?

6 Juror - Yes, sir.

7 The Court - All right, thank you for telling me.
8 I appreciate that. All right, is there anyone among you
9 who is a member of or a financial contributor to any
10 organization which advocates for either law enforcement or
11 for victim's rights? Now, when I say that, I mean
12 organizations such as MADD, Mother's Against Drunk
13 Driving, SADD, Students Against Drunk Driving, any
14 fraternal order of police, any organization like that that
15 again, either advocates for criminal prosecution or for
16 victim's rights?

17 (No response)

18 The Court - All right, let the record reflect no
19 affirmative response. Is there anyone among you who has
20 been charged with or convicted of an assault for criminal
21 domestic violence?

22 (No response)

23 The Court - All right. Is there anyone among
24 you who's a member of a religious group which would
25 prevent you from rendering a verdict in a criminal case?

1 (No response)

2 The Court - Is there anyone among you who has
3 ever filed a lawsuit against the County of Union or the
4 Sheriff's Department of Union County?

5 (No response)

6 The Court - Anyone among you who is a member of
7 an organization which does not recognize the authority of
8 the government of the State of South Carolina, the United
9 States or the County of Union?

10 (No response)

11 The Court - Anyone among you who has ever worked
12 for or volunteered for the prosecution, a prosecutorial
13 agency or law enforcement agency?

14 (No response)

15 The Court - Is there anyone among --

16 (Juror stands)

17 The Court - Yes, sir?

18 Juror - Say that again, sir?

19 The Court - Anyone among you who has ever
20 volunteered for or worked for a law enforcement or
21 prosecutorial agency, like the solicitor's office and the
22 sheriff's office?

23 Juror - Okay. I was a reserve police officer
24 for the City of Gaffney.

25 The Court - Okay, your name and juror number,

1 sir?

2 Juror - Lucius Rice.

3 The Court - Lucius Rice.

4 Juror - Number 224.

5 The Court - Okay. All right. When was that?

6 Juror - Back in 2004.

7 The Court - Okay. You still think you could be
8 fair and impartial in this case, sir?

9 Juror - Oh, yes.

10 The Court - Okay. Great. Thank you for letting
11 me know. I appreciate it. All right, is there anyone
12 among you who believes that a person does not have a right
13 to exercise self defense?

14 Mr. Anthony - Your Honor, may I approach a
15 minute? May we approach?

16 The Court - Sure.

17 (Bench conference was held in the presence of
18 the jury venire but out of the hearing of the jury venire
19 which was not reported.)

20 The Court - All right, ladies and gentlemen, I'm
21 going to pose that last question to you one more time. Is
22 there anyone among you who believes that a person does not
23 have a right to exercise self defense?

24 (No response)

25 The Court - Okay. Ladies and gentlemen, is

1 there anyone among you who for whatever reason feels like
2 you could not be a fair and impartial juror in the trial
3 of this case?

4 (No response)

5 The Court - Okay. Good enough. All right,
6 ladies and gentlemen, what we're going to do now is move
7 toward selection of the jury. Now, we have a time honored
8 process of selecting the jury, and the attorneys are
9 allowed -- each side is allowed to exercise strikes.
10 Peremptory challenges is what they're called technically.
11 And what's going to happen is the Clerk of Court has
12 selected those among you at random by way of a computer
13 program and what he's going to do is, he's going to call
14 your name. When he calls your name, what I want you to
15 do, if you would, please, is stand up. Now, the attorneys
16 will then have the opportunity to exercise peremptory
17 challenges, strikes. The State gets five strikes; the
18 defense gets ten strikes. Now, when you stand up, if you
19 hear twice, please present the juror or please seat the
20 juror, then what I'd ask you to do is take all of your
21 belongings, backpacks, books, pocketbooks, man purses,
22 whatever you've got and come on up and sit in the jury
23 box. You'll have them sit over here, Mr. Gault?

24 Clerk - Yes, sir.

25 The Court - Okay. Sit in the jury box. Okay?

13

1 If you hear, please excuse the juror from the trial of
2 this case, please strike the juror from the trial of this
3 case, then you can sit back down. You will not have been
4 selected for the trial of this case. We're going to
5 select twelve main jurors and then two alternate jurors.
6 The reason we pick two alternates is because from time to
7 time we find that it's necessary to replace one of the
8 main twelve jurors with an alternate. The alternates are
9 just as important as any of the main jurors and in some
10 instances they become more important than the main jurors.
11 So we'll pick fourteen altogether. Please know that the
12 attorneys are given wide latitude and broad discretion in
13 who they elect to strike or not strike. So don't try to
14 determine why they may have stricken you or why they may
15 have selected you, because if you try to get in the head
16 of an attorney, you'll be as batty as we are, and I --
17 it's not a comfortable place to be. Okay? So just accept
18 it philosophically. All right? Having said that, you may
19 call the names.

20 Mr. Anthony - Your Honor, before we start, can
21 we approach a minute?

22 The Court - Sure.

23 (Bench conference was held in the presence of
24 the jury venire but out of the hearing of jury venire
25 which was not reported.)

1 The Court - All right, ladies and gentlemen,
2 we're going to take a few minutes and we're going to look
3 up a matter of law to make sure that the peremptory
4 challenges, the numbers are correct. I may be wrong in
5 that regard. We're going to find out and then we're going
6 to go forward. Okay?

7 (Brief recess taken)

8 The Court - All right, Mr. Delaney, do you take
9 exception to the State's proposition that it's five?

10 Mr. Delaney - Judge, we do.

11 The Court - Sir?

12 Mr. Delaney - Judge, we still feel that there
13 should be ten -- ten strikes given in the case.

14 The Court - Okay.

15 Mr. Delaney - And, Judge, I don't know if this
16 is updated since the new law has changed --

17 Mr. Anthony - It hasn't been. We checked. This
18 is still the law that's in effect.

19 The Court - Okay. Good enough. Inasmuch as is
20 set forth statutorily, I recognize it's fairly vague, I
21 will allow five and five. Okay? Having said that, you
22 may proceed.

23 The Clerk - As I call your name, if you will
24 please stand. Juror Number 99, Willie Goode. So says the
25 State?

15

1 Mr. Anthony - Please present the juror.

2 The Clerk - So say the defense?

3 Mr. Delaney - Please seat the juror.

4 The Clerk - You may come forward, ma'am.

5 (Juror seated)

6 The Clerk - And everyone, please, as you sit
7 down in these chairs, some of them will lean back very
8 quickly with you, so just be careful. Juror Number 296,
9 Amanda Yendall. So says the State?

10 Mr. Anthony - Please present the juror.

11 The Clerk - So say the defense?

12 Mr. Delaney - Please seat the juror.

13 The Clerk - You may come forward, ma'am.

14 (Juror seated)

15 The Clerk - Juror Number 63, Cameron Dyer. So
16 says the State?

17 Mr. Anthony - Please excuse the juror.

18 The Clerk - You can have a seat, sir. Juror
19 Number 64, Juaniece Eison. So say the State?

20 Mr. Anthony - Please present the juror.

21 The Clerk - So say the defense?

22 Mr. Delaney - Please excuse the juror.

23 The Clerk - You may have a seat, ma'am. Juror
24 Number 199, Joshua Mulwee. So say the State?

25 Mr. Anthony - Please present the juror.

1 The Clerk - So say the defense?

2 Mr. Delaney - Please seat the juror.

3 The Clerk - Come forward, sir.

4 (Juror seated)

5 The Clerk - Juror Number 151, Clifford Kershaw.

6 So say the State?

7 Mr. Anthony - Please excuse the juror.

8 The Clerk - You can have a seat, sir. Juror

9 Number 32, Tonya Brown. So say the State?

10 Mr. Anthony - Please present the juror.

11 The Clerk - So say the defense?

12 Mr. Delaney - Please seat the juror.

13 The Clerk - You may come forward, ma'am.

14 (Juror seated)

15 The Clerk - Juror Number 217, Linda Prince. So

16 say the State?

17 Mr. Anthony - Please present the juror.

18 The Clerk - So say the defense?

19 Mr. Delaney - Please seat the juror.

20 The Clerk - You may come forward, ma'am.

21 (Juror seated)

22 The Clerk - Juror Number 186, Harold McCormick.

23 So say the State?

24 Mr. Anthony - Please present the juror.

25 The Clerk - So say the defense?

1 Mr. Delaney - Please excuse the juror.

2 The Clerk - You may have a seat, sir. Juror

3 Number 55, Debra Darby. So say the State?

4 Mr. Anthony - Please present the juror.

5 The Clerk - So say the defense?

6 Mr. Delaney - Please seat the juror.

7 The Clerk - You may come forward, ma'am.

8 (Juror seated)

9 The Clerk - Juror Number 27, Ronald Brawley. So

10 say the State?

11 Mr. Anthony - Please excuse the juror.

12 The Clerk - You can have a seat, sir. Juror

13 Number 253, Anita Stephens. So say the State?

14 Mr. Anthony - Please present the juror.

15 The Clerk - So say the defense?

16 Mr. Delaney - Please seat the juror.

17 The Clerk - You can come forward, ma'am.

18 (Juror seated)

19 The Clerk - Juror Number 118, Sherry Hodge. So

20 say the State?

21 Mr. Anthony - Please present the juror.

22 The Clerk - So say the defense?

23 Mr. Delaney - Please seat the juror.

24 The Clerk - You may come forward, ma'am.

25 (Juror seated)

1 The Clerk - Juror number 133, Brooke Parkins.

2 So say the State?

3 Mr. Anthony - Please present the juror.

4 The Clerk - So say the defense?

5 Mr. Delaney - Please seat the juror.

6 The Clerk - You can come forward, ma'am.

7 (Juror seated)

8 The Clerk - Juror Number 135, Beverly Jeter. So

9 say the State?

10 Mr. Anthony - Please present the juror.

11 The Clerk - So say the defense?

12 Mr. Delaney - Please seat the juror.

13 The Clerk - You may come forward, ma'am.

14 (Juror seated)

15 The Clerk - Juror Number 5, Denise Alexander.

16 So say the State?

17 Mr. Anthony - Your Honor, the State would make
18 the motion we discussed at the bench.

19 The Court - All right. Any objections to that,
20 sir?

21 Mr. Delaney - No, Your Honor.

22 The Court - All right. Stricken for cause.

23 The Clerk - You may have a seat, ma'am. Juror
24 Number 67, Audie Epps. So say the State?

25 Mr. Anthony - Please present the juror.

1 The Clerk - So say the defense?

2 Mr. Delaney - Please excuse the juror.

3 The Clerk - You can have a seat, sir. Juror

4 Number 53, Latronda Crosby -- no, sir, I'm sorry. Have a

5 seat, sir. Mr. Epps, you can have a seat.

6 Mr. Epps - Oh, okay. I thought you said seated.

7 The Clerk - Juror Number 53, Latronda Crosby.

8 So say the State?

9 Mr. Anthony - Please excuse the juror.

10 The Clerk - You can have a seat, ma'am. Juror

11 Number 245, Quintina Smith. So say the State?

12 Mr. Anthony - Please present the juror.

13 The Clerk - So say the defense?

14 Mr. Delaney - Please seat the juror.

15 The Clerk - You may come forward, ma'am.

16 (Juror seated)

17 The Clerk - Juror Number 153, April Kinard. So

18 say the State?

19 Mr. Anthony - Please present the juror.

20 The Clerk - So say the defense?

21 Mr. Delaney - Please seat the juror.

22 The Clerk - You may come forward, ma'am.

23 (Juror seated)

24 The Clerk - All right, ladies and gentlemen,

25 that is twelve if my count is correct, so we're going to

1 pick two alternates. Strikes are one and two per
2 alternate.

3 The Clerk - Juror Number 193, Judy Moore. So
4 says the State?

5 Mr. Anthony - Please present the juror.

6 The Clerk - So say the defense?

7 Mr. Delaney - Please seat the juror.

8 The Clerk - You may come forward, ma'am.

9 (Juror seated)

10 The Clerk - Juror Number 11, Paula Barrier. So
11 says the State?

12 Mr. Anthony - Please present the juror.

13 The Clerk - So say the defense?

14 Mr. Delaney - Please excuse the juror.

15 The Clerk - You may have a seat, ma'am. Juror
16 Number 147, Hermine Keith. So say the State?

17 Mr. Anthony - Please present the juror.

18 The Clerk - So say the defense?

19 Mr. Delaney - Please seat the juror.

20 The Clerk - You may come forward, ma'am.

21 (Juror Seated)

22 The Court - All right, counsel, any issues or
23 matters of law to take up with respect to the
24 qualification and/or selection of this jury?

25 Mr. Anthony - The State has a matter, Your

1 Honor..

2 The Court - All right. Then what I'm going to
3 ask you to do is this jury, if you would, please, take
4 them back to their jury room. The remainder of you what
5 I would like for you to do, please, is go into the hall
6 and wait for me for just a few seconds. There's a matter
7 of law that I need to take up on the record with the
8 attorneys in this case. I'm going to ask you to go
9 outside the courtroom and please don't enter the courtroom
10 again until you receive specific instructions from a
11 bailiff or a deputy for you to do so. Don't try to listen
12 in to what is happening. Just wait patiently and we'll
13 call you back in when it is appropriate. All right. So
14 please step out of the courtroom.

15 (Jury panel and remaining jury venire exit the
16 courtroom)

17 The Court - All right, Mr. Anthony, I'll be
18 happy to hear from you, sir.

19 Mr. Anthony - Yes, sir. The defense struck two
20 male jurors, number 186, Mr. McCormick, and number 67, Mr.
21 Epps, and the State would ask for a gender neutral reason
22 why those two gentlemen were struck from the pool.

23 The Court - All right, Mr. Delaney, I'll be
24 happy to hear from you, sir.

25 Mr. Delaney - Judge with the -- I guess it was

1 number 1 -- what number is it again, John?

2 Mr. Anthony - It's 186 and 67.

3 Mr. Delaney - 186, the reason we struck him
4 would be what his wife does, being a lab tech and not
5 knowing anything more as far as there's going to be an
6 issue in this case with the injuries, so that was the
7 reason didn't feel comfortable there with that juror. And
8 the other juror was Mr. Epps and we struck him solely on
9 some of the interactions that were done when Mr. Epps was
10 called up here to give an answer to a question during
11 qualifications. He didn't seem to be very friendly with
12 individuals that were standing over here from either the
13 solicitor's office or law enforcement, so that was the
14 reason that we struck him.

15 The Court - Okay. All right. Mr. Anthony, any
16 argument with respect to those reasons, sir?

17 Mr. Anthony - Could I have just a couple of
18 minutes to check the jury list?

19 The Court - Sure.

20 Mr. Anthony - Thank you. (pause) Your Honor --

21 The Court - Yes, sir?

22 Mr. Anthony - -- number -- in regards to the
23 justification given to the strike of juror number 186, I
24 would point out to the Court that the defense -- our
25 second alternate is Ms. Keith, and Ms. Keith is a medical

23

1 technologist or according to the juror list, she has a
2 medical -- medical -- it says medical techno on the juror
3 list. I assume that's some sort of medical technologist,
4 and she's employed at Spartanburg Regional, so the State
5 would argue that it is not credible to say that we're --
6 essentially what the defense is saying is we're striking
7 a man because of what his -- his wife might work in the
8 medical profession, but we're going to put a woman who we
9 know works in the medical profession on the jury, and we
10 would argue that's a pretextual justification and for that
11 reason the -- we should -- we should have another jury
12 strike.

13 The Court - All right, Mr. Delaney, would you
14 like to comment on that, sir?

15 Mr. Delaney - Judge, just in response to the
16 last alternate that we sat, as far as the description we
17 had, a medical techno, our interpretation of that was
18 she's, you know, not in the, quote, unquote, medical field
19 as far as a lab tech. That's more of dictates,
20 transcribing, those type of things. That was our
21 interpretation of that. That's our response.

22 The Court - All right, based on the defense's
23 explanations, I'm going to respectfully deny the Batson
24 challenge. I find that the peremptory challenges were
25 exercised in a gender and -- excuse me -- racial neutral

1 manner and that the defense has articulated reasonable
2 criteria upon which they made their strikes. Okay. All
3 right, gentlemen, anything else before we -- well,
4 actually, I do want to ask you this. I'm going to have
5 Mr. Gault go out and excuse the remainder of the jury for
6 the rest of the week, and with respect to this jury, what
7 I'd like to do is go ahead and bring them in, swear them,
8 and begin opening arguments. Anything we need to take up
9 before we do that?

10 Mr. Anthony - I know the defense provided me a
11 set of pre-trial motions they wanted to make.

12 Mr. Delaney - That is correct, Your Honor.

13 The Court - I got it.

14 Mr. Delaney - There is a Denno hearing I think
15 we need to do in the case.

16 The Court - Okay. I'll tell you what. We'll go
17 through these. These don't look like they're going to
18 take a whole lot of time. So Mr. Gault, it's up to you.
19 If you want to go tell the jury that I've released them
20 and they can just call back.

21 The Clerk - Okay, call back after 6:00.

22 The Court - Yes, sir. And thank them for me if
23 you will, please.

24 The Clerk - Thank you, sir.

25 The Court - All right, the first motion that I

25

1 have in front of me is a written motion from Mr. Delaney,
2 attorney for the defendant, motion to determine if the
3 State has complied with Rule 5 and Brady. Mr. Anthony, I
4 would ask you, as an officer of the Court, has the State
5 complied with Rule 5 and Brady?

6 Mr. Anthony - Yes, sir, we have.

7 The Court - Are you satisfied with that, Mr.
8 Delaney?

9 Ms. Ingerillo - Yes, sir. May it please the
10 Court. May I speak on behalf of Mr. Delaney? It does.
11 We just wanted to make sure Mr. Anthony hasn't received
12 anything this morning.

13 The Court - Got you. Thank you. All right, --

14 Mr. Anthony - I will say, I mentioned to Mr.
15 Delaney, I have a diagram that Captain Hines has prepared.
16 I'm going to give that to them at the lunch break --

17 The Court - Okay.

18 Mr. Anthony - -- but other than that, we have
19 made substantial compliance with Brady, giving over
20 everything relevant and material to the case.

21 The Court - Fair enough. Fair enough. Okay, so
22 let's move to number two, motion to determine prior record
23 of defendant the State would intend to introduce should
24 she choose to testify. Let us take that up when the State
25 rests and you make a determination then as to whether the

1 defendant wants to testify. Okay? Does she have a prior
2 record?

3 Mr. Anthony - I don't believe there's anything
4 on her record the State can use as impeachment under 609.

5 The Court - Okay. All right, you understand
6 that, Ms. Inzerillo?

7 Ms. Inzerillo - Yes, Your Honor.

8 The Court - He says there's nothing. Was that
9 your understanding as well?

10 Ms. Inzerillo - Yes, Your Honor.

11 The Court - Okay. All right. Three, motion to
12 list of witnesses, as well as criminal histories of any
13 state law, non-law enforcement witnesses. I know you've
14 provided them a list incident to jury selection. Anything
15 else that needs to be provided?

16 Mr. Anthony - No, sir, the only -- the only non-
17 law enforcement witness that I would expect to call in my
18 case in chief is going to be Dr. Morrow who's a doctor at
19 the Spartanburg Regional and I -- other than that, I've
20 turned over the NCIC from the victim in the case.

21 The Court - Okay. You don't have any reason to
22 believe that Dr. Morrow has a criminal record which would
23 be relevant for impeachment?

24 Mr. Anthony - No, sir, I have no reason to
25 believe that.

1 The Court - All right. Satisfied with that, Ms.
2 Inzerillo?

3 Ms. Inzerillo - Yes, Your Honor.

4 The Court - Okay. Motion to sequester the
5 witnesses for the State. Any objection to that?
6 Obviously that would be uniformly applied.

7 Mr. Anthony - Yes, sir. Our only exception to
8 that is obviously we'd ask that the victim be allowed to
9 stay in the courtroom and we'd ask that Captain Hines, the
10 case agent, be allowed to stay in the courtroom.

11 The Court - All right. Ms. Inzerillo, any issue
12 with that, ma'am?

13 Ms. Inzerillo - Yes, Your Honor, just in regards
14 to two of our witnesses. The first is we have retained an
15 expert in this case that we expect to testify, and we
16 would just ask that if she were to -- we don't expect her
17 to sit in the entire trial, but if she were to come at a
18 particular time prior to her testimony, that she be
19 allowed to enter in the courtroom and not be under
20 sequestration order. The second witness, Your Honor, we
21 actually have Ms. Shuggart under subpoena for the defense.
22 It's my understanding she may be helping with the victim
23 in this case, and we just wanted to bring that to the
24 Court's attention. I don't know if the State would like
25 to weigh in as to whether they would need her here in the

1 courtroom, but we certainly want to bring that to the
2 Court's attention that she may at their request have to be
3 present in the courtroom.

4 The Court - Okay.

5 Mr. Anthony - Yes, I would ask if -- they did,
6 they subpoenaed her as a defense witness, I'd ask that
7 she'd be exempted from sequestration, so she can stay in
8 the courtroom.

9 The Court - Do you have an issue with that?

10 Ms. Inzerillo - No, Your Honor.

11 The Court - Okay. So I think we've got a
12 consensus. The victim, obviously, statutorily has a right
13 to be here, the prosecuting officers have a right to be
14 here, and all other witnesses will be sequestered and
15 precluded from entering the courtroom unless and until
16 they're testifying and understanding that when the expert
17 witness shows up for her testimony, she may enter the
18 courtroom. Any exception to that?

19 Mr. Anthony - I -- I really don't know why their
20 expert should be treated any different than anybody else.

21 The Court - Yes, I think they're -- I think Ms.
22 Inzerillo's problem is, probably experience tells her
23 this, that she's paying attention to her case and her
24 expert walks in the courtroom and all of a sudden that
25 expert is tainted. The ruling is this, if she comes in,

29

1 then she needs to be asked to leave, but that will not
2 taint her ability to testify before this jury.

3 Mr. Anthony - That's fine. That's fine.

4 The Court - Fair enough?

5 Ms. Inzerillo - Yes, Your Honor. Thank you.

6 The Court - Okay. Okay, motion to determine the
7 existence and admissibility of prior bad acts the State
8 may introduce. Any?

9 Mr. Anthony - We don't have any -- any acts
10 outside of testimony about the relationship between the
11 victim in the case and Ms. Forrest, which I understand
12 this is going to be a self defense case, so I'm assuming
13 there will be evidence on the defense's part of alleging
14 prior animus that he has against her and I expect they'll
15 be in response to that some evidence from the State
16 regarding the animus she might have against him --

17 The Court - Okay.

18 Mr. Anthony - -- but other than, anything that
19 would be considered Lyle outside of that relationship, I
20 don't have any intention of proffering any evidence along
21 those lines.

22 The Court - Okay. Ms. Inzerillo, any response?

23 Ms. Inzerillo - No, Your Honor.

24 The Court - This is what I would suggest that
25 y'all do. I don't know what may come up that may be

1 within the category of prior bad act under Lyle. During
2 your opening statements, just refrain from referencing
3 anything that may be a prior bad act under Lyle, then at
4 the lunch break if y'all want to have a conversation about
5 anything that may be Lyle, then y'all can bring it to my
6 attention and we can take up a surgical analysis about
7 specific evidence that is to be elicited in trial. Okay.
8 Fair enough?

9 Ms. Inzerillo - Yes, sir.

10 The Court - Okay. And now we have Jackson v.
11 Denno. All right, what we will do at the Jackson v. Denno
12 is we can take that up after we have opening arguments and
13 we'll send the jury to lunch; we'll have a Jackson v.
14 Denno, and then we will go to lunch and then come back and
15 begin the introduction of evidence. Any objection to that
16 manner of proceeding?

17 Mr. Anthony - Your Honor, I would just ask the
18 Court to go ahead and send the jury to lunch and let's do
19 the Jackson v. Denno and get a ruling on that before we
20 start the trial.

21 The Court - You intend to discuss that in your
22 opening arguments?

23 Mr. Anthony - I very well might make reference
24 to what she said, yes, sir, and I would just -- I would
25 just ask before the jury's sworn that we get a ruling on

1 that.

2 The Court - Okay.

3 Mr. Delaney - Judge, I may be doing -- I may be
4 putting a fine line but doing the same thing in my opening
5 as well.

6 The Court - Okay. All right. Let's see. How
7 long do you intend to take for opening arguments, knowing
8 that I'm not going to let you go much beyond ten minutes?

9 Mr. Anthony - I was going to say probably about
10 ten minutes.

11 The Court - Okay.

12 Mr. Delaney - Mine's right around ten -- ten to
13 twelve minutes, Your Honor.

14 The Court - Ten to twelve, huh.

15 Mr. Delaney - Ten to 12 --

16 The Court - Might give you some latitude with
17 the two. When you get to thirteen, it's going to be bad
18 news. Okay. All right. How many witnesses do you have
19 for your Denno hearing?

20 Mr. Anthony - Oh, I have one witness for the
21 Denno hearing.

22 The Court - One witness?

23 Mr. Anthony - Yes, sir.

24 The Court - Okay. Then what we'll do, we'll go
25 ahead and let the -- bring the jury in. I'll let them go

1 for lunch, have them be back at 2:00. We'll start up the
2 -- because I have an appointment at 1:30. Okay? So I
3 have a meet the appointment, and we'll -- we will stay,
4 conduct the Jackson v. Denno, and then we'll adjourn for
5 lunch as well. Okay? Good enough. Let's bring -- bring
6 the jury back in, please. And, ladies and gentlemen, just
7 for your information, I'm going to give them a brief
8 opening charge before I release them, just to get that out
9 of the way. It's going to take just a few minutes.

10 (Jury returns to the courtroom)

11 The Court - All right, ladies and gentlemen,
12 welcome back and congratulations or condolences depending
13 on your predisposition regarding jury duty. You are the
14 jury for this case. I think after you have had the
15 opportunity to sit as a juror in Circuit Court you will
16 find that it is a rewarding experience. Most jurors do
17 find that after having performed jury service that
18 actually they learned a lot and it was a positive
19 experience that they took away from them from Court, and
20 I'm very hopeful that y'all will feel the same way when we
21 conclude this trial. I am going to release you to go
22 lunch, but before I do that I'm going to give you a very
23 brief overview of what we're going to do in this trial.
24 Seems to me that it's always helpful before we get started
25 for me to kind of give you -- to give you an idea of what

33

1 we're going to do in this trial, how it's going to
2 proceed, the process, what your role is as jurors as
3 opposed to my role as Judge in this case. Now, your role
4 as jurors in this case is to act as the Judge of the
5 facts, which means that you have the exclusive
6 responsibility and exclusive authority to determine what
7 the facts are in this case. You're going to see evidence
8 presented in this case; evidence can come in many forms.
9 It can come in the form of eye-witness persons who take
10 the stand and swear in and say I saw this, I touched this,
11 I smelled this, I tasted this. That's one form of
12 evidence. You can also have documents put into the record
13 for your review. You can have audio-tape; you can have
14 video-tape; you can have tangible objects put into the
15 record as evidence. It can take many forms. I can't tell
16 you precisely what the evidence is going to be in this
17 case, because I don't know. I don't know anymore about
18 the case right now than y'all do, because I haven't heard
19 anything more about it than y'all have and that was
20 essentially reading the indictment. So just know that
21 you're going to see evidence presented in many different
22 forms. Your job is to take that evidence, analyze it,
23 look at it, determine what is -- what has weight and what
24 doesn't have weight, determine what witnesses are credible
25 and what witnesses may not be credible, and based on that,

1 determine what the facts are in this case. You'll
2 determine the facts and then what you'll do, is you will
3 take those facts and apply the law to those facts. I will
4 tell you what the law is. My job is as the Judge of the
5 law. So you will accept the law as I give it to you and
6 you must do that as you will promise to do under your
7 oath, and you'll apply that law to the facts as you
8 determine them to be. Now, during the course of this
9 trial, if I say anything to you that gives you the
10 impression that I have an opinion about what the facts are
11 in this case or a predisposition about this case one way
12 or the other, I will caution you now and I charge you now,
13 disregard that, ignore it, because I don't. I'm not
14 allowed to have an opinion about the facts of this case.
15 I'm not allowed to have an opinion about what you should
16 do in this case. All I am is the objective umpire. I'm
17 calling balls and strikes. That's all I'm doing. My only
18 concern in this case is that the defense and the State and
19 y'all get a fair trial. And what I will be doing is
20 making sure that the process that we follow is in
21 accordance with the law and the rules of Court and I will
22 be telling you what the law is to apply to the facts at
23 the end of the case. I'm not going to tell you what the
24 law is before, because I haven't heard the evidence, so I
25 don't know what law specifically applies to the evidence

1 that's going to be presented. That's why I wait til the
2 end. Okay? Now, during the course of this trial you're
3 also going to see attorneys from time to time making
4 objections. It's their job to make objections. They're
5 advocates for their respective sides, therefore, they will
6 be asking me to include or exclude evidence or they'll be
7 asking me to do something as a matter of procedure in the
8 trial. And I'm going to rule one way or the other. And
9 understand I have to rule one way or the other. I'm
10 either going to sustain or overrule the objection, which
11 means I'm going to rule one way or the other. Now,
12 understand, just because I rule for one side or against
13 one side doesn't mean that I have a preference for that
14 side or a bias against the other. Those are objective
15 rulings based on my understanding of what the law is and
16 of what the rules are, so don't take from me any
17 indication that I have a preference or a bias. Now, also
18 don't hold it against the attorneys when they make motions
19 or when they object. That's their job. That's what
20 they're here to do, to represent their respective clients.
21 Now, the way this will start, after I give you a brief
22 closing -- or excuse me -- opening charge on the law and
23 kind of tell you where we're going to go, I'm going to
24 release you for lunch and ask you to come back at 2:00.
25 When we come back, what will happen is, the attorneys will

1 make brief opening statements to you. Now, those opening
2 statements are not evidence. As I indicated to you, the
3 attorneys are advocates for their respective positions,
4 which means they're going to get up and they're going to
5 argue to you, and those opening arguments are essentially
6 an introduction of themselves and an introduction of their
7 case. Each of them have the opportunity to make short
8 opening statements to you, but remember, when you hear
9 those statements, it's not evidence. That's simply
10 arguments from counsel. After the attorneys make their
11 opening statements, then the State will have the
12 opportunity to introduce its evidence into the record.
13 The State goes first. And you will remember when we first
14 started today, I told you the State has the burden of
15 proving the defendant guilty beyond a reasonable doubt.
16 The State has the burden of proving each and every element
17 of the offense beyond a reasonable doubt, and because the
18 State has the burden of proof, the State goes first. The
19 State will introduce evidence. Probably they will put
20 witnesses on the stand. They will examine those
21 witnesses, that is, ask them questions. The defense will
22 then have the opportunity to cross examine any of the
23 witnesses that the State puts into the record. After the
24 State has put in all of the evidence that it wishes to
25 introduce into the record, then it will rest. Then the

1 defense will have the opportunity to put evidence into the
2 record should she elect to. She doesn't have to, but
3 should she elect to, she may. And then defense would, if
4 in their discretion, put witnesses on the stand as well.
5 The State would have the opportunity to cross examine the
6 defenses' witnesses, just as the defense had the
7 opportunity to cross examine the State's witnesses. After
8 the defense puts up all the evidence it intends to
9 introduce, then it will rest as well. Sometimes under
10 limited circumstances the State will then have the
11 opportunity to put up reply testimony or reply evidence.
12 That doesn't happen all the time. I don't know whether
13 it's going to happen in this case. The only reason I tell
14 you that is because it could happen and if it does I don't
15 want it to catch you off-guard. Okay? So it could be
16 that the State gets to put up brief reply testimony.
17 After the State has put up any reply testimony, if
18 appropriate, then you will have heard all the evidence
19 which will be submitted in this case, then you will hear
20 closing arguments from counsel. Now, closing argument is
21 somewhat like opening statements, in that it's advocacy,
22 argument from the attorneys, not evidence remember, it is
23 argument from the attorneys, but the difference will be
24 that they'll be commenting on the evidence that has been
25 presented, and they'll be arguing their respective

1 positions to you, again, not evidence, you will have
2 already received all of that. After you hear closing
3 arguments from both sides, then I will give you a closing
4 instruction on the law, and I will tell you what law to
5 apply to the facts as you determine them to be. After I
6 give you a closing argument -- a closing charge on the
7 law, then I'll ask you to retire to your jury room, and
8 then not long after you retire to your jury room I'll ask
9 you to begin your deliberations. Now, it's very important
10 that you don't begin your deliberations, you don't begin
11 considering any of the evidence until such time as I tell
12 you to at the end of the case. And you all know through
13 your good common sense why that is, and that is because
14 it's just fair to make a decision or to start to analyze
15 or deliberate on this evidence until such time as you've
16 heard everything. In your common experience you've
17 probably had children to come to you and told you one side
18 of the story about what their brother and sister did that
19 was gosh awful, and you thought, yes, in fact, it's gosh
20 awful, then you hear the other side of the story and it
21 opens your eyes and you hear more, more facts that bear
22 upon the issue. So Court is the same way. You need to
23 listen to all the evidence before you begin any
24 deliberations. So please don't begin any deliberations
25 until you get a very firm signal from me that you should,

39

1 and that'll be all the way at the end of the case, and it
2 will be unmistakable I promise you. Before then don't
3 discuss it with one another; don't discuss the case with
4 your friends, with your spouse, with your mama, with your
5 daddy, with your brother, your sister, anybody else. It's
6 only appropriate that you discuss this case with the
7 twelve jurors who deliberate in this case at the end of
8 the case. Also, when you're -- when I send you to lunch
9 or when I send you home tonight, please don't go out and
10 do any self-help on this case. I don't know that there
11 was any publicity surrounding this case. I honestly don't
12 know. I don't know whether you could find anything,
13 either on the internet or the public library or the
14 Clerk's Office about this case. I honestly don't know,
15 but what I'm telling you is, don't find out. Okay? The
16 only thing that's appropriate for you to consider in this
17 case is the evidence that is presented in trial and that's
18 it. And if you look at anything outside of this
19 courtroom, it's going to taint your deliberations. If you
20 talk to anybody about this case outside of this courtroom,
21 it's going to taint your deliberations. And what that
22 means is that we're just going to have to try this case
23 again, and you will have wasted all of your collective
24 time however far we're into the trial. Even if we've
25 already completed it, we'll have to start again. So I'm

1 asking you and I'm charging you, I'm directing you, don't
2 discuss it with anybody outside of this courtroom. Now,
3 you're going to be asked to, because if your spouses are
4 like my spouse or your friends are like my friends, as
5 soon as you tell them you're on jury duty, they're going
6 to start asking you, hey, what's going on, tell me about
7 it, and that seems pretty innocent to say, well, this is
8 what I've heard so far, but the problem is when you start
9 telling them what you've heard so far, you start thinking
10 about what you've heard and basically that's a form of
11 deliberation, you start making these qualitative decisions
12 about what you heard and what the facts are in a case, and
13 then after you've done that, which was bad enough, they
14 follow-up with a question -- right -- because they always
15 follow-up with a question. You can't get off scott-free.
16 And so then y'all start having a dialogue, and before you
17 know it, what you're doing is you're talking about the
18 case and you're deliberating. So what you do is you just
19 say, I can't talk about it now, but when it's over, we'll
20 talk about it as much as you want to or as much as you
21 want to. Okay? So don't be suckered into discussing the
22 case with someone who may be prevailing upon you to talk
23 about it. Okay? All right. So ladies and gentlemen,
24 when you come back into Court -- please be here at 2:00.
25 If you'll be here just a little bit early, not out of

41

1 consideration for me or the parties, but out of
2 consideration for each other, because we're not going to
3 be able to start until I have all fourteen of you. So out
4 of consideration for each other, if y'all would be here
5 about five minutes early so that we can get started just
6 as timely as possible. I hope y'all have a good lunch and
7 I'll see you at 2:00.

8 (Jury exits the courtroom)

9 The Court - All right. We're clear?

10 Bailiff - (Indicating yes)

11 The Court - Okay. Mr. Delaney, have you filed
12 these motions with the Clerk's Office? No?

13 Ms. Inzerillo - No, Your Honor, --

14 The Court - Okay. Then I'm going to make them
15 a Court's Exhibit --

16 Ms. Inzerillo - Yes, Your Honor.

17 The Court - -- so you'll be protected on the
18 record, because I know I went through it pretty quickly
19 and I want to make sure y'all are protected in that
20 regard. Okay?

21 Ms. Inzerillo - Thank you, Your Honor.

22 The Court - So the motions 1 through 6 are
23 introduced as Court's Exhibit Number 1.

24 (Documents marked as Court's Exhibit Number 1.)

25 The Court - All right. With respect to the

Robbie Hines - Direct by Mr. Anthony

42

1 Jackson v. Denno, Mr. Anthony, I'll turn it over to you,
2 sir.

3 Mr. Anthony - Thank you. We call Captain Hines.

4 (Document marked for identification as State's
5 Exhibit Number 1.)

6 Robbie Hines, after being first duly sworn,
7 testifies as follows -

8 Direct Examination

9 by Mr. Anthony -

10 Q Would you state your name, please?

11 A Robert Hines.

12 Q And, Mr. Hines, how are you employed?

13 A Employed with the Union County Sheriff's Office.

14 Q And how long have you worked for the Sheriff's
15 Office?

16 A Been employed for twenty-one years.

17 Q What's your current position at the Sheriff's Office.

18 A My current position is I hold the rank of a Captain.
19 I am Director of the Union County 9-1-1, Union County
20 Emergency Services, Union County Emergency Management
21 Division and I'm the Director over Union County Jail.

22 Q And do you still have responsibilities as a criminal
23 investigator?

24 A Yes, sir, we are -- ranking official we are
25 occasionally placed on call for investigative status.

Robbie Hines - Direct by Mr. Anthony

43

1 Q Okay. And were you on an investigative status early
2 in the morning of June 7th of 2010?

3 A Yes, sir, I was.

4 Q And did you go out as an investigator out to
5 Street in Jonesville?

6 A I did, yes, sir.

7 Q And when you arrived there did you see the defendant
8 in this case, Ms. Forrest?

9 A I did.

10 Q And where was Ms. Forrest when you saw there, when
11 you got there and saw here?

12 A Was sitting in the back passenger side of a patrol
13 vehicle.

14 Q Okay. What -- what kind of contact did you have with
15 Ms. Forrest there at

16 A I went to the back of the vehicle where I spoke to
17 both Ms. Forrest as well as Deputy Vinson.

18 Q Okay. And just to back up a little bit, what -- what
19 -- what were you called out to Street concerning?

20 A Dispatch had called me that morning, advised me that
21 they had a shooting at Jonesville city
22 limits, I was investigator on call, would I respond, and
23 acknowledged that I would.

24 Q Okay. And when you got there, what -- what were you
25 able to determine had gone on?

Robbie Hines - Direct by Mr. Anthony

44

1 A Actually in route to the scene I contacted dispatch
2 back, got more information from the dispatchers;
3 information I received was that Leah Forrest was -- had
4 been on the phone with them; she had called 9-1-1 and
5 stated that she'd shot her live-in boyfriend, so I knew
6 that that was a -- Leah Forrest had shot her boyfriend
7 named Ronald. When I was in route to the scene I con --
8 I arrived at the scene. I found Corporal Vinson speaking
9 with Ms. Leah Forrest in the backseat of a patrol vehicle
10 with the door open. They were conversing. I saw
11 Investigator Lawson over across the street in a kudzu
12 patch across the street from the house. I spoke with
13 Deputy Vinson. He kind of gave me an overview of what had
14 happened. A few seconds -- a few minutes later
15 Investigator Lawson came to where I was. He kind of
16 updated me more of what had happened, what was going on
17 and we kind of made our way into the home of the crime
18 scene where I met Sergeant Jeff Wright who basically
19 verified everything for me up to that point.

20 Q Okay. And at that point did you go talk to Ms.
21 Forrest?

22 A As soon after that, yes, sir.

23 Q Okay. And was she still in the patrol car when you
24 spoke to her initially?

25 A In the same position, same patrol car, yes.

Robbie Hines - Direct by Mr. Anthony

45

1 Q All right. Before you talked to her, did you advise
2 her of any warnings?

3 A They were advised by Corporal Vinson who advised me
4 that he had provided her with Mirandas; I went over them
5 with her again.

6 Q You went over them with her again.

7 A Yes, sir.

8 Q Okay. Just for the record, tell -- what did you tell
9 her?

10 A The very same card that I've had for twenty-one
11 years. You have the right to remain silent; anything you
12 say can be used against in a Court of law. You have the
13 right to talk to an attorney, have him or her present with
14 you while you're being questioned. If you cannot afford
15 to hire an attorney one will be appointed to represent you
16 before any questioning if you wish. You can decide at any
17 time to exercise these rights and not answer any
18 questions, make any statements. Do you understand each of
19 these rights I've explained to you. Having these rights
20 in mind, do you wish to talk to us now?

21 Q All right, and once you -- once you read those rights
22 to Ms. Forrest again yourself, what did she indicate?

23 A She indicated she wouldn't have no problem talking.

24 Q Okay.

25 A She was already talking to Corporal Vinson.

Robbie Hines - Direct by Mr. Anthony

46

1 Q Okay. And what was the nature of your conversation
2 with her there on the -- at Street in the police
3 car?

4 A Basically trying to figure out what happened from her
5 perspective.

6 Q Okay. And what did she tell you at that time?

7 A Stated that she and Ron had gotten into an argument
8 that morning and that he had taken a phone -- gotten a
9 phone that belonged to her. They got into an argument
10 that led to a scuffle, altercation physically. She
11 explained to me a area on the bridge of her nose that
12 appeared to be fresh. There were some other signs on her
13 body that she had presented to Corporal Vinson as well as
14 myself that appeared to be old in my opinion. She stated
15 that she was tired of physical altercations that they were
16 having with their relationship and that she had gotten a
17 weapon, specifically, a .22 long rifle and discharged the
18 weapon twice, and she took that weapon and threw it across
19 the street into a kudzu patch and that was the purpose for
20 Investigator Lawson being in the kudzu patch area trying
21 to retrieve or locate the weapon in question. At that
22 time I explained to her that I was going to perform what's
23 called or referred to as GSR gunshot residue kit. I
24 explained that to her. She said she understood what a GSR
25 kit was. I left from the apex of the door, went to my

Robbie Hines - Direct by Mr. Anthony

47

1 vehicle which was parked right there at -- behind the
2 other vehicle that Ms. Forrest was sitting in, retrieved
3 a GSR kit, went back to the trunk of the vehicle that Ms.
4 Forrest was sitting in, took the GSR kit out and conducted
5 the GSR kit as I normally would, which includes clearly
6 explaining to the person whom the GSR kit is being
7 performed on; Ms. Forrest, not rudely, but interrupted me
8 a couple of times telling me that she knew what a GSR kit
9 was. She even presented to me her right hand telling me
10 that this is the one that used to pull the trigger. So,
11 of course, I started with the right hand because that's my
12 procedure and then moved to the left hand. She complied
13 with me on the GSR kit giving me no issues on GSR kit.
14 About that time Ms. Williams and some of the other
15 investigators started showing up. I was pretty much at
16 that moment complete with what our conversation had, so I
17 advised her again that she was under arrest, that she was
18 going to be transported to the Union County jail facility.

19 Q Okay. And when you had this conversation with her
20 that morning, how did she appear?

21 A In the backseat of the vehicle?

22 Q What was her general demeanor? What -- What was her
23 condition? What'd her condition appear to you to be?

24 A She was distraught. She had been consuming alcohol,
25 which I understood both of them had been drinking alcohol.

Robbie Hines - Direct by Mr. Anthony

48

1 She was -- I guess she was very determined as far as -- or
2 adamant, you know, as far as shooting -- you know, had
3 shot an individual twice.

4 Q Was there anything about her condition that made you
5 think she wasn't aware or competent to give you an
6 accurate statement that morning?

7 A No, sir, it was -- she was -- as I said, she was very
8 compliant with her questions and her answers. She
9 assisted me to the point of even -- sometimes even
10 finishing my statements. As I said earlier, she provided
11 -- she explained to me that she knew what a GSR kit was
12 even though I went ahead and explained it to her, to the
13 point where she even said this is -- this is the one that
14 you want, this is the hand that you want, this is the one
15 I pulled the trigger with.

16 Q All right, and did you -- was there anything -- did
17 you promise her anything or threaten her with anything if
18 she did or didn't talk to you that morning?

19 A No, sir, absolutely not.

20 Q Okay. All right, and you testified that she was
21 placed under arrest that morning?

22 A Yes, sir.

23 Q And where was she taken?

24 A Union County jail.

25 Q Okay. And then did you see her later on that day?

Robbie Hines - Direct by Mr. Anthony

49

1 A Yes, sir.

2 Q And where was -- where did you see her later on that
3 day?

4 A At the Union County jail.

5 Q Okay. And approximately what time was that, Captain?

6 A Can I see my statement, Solicitor?

7 Q I'm going to show you what's been marked for
8 identification as State's Exhibit Number 1 and ask if you
9 recognize this document?

10 A Yes, sir, this is the Miranda form as well as the
11 statement, written statement Union County Sheriff's
12 Office, voluntary statement that was written on that day
13 by me. The Mirandas was given to her again at the Union
14 County jail this time on paper. I asked the questions;
15 before we ask you any questions, you must understand your
16 rights. Once I say that statement or that sentence,
17 excuse me, I check mark it to let that person know that
18 we're through with that sentence. She had no questions
19 about that. The next one was, you have the right to
20 remain silent; did she have any questions about that, no
21 questions; she understood that she had the right to remain
22 silent, put a check mark indicating. Anything you say can
23 be used against you in Court; there was no question about
24 that; she understood it; I check marked it. Etcetera,
25 etcetera. She signed it; I signed it. It was done at

Robbie Hines - Direct by Mr. Anthony

50

1 1:50 p.m. on June 7th, 2010.

2 Q Okay. And then on that same page that you're
3 referring to, first page of the Exhibit, is there a form -
4 - is there an additional waiver section to that form?

5 A Yes, sir.

6 Q All right. If you could just read what that say as
7 well, please?

8 A Yes. Waiver of Rights, I've read the statement of my
9 rights, understand what my rights are; I'm willing to make
10 a statement, answer questions; I do not want a lawyer at
11 this time. I understand and know what I am doing, no
12 promise or threats have been made to me, no pressure or
13 coercion of any kind has been used against me.

14 Q Okay. And did -- what did she do after you'd gone
15 through her Miranda warnings and then gone through the
16 waiver part of the form with her?

17 A I turned the paper around towards her and slid it
18 towards her; she grabbed it or got the paper with the pen
19 and signed it.

20 Q All right. And after that -- well, let me just ask
21 you, when you were advising her of her rights, what did
22 her condition appear to be at that time?

23 A She was relatively calm. She was also dressed out in
24 khaki attire, uniform, jail uniform attire and she -- she
25 -- you know, she spoke to me but I felt like to the point

Robbie Hines - Direct by Mr. Anthony

51

1 that, you know, I was kind of wasting my time by talking
2 to her.

3 Q Well, did she appear to understand what you were
4 asking her to do?

5 A Yes, sir.

6 Q And did she appear to be coherent?

7 A Yes, sir.

8 Q And did she appear to know what -- what she was
9 saying to you?

10 A Yes.

11 Q Okay. All right. And what process did you use in
12 taking a written statement from her? How did that
13 proceed?

14 A We -- basically we talk, and I explained to her -- I
15 explained to her what I was there for again, even though
16 we just had a conversation just a couple of hours prior.
17 She said that she understood. We kind of recapped what
18 we'd talked about that morning when she was in the
19 backseat of the patrol car at

20 Everything was consistent, pretty much consistent with
21 what she explained to me. Again, I explained to her what
22 I was there for, who I was, what I was there to get, which
23 was a statement of her side of the story. She explained -
24 - we talked. You know, I said it wasn't -- she didn't
25 have any problem talking to me, but I offered -- I mean I

Robbie Hines - Direct by Mr. Anthony

52

1 hadn't (sic) asked questions and she offered, you know,
2 statements or answers to my questions. Then once we --

3 Q And what -- once you'd answered the questions, what
4 would you do? What would you do when she answered the
5 questions and gave you information?

6 A I would -- when -- well, I -- I don't understand your
7 question.

8 Q Well, how did you go about writing down what -- what
9 led you to write down the things you wrote down?

10 A Okay. All right, so we -- like I said, we talked for
11 a while and then I offered her -- explained to her that
12 I'm going to need volunteer statements from her, and that
13 she wasn't under -- you know, basically going off Miranda
14 -- she wasn't under -- she -- you know, I needed -- you
15 know, free and voluntarily, that she didn't have to
16 provide a statement; she said that she had no problem
17 giving a statement, but that she said that she wasn't
18 writing a statement, and I said that's no problem, I can
19 write the statement for you. She said that was fine. So
20 basically everything that's handwritten -- everything that
21 is handwritten on here is -- was written by me with the
22 exception of her initials and signature.

23 Q Okay. All right. And when -- when you -- the
24 statement that you're holding as far as State's Exhibit
25 Number 1, is there an additional right section of that

Robbie Hines - Direct by Mr. Anthony

53

1 statement to that?

2 A Yes, sir. Yes, sir.

3 Q Okay. And did you go through that with her?

4 A I went through the top portion with her, yes, sir.

5 Q Okay. The -- well, when you say the top portion --

6 A Yes, sir, the end -- the words that's -- they're
7 printed on the paper --

8 Q Okay.

9 A This top portion here.

10 Q Okay. The printed out paragraphs underneath the
11 identifying information.

12 A Yes, sir.

13 Q Okay. And did she seem to understand what you were
14 telling her when you read that?

15 A Yes, sir, yes, she did. She had no problems --

16 Q Okay.

17 A -- understanding.

18 Q And then the information she gave you from the
19 statement, how -- what was the process you used as far as
20 translating that information from what she's telling you
21 orally to what goes down on this page?

22 A We basically at that point, we kind of re-capped for
23 the second time and I would go in and said okay, you know,
24 Leah, tell me what happened this morning; I got up this
25 morning to go use the bathroom, okay, I got up this

Robbie Hines - Direct by Mr. Anthony

54

1 morning to use the bathroom; all right, then tell me what
2 happened; but I had trouble finding the door knob, okay,
3 hold on a second, but I had trouble finding the door
4 knob. You know, so that's basically how we proceeded
5 through the whole statement.

6 Q Okay. And once you had completed taking the written
7 statement, what did you do?

8 A Okay, I explained to her that the statement was
9 written by me and I wrote that I at the very bottom;
10 Captain Hines wrote this statement for me at my request;
11 he read it to me and I found it to say everything I wanted
12 it to say; I read the entire statement to her; she also --
13 when I turned the statement around towards her to give her
14 the statement, she also read the statement, the two-page
15 statement. She -- I told her that we -- at this point she
16 can add, remove, change, delete, whatever you want to do,
17 now is the time to do anything that you want to do; if you
18 don't like a word, take it out, and you want to add,
19 further on we can add more to it. If you want to add more
20 sentence -- what -- anything that you want to do, now's
21 your time. She said she was good with it. I had her to
22 initial the very first letter or -- yes -- I got up this
23 morning, she initialed LF, her signature, her initials,
24 the very last part of the computer on page -- statement
25 one, LF, that's her handwriting initial, second page, same

Robbie Hines - Direct by Mr. Anthony

55

1 thing, LF, the very first -- beginning of the sentence and
2 the last of that particular paragraph which was arguing,
3 LF, Leah Forrest, that's her initials, and then she signed
4 her name, witnessed by myself, sworn by me and witnessed
5 by a jail officer, Crystal (phonetic) Richardson, Christie
6 (phonetic) Richardson.

7 Q Okay. All right. And is the statement you have up
8 there that's been marked Exhibit 1 for identification, is
9 that an accurate -- is that the statement you took from
10 her?

11 A This is the original statement written by me and
12 signed and initialed by Ms. Leah Forrest.

13 Q Okay. And is it still in the same condition it was
14 in when you took it?

15 A Yes, exactly the same, yes, sir.

16 Q Okay.

17 A Without the staple.

18 Q Okay. And were there any -- were there any promises
19 made to Ms. Forrest or threats made to Ms. Forrest about
20 what would happen to her if she either did or didn't give
21 a statement when you took that afternoon statement that's
22 State's Exhibit Number 1?

23 A No, sir.

24 Q Okay.

25 A No, sir.

Robbie Hines - Cross by Mr. Delaney

56

1 Q Okay.

2 Mr. Anthony - Okay. That's everything on
3 direct, and we would -- I won't move the statement into
4 evidence at this time, but I'd ask that for purpose of the
5 Denno hearing that it be moved into for the Court to
6 review it if he so chooses.

7 The Court - I understand. All right. Any
8 objection to move it in for purpose of the hearing as
9 State's Exhibit Number -- what do you have it marked as,
10 1?

11 Court Reporter - (Indicating yes)

12 The Court - Okay, State's Exhibit Number 1.

13 Mr. Delaney - No objection, Judge.

14 The Court - All right, it's already marked as
15 same.

16 (State's Exhibit 1 marked into evidence for
17 purposes of Jackson v. Denno.)

18 The Court - Good enough. Mr. Delaney?

19 Mr. Delaney - All right, Judge, briefly.

20 Cross Examination

21 by Mr. Delaney -

22 Q Captain, when you went to the jail, did you request
23 to see her, or did she request to see you?

24 A I'm sorry, sir?

25 Q When you went to the jail, did Leah request to see

Robbie Hines - Cross by Mr. Delaney

57

1 you or did you request to see her?

2 A No, sir, when was at the scene, as I said earlier,
3 while Leah and I were talking with her in the backseat, I
4 noticed that we had some of the other investigators and
5 such starting to arrive, we still had processing the crime
6 scene to do, so I thought that was an appropriate or good
7 time for us to kind of part ways, and she was instructed
8 that she was going to be obviously arrested for the charge
9 and I instructed the deputy to go ahead and transport her
10 to the jail. I explained to her that I had some stuff
11 there at the crime scene that I needed to take care of,
12 but later on I will be back to see you, so I advised her
13 that I would be back later on to see her.

14 Q And at that time she's sitting in the police car at
15 that time. Is that correct?

16 A Yes, sir.

17 Q Okay. And is EMS -- they're gone at that point.
18 Right? They have already transported --

19 A I believe you're right.

20 Q -- Mr. Dipietro.

21 A They were -- when I first got there they were still
22 there, but they were just about ready to leave, so I'm
23 sure, yes, sir, they were probably gone by this point,
24 because we're talking probably ten, maybe fifteen minutes.

25 Q Okay. Now back to the jail, was it you two and -- it

Robbie Hines - Cross by Mr. Delaney

58

1 was you and Leah in the room?

2 A It was myself and then I had the victim's advocate
3 later there and then Officer Richardson who was an
4 employee there at the jail was in there with us.

5 Q Okay. And it's Michelle Shuggart and she's the
6 victim's advocate.

7 A Yes, sir.

8 Q And you inter -- did you interview her before taking
9 her statement?

10 A Interview --

11 Q Ms. Forrest.

12 A Interview her before taking her statement?

13 Q When you and Ms. Forrest in the room there -- was --
14 was -- it was -- an interview going on?

15 A There was a conversation. That consisted of the
16 Miranda rights --

17 Q Right.

18 A -- and we went from there straight to, okay, now,
19 let's kind of recap what we talked about this morning in
20 the backseat of the car.

21 Q Okay, were you talking about anything else prior?
22 Was prior abuse being discussed, anything like that in the
23 room?

24 A No, sir, there was not (sic) mentioned any time prior
25 to giving these Mirandas issue.

Robbie Hines - Cross by Mr. Delaney

59

1 Q Okay.

2 A Mr. Delaney, let me -- ask me that question one more
3 time.

4 Q Was there any prior abuse being discussed between you
5 and Leah? Was Leah discussing -- was Leah telling you
6 anything about the prior abuse when you went and talked to
7 her at the jail?

8 A Okay, now in the car that morning she mentioned
9 abuse, physical. I guess that's what you're referring to.

10 Q Okay.

11 A Is that what you're referring to?

12 Q Yes.

13 A Yes. There was some physical -- she mentioned that
14 she and Ronald got into a physical altercation at the home
15 and that she indicated a cut mark on the nose, a bruise on
16 the elbow.

17 Q Okay, but that was more specific to -- she was
18 talking about --

19 A What happened that morning.

20 Q -- that day.

21 A That was my question at that car that morning, can
22 you tell me what happened this morning, tell me what
23 happened prior to the incident which escalated to the
24 shooting, ---

25 Q And my question was --

Robbie Hines - Cross by Mr. Delaney

60

1 A -- yes, sir.

2 Q -- anything prior --

3 A No, sir. I just want to make sure I understand your
4 question.

5 Q Okay. And once you wrote it out, she reviewed it and
6 signed it. Right?

7 A Once I wrote it out, she reviewed it and signed it.

8 Q Right.

9 A Yes, sir.

10 Q Conversation, audio or video?

11 A No, sir.

12 Q Okay. And you spoke with her twice on that day, once
13 at the scene, once at the jail. Correct?

14 A Yes, sir.

15 Q Okay. Now, in the statement that Leah gave or you
16 wrote and Leah signed, she makes some mention of losing
17 consciousness. Is that correct? Some reference to that.
18 As far as something happening in the back room and then
19 basically coming through it sounds like in the living
20 room.

21 A (No response)

22 Q Where she said she hit her head on something and the
23 next thing she knew.

24 A (No response)

25 Q You see where I'm talking about?

Robbie Hines - Cross by Mr. Delaney

61

1 A No, sir, I don't see a part in there where --

2 Q At the very beginning of the --

3 Mr. Delaney - Your Honor, may I approach?

4 The Court - Yes, sir.

5 A It doesn't say here she was knocked unconscious.

6 Q Well, I'm -- I said is there something -- now, the
7 statement she gave you she said that she hit her head on
8 something. Right?

9 A That's correct. (Indicating yes)

10 Q And the next thing that she knew after hitting her
11 head on something she was in the living room. Correct?

12 A Yes, sir. Yes, sir.

13 Q Okay. Now, hearing that from you, you didn't give
14 her any -- did you request any type of medical treatment
15 for Leah?

16 A Did I request any medical treatment --

17 Q Yes.

18 A -- for her?

19 Q Because she told you she hit her head and she didn't
20 remem -- she hit her head and the next thing she knew she
21 was in the living room. She hit her head in the bathroom;
22 next thing she knew she was in the living room. When she
23 made that statement to you, did you get her -- request to
24 have or get any medical treatment?

25 A She was -- not at the scene; no, sir, I did not

Robbie Hines - Cross by Mr. Delaney

62

1 personally request that at the scene.

2 Q Okay. What about at the jail?

3 A Yes, at the -- okay -- EMS was at the scene when I
4 got there that morning. When I was at the jail, we have
5 what's called a medical log that is completed by every
6 inmate by the jail officers and/or nurse and a medical
7 screen was completed on her which did not indicate that I
8 know of any reason for her to go to the hospital.

9 Q A medi -- you said a medical screen was done on her?

10 A Yes. (Indicating yes)

11 Q Okay. And that's done for inmate that comes in?

12 A Say what now?

13 Q That's done for an inmate that comes into the jail?

14 A Yes, sir.

15 Q Okay. And that -- and that's a piece of paper that's
16 actually filled out by your staff at the jail?

17 A Yes, sir.

18 Q Okay. And that's something that if we would've sent
19 a subpoena to the jail, that's something that we would
20 normally see. Is that correct?

21 A Oh, well, the paperwork is not physically held at the
22 jail. It's held at -- the record is -- the records
23 department at the sheriff's office, so we would not have
24 had it at the jail, no, sir. It's attached to the booking
25 sheet.

Robbie Hines - Cross by Mr. Delaney

63

1 Q Okay.

2 A And once the individual makes bond, the booking sheet
3 is turned back into the sheriff's office where Shannon
4 Deaton our record's clerk maintains the records.

5 Q And who -- going over this exam, is this actual
6 medical -- is this a doctor that's examining her at the
7 jail?

8 A No, sir.

9 Q Who is that? Who's examining her at the jail?

10 A It would've been at that time probably one of the
11 jail -- jail employees, one of the jailers that we have
12 working there, which is a series of questions that we have
13 prepared on paper, medical questions.

14 Q Did you -- just to clarify. You personally did not
15 contact EMS, contact a doctor and request that Leah get
16 any type of medical treatment. Correct?

17 A No, sir. When she and I were talking at the actual
18 interview at the jail, of course, I showed concern,
19 because I was concerned about her physically, and pictures
20 were made by the victim's advocate of her. There was a
21 picture made of the back of her head area, as well as back
22 area, couple other places, but physically she indicated
23 that she was okay, she did not appear to me disoriented,
24 hemorrhaging or any kind of issues that would've -- I
25 would've under common sense sent her to the hospital.

Robbie Hines - Cross by Mr. Delaney

64

1 Being the director over the Union County jail I understand
2 the importance of maintaining my inmates. Not only that,
3 I sometimes have to make decisions to send inmates to
4 hospital or the dentist or x-rays or whatever, even they
5 don't necessarily want to go themselves.

6 Q And I know you're not a doctor, but you know
7 concussions, injuries to someone's head, that's not
8 something that's going to show always physical signs. Is
9 that correct? As far as seeing bleeding and those type of
10 things. Right?

11 A Yes, I didn't see any kind of external bleeding. I
12 did -- we did have eye contact, so I didn't notice any
13 shaking or shivering of the eyes, dilated pupils. Our
14 conversation was basically flowed like conversation you
15 and I are having now. There was no long hesitation on her
16 responses. Nothing -- like I said, nothing that I
17 would've indicated -- because I would've had no problem
18 sending her to the hospital. That's what -- you know, or
19 calling EMS to the jail facility.

20 Q And you got victim's advocate, Ms. Shuggart,
21 involved. Right?

22 A That's correct.

23 Q Okay. And you requested her to take some pictures
24 for you. Is that right?

25 A Yes, sir.

Robbie Hines - Cross by Mr. Delaney

65

1 Q Okay, and those pictures I think we mentioned a
2 little bit as far as pictures were taken of the back of
3 her head, taken some pictures of her back area where she
4 had pulled her shirt up --

5 A (Indicating yes)

6 Q -- and elbow, arm --

7 A Elbow, her hand --

8 Q Okay. Okay. And did you after Ms. Shuggart took
9 those pictures, did you and Ms. Shuggart -- Ms. Shuggart
10 and yourself have conversation about the pictures or what
11 she did with Leah?

12 A She explained to me the pictures that she took, what
13 areas, and basically what she saw. I had to exit the
14 room. I wasn't a witness -- I didn't witness those
15 pictures being taken.

16 Q What'd she tell you she saw?

17 A Did Leah or Ms. Shuggart?

18 Q Ms. Shuggart.

19 A She just explained that she had a picture of the back
20 of her head. She said that she had blurred that a little
21 bit trying to keep her head -- you know, her head still
22 with her hair pulled apart, um, palm of her hand. There
23 was an elbow, something on the back -- I believe the back
24 area.

25 Q All right.

1 Mr. Delaney - All right, no further questions.

2 Thank you.

3 The Court - Do you have any further questions?

4 Mr. Anthony - No. No re-direct.

5 The Court - All right, any arguments, Mr.
6 Delaney?

7 Mr. Delaney - No, Judge.

8 The Court - Okay, good enough. All right, I
9 find under the standards enumerated under Jackson v. Denno
10 and the its progeny that the statement was freely and
11 voluntarily given subsequent to the advisement of Miranda
12 rights, therefore, at a threshold I find that it's
13 admissible with respect ultimately to whether it's
14 voluntary. That'll be an issue -- a factual issue for the
15 jury to make a determination of. All right. Anything
16 additionally?

17 (No response)

18 The Court - All right, hearing nothing --

19 Mr. Anthony - I have -- and I don't -- we don't
20 have to take this up right now if the Court doesn't want
21 to, but just I do have a motion concerning Mr. Dipietro's
22 record and impeachment of him that I'd like to make before
23 he testifies.

24 The Court - Okay. All right. Is he going to be
25 your first witness?

1 Mr. Anthony - No, he will be my second witness.

2 The Court - Your second witness?

3 Mr. Anthony - Yes, sir.

4 The Court - Okay. All right, what's the prior
5 record? Well, let me ask you first. Do you intend to ask
6 him any questions on cross examination regarding his prior
7 record for impeachment purposes?

8 Mr. Delaney - There's a 2007 conviction for
9 failing to register as a sex offender. We would intend to
10 ask him about that.

11 The Court - Okay.

12 Mr. Anthony - And the underlying conviction that
13 made him a sex offender was a 1996 conviction which would
14 be outside of the rule, and what I would ask the Court is
15 to allow impeachment as to the 19 -- or the 2007
16 conviction but limited to a question as to whether or not
17 he has been convicted of a felony carrying over a year,
18 rather than let them ask him about a question that refers
19 to a underlying conviction that he could not be asked
20 about otherwise.

21 The Court - Okay. Mr. Delaney, do you take the
22 position that the -- that the nature -- or the specific
23 nature of the conviction is relevant for impeachment
24 purposes?

25 Mr. Delaney - I do, Judge.

1 The Court - Why?

2 Mr. Delaney - I think it goes to the witness's
3 credibility in the case, the -- as far as truthfulness and
4 it goes to that and the specifics of the offense of
5 failing to register and I believe it would also tie him to
6 other things that we believe are going to be able to
7 elicit regarding that that would show and go towards
8 truthfulness in the case.

9 The Court - Okay. All right, at this point and
10 not having heard any of the testimony, I'm going to -- I'm
11 going to allow you to ask him question about a felony
12 conviction. I'm not going to allow you to ask about the
13 specific conviction. I think that for purposes of
14 impeachment the rule contemplates that you can ask him
15 questions that bear upon his credibility and I don't see
16 how substantively the nature of the offense is relevant,
17 but the fact that he committed the offense is.
18 Essentially what I'm looking at all the time in these
19 types of analysis's is I look at the stick in the eye
20 analysis and that is it really just a stick in the eye to
21 be able to say to the jury that he has a prior offense for
22 a sex -- a failure to register for a sex offense. And in
23 this offense I think that crosses the line into a
24 gratuitous comment as opposed to a substantively relevant
25 type. Okay?

1 Mr. Delaney - Judge, our only response would be
2 and I don't know if we got closer to that point if we
3 could proffer a little bit of testimony, because the 2007
4 conviction, and without going into everything right now,
5 ties into some of our theories, strategies in the case,
6 and it's also my understanding that Mr. Dipietro was not
7 reporting here in South Carolina when he was living down
8 here, as a -- as a registered sex offender, so that would
9 be something that we -- you know, as far as --

10 The Court - Okay. I would tell you that when the
11 time comes, based on what's coming into evidence, if you
12 want to proffer something into the record, I'm comfortable
13 letting you do that.

14 Mr. Delaney - Okay.

15 The Court - It's going to be difficult before
16 you have made -- introduced any evidence to find a basis
17 on which that would be relevant. It would be perspective
18 and I don't know how you're going to get it in at that
19 point. The only reason I tell you that is because that's
20 -- I'm real reluctant to let something like that in. I'm
21 real reluctant. The felony's okay, and there may be
22 circumstances -- the reason I'm hedging my bets and
23 equivocating a little bit, because there are circumstances
24 under which it could come in that I just don't anticipate
25 right now based on what evidence is elicited on the stand,

1 so at that time if you want to proffer something into the
2 record, then we'll take a break and proceed in that vein,
3 if appropriate and if necessary.

4 Mr. Delaney - All right. Thank you, Judge.

5 The Court - Okay? All right. Anything else?

6 Mr. Anthony - No, sir, I would -- if you've got
7 just a couple of seconds in chambers, I can tell you sort
8 of how I plan on -- who I plan on calling this afternoon
9 and sort of the general schedule, but I don't have
10 anything for the record at this time.

11 The Court - Okay. All right, good enough. All
12 right, then we'll adjourn until 2:00 o'clock.

13 (Lunch recess)

14 The Court - Okay. Are we ready for the jury?

15 Mr. Anthony - Yes, sir.

16 The Court - Okay, good enough. Bring them in
17 please, sir.

18 (Jury enters the courtroom)

19 The Court - All right, ladies and gentlemen,
20 thank you for being on time. Sorry I started a little bit
21 later. It was my fault. I take the blame for it. We're
22 about to start with opening arguments. Before we get
23 started I'm going to ask the Clerk of Court to swear you
24 in. I know you took an oath this morning to tell the
25 truth. Now, this is a different oath which applies to

1 this specific case wherein you swear to truly and fairly
2 try this case in accordance with the law and evidence.
3 So, Mr. Gault, turn it over to you.

4 (Whereupon, the jury is duly sworn by the Clerk)

5 The Court - All right, ladies and gentlemen, I
6 had the opportunity to talk to the lawyers while you were
7 out and I'm going to tell you how I think this case is
8 going to go as far as timing is concerned. The State's
9 going to have somewhere between six and eight witnesses,
10 maybe a little bit more, maybe a little bit less is what
11 I think, about six to eight witnesses, and the defense may
12 have about the same. And what we're looking at is putting
13 up one short witness and maybe a long witness today, and
14 then the State will put up the remainder of its witnesses
15 tomorrow morning and then will probably rest some time
16 late morning, early to mid-afternoon, and then the defense
17 will have the opportunity to put its case into the record.
18 So what I'm guessing is for the rest of the day we're
19 going to hear testimony. We'll probably leave about 5:00.
20 I try to start just at business hours at 9:00 and end at
21 about business hours. If we're going to go over that or
22 beyond that by more than hour, I'll let you know, but
23 hopefully we're going to end somewhere around 5:00, 5:15.
24 Okay? Tomorrow we'll start back probably at 9:30 and then
25 we'll go again with testimony during the day, end about

1 4:30 tomorrow, because one of the courtroom personnel has
2 to -- has a commitment, so we're going to try to end at
3 about 4:30 tomorrow, then come back on Thursday morning.
4 I hope on Thursday morning we're able to finish the
5 introduction of evidence and then roll into closing
6 arguments and the charge on the law, and hopefully
7 Thursday afternoon y'all can begin deliberations. Now,
8 you hear me, I'm hedging a little bit, because I don't
9 know. I don't really control it. It could take a little
10 bit longer; it could take a little bit less time. We'll
11 just have to hear the testimony and see how it goes.
12 Okay? And if there's any deviation to that, to what I
13 just told you, then when I know it I'll let you know, so
14 that you'll be aware of what's going on. During the
15 course of this trial, we're going to take pretty regular
16 breaks, about every hour, hour and a half. If for
17 whatever reason you need to take a break at a different
18 time, that is, you've just got to take a break, then get
19 my attention, get the bailiff's attention and what we'll
20 do is we'll take a break, we'll recess and we'll come
21 back, because I want you to understand because you right
22 now are the most -- the fourteen most important people in
23 this courtroom, and what I want to make sure of is that
24 you're paying attention to what's happening on the stand,
25 as opposed to thinking, gosh, I wish they'd shut up so I

1 can take a break. So just stop us and we'll take a break.
2 Okay? If you need to stand up -- I know those aren't the
3 most comfortable chairs in the world -- if you need to
4 stand up, as long as you're not getting in the way and
5 you're not a nuisance to someone else that's around you,
6 if you need to stand up and move around, do whatever you
7 want to. Okay? That's a pretty small space, but I don't
8 intend for you to be confined to chairs and to be
9 captives over there. Okay? You can put your feet up if
10 you want to. It doesn't bother me a bit. The Clerk of
11 Court might say, hey, this is my courtroom, you're messing
12 it up, but I'm not going to be worried about. So having
13 said that, ladies and gentlemen, you know what I know now.
14 So I'm going to turn it over to the State to start opening
15 statements.

16 Mr. Anthony - Thank you, Your Honor. Good
17 afternoon. My name's John Anthony and I'm the Deputy
18 Solicitor here in Union and I'm the man who will be
19 representing the State in this case. I remember this old
20 song that kind of puts me in mind of what happened in this
21 case you're about to hear. Most of y'all probably heard
22 this song a long time ago on the radio, and it's called,
23 there ain't no getting over me, and some of the lines to
24 it go -- and don't worry, I'm not going to sing it to you
25 or anything -- yes, the lines go, you can walk out on me

1 tonight if you think that it ain't feeling right, but
2 darling, there ain't no getting over me, and you can say
3 that you need to be free, but there ain't no place that I
4 won't be, because, darling, there ain't no getting over
5 me. This case is about a man, the victim in this case,
6 Ron Dipietro over here who decided he wanted to walk out,
7 and it's about a woman, the defendant in this case, Leah
8 Forrest, who decided that he wasn't going to walk out, and
9 now because of what happened on June 7th, 2010 when Leah
10 Forrest made that decision, Ron Dipietro is never going to
11 walk anywhere again. Ron Dipietro and Leah Forrest stayed
12 together a lot of the time at a house on Street in
13 Jonesville, and on June 7th, 2010 real early that morning,
14 they were there together that night, they'd gotten up --
15 both of them had gotten up out of bed in the middle of the
16 night and they had a argument because Ron Dipietro found
17 some text messages on Leah Forrest's phone from a couple
18 other guys, and an argument started, and that argument
19 escalated and it became physical and Ron grabbed Ms.
20 Forrest, he put a scratch on her nose, he grabbed her by
21 the wrist, threw her down on the couch, and Ms. Forrest
22 ran out of the house, and Ron Dipietro decided he was
23 walking out, so Ron started getting his clothes together;
24 he started getting some cds and some things he had from
25 the computer area in their living room, and he was in the

1 living room trying to walk out. Leah Forrest came back in
2 the house. Leah Forrest went back into the bedroom; she
3 got a .22 rifle out of the closet; she came back into the
4 living room where Ron was standing there at the computer,
5 was trying to get out, and she shot Ron Dipietro two
6 times. She shot him in the abdomen and she shot him in
7 the neck, in the back of the neck, and the shot to the
8 back of the neck severed his spinal cord and he collapsed
9 right there, his spine was severed, but the attack didn't
10 stop then, because Ms. Forrest after that happened, she
11 drove Mr. Dipietro's head into the computer keyboard, she
12 kicked him in the ribs, she beat him with his own phone.
13 There was an assault that continued after the shooting,
14 and then finally, Leah Forrest decided that Ron Dipietro
15 could leave her house, and she called 9-1-1; EMS came and
16 Ron Dipietro left her house early that morning on a
17 stretcher. So in this case we're going to present Ron
18 Dipietro. He's going to testify. We're going to have
19 medical witness testify. We're going to have several
20 people from law enforcement come testify about the
21 investigation of the case, what happened at the crime
22 scene, things like that. And Ms. Forrest is here today
23 charged with attempted murder, and we believe that once
24 you've heard all the evidence in this case, that you'll
25 find she's guilty of attempted murder. Now, my

1 expectation is that she's going to argue that she was
2 defending herself, that this is a self-defense situation.
3 It's not really appropriate in an opening statement to go
4 into the law, so I'm not really going to stand up here and
5 talk to you a lot about the law of self-defense right now.
6 I'll do that at the end of the case. I'll just say that
7 we don't believe that it's ever justified, it's ever
8 permissible to shoot somebody in the back in self-defense.
9 And we believe once you've heard the evidence in this case
10 that you'll think the same thing and that you'll find Ms.
11 Forrest guilty of attempted murder. Thank y'all very much
12 and I look forward to presenting the case to you.

13 Mr. Delaney - May it please the Court. Good
14 afternoon. What kind of man picks a woman up off of her
15 feet and slams her to the ground? What kind of man picks
16 this same woman up again for a second time and slams her
17 to the ground? What kind of man picks this woman up, this
18 same woman up for a third time and slams her to the
19 ground? This man. Ronald Dipietro was a much different
20 man back in June 2010. He was five feet, nine inches
21 tall; he weighed nearly three hundred pounds. He was a
22 big man. He was a strong man, a violent man. The
23 evidence will show he was a violent man with a bad
24 temper. The evidence in this case will show he was a man
25 who repeatedly abused and beat Leah Forrest. He's not the

1 same man that he was back in June of 2010. This is a case
2 of self-defense. The evidence in this case will show Leah
3 Forrest shot a violent man with a bad temper who
4 repeatedly abused and beat her on the morning of June the
5 7th, 2010. The evidence will show Leah Forrest was a
6 battered woman who acted in self-defense. You're going to
7 hear testimony from this stand from Vicky Burris, social
8 worker, with many years of experience of evaluating,
9 diagnosing battered women, many years of experience
10 working with women when they're diagnosed with suffering
11 from battered women syndrome. You're going to hear that
12 Ms. Burris testified in criminal court in the past
13 regarding the battered women. You're going to hear that
14 she's testified for the prosecution; she's testified for
15 the defense, and you're going to hear that she evaluated
16 Leah Forrest for battered women's syndrome and you're
17 going to hear she diagnoses Leah Forrest as someone who
18 was suffering from battered women's syndrome. You've
19 heard the State; they have the burden of proof in this
20 case. They must prove to you beyond a reasonable doubt
21 that they have brought against Leah Forrest. Reasonable
22 doubt is defined as the kind of doubt that would leave a
23 reasonable person hesitant to act, been defined as the
24 kind of doubt that would leave a reasonable person not
25 firmly convinced. And this standard is so important to

1 this process, ladies and gentlemen, because if you are not
2 firmly convinced, you must render a verdict of not guilty.
3 The State also has the burden in this case to disprove
4 beyond a reasonable doubt that Leah Forrest acted in self-
5 defense. Hold them to their burden, ladies and gentlemen.
6 What evidence are they going to be bringing to you in this
7 trial that is going to satisfy their burden? What
8 evidence are they going to bringing to you in this trial
9 that is either going to corroborate or contradict what
10 you're hearing from this witness stand? And what you're
11 going to have to ask yourselves about the investigation
12 that was done in this case, was this a fair investigation
13 from beginning to end? Was it a detailed investigation
14 from beginning to end? Was it an accurate investigation
15 from beginning to end? Because you're going to hear and
16 the evidence is going to show that Leah Forrest was
17 consistent in the beginning of this case, consistent that
18 she was abused, consistent that she was beat, and you're
19 going to see this consistent through the 9-1-1 recording
20 that you're going to hear in this case, through the
21 pictures that you're going to see taken in this case,
22 through the statement that Leah Forrest gave to Captain
23 Hines in this case, consistent that she was beaten,
24 consistent that she was abused. Ronald Dipietro suffered
25 a devastating injury, the type of injury I would wish on

1 no one. It's a terribly sad situation that he is in, and
2 when you hear from him in this case, it's going to be
3 emotional, but you've been selected as jurors, you've
4 taken an oath and you'll be instructed by the Judge at the
5 close of this trial to decide this case based on the
6 facts, based on the evidence, without emotion, without
7 sympathy. Ronald Dipietro was a different man back in
8 June of 2010. Ronald Dipietro's story that you're going
9 to hear in this case is going to change and it's going to
10 change and it's going to change. And what you're going to
11 have to ask yourselves at the end of this trial after all
12 the evidence has been presented, after Judge Stilwell
13 instructs you as to the law that you must apply to the
14 facts, what you're going to have to ask yourselves is
15 this, are you firmly convinced, firmly convinced of Leah
16 Forrest's guilt, firmly convinced. And what I contend to
17 you, ladies and gentlemen, is no way. The evidence in
18 this case will show Leah Forrest was a battered woman who
19 acted in self-defense and at the close of this trial we
20 would ask you to find her not guilty. Thank you.

21 The Court - Mr. Solicitor?

22 Mr. Anthony - The first witness will be
23 Investigator Lawson. I think he's back there.

24 (Documents marked for identification as State's
25 Exhibit 2 through 17.)

Jeff Lawson - Direct by Mr. Anthony

80

1 Jeff Lawson, after being first duly sworn,
2 testifies as follows -

3 Direct Examination

4 by Mr. Anthony -

5 Q Would you state your name, please?

6 A Jeff R. Lawson.

7 Q And, Mr. Lawson, how are you employed?

8 A With the Union County Sheriff's Office.

9 Q How long have you worked for the sheriff's office?

10 A Twenty-seven years last month.

11 Q And what's your current job with the sheriff's
12 office?

13 A I am the investigator.

14 Q And back in June of 2010, what was your job at the
15 sheriff's office at that time?

16 A I was working road patrol.

17 Q Were you working early in the morning on June 7th of
18 2010?

19 A That's correct, yes, sir.

20 Q And did you respond to a call at

21 A Yes, sir, I did.

22 Q And what town is that in?

23 A That's in the City of Jonesville.

24 Q All right, and is that in Union County?

25 A It is sir, yes, sir.

Jeff Lawson - Direct by Mr. Anthony

81

1 Q And approximately what time did you get the call to
2 go out there?

3 A I want to think it was somewhere around 6:00 a.m.,
4 somewhere close to 6:00 a.m.

5 Q And along besides yourself, did any other deputies go
6 out to Street?

7 A That's correct, Sergeant Jeff Wright and Corporal
8 Russell Vinson.

9 Q And when you got there, what'd you see?

10 A Well, we saw the defendant in this case; she was
11 outside; we inquired what was going on; she said that she
12 had shot him and it was after some type of argument.

13 Q All right. And did you ask her about any weapon?

14 A Yes, sir, we asked her about the firearm that was
15 used. She gave us the answer that she had thrown the
16 firearm across a road, just out of the yard into a field.

17 Q And what was her demeanor when you talked to her,
18 when you got there and just saw her in person?

19 A She was relatively calm in my opinion.

20 Q After you had that conversation with her, what did
21 you do?

22 A We went and checked on the victim in the house and
23 did like a cursory search of any other weapons in the
24 immediate area.

25 Q And who was the victim?

Jeff Lawson - Direct by Mr. Anthony

82

1 A Mr. -- and I cannot pronounce his last name. I
2 apologize, sir. Ron is all I've known him by.

3 Q Okay. All right. And where was he located in the
4 residence?

5 A He was like in the den area of the residence laying
6 face down on the floor.

7 Q What was he wearing at the time you got to the house?

8 A I believe it was a pair of blue jeans and a t-shirt.

9 Q And did you notice any injuries to him when you got
10 there initially?

11 A Initially there were some blood coming out from
12 looked like the side of his -- to the side of his abdomen
13 here, maybe a place back there on the back and noticed I
14 believe some blood coming out of his mouth.

15 Q And when you went in to the residence and found Mr.
16 Dipietro, what -- where was Ms. Forrest. What did you
17 have her do?

18 A Ms. Forrest I think was standing in the kitchen area
19 of the residence.

20 Q Okay. And what was the nature of your interaction
21 with Mr. Dipietro when you went in and found him lying
22 there on the ground or on the floor of the residence?

23 A Just to check his status would be what we were
24 checking on.

25 Q Okay. What did you determine from trying to speak to

Jeff Lawson - Direct by Mr. Anthony

83

1 him that morning?

2 A Well, he couldn't move, had no feeling.

3 Q Where was Ms. Forrest after you went in and she
4 initially went in the kitchen with you? What eventually
5 did you ask her to do?

6 A She stepped outside with Corporal Vinson and I think
7 went into -- in Corporal Vinson's vehicle, had her sitting
8 in the backseat with the door open.

9 Q And was there anybody else at the residence aside
10 from Mr. Dipietro and Ms. Forrest?

11 A No, sir.

12 Q What did you do once you got there and had made this
13 assessment and saw Mr. Dipietro? What was the next thing
14 you did?

15 A What I did was I obtained Sergeant Wright's camera
16 and I have a -- was going -- taking photographs of what we
17 thought was evidence involved in this case. This was
18 prior to EMS arrival. We tried to get it there (sic)
19 before EMS got in there and kicking stuff around and I
20 think they -- they were there during some of the photos as
21 well.

22 Q And did you do anything to try and identify where
23 things that you thought might be relevant to the case --

24 A We had these little, like placards, little things you
25 sit down that's numbered from one to maybe ten or

Jeff Lawson - Direct by Mr. Anthony

84

1 something and we set down to every piece of evidence we
2 found.

3 Q Okay. And did EMS arrive there at the scene --

4 A Yes, sir.

5 Q -- after you did?

6 A Yes, sir.

7 Q And what did they do in regards to Mr. Dipietro?

8 A They were treating him. They cut his clothing off.
9 We could visibly see a -- looked like a gunshot wound
10 around the shoulder-blade area, gunshot wound to the side
11 area of him.

12 Q And then once they -- once they got there, cut his
13 clothes off, what did they do in regards to getting some
14 attention to him?

15 A Well, they were treating him for the gunshots. They
16 also turned him over and it appeared there was some blood
17 coming from his mouth area. He had a goatee at the time
18 and there was some blood around his mouth. We also
19 noticed a keyboard in the floor, it had blood on the
20 keyboard.

21 Q Okay. And then what did they eventually do with Mr.
22 Dipietro?

23 A I think they transferred him to Spartanburg Regional.

24 Q Okay. And then once he was out of the scene, after -
25 - gone from the scene, once EMS had left, what did you and

Jeff Lawson - Direct by Mr. Anthony

85

1 Sergeant Wright try to do?

2 A Myself and Sergeant Wright went to the wooded area
3 where the defendant alleged that she threwed the weapon,
4 supposed to been a rifle. We searched the area
5 completely, every inch, and could not locate the rifle.

6 Q What did you do once you couldn't find the rifle in
7 the field?

8 A We determined that it had to be somewhere in the
9 house. We went back in the house and the rifle was found
10 in the closet in a bedroom.

11 Q Okay. And did anybody else arrive to investigate
12 this incident from the sheriff's office?

13 A Yes, sir, Captain Robbie Hines arrived at the scene.

14 Q And once he got there, what did you do in regards to
15 the actual crime and the scene?

16 A We relinquished everything over to him.

17 Q I'm going to show you what's been marked for
18 identification as Exhibits 2 through 17, and I'll ask that
19 you look through those photos and see if you recognize
20 what they depict.

21 A Yes, sir, this is the photos from the crimes on
22 Street in Jonesville.

23 Q Okay, and do those fairly and accurately depict how
24 the scene appeared to you on the morning of June 7th when
25 you went there?

Jeff Lawson - Direct by Mr. Anthony?

86

1 A Yes, sir.

2 Q Okay. And -- all right.

3 Mr. Anthony - We'd move 2 through 17 into
4 evidence.

5 The Court - Any objections, sir.?

6 Mr. Delaney - No objections, Judge.

7 The Court - All right, without objection, the
8 same are moved into evidence as State's Exhibits 2 through
9 17.

10 (Photos marked into evidence as State's Exhibits
11 2 through 17.)

12 Mr. Anthony - I'd ask to publish these to the
13 jury, Your Honor.

14 The Court - Yes, sir.

15 Mr. Anthony - Thank you.

16 (Exhibits published to the jury)

17 Q All right. I am showing you --

18 Mr. Anthony - Can you -- yes, can you try to dim
19 those -- that overhead light? I think that's where that
20 glare's coming from.

21 (Deputy complies)

22 Mr. Anthony - Yes, that's good. Thank you.

23 Q All right, I'm showing you first of all State's
24 Exhibit Number 2. I just ask what -- what that's a photo
25 of?

Jeff Lawson - Direct by Mr. Anthony

87

1 A That is a picture of the residence at
2 Street in Jonesville.

3 Q Okay. And this -- this door right here, which door
4 is that?

5 A That would be the front door.

6 Q Okay. And then is there another way to access the
7 house to get into it?

8 A Yes, sir, through the carport area; you see where
9 that grill's at, it's right through there.

10 Q Okay.

11 A Would be the side door.

12 Q Okay. All right. And I'm showing you now Exhibit 3,
13 and what is that a picture of?

14 A That is a photo from the kitchen area of the
15 residence, coming in from the side door, the porch, -- the
16 carport, excuse me.

17 Q Okay. So when you come in off that kitchen door off
18 -- into -- through that kitchen door off the carport, this
19 is basically the view you would have?

20 A Yes, sir.

21 Q Okay. And what -- what is that right -- you see that
22 --

23 A That is -- I believe that's going to be the victim
24 laying face down on the floor.

25 Q Okay. And where would -- where would the front door

Jeff Lawson - Direct by Mr. Anthony

88

1 be in that --

2 A I think it would be to the left, right to the left
3 arm of the officer standing there.

4 Q Right. Is that it there?

5 A That's correct. Yes, sir.

6 Q Okay. Okay. Now, I'm going to show you now Exhibit
7 4 and ask what is that a photo of?

8 A That is the victim -- they had obviously -- cut --
9 clothes cut away by EMS. They were working with him.

10 Q Who is this gentleman here?

11 A That's EMS, one of EMS.

12 Q Okay. Okay. And is that location there, is that
13 where you found him?

14 A Yes, sir.

15 Q All right, I want to show you now Exhibit Number 5.
16 Can you -- I'll give you the pointer. Can you point out
17 to the jury where the neck wound is on that photo?

18 A Right there around the shoulder blade area, right in
19 there towards the -- one of the wounds were.

20 Q Okay. And then did you observe any other injuries on
21 Mr. Dipietro that would be --

22 A The victim had what looked like some gouge marks
23 right here, I don't know what caused by, have no idea, and
24 there was some bruising around in different areas of the
25 back. There also a gunshot wound, what appeared to be a

Jeff Lawson - Direct by Mr. Anthony

89

1 gunshot wound to the left side of the victim.

2 Q Okay. And I'm going to show you now Exhibit 6 and
3 what does -- what does that photo depict?

4 A That is the gunshot wound to the left side area.

5 Q Okay. And is that when the victim's on his back or
6 on his front?

7 A He was on his front, still on his front, yes, sir.

8 Q Well, does that -- the wound that you just showed the
9 jury --

10 A That's correct.

11 Q -- appear in Number 5?

12 A Right in that area right there.

13 Q Okay. Okay. So that's the same as what you just --
14 what we -- as Number 6. Is that correct?

15 A Yes, sir.

16 Q Okay. And that's the view from -- when you say on
17 his front, you mean laying on his stomach.

18 A He was laying -- face down. He was laying face down.

19 Q Okay. All right. And I'm going to show you now
20 Exhibit Number 7, and what is -- what is that a photo of?

21 A That appears -- and I'm no expert, but it appears to
22 be an exit wound from the shot on the backside exiting
23 from towards the front side of the victim.

24 Q Okay. And how -- when that picture was taken of Mr.
25 Dipietro, what had been done to him at that point in time?

Jeff Lawson - Direct by Mr. Anthony

90

1 A EMS had turned him over on a -- you can see right
2 here -- one of the boards to make it easy for them to
3 transport him.

4 Q Okay. So that is actually with him laying on his
5 back.

6 A That's correct, on his back.

7 Q Okay. All right. I'm showing you now Exhibit Number
8 8. And what is that a photo of?

9 A That's a photo of the victim's face; photo obviously
10 showed signs of blood coming out of the mouth area right
11 here and in the goatee area.

12 Q And then I'm showing you now Exhibit 9. What is that
13 a photo of?

14 A I can't really see what the -- the marker's --

15 Q Well, -- but well -- just what is that in general?
16 What's that in the house?

17 A It looks like a bedroom door in the house is what it
18 looks like to me. I don't know if there's any marker --

19 Q Okay.

20 A I don't know why it's marked.

21 Court Reporter - He needs to speak up and turn
22 towards the mic.

23 A I don't know why it's marked. This is just the room.
24 I can't see --

25 Q Okay. And I'll show you now Exhibit Number 10.

Jeff Lawson - Direct by Mr. Anthony

91

- 1 A Yes, sir, that's the rifle that was in the closet.
- 2 Q And is that how the rifle appeared in the bedroom
- 3 closet?
- 4 A That is correct. Yes, sir. Exactly the way it's
- 5 displayed.
- 6 Q Okay. And was -- was the rifle -- was the closet
- 7 where the rifle was, does that --
- 8 A That's correct.
- 9 Q That's the same as number --
- 10 A Exactly.
- 11 Q This room here?
- 12 A Yes, sir.
- 13 Q Okay. Okay. And -- try not to drop it this time.
- 14 I'm going to show you an item marked State's Exhibit
- 15 Number 25, ask if you've seen this item before.
- 16 A Yes, sir, this is the rifle that was taken from the
- 17 residence.
- 18 Q Okay. All right. And does that rifle have -- does
- 19 it appear to be in the same condition --
- 20 A Yes, sir.
- 21 Q -- that it was in when you --
- 22 A Correct, yes, sir.
- 23 Q -- when you seized it from the bedroom closet of the
- 24 residence?
- 25 A Yes, sir. It is.

Jeff Lawson - Cross by Mr. Delaney

92

1 Mr. Anthony - All right. We move 25 into
2 evidence.

3 Mr. Delaney - No objection.

4 The Court - All right, without objection same is
5 admitted in as State's Exhibit 25.

6 (Rifle is entered into evidence as State's
7 Exhibit Number 25.)

8 Mr. Anthony - If I can have one moment.

9 The Court - Sure.

10 Mr. Anthony - Thank you. That's everything on
11 direct.

12 The Court - Cross examination?

13 Mr. Delaney - Court's indulgence. I just want
14 to move this podium.

15 The Court - Sure.

16 Cross Examination

17 by Mr. Delaney -

18 Q All right, so you received a call from dispatch. Is
19 that right?

20 A Yes, sir.

21 Q Okay. And that was in reference to a shooting?

22 A That is correct, yes, sir.

23 Q And that was the shooting at

24 A Yes, sir.

25 Q And that's in Jonesville. Right?

Jeff Lawson - Cross by Mr. Delaney

93

1 A Yes, sir.

2 Q Okay. And was it your understanding at the time was
3 at the home of Leah Forrest?

4 A We -- I don't even know that the name had been
5 mentioned prior to our arrival, no.

6 Q Okay. And did you have -- the information you
7 received from dispatch was that someone had just shot a
8 boyfriend?

9 A To be honest I don't recall. I just knew it was a
10 Code 3 call and I believe it was a shooting call as best
11 I can recollect. I don't know if there was any name
12 mentioned; I don't know if it was over an argument. I
13 cannot recall that information.

14 Q You don't recall getting any information that -- from
15 dispatch that she may have been assaulted first before the
16 shooting?

17 A No, sir, I don't recall that, I'm sorry.

18 Q Okay. And you did not prepare a report in this case.
19 Is that right?

20 A That's correct.

21 Q Okay. When you got to the residence you had an
22 opportunity to observe Mr. Dipietro?

23 A Yes, sir.

24 Q Okay. And he was -- he was a large man. Correct?

25 A That's correct.

Jeff Lawson - Cross by Mr. Delaney

94

1 Q And you also had an opportunity to it sounds like
2 cross paths with Leah Forrest when you got there?

3 A Yes, sir.

4 Q Okay. Leah Forrest, small woman. Right?

5 A That's correct.

6 Q And you were not the detective in this case.
7 Correct?

8 A No, sir, I wasn't.

9 Q Okay. And you were the responding officer?

10 A One of them, yes, sir.

11 Q Okay. And there were two others?

12 A Yes, sir.

13 Q Okay. And that would be Sergeant --

14 A Jeff Wright, --

15 Q -- Wright and Corporal --

16 A -- Corporal Russell Vinson.

17 Q Okay, thank you. And at that time as a responding
18 officer your job differs from that of a detective.
19 Correct?

20 A Correct.

21 Q Okay. The information you collected on that day you
22 passed on to Captain Hines.

23 A Correct, yes, sir.

24 Q Okay. And he was the lead investigator in this case.
25 Correct?

Jeff Lawson - Cross by Mr. Delaney

95

1 A Yes, sir.

2 Q Okay. And it would be the duty of the lead
3 investigator to gather the information in the case. Is
4 that correct?

5 A Yes, sir.

6 Q Okay. The important information.

7 A Exactly.

8 Q They can take pictures or call the crime scene unit.
9 Correct?

10 A We are -- when you see -- look at him, he is crime
11 scene; that's all we have is sergeant.

12 Q Okay. Lead detective's responsibility normally to
13 get a search warrant?

14 A If need be, yes, sir.

15 Q Okay. And then obviously execute the search warrant?

16 A Yes, sir.

17 Q Okay. Lead detective's responsibility is going to
18 include interviewing witnesses. Is that right?

19 A Yes, sir.

20 Q Okay. Processing evidence?

21 A Correct.

22 Q It can include downloading items from computers, cell
23 phones. Correct?

24 A Yes, sir.

25 Q Okay. Lead detective would request items be sent to

Jeff Lawson - Cross by Mr. Delaney

96

1 SLED for different types of testing?

2 A Yes, sir.

3 Q And it would be the lead investigator's duty to
4 determine how a crime happened. Right?

5 A Yes, sir.

6 Q Okay. Where it happened?

7 A Correct.

8 Q How it happened?

9 A Yes, sir.

10 Q And who was involved.

11 A Yes, sir.

12 Q Okay. And as part of your role at the residence that
13 day, officer, you didn't take any pictures in the
14 bathroom. Is that correct?

15 A No, sir.

16 Q Okay. And you never requested -- I guess when you
17 got there you saw -- you saw Leah Forrest when you got to
18 the house. Correct?

19 A Yes, sir.

20 Q Okay. And you saw -- do you remember seeing a mark
21 on her face?

22 A I don't -- I don't recall. At the time I do not
23 recall. I'm sorry.

24 Q Do you recall any bruising on her? Do you recall
25 seeing any of that?

Jeff Lawson - Cross by Mr. Delaney

97

- 1 A No, sir, I don't.
- 2 Q And you -- you did not request on that day that Leah
- 3 Forrest get any medical attention. Is that correct?
- 4 A No, sir, I did not.
- 5 Q Okay. And when you arrived, you secured the crime
- 6 scene. Is that correct?
- 7 A Yes, sir.
- 8 Q Okay. And because evidence at a crime scene can tell
- 9 you how a crime happened. Right?
- 10 A Yes, sir.
- 11 Q Where a crime happened?
- 12 A Yes, sir.
- 13 Q When it happened?
- 14 A Yes, sir.
- 15 Q And who was involved.
- 16 A Correct.
- 17 Q And you learned from your training and your
- 18 experience you don't want people touching items inside the
- 19 crime scene. Right?
- 20 A That's correct.
- 21 Q Okay. And you wanted to protect the crime scene.
- 22 Correct?
- 23 A Yes, sir.
- 24 Q You wanted to secure the crime scene?
- 25 A Yes, sir.

Jeff Lawson - Cross by Mr. Delaney

98

1 Q And preserve the crime scene.

2 A Right.

3 Q Because when people are in and out of the crime scene
4 evidence can be contaminated?

5 A Can be kicked, knocked around, yes, sir.

6 Q And you've learned that from your training. Right?

7 A Yes, sir.

8 Q Okay. And also from your experience.

9 A Yes, sir.

10 Q And when you turned the crime scene over to Captain
11 Hines, no evidence had been damaged. Right?

12 A Not to my knowledge, no, sir.

13 Q Okay. Destroyed?

14 A Not to my knowledge, no, sir.

15 Q Contaminated?

16 A Not to my knowledge.

17 Q And to your knowledge the crime scene was in tact.

18 A Yes, sir.

19 Q Okay.

20 Mr. Delaney - Court's indulgence one moment.

21 (Pause) All right, thank you, officer. No further
22 questions.

23 The Court - Any re-direct, sir?

24 Mr. Anthony - Just briefly.

25 Re-direct Examination

Jeff Lawson - Re-direct by Mr. Anthony

99

1 by Mr. Anthony -

2 Q Insofar as where things were located, did -- is it --
3 did you observe or is it possible EMS did have to move
4 some things just to get Mr. Dipietro out of the house?

5 A Correct. More than likely, yes, sir.

6 Q Okay. And EMS had to walk through the house --

7 A That's correct.

8 Q -- just to get to him.

9 A Right. Yes, sir.

10 Mr. Anthony - Okay. All right, thank you.
11 That's everything.

12 The Court - Okay. Any re-cross based on the
13 scope of that re-direct?

14 Mr. Delaney - No, Judge.

15 The Court - Thank you, officer. Appreciate your
16 being here. You can stand down.

17 Mr. Anthony - Could we approach just a minute?

18 The Court - Sure, absolutely.

19 (Bench conference was held in the presence of
20 the jury but out of the hearing of the jury which was not
21 reported.)

22 The Court - All right ladies and gentlemen,
23 we're going to take about a ten minute break. Mr.
24 Dipietro is going to testify next and he's going to come
25 up. Before we do that, his testimony may take a little

1 bit of time, so let's take a little break and refresh and
2 then we'll come back in and listen to his testimony.
3 Please don't discuss the case.

4 (Jury exits the courtroom)

5 The Court - All right, Mr. Anthony, just send
6 word to me when you're ready. Okay?

7 Mr. Anthony - Yes, sir. Thank you.

8 The Court - Thank you.

9 (Recess taken)

10 The Court - Take your seats, ladies and
11 gentlemen. All right, y'all ready for the jury?

12 Mr. Delaney - Judge, one quick issue if we may
13 regarding Mr. Dipietro's testimony. We had dealt with the
14 issue a little earlier about, you know, going into whether
15 or not the 2007 failure to register, and I would ask the
16 Court -- and it is my understanding Mr. Dipietro has an
17 assault of a 2007 conviction and was on probation, and I
18 would inquire if I could go into the facts as far as being
19 on probation and just a couple of the general
20 requirements, nothing about reporting, but that when
21 you're on probation, you got to pay money; when you're on
22 probation, you've got to stay out of trouble, don't get
23 any new charges as far as basic conditions of being on
24 probation, so I would ask the Court if I could inquire
25 into that.

101

1 The Court - Limited to essentially those two or
2 three questions that you've just indicated?

3 Mr. Delaney - Yes, sir.

4 The Court - You take a position with respect to
5 that, sir?

6 Mr. Anthony - No. If the Court's going to allow
7 that, then I would probably like to ask him about that
8 status during his direct, but I don't -- well, I guess
9 first of all, I would inquire as to how that's relevant,
10 I mean before I -- before I agree that --

11 The Court - Yes, but it's hard to say without
12 hearing the testimony to begin with.

13 Mr. Anthony - Yes. I mean I just want to
14 inquire as to why it's relevant, what the theory is and
15 why it's relevant.

16 Mr. Delaney - Well, it's -- the theory is
17 connected to -- you know, our defense in this case, as far
18 as, you know, threats that were being made, control issues
19 in the house, different avenues of our defense, I believe
20 it is relevant as far as some question I would have
21 regarding that.

22 The Court - Okay. Here's the deal. I don't
23 know in a vacuum whether it's relevant or not. It may be
24 based on all of the testimony that's elicited. I don't
25 know. I know what -- you want me to go ahead and say yea

1 or nay absolutely one way or the other so that you can
2 address it in your direct examination. I don't know that
3 I'm prepared to do it, only because I don't know in a
4 vacuum whether it is relevant or not. I don't have a
5 problem conceptually with you asking those questions that
6 you just posited given that they are relevant. Now, I
7 will tell you this, in cross examination we're given some
8 pretty significant latitude in that regard, but I can't
9 tell you for sure. If you were to posit an objection
10 based on relevancy, you know, at this point as we stand
11 here in this courtroom, you've got a fifty/fifty shot. So
12 you've kind of got to make a choice and just decide.

13 Mr. Anthony - Well, I won't -- I probably won't
14 inquire into. I'll just -- I'll just listen with
15 everybody else.

16 The Court - And you'll get a chance to re-direct
17 if you want to cover some ground in that regard if he gets
18 -- Okay.

19 Mr. Anthony - Okay.

20 The Court - Good enough. All right, you can
21 bring the jury in.

22 (Jury returns to the courtroom)

23 The Court - Okay. Mr. Anthony, your case, sir.

24 Mr. Anthony - Our next witness is Mr. Dipietro.

25 Ronald Dipietro, after being first duly sworn.

Ronald Dipietro - Direct by Mr. Anthony

103

1 testifies as follows -

2 Direct Examination

3 by Mr. Anthony -

4 Q Would you state your name, please?

5 A Ronald Charles Dipietro.

6 Q And, Mr. Dipietro, some of the jurors may have
7 noticed that in that wheelchair you're in, you kind of go
8 up and down and back and forth.

9 A Yes, sir.

10 Q Can you explain what the purpose of that is?

11 A It's a pressure relief. Due to not being able to
12 move from the chest down, I have to take pressure off my
13 back side, same way as you guys sit in a chair for a
14 while, moving from side to side or to walk out, I don't
15 have that option anymore, so the chair's designed to take
16 that off and let the blood flow naturally.

17 Q And, Mr. Dipietro, where are you currently residing?

18 A I'm in a rest home in North Carolina, nurse --
19 nursing home.

20 Q And where is your family?

21 A They're in North Carolina, Hendersonville.

22 Q And going back now to June of 2010, where were you
23 working at that time?

24 A I was employed by Renntech Graphics here in
25 Jonesville.

Ronald Dipietro - Direct by Mr. Anthony

104

1 Q And who owns that business?

2 A Chad Gault.

3 Q And what did you do there?

4 A Digital graphic designer, sign painter, pretty much
5 just handy man for the business, did a lot of designs for
6 him.

7 Q And how long -- back in June of 2010, how long had
8 you worked for Renntech doing graphic work?

9 A Going on two years.

10 Q All right. And in June of 2010 and in the months
11 leading up to that, what had been your living situation?

12 A Part-time here, part-time with my parents up in North
13 Carolina. They're older.

14 Q Okay. And when you lived here, where did you live?

15 A I stayed at Street...

16 Q Okay. And who did you live with?

17 A Leah Forrest.

18 Q Okay. And in June of 2010, how long had you known
19 Ms. Forrest?

20 A Going on two and a half to three years.

21 Q And how long had Ms. Forrest lived in Jonesville at
22 this residence on Street?

23 A It was January I believe of 2009.

24 Q Okay. And where did Ms. Forrest work?

25 A At the convenience store on the corner. I believe

Ronald Dipietro - Direct by Mr. Anthony

105

1 it's Kangaroo.

2 Q Now, during the time that you had stayed -- that you
3 two were staying at the residence on Street
4 together, did anybody else live there?

5 A Her son came to live with us for a while and her
6 daughter lived with us for a while also.

7 Q Okay. What's her son's name?

8 A Brandon Howard.

9 Q Okay. And at the time of this incident, was he
10 living there?

11 A No, sir.

12 Q Okay. How -- when had he lived there?

13 A About two months prior.

14 Q Okay. He had moved out about two months --

15 A Yes, sir, I'm sorry.

16 Q -- prior? Okay. And approximately how long did he -
17 - he live with y'all?

18 A About six months.

19 Q All right. And you said her daughter had lived there
20 with the two of you.

21 A Yes, sir.

22 Q What was her name?

23 A Haley Forrest.

24 Q Okay. And well, going back to Brandon Howard, how
25 old a young man is he?

Ronald Dipietro - Direct by Mr. Anthony

106

1 A He was sixteen I believe then.

2 Q Okay. All right. And Haley, how old is she? Or how
3 old was she at the time she lived with y'all?

4 A Ten or eleven, around in there.

5 Q Okay. And was she living in the residence where you
6 and Ms. Forrest stayed at the time of the shooting?

7 A She wasn't in the residence, but she did live there.

8 Q Okay. She wasn't there that night.

9 A No, sir.

10 Q Okay. Where had she gone that night?

11 A She was with her father on a trip to the beach if I
12 remember correctly.

13 Q Okay. Okay. And so you had -- you had known Ms.
14 Forrest two and a half to three years.

15 A Yes.

16 Q And how -- how had your relationship evolved in the
17 six months or so prior to this incident?

18 A Like a -- going down hill fast.

19 Q Okay. All right. And the fact that the relationship
20 was deteriorating, how had that affected where you were
21 spending most of your time?

22 A Well, I spent most of my time the whole relationship
23 in between North Carolina and here.

24 Q Okay.

25 A You know, had the house, but when I stayed late at

Ronald Dipietro - Direct by Mr. Anthony

107

1 work or anything, stayed there part-time so-to-speak.

2 Q Okay. And as things started to go bad, what -- did
3 you spend an increasing or a decreasing amount of time at
4 the house in Jonesville?

5 A Decreasing, sir.

6 Q Okay. All right. And what -- had anything happened
7 in the couple of weeks before this incident that had --
8 had -- had changed the relationship that made you, you
9 know, more eager to possibly move out?

10 A There was a incident where I was chased down the road
11 by --

12 Q Well, no, I mean -- I mean was there -- was there an
13 incident where you actually had some items of clothes
14 thrown out of the house?

15 A Oh, yes, yes, yes, I'm sorry. Yes. We had had some
16 words and I was up at my parent's house and, of course,
17 Hendersonville here is a long way, and in between I guess
18 she had thrown my clothes out in the front yard.

19 Q Okay.

20 A Strewed them out in the front yard.

21 Q All right. And when was this?

22 A Towards the end of May, May 20th, 21st, around in
23 there.

24 Q Okay. All right. And so this was as a consequence
25 of an argument the two of you had I take it?

Ronald Dipietro - Direct by Mr. Anthony

108

1 A I believe so, sir, yes.

2 Q Okay. And then in that period of time between the
3 20th of May and the 7th of June, what was going on between
4 the two of you?

5 A A lot of bickering. I was trying to leave the
6 residence and get more of my stuff out every time I went
7 there. You know, it wasn't a good situation.

8 Q I'm sorry?

9 A I said it wasn't a good situation.

10 Q Okay. All right. And in the week or so before the
11 shooting, what -- what had occurred in your relationship?

12 A I'm not exactly sure what you mean.

13 Q Well, had there been a possibility of things getting
14 better?

15 A Not really.

16 Q Okay. All right. Well, what happened the weekend --
17 this happened early on Monday morning; what had happened
18 the weekend before?

19 A That Saturday, Sunday?

20 Q Yes.

21 A Okay, I'm sorry. We had done some talking as couples
22 would do and we were trying to make the best of a real bad
23 situation, trying to, you know, I decided to say, hey, you
24 know, she asked for me to come stay at the house and let's
25 try to work on things and, you know, you miss your friend

Ronald Dipietro - Direct by Mr. Anthony

109

1 after a while, so me being like a lot of people, I went
2 back to talk and see if we could work things out.

3 Q All right. And that Saturday night --

4 A Excuse me just one second.

5 Q Sure. Sure. Go ahead.

6 A Thank you.

7 Q That Saturday night before this incident occurred,
8 where had you stayed?

9 A Saturday night? I believe I was in North Carolina;
10 Saturday night, Saturday night, Saturday night. No, I was
11 at the house because she was working third shift at the
12 store if I remember correctly.

13 Q And then that Sunday had you two had a conversation
14 about your relationship?

15 A In the afternoon we did. We -- as a matter of fact,
16 we talked over supper that night. We went to a chinese
17 restaurant.

18 Q Okay. And what -- what had you decided as far as the
19 relationship goes?

20 A A day at a time. You know, it's -- you know, just
21 take it a day at a time see what -- if it will get any
22 better, any worse, but at the same time I still had my
23 things ready to go; I was getting my things, you know,
24 ready to go.

25 Q And that Sunday during the day, that Sunday evening,

Ronald Dipietro - Direct by Mr. Anthony

110

1 was there any trouble between the two of you?

2 A Pretty normal Sunday evening leading up to bed-time,
3 yes, pretty normal.

4 Q All right. And approximately what time did you go to
5 bed that night?

6 A 10:30, 11:00, o'clock. I had to work early the next
7 morning.

8 Q Okay. And how about Ms. Forrest?

9 A Very shortly thereafter I believe.

10 Q Okay. All right. And what -- after you went to bed
11 that night, what was the next thing you're aware of
12 happening?

13 A Just a little bit of noise. She was getting up to do
14 something. You know, I think she had a message on her
15 phone or something. I can't exactly remember now, but it
16 was something to that effect.

17 Q Okay. And then what did you do when that woke you
18 up?

19 A Went out to see what was going on, you know. I had -
20 -

21 Q And where did -- you say you went out. Where did you
22 walk to?

23 A Walked out of the bedroom and into the -- like the
24 den area, the living room area.

25 Q And where was -- what did you observe when you got

Ronald Dipietro - Direct by Mr. Anthony

111

1 into the den area?

2 A She was on the computer and I seen the phone sitting
3 there and she kind of, you know, tried to hide the phone.

4 Q Okay. And what did you do?

5 A Just told her, I said, you're always reading all my
6 text messages, let me see what some of yours are.

7 Q And so did you get her phone?

8 A Yes, I grabbed the phone.

9 Q Okay. And what happened when you -- what did you see
10 when you grabbed her phone?

11 A Some text messages that were if anybody was in my
12 situation or with somebody would be upset over.

13 Q Okay. And how did she react when you -- when you
14 read those text messages?

15 A She attacked me, you know, uh, flailing at me trying
16 to get the phone, telling me to stop reading them, --

17 Q Okay. Let me just be -- just back up a little bit.
18 You said it was something somebody in your situation would
19 be angry about. What -- what was it in particular that
20 you found that upset you?

21 A Another man having, you know -- her and another man
22 going back and forth having feelings for each other.

23 Q Okay. All right. And you said that she became
24 angry?

25 A Yes, sir.

Ronald Dipietro - Direct by Mr. Anthony

112

1 Q Okay. And what happened between the two of you after
2 you found those text messages and she got mad?

3 A I got to, you know, trying to see the messages and
4 trying to keep her away at the same time. Almost reminded
5 me, if I may say, of like a little kid will hold ice cream
6 back and push the other kid away and try to lick the ice
7 cream, something like that, would be the scenario. And
8 after I seen it, I got angry myself and I just threw the
9 phone at the wall and told her you've got some nerve to be
10 blaming me for messing around when you're the one that's
11 been doing it.

12 Q Okay. And what did she do then?

13 A Just normal screaming and yelling between the two of
14 us, not normal, but just, you know, screaming and yelling.

15 Q All right. And then what happened after that?

16 A She was trying to attack me and, you know, after I
17 broke the phone it was like World War III started. I mean
18 she'd been mad at me before, but I've never seen her like
19 that.

20 Q Okay. And so what -- what did she do?

21 A Just trying to hit me, and you know, I was just
22 trying to block my way, you know, not be attacked and
23 finally it escalated and, you know, I just, you know, set
24 her back. When I pushed her back, I think I struck her in
25 the face somewhere up in this area, because if I remember

Ronald Dipietro - Direct by Mr. Anthony

113

1 right she had a scratch on her nose. I think I caught her
2 with my thumb. I was trying to grab her wrist and sit her
3 down and say, hey, I -- so I'm leaving, I'm done, so --

4 Q And so once you -- once you did that, once you sat
5 her down on the couch and said you were done, what did she
6 do?

7 A Pushed me back and ran out the kitchen door.

8 Q Okay. And then what did you do?

9 A Locked the doors behind her.

10 Q And -- and then what did you do after you locked the
11 doors?

12 A Threw some of my clothes over there on the -- it's
13 like a little card table, just picked up what I had real
14 quick and went over there by the computer, disconnected
15 the computer and started grabbing some of my discs and
16 cd's and stuff like that that I had.

17 Q Okay. And why did you disconnect the computer?

18 A I -- just the messages going back and forth, you
19 know. You help somebody pay for cable and everything and
20 they're doing stuff behind your back, it gets upsetting,
21 so I -- you know, -- I don't know if anybody would react
22 in that, you know, situation the way I did, but I would
23 feel most people would.

24 Q So -- and you said you had some discs that you were
25 picking up?

Ronald Dipietro - Direct by Mr. Anthony

114

1 A Yes, I race on line, tournaments and stuff like that
2 at the time, used to enter tournaments and, you know, for
3 money, racing on line. Instead of having a real race car,
4 mine was a virtual race car.

5 Q Okay. All right. And so you had -- you had some
6 cd's associated with that?

7 A Yes, I had a tournament coming up that evening. You
8 know, it was a two-day tournaments in the evening. People
9 from all over the world race on there so I was just
10 grabbing my cd's and, you know, I had an XBox 360, which
11 is what the platform that we use, what we race on, and
12 just trying to get everything together so I could get out
13 the door.

14 Q Okay. So as you're doing that, what happens next?

15 A She flung herself against the front door, kicked the
16 front door in and front door went flying open, she went
17 across the living floor, picked herself up and ran back
18 around the corner, went to the bedroom.

19 Q And so after -- when -- after she did this, what did
20 you do?

21 A Really nothing. I just, you know, kind of looked
22 over, like okay, I thought it was over; I thought she'd
23 just went in the bedroom and went to bed, thought it was
24 done now. I was going to head out the door.

25 Q Okay. And so while she goes into the bedroom, what

Ronald Dipietro - Direct by Mr. Anthony

115

- 1 are you doing?
- 2 A Grabbing my cd's and stuff.
- 3 Q You're still doing that?
- 4 A Yes, I had my back to the house.
- 5 Q Okay. And so what happens next as you're standing
- 6 there grabbing your cd's?
- 7 A She came out in the hallway there and I turned over
- 8 my shoulder like, you know, what are you doing. She was
- 9 standing there pointing a gun at me.
- 10 Q And what kind of gun was it?
- 11 A I believe it was a .22.
- 12 Q Okay. And where was that gun? Whose gun was that?
- 13 A It was hers. She had told me it was a gift from her
- 14 grandparents.
- 15 Q Where did she keep it? Where was it kept in the
- 16 house?
- 17 A Sometimes she would keep it in the closet. Sometimes
- 18 she would keep it in, you know, on her side of the bed.
- 19 Q And when you saw her standing there in the entrance
- 20 of that room with a rifle pointed at you, what did you do?
- 21 A Said Leah no, and I heard the gun went off and I hit
- 22 the floor.
- 23 Q Once you hit the floor, what did you -- what did you
- 24 realize about yourself?
- 25 A Other than don't know if I was going to live or die

Ronald Dipietro - Direct by Mr. Anthony

116

1 at that point in time -- I tried to get up and just get
2 away and -- was nothing -- couldn't move. I'm sorry.

3 Q Okay. And were you aware -- after you were shot do
4 you have any recollection now of being shot another time,
5 either before or after you were shot -- you were shot and
6 fell?

7 A Pretty sure the first shot was like somebody snipped
8 the strings of a marionette and I hit the ground, totally
9 helpless.

10 Q And what happened after you got shot and hit the
11 ground, Mr. Dipietro?

12 A I went through the worse torture that anybody could -
13 - I just was beat on, stomped on, had my head smashed into
14 the ground, all the while asking for help.

15 Q And who was doing this to you?

16 A Leah was.

17 Q All right, and you -- you were asking her for help?

18 A Yes, I told her I said, Leah, before this goes any
19 further, you know, you'll be in trouble, don't go to jail
20 for murder, get some help, don't go to jail for murder.
21 She replied, I'm not doing no such thing and kicked me in
22 the side and knocked all the wind out of me.

23 Q And you said -- you said your face -- what was done
24 specifically to your face during this time?

25 A It was being pushed into the ground and she was

Ronald Dipietro - Direct by Mr. Anthony

117

1 pulling my neck back like -- my face back like trying to
2 snap my neck is the only thing I could think of and
3 throughout some of the time she had gone into my pocket
4 taking out my cell phone and was trying to get into my
5 cell phone. I didn't -- you know, she wanted the code for
6 my phone and I just, you know, at that time it was the
7 furthest thing from my mind and she took the phone and
8 threw it at me in the face, hit me in the face with it,
9 then she held it up to my face and showed me, I broke her
10 phone, she broke mine, and showed me it all smashed.

11 Q And --

12 A Could I have a minute, please?

13 Q Yes.

14 (Whereupon, the witness is visibly upset)

15 Mr. Dipietro - Sorry. Let's go ahead.

16 Q During the time that you were lying there, did -- did
17 Ms. Forrest say anything to you about calling anybody?

18 A Yes, at one point we were -- you know, I was asking
19 for help and she was denying the help to me, and she said
20 that she was going to chop me up into little pieces and
21 call a friend of hers that owned a body farm and have me
22 put out there where nobody would ever find me.

23 Q Did she say that she had called anybody in particular
24 that you knew during this time?

25 A Do I need to use the exact words that were said to me

Ronald Dipietro - Direct by Mr. Anthony

118

1 or --

2 Q Well, I'm just asking --

3 A Yes.

4 Q -- did she tell you she had called a person that she
5 thought you knew?

6 A Yes.

7 Q Okay. What was that person's name?

8 A Desiree.

9 Q All right. And where did Desiree live?

10 A She's in New York.

11 Q All right. And what had been the -- had there been
12 some tension in your relationship about Desiree?

13 A Leah thought I was cheating on her with Desiree.
14 Desiree's a friend from 20 years ago that I knew when I
15 was younger in New York.

16 Q And do you know the area code prefix to Ms. Feora's
17 (phonetic) number, what that was?

18 A Like 631 I know is the area code for Eastern Long
19 Island and I believe it was 849-3 -- I can't remember.

20 Q All right. Well, while she's doing these things,
21 what are -- what were you asking her to do or how were you
22 trying to communicate with her?

23 A Just trying to agree with her to get her to calm
24 down, trying to watch my breathing and stuff like that to,
25 you know, I don't know how to put it. I would hope nobody

Ronald Dipietro - Direct by Mr. Anthony

119

1 would be in a situation, but I was trying to survive, you
2 know, just trying to tell her, you know, hey, I'm sorry,
3 let's -- you know, I need help, trying to survive.

4 Q And did anything begin to happen to you physically
5 after you'd been lying there for a couple hours?

6 A Started to drift kind of like you would call it, you
7 know, get real light-headed and stuff. That's what she
8 said, I got something for you, and poured salt in my open
9 wounds and said how is that, I hope that hurts.

10 Q And did she -- did she eventually -- after you
11 started having these drifting episodes, what did she
12 eventually do?

13 A She picked up the phone and went outside and come
14 back in and said hoped I was happy, that now she's going
15 to be going to jail. I guess at that time she had dialed
16 9-1-1.

17 Q And had she already told you at that time that she
18 had called Desiree in New York?

19 A She called Desiree when she was in the kitchen I
20 believe.

21 Q All right. Okay. And eventually did people respond
22 to the residence?

23 A Yes, during -- I was laying I couldn't see, but I
24 believe it was Mr. Lawson was one of the first ones there.

25 Q All right, and then did medics come as well?

Ronald Dipietro - Direct by Mr. Anthony

120

1 A Yes, it seemed like an eternity that they came, but
2 they came a little while later.

3 Q All right. And where were you taken from or where
4 were you taken to from Street that morning?

5 A Spartanburg Regional.

6 Q And how long did you spend at Spartanburg Regional?

7 A About three to four days.

8 Q All right. And after that, were arrangements made to
9 send you to another hospital?

10 A Yes, my family didn't know whether I was going to
11 make it or not, injuries that pretty much taken over and
12 I was stuffed into a -- they induced me into a coma and my
13 father's 96 years old, so my family wanted to get me
14 closer to Hendersonville so he wouldn't have to drive so
15 far.

16 (Whereupon, witness is crying)

17 A Sorry.

18 Q You okay?

19 A Yes, it's hard. I'm trying.

20 Q Where did -- where did they take you to from
21 Spartanburg?

22 A I'm sorry?

23 Q Where did you go from Spartanburg Regional? Where
24 were you taken to next?

25 A I was flown in a helicopter to intensive care up in

Ronald Dipietro - Direct by Mr. Anthony

121

1 Asheville Memorial -- I mean up in Asheville. I can't
2 think of the name.

3 Q Mission?

4 A Mission, yes, sir.

5 Q Okay. And how long did you stay there?

6 A I was in intensive care for close to a month.

7 Q All right. Mr. Dipietro, you have a 2008 felony
8 conviction in North Carolina. Is that correct?

9 A Yes, sir.

10 Q Okay. I'm going to show you some photographs.

11 Mr. Anthony - Can y'all get the -- turn the
12 lights down please?

13 (Whereupon, bailiffs comply)

14 Q I'm showing you first off State's Exhibit Number 3.
15 Is there anything on that photograph that would indicate
16 that you can point out to the jury or tell the jury that
17 would indicate approximately where Ms. Forrest was
18 standing when she shot you?

19 A I -- excuse me, I've got to move. I just --
20 computer's in the way.

21 Q Can you see it now?

22 A Yes, sir.

23 Q Okay. Is there anything you can point out that would
24 -- that would indicate approximately where Ms. Forrest was
25 standing when you were -- when she came into the room with

Ronald Dipietro - Direct by Mr. Anthony

122

1 the rifle?

2 A She was standing right about where that officer's
3 foot was right by the little container we used to carry
4 our cat in.

5 Q Okay, right -- right here?

6 A A little bit to the right.

7 Q Okay. Closer to --

8 A Right around in where you just had it.

9 Q Right there --

10 A Right in that area.

11 Q -- right there where the tile ends?

12 A Yes, sir.

13 Q Okay and the carpet starts?

14 A Yes, sir.

15 Q Okay. And then I'm going to point out -- what --
16 what is -- am I pointing to right there? What is that?

17 A That's some of the clothes.

18 Q Okay. And whose clothes are those?

19 A They're mine and -- shorts and a pair of jeans and
20 stuff.

21 Q Okay. So that -- that's the table you were putting
22 them on?

23 A Yes, sir.

24 Q Okay. I'm showing you Exhibits 22 through 24.

25 Mr. Anthony - Have these been moved in, 22

Ronald Dipietro - Direct by Mr. Anthony

123

1 through 24?

2 Court Reporter - No, sir.

3 Mr. Anthony - I didn't think -- okay, I didn't
4 think so.

5 Q All right, I'm showing you what's been marked for
6 identification as Exhibits 22, 23 and 24, and I'd ask if
7 you -- do you recognize what those are photos of?

8 A Yes.

9 Q Okay. What are those photos of, Mr. Dipietro?

10 A The keyboard where my head was laying on, the other
11 one --

12 Q 22 is the keyboard?

13 A Yes, sir.

14 Q Okay, and then 23 --

15 A Is the computer and right over here is where I was
16 laying.

17 Q Okay. And then 24.

18 A That's where the XBox 360 and my discs were. You
19 could see it on the ground is one of the boxes.

20 Q Okay. All right. And do those pictures fairly and
21 accurately depict the items that were there in that part
22 of the living room that night?

23 A Yes, sir.

24 Mr. Anthony - Okay. We move 22 through 24 into
25 evidence.

Ronald Dipietro - Direct by Mr. Anthony

124

1 Mr. Delaney - No objection, Judge.

2 The Court - All right, without objection same is
3 moved into evidence.

4 (Documents marked into evidence as State's
5 Exhibits Numbers 22 through 24.)

6 Q All right, I'm going to show you 22. All right. And
7 what is that a photo of?

8 A That's a keyboard and that's my phone and --

9 Q Okay. All right.

10 A -- that's just a little drawing pad.

11 Q All right. And where -- where was your head -- while
12 this was going on, where was your head in relation to that
13 keyboard?

14 A My face was face down at that point. My nose would
15 be right in between the two of them.

16 Q Okay. All right. And then what is this above it?

17 A What's that now? Excuse me?

18 Q What is this item above it that I'm pointing to?

19 A That's some blood on the drawing pad.

20 Q Okay. Okay. And how did that -- did the blood get
21 on the keyboard?

22 A Just trickling down from where my face had been
23 struck over here. I had a little scar on my face here
24 from where the phone hit me. It was cut and trickling
25 down.

Ronald Di Pietro - Direct by Mr. Anthony

125

1 Q Okay. And then the phone, what had -- what was done
2 to the phone?

3 A I don't know exactly what was done to the phone, but
4 I know it was smashed but it -- you know --

5 Q What did Ms. Forrest do with the phone?

6 A She smashed it when she couldn't get into it.

7 Q Okay. And I mean did she do anything to you with the
8 phone?

9 A Held it in my face and did a couple of numbers like
10 that and threw it at me.

11 (Documents marked for identification as State's
12 Exhibits Numbers 26, 27 and 28.)

13 Q Okay. All right. And I'm going to show you Exhibit
14 Number 27 or what's been marked for identification as
15 number 27. Can you identify that item?

16 A Yes, sir, that's my phone.

17 Q Okay, that -- this phone, number 27 is the same phone
18 that's in that photo.

19 A I believe so, yes, it is.

20 Q And I'm going to show you now Exhibit Number 24 and
21 I'd ask you what is that a picture of, just in general?

22 A It's a -- where the Xbox was, and the discs were in
23 that drawer that's underneath the tape recorder, I mean
24 the VCR player.

25 Q Okay. What is this right here?

Ronald Dipietro - Direct by Mr. Anthony

126

1 A That's the Xbox 360.

2 Q Okay, that's the Xbox. Okay. And then you -- what
3 is this right here?

4 A That's the DVD player, VCR and there's a little
5 drawer underneath there. That's where I was getting the
6 discs from, --

7 Q Okay.

8 A -- and as you can see on top, there's a couple of
9 discs there.

10 Q Okay. All right. Okay, right there's the drawer.
11 Is that right?

12 A Yes, sir.

13 Q Okay. All right. And this item right there beside
14 that black keyboard, do you recognize -- can you tell what
15 that is?

16 A Yes, I can. That's -- that's Leah's phone.

17 Q Okay. And what had happened to that -- what was --
18 when all this was going on, how was that phone involved in
19 the incident? What had you done to that phone?

20 A That was the one that I had read the text messages on
21 and then I threw against the wall in a corner over there.

22 Q I'm sorry?

23 A I had thrown it against the wall in a corner.

24 Q Okay. All right. All right, I'm going to show you
25 what's been marked for identification as Exhibit Number 28

Ronald Dipietro - Direct by Mr. Anthony

127

1 that's in this little envelope and ask you if you
2 recognize this phone?

3 A That's her phone.

4 Q Okay. And when you say her phone, you mean Ms.
5 Forrest?

6 A Leah's phone, yes.

7 Q Okay. All right. And then -- all right, I'm going
8 to show you what's already been moved into evidence as
9 State's Exhibit Number 14 and ask you what -- what is that
10 a photo of, Mr. Dipietro?

11 A Well, it's actually two things there. That's the
12 salt grinder that she used to put the salt on my back.

13 Q Right there?

14 A Yes, sir.

15 Q Okay.

16 A And right next to it's the phone that she dialed 9-1-
17 1 on.

18 Q Right there?

19 A Yes, sir.

20 Q Okay. It's kind of dark. I'm going to see if I can
21 zoom in on it just a little bit. Okay. So you're talking
22 about this item right here.

23 A Yes.

24 Q Okay. All right. And I'm showing you -- I'm showing
25 you now what's been marked for identification as Exhibit

Ronald Dipietro - Direct by Mr. Anthony

128

1 26 and ask if you recognize this phone.

2 A Yes. Yes, I've got -- that was the phone that she
3 called 9-1-1 on.

4 Q Okay. That's the phone Ms. Forrest called 9-1-1 on.

5 A Yes, sir.

6 Q Okay. And I'm going to show you also what's been
7 marked in evidence -- or what's already been admitted in
8 evidence as State's Exhibit Number 18. I'm going to zoom
9 out on that in just a little bit. What is that a photo
10 of?

11 A That's the house phone.

12 Q Okay. And that -- where would that house phone be
13 loca -- be found? Where was that picture --

14 A Looks like it's by the kitchen stool.

15 Q Okay. All right. And what had happened to the house
16 phone that night?

17 A When she was outside I had taken my hand and back-
18 handed it off the table when I put my clothes there on the
19 table.

20 Q Okay. So it was on that little card table --

21 A Yes, sir.

22 Q -- your clothes were on?

23 A Yes.

24 Q Okay. And what had -- what, you had just pushed it
25 off the table?

Ronald Dipietro - Direct by Mr. Anthony

129

1 A Back-handed it off the table --

2 Q Back --

3 A -- put my clothes down --

4 Q Okay.

5 A -- and went to get my cd's and stuff.

6 Q Okay. All right.

7 Mr. Anthony - If I could have one moment.

8 (Pause)

9 Q All right, Mr. Dipietro, what -- since this shooting,
10 what is your condition?

11 A I'm a C-5 quadriplegic. That's exact terminology.

12 Q Okay. And what does that mean in real terms as far
13 as how you're affected?

14 A I can't use any of my lower extremities from about my
15 chest line on down. I have no triceps in my arms and I
16 can't use my hands anymore. I can just move my wrists,
17 very limited mobility.

18 Q And what -- what are some of the accompanying health
19 problems that you have from this injury?

20 A Pressure sores, on-going UTI's.

21 Q I'm sorry, what?

22 A Urinary tract infections. I'm sorry.

23 Q Okay.

24 A I had to -- since I can't use any of my lower
25 extremities anymore, I can't -- I can't urinate like a

Ronald Dipietro - Cross by Mr. Delaney

130

1 normal person, so instead of having a catheter that would
2 be inserted, I -- go ahead and use correct medical terms -
3 - instead of being inserted through my penis, I had an
4 operation where it goes directly in my bladder to help
5 stop all the urinary tract infections. That's one of the
6 number one killers among quadriplegics, and as a matter of
7 fact I have one now.

8 Q Okay. And are you able to live by yourself?

9 A No. I'm totally dependent, twenty-four hour care.
10 That's why I don't live with my family anymore. They --
11 as hard as I try to do things for myself it just -- it's
12 not enough being in this position. It's, you know, lot of
13 hard work and rehab just trying to get a little bit of
14 anything. About a month ago I started to move my finger,
15 and I used to pinstripe cars by hand. I worked so long
16 and almost twenty-five years to learn how to pinstripe.
17 It's all gone. Something I loved to do; I love to do
18 graphics on cars and signs.

19 (Whereupon, witness is crying)

20 Mr. Anthony - Thank you very much. That's
21 everything on direct.

22 Mr. Dipietro - I'm sorry.

23 Cross Examination

24 by Mr. Delaney -

25 Q Good afternoon.

Ronald Dipietro - Cross by Mr. Delaney

131

1 A Hi.

2 Q Mr. Dipietro, you testified earlier that it was a
3 pretty normal Sunday, pretty normal Sunday in Union on
4 June the 6th, 2010. Correct?

5 A Yes, sir. Not to be impolite, do I just address you,
6 sir or public defender or --

7 Q You can say, sir, that's fine.

8 A Thank you.

9 Q Public defender's fine. Eric's fine. You talked to
10 the police, more specifically Captain Hines, a couple of
11 times in this -- about this case. Correct?

12 A Yes, they've questioned me several times.

13 Q Okay. And Captain Hines came and talked to you June
14 the 7th when you were at the Spartanburg Regional
15 Hospital. Is that right?

16 A Yes, sir.

17 Q Okay. And when he came there, he read you your
18 Miranda rights. Is that right?

19 A I believe he did, sir.

20 Q Okay. And you understood those rights?

21 A Yes, sir.

22 Q And you understood Captain Hines' questions to you
23 that day?

24 A To the best of my recollection, yes.

25 Q You told him what happened.

Ronald Dipietro - Cross by Mr. Delaney

132

1 A Yes.

2 Q How it happened.

3 A As much as I could remember.

4 Q When it happened.

5 A Yes.

6 Q You told Captain Hines your story that day. Correct?

7 A Correct.

8 Q And you him told the truth?

9 A To the best of my recollection. I had no reason to
10 lie.

11 Q You also talked to Captain Hines about two and a half
12 months later up in North Carolina. Correct?

13 A Yes, sir.

14 Q And that was at the Mission Hospital?

15 A Yes, sir.

16 Q And, again, he read you your Miranda rights?

17 A (Indicating yes)

18 Q Okay, and again, you understood those rights?

19 Court Reporter - He needs to speak up and answer
20 verbally.

21 Mr. Dipietro - Oh. Do I need to be closer to
22 the mic, ma'am.

23 Court Reporter - No, just speak up and answer
24 verbally not shake your head.

25 A Yes, sir, he did.

Ronald Dipietro - Cross by Mr. Delaney

133

- 1 Q Okay. And you understood Captain Hines' questions to
2 you that day?
- 3 A Yes, I did, sir.
- 4 Q Okay. And he told you that you were being audio-
5 taped that day. Correct?
- 6 A Yes, he did.
- 7 Q And you told him what happened. Right?
- 8 A Yes, sir.
- 9 Q Told him how it happened.
- 10 A To the best of my recollection, sir.
- 11 Q When it happened.
- 12 A Yes, sir.
- 13 Q Okay. And again on that day, you told Captain Hines
14 your story. Right?
- 15 A Yes, I did.
- 16 Q And you told him the truth that day?
- 17 A Yes, sir.
- 18 Q Now, I want to go in your conversations a little bit.
19 Mr. Dipietro, on June the 7th of 2010 you told Captain
20 Hines you heard Leah get a text message while in bed. Is
21 that right?
- 22 A Yes, sir.
- 23 Q And Leah told you she was setting her alarm?
- 24 A To the best of my recollection I believe that's what
25 happened.

Ronald Dipietro - Cross by Mr. Delaney

134

1 Q Okay. Setting her alarm to go -- get up and go to
2 work?

3 A I'm not exactly sure.

4 Q Okay. And -- but you told Captain Hines that her
5 phone was on vibrate. Right?

6 A Right.

7 Q Is that right?

8 A I believe so.

9 Q But on August 25th, 2010 your story changed when you
10 told Detective Hines that you were awakened by some slight
11 noise and some lights being on in the house. Correct?

12 A That was correct.

13 Q On June the 7th you told Captain Hines that Leah got
14 up and was looking for the door knob. Right?

15 A Yes, sir.

16 Q You at that time asked her what she was doing.
17 Right?

18 A I believe I did.

19 Q Okay. And you told Captain Hines she told you she
20 had to use the bathroom.

21 A Yes.

22 Q Okay. And she opened the door and went to the
23 bathroom.

24 A I'm not sure that she went to the bathroom, but she
25 opened the door and went out.

Ronald Dipietro - Cross by Mr. Delaney

135

1 Q Okay. Now, on August the 25th your story changed
2 again when you told Captain Hines you woke up and walked
3 out into the living room where Leah was sitting on the
4 computer.

5 A That was a couple of minutes afterwards, yes.

6 Q That was a couple of minutes afterwards?

7 A After she had gotten whatever happened with the
8 phone, with the vibrated (sic) and fumble around for the
9 door, I went out there. It was all within probably ten,
10 fifteen minute range I'd say.

11 Q Ten to fifteen minute range?

12 A I -- I mean it's been a long time ago. It's been a
13 lot of medication in between. I'll answer you the best I
14 can.

15 Q And you were able on the 7th and on the 20 -- 7th of
16 June and August 25th, you testified that you understand
17 the Captain's questions to you. Correct?

18 A Yes, sir.

19 Q Okay. And you testified to this court that you
20 answered those questions truthfully on June the 7th and
21 August the 25th. Correct?

22 A I'm doing my best, yes.

23 Q Now, on June the 7th you told Captain Hines that you
24 got up and you found her in the kitchen texting. Right?

25 A I may have said that, but she was in the living room.

Ronald Dipietro - Cross by Mr. Delaney

136

1 Q So she wasn't in the kitchen; she was in the living
2 room.

3 A She was in the living room.

4 Q She was in the living room -- she was on (sic) the
5 living room talking to someone on the computer?

6 A Yes, she was on her facebook page if I remember
7 correctly.

8 Q So in one statement to Captain Hines you tell him
9 Leah's in the kitchen texting. Right?

10 A Yes, but I believe that was a mistake.

11 Q Okay. And then another statement to Captain Hines
12 she's in the living room on the computer talking to
13 someone on the computer and texting?

14 A She wasn't texting at the time, but her phone had
15 received a text somewhere in the, you know, before that.

16 Q And you had testified earlier today I think that she
17 -- she had her phone the way where she was trying to hide
18 it from you?

19 A Correct.

20 Q The computer was in the living room. Right?

21 A Yes, sir.

22 Q Okay. You told -- on June the 7th you told Captain
23 Hines that you grabbed the phone from Leah. Right?

24 A Yes.

25 Q And you saw that she was texting a man named Randy.

Ronald Dipietro - Cross by Mr. Delaney

137

1 Right?

2 A I believe it was, yes.

3 Q And you saw that on Leah's phone when you grabbed it?

4 A Yes, and a couple -- several messages between the
5 two. I don't know the exact times of the messages, but I
6 do know the phone, you know, had made a sound and, you
7 know, I grabbed it.

8 Q And you felt she was cheating on you?

9 A I felt she was doing probably something dishonorable.

10 Q You saw that message and you were mad.

11 A I became angry, yes, I did.

12 Q Now, when you talked with Captain Hines on the 25th
13 and he recorded your statement, you didn't say anything
14 about seeing a text message from Randy. Right?

15 A At the time that he had taken those, I didn't know or
16 remember the exact person's name, but I do know there was
17 a person on the phone.

18 Q Because you told Captain Hines on the 25th when you
19 took the phone from her hands, you discovered that she was
20 now talking to two people behind your back. Correct?

21 A I believe it was two.

22 Q Okay.

23 A Possibly three.

24 Q Possibly three. And you were mad.

25 A When was this that I was mad?

Ronald Dipietro - Cross by Mr. Delaney

138

1 Q When you discovered that it was possibly three people
2 she was cheating on you with.

3 A I was angry at the fact that I was being blamed for
4 cheating and somebody else was doing it the whole time.

5 Q You were mad -- you were so mad -- you were so angry
6 you took the phone and you threw the phone against the
7 wall. Right?

8 A Yes, I did.

9 Q And you told Captain Hines that you broke more phones
10 the night before. Right?

11 A Wasn't the night before.

12 Q It wasn't the night before.

13 A It was during the 7th.

14 Q You didn't tell Captain Hines on June the 7th that
15 you broke phones the night before on June the 6th.

16 A It was all during -- it was all during the same
17 argument.

18 Q So you grabbed Leah's phone, you see that she's
19 cheating on you with as many as you believe three guys,
20 threw her phone against the wall. Now, prior to that,
21 when did you break these other phones?

22 A After that.

23 Q After that. You didn't break the phones before that.

24 A No.

25 Q And you didn't tell Captain Hines that those phones

Ronald Dipietro - Cross by Mr. Delaney

139

1 were broke before that.

2 A They may not have been working. Her son's phone
3 wasn't. That's one of the phones that's in there, but you
4 know, the best of my recollection with everything that
5 happened that night, it was after her phone got broken.

6 Q You didn't go to bed angry the night of June the 6th?

7 A No, there was no reason to.

8 Q Mad? Jealous?

9 A (Indicating no)

10 Q There was no reason to?

11 Court Reporter - He needs to answer verbally.

12 A Oh, I'm sorry. No, sir.

13 Q Even though that you're suspecting a woman that
14 you're living with cheating on you with as much as -- many
15 as three guys, it's your testimony that you weren't angry,
16 weren't mad, you weren't jealous?

17 A Going to bed I did not know about the text messages.
18 Had no idea. I was waken up in the middle of the night
19 with it.

20 Q So you woke up the morning of June the 7th angry.

21 A No, I didn't wake up angry. Waked up -- woke up
22 curious.

23 Q Mad?

24 A Wasn't mad at that point in time.

25 Q Jealous?

Ronald Dipietro - Cross by Mr. Delaney

140

1 A Wasn't jealous at that point in time. As a matter of
2 fact I was never jealous the whole time. I was angry at
3 being lied to.

4 Q So when you get up that morning and you see this
5 phone and you see and you feel in your mind that Leah is
6 cheating on you, it's your testimony that you're not
7 jealous?

8 A My testimony right then, no, I was more angry at what
9 I had been being put through a month prior, because I was
10 the one that was getting accused of cheating for a month.

11 Q And when you confront Leah, throw her phone against
12 the wall, she's the one that goes ballistic. Correct?

13 A Yes, she did.

14 Q Not you, but her.

15 A I was trying to get out and get away at that point in
16 time.

17 Q You're the one that just discovered in your testimony
18 that she's cheating on you with as many as three different
19 guys. You discover that, but she's the one that goes
20 ballistic.

21 A Yes, she wanted her phone.

22 Q And she begins trying to attack you and claw at you.

23 A She got mad when I broke her phone.

24 Q And you had to restrain her. Is that right?

25 A Protect myself, yes, sir.

Ronald Dipietro - Cross by Mr. Delaney

141

1 Q And, Mr. Dipietro, you were five feet, nine, weighed
2 close to three hundred pounds back in June of 2010.
3 Correct?

4 A About two forty.

5 Q Two forty?

6 A Yes, sir. And I'm five foot, ten and a half.

7 Q Leah wasn't close to half your size, was she?

8 A She may have been a hundred, half (sic) pounds
9 lighter.

10 Q You had to restrain her?

11 A Yes, I had to. She was like a caged animal.

12 Q She was like a caged animal?

13 A Correct.

14 Q After you discovered that she's cheating on you, she
15 starts acting like a caged animal.

16 A Yes, she got discovered. It was found out that she
17 was the one doing it, and she was mad that I found out.

18 Q You told Captain Hines on August the 25th that a
19 little battle went back and forth between you and Leah.
20 Right?

21 A At that point in time it was being, you know,
22 protecting myself, yes.

23 Q Okay. And you told Captain Hines that this little
24 battle ended up into the bathroom. Correct?

25 A I'm not exactly sure. From what I remember I know we

Ronald Dipietro - Cross by Mr. Delaney

142

1 were in the living room. I don't quite recall the
2 bathroom. I think there might've been a point in time
3 that she did go into the bathroom, but I didn't, you know
4 --

5 Q You never went into the bathroom?

6 A No, I -- I don't remember going in there.

7 Q So when you told Captain Hines you were in this
8 little battle back and forth with Leah, you do remember
9 being in the living room at some point?

10 A Yes.

11 Q And then it going into another room?

12 A No, I don't really recall it going into another room.

13 Q And you testified Leah was about half your size?

14 A Yes, I do. About a hundred pounds lighter if I
15 remember right.

16 Q And you testified at that time you were mad?

17 A I was upset, yes.

18 Q Angry?

19 A Yes, I was angry.

20 Q Not jealous though.

21 A Not really jealous. To me it was relief, because now
22 I knew it was over.

23 Q Convinced she was cheating on you.

24 A Not exactly convinced, but you know upset at the fact
25 that I was being blamed for talking to other people the

Ronald Dipietro - Cross by Mr. Delaney

143

1 way she was.

2 Q You were breaking phones all over that house.

3 A Broke two phones.

4 Q None the night before, though. Right?

5 A None the night before. They were both during that
6 same argument.

7 Q And you told Captain Hines that you pushed her down
8 on the couch. Is that right?

9 A More like restrained her down. She was striking at
10 me and I grabbed her wrists and said -- say, hey, I'm
11 done.

12 Q And you told her to please stay there. Correct?

13 A Yes, stay there while I get my things so I can get
14 out of here.

15 Q And about that time Leah doesn't listen to your
16 polite request. Is that right?

17 A They probably weren't exactly polite, but you know,
18 hey, I'm done, I want to get out of here, let me get my
19 things and leave.

20 Q Now, she ran out the front door. That's your story?

21 A Side door, kitchen door.

22 Q She ran out the side door. Okay. And at that point
23 you locked the side door?

24 A And the front door.

25 Q And the front door. But on August the 25th you told

Ronald Dipietro - Cross by Mr. Delaney

144

1 Captain Hines Leah runs out the kitchen door.

2 A That's just what I said, the kitchen door, the side
3 door.

4 Q That's the side door? You locked both doors?

5 A Locked both doors.

6 Q Okay. And then couple of minutes go by?

7 A About ten.

8 Q Ten minutes.

9 A Maybe fifteen.

10 Q Ten or fifteen minutes go by?

11 A Yes, it was a good couple minutes. I wouldn't say --
12 maybe no longer than ten, about ten.

13 Q About ten minutes go by. And then the next thing you
14 know, this woman you've testified is throwing herself
15 against this front door and ultimately kicks in the front
16 door. Is that correct?

17 A I can't say if she kicked it. I would assume she
18 kicked it, but you know, she had to throw her weight
19 against it to get in. It was locked.

20 Q You testified earlier that she kicked it.

21 A Well, kicking in the front door -- I mean you could
22 use that testimony, she kicked in the front door.

23 Q Or she threw her weight against it?

24 A She got the front door open some how.

25 Q This is a pretty big front door that was on that

Ronald Dipietro - Cross by Mr. Delaney

145

1 house. Right?

2 A Normal size.

3 Q You're not talking about a little screen door or
4 anything like that.

5 A No, we weren't. If I'm not mistaken -- I don't know.
6 Can I ask? Mr. Hines has some damage on the lock to the
7 door.

8 Q Okay. We're going to talk about that damage to the
9 lock to the door in a little bit. Okay?

10 A Okay.

11 Q And we're going to get back to your stories of what
12 happened on June the 7th, 2010 in a little bit. Mr.
13 Dipietro, you grew up in New Jersey?

14 A Long Island.

15 Q You grew up in Long Island?

16 A Eastern Long Island.

17 Q Okay. And at some point you moved to North Carolina.
18 Is that right?

19 A Yes, sir.

20 Q Okay. And that was Hendersonville, North Carolina?

21 A Yes, sir.

22 Q Okay. And we've heard testimony, the solicitor had
23 asked you a little while ago that in 2008 you were
24 convicted of a felony in North Carolina?

25 A Yes, I was convicted of a felony, yes.

Ronald Dipietro - Cross by Mr. Delaney

146

1 Q And you received a probationary sentence?

2 A Two and a half years.

3 Q Of probation?

4 A Yes, sir.

5 Q Okay. And there were some basic conditions put on
6 your probation, required to pay some money?

7 A Yes, I had to pay restitution. Correct.

8 Q And that's usually a monthly type of thing?

9 A Weekly.

10 Q Weekly? Okay. And basic condition of probation,
11 stay out of trouble, don't pick up any new charges.
12 Right?

13 A Pretty much, yes, sir.

14 Q Okay. And you were on this probation throughout the
15 time that you were with Leah. Is that correct?

16 A The whole relationship.

17 Q The whole relationship?

18 A Yes, sir.

19 Q And you met Leah on-line?

20 A We met on-line, yes.

21 Q Okay. And she came to see you for the first time in
22 August of 2008. Does that sound right?

23 A That sounds about right, yes.

24 Q And at that point you and Leah started seeing more
25 and more of each other. Is that right?

Ronald Dipietro - Cross by Mr. Delaney

147

- 1 A Correct. It was wonderful.
- 2 Q You were working at a golf course at that time?
- 3 A Yes.
- 4 Q Okay. And a relationship began.
- 5 A Yes, sir.
- 6 Q And it was going good?
- 7 A Was going very well.
- 8 Q And you were --
- 9 A Probably one of the best I ever had.
- 10 Q Say it again?
- 11 A Probably one of the best relationships I ever had.
- 12 Q You were nice to Leah?
- 13 A I tried to be.
- 14 Q Did nice things for her?
- 15 A Yes, and she did likewise.
- 16 Q Relationship again was going good. Right?
- 17 A Pretty much, yes.
- 18 Q It was going so good that y'all decided to take the
- 19 next step and move in together. Right?
- 20 A Right. She wanted to be down here and I had found a
- 21 job down here.
- 22 Q So you decided to move down to Jonesville from
- 23 Hendersonville?
- 24 A Well, because of my probation I could come down and
- 25 stay, but I couldn't stay but so many days. My probation

Ronald Dipietro - Cross by Mr. Delaney

148

1 officer knew, gave me permission to do that.

2 Q Okay. And around the winter of 2009 is when you came
3 and started living with Leah. Correct?

4 A In January, yes.

5 Q January, 2009?

6 A Wasn't living, but was staying multiple days at a
7 time and doing visa versa up here.

8 Q And you also at time you testified you got a job --
9 you got a job at Renntech?

10 A Yes, sir.

11 Q And pretty good job at Renntech?

12 A Very good job.

13 Q Okay. You were -- I know into -- you did the graphic
14 designs?

15 A Right. Graphic design.

16 Q Okay. And paid you pretty well at Renntech?

17 A Can't complain.

18 Q And you were actually able to -- you paid the bills
19 at the house. Right?

20 A We split most of the stuff. I mean sometimes she'd
21 pay; sometimes I'd pay.

22 Q You paid the rent. Right?

23 A I paid a lot of it. I mean pretty much we went back
24 and forth on it.

25 Q You didn't pay the rent all the time?

Ronald Dipietro - Cross by Mr. Delaney

149

1 A Not all the time; she paid some of the time.

2 Q And Leah was working -- she worked at the little gas
3 station just up at the corner. Right?

4 A Correct.

5 Q Leah wasn't making a whole lot of money, was she?

6 A I don't know exactly how much she made. I treated
7 her business as her business and mine was mine, but we
8 never went without between the two of us.

9 Q You made substantial -- you made a substantial amount
10 more than Leah. Right?

11 A About double what she made.

12 Q And at Renntech you did graphic design for the police
13 department. Is that correct?

14 A I designed for Chad. He was the one that was dealing
15 with everybody.

16 Q Okay. So you did stuff on the cars?

17 A Right. I would make the designs. Chad would present
18 them to the officers or whoever.

19 Q Okay. So you didn't give --

20 A Correct.

21 Q You didn't get to know any of the officers through --

22 A Well, of course, I mean, just, you know -- you have
23 a job being public defender, you know the officers coming
24 in and out. My job dealing with putting decals on, I
25 would see them as they came in and out.

Ronald Dipietro - Cross by Mr. Delaney

150

1 Q And you'd work on like their check point signs and
2 stuff like that too. Is that right?

3 A Whatever I was asked to do.

4 Q Now, Ron, you testified that this relationship with
5 Leah started off good.

6 A Very good.

7 Q I think it's your testimony and I don't want to put
8 words in your mouth, but it was your testimony that this
9 was one of the -- at that point best relationships that
10 you had been in. Is that right?

11 A Yes, it was.

12 Q You were nice to her.

13 A Tried to be.

14 Q She was nice to you.

15 A She was.

16 Q Things changed when you started spending time, when
17 you started living at that house on
18 didn't it?

19 A Not til after the first year.

20 Q Isn't it when you moved in there and started spending
21 time at with Leah Forest, that is when
22 you showed Leah for the first time the type of man that
23 she was in a relationship with. Right?

24 A I'm not exactly sure what you're trying to say.

25 Q That is when you became a controlling man?

Ronald Dipietro - Cross by Mr. Delaney

151

1 A I never believed I was that controlling.

2 Q That is when you became a jealous man?

3 A I was never jealous.

4 Q That is when you became a violent man.

5 A I was never violent.

6 Q You were never violent. That's your testimony to
7 this jury here today.

8 A My testify (sic) to this jury.

9 Q You'd like to drink sometimes?

10 A Me and her drank plenty of times together.

11 Q You liked to use cocaine?

12 A I'd done it several times over the years.

13 Q Powder and crack?

14 A I'm sorry?

15 Q Powder and crack?

16 A I had a crack habit at one point in time.

17 Mr. Anthony - I object. That's irrelevant in
18 this context.

19 The Court - You talking about the distinction
20 between the powder and crack?

21 Mr. Anthony - No. I'm talking about the -- I
22 don't -- there's no basis for asking questions about drug
23 use beyond the relationship.

24 Mr. Delaney - Feel I've got a basis and I'll get
25 to it, Judge.

Ronald Dipietro - Cross by Mr. Delaney

152

1 The Court - Okay. I know you've already asked
2 that question without objection as to whether they had
3 done that. I'm going to sustain the objection with
4 respect to the distinction between the two, and you can
5 move on, but I don't think it going too far afield with
6 that is appropriate. You can move on to your point now.

7 Q The bag of white powder that was found in the bedroom
8 on June the 7th didn't belong to you?

9 A I was not aware that one was found.

10 Q Say again?

11 A I wasn't aware that one was found.

12 Q And now that you're aware that one was found, bag of
13 white powder --

14 A I didn't have any -- I --

15 Q You became violent towards this woman and it started
16 with you not -- she not helping you out with some of these
17 fees you had on probation. Correct?

18 A No.

19 Q That didn't cause big fights?

20 A No. That was my responsibility.

21 Q You didn't fight with her over that?

22 A No.

23 Q You weren't mad with her because she didn't help you
24 out?

25 A No.

Ronald Dipietro - Cross by Mr. Delaney

153

1 Q What about when she said she was going to call the
2 police regarding some of the things that you were doing to
3 her in that house and she was going to call your probation
4 officer?

5 A I don't recall her saying that.

6 Q What'd you do at that point?

7 A I don't recall her saying that.

8 Q You don't recall any of that?

9 A No, I do not.

10 Q Leah would confront you about certain things you were
11 doing on the computer. Right?

12 A As to?

13 Q As to some bills you were -- some use you were having
14 on the computer with porn? Some porn use on the computer?

15 A Those that were found by her son?

16 Q When she confronted you. I'm talking about you, not
17 her son.

18 A Okay.

19 Q About you.

20 A Well, I don't recall her confronting me on anything
21 like that.

22 Q Shortly after moving in with Leah, you began to abuse
23 -- you began to beat her, didn't you?

24 A No, sir.

25 Q You had also threatened to kill her.

Ronald Dipietro - Cross by Mr. Delaney

154

- 1 A Never threatened to kill Leah.
- 2 Q You never threatened to kill Leah.
- 3 A No, I haven't.
- 4 Q Threatened to beat her.
- 5 A Never threatened to beat her.
- 6 Q Never threatened to beat her.
- 7 A No.
- 8 Q And you'd do this in front of her children, wouldn't
- 9 you?
- 10 A Never did anything like that in front of her
- 11 children, however I did defend myself in front of her
- 12 children.
- 13 Q You wouldn't threaten the children?
- 14 A No.
- 15 Q Threaten to kill her children?
- 16 A No. I -- the only thing I threatened of her son was
- 17 if he didn't shape up he was going to move back in with
- 18 his father.
- 19 Q And her son, Brandon, how old was he at that time?
- 20 A Fifteen, sixteen.
- 21 Q And Brandon's pretty small, isn't he?
- 22 A He's skinny. He's not small. He's actually taller
- 23 than me I believe.
- 24 Q But you probably have at least a hundred pounds on
- 25 him, don't you?

Ronald Dipietro - Cross by Mr. Delaney

155

1 A I would say.

2 Q But you had to defend yourself from Brandon? That's
3 your testimony?

4 A Brandon would stand up and do things as a young man
5 testing to see how far he would get.

6 Q Well, Brandon would stand up when you were beating
7 his mom, wouldn't he?

8 A Brandon came in when me and her had a discussion of
9 where she and me had our hands on each other, but it was
10 more of a struggle of holding each other off. When
11 Brandon seen what was going on where he got up to defend
12 his mother, he seen what was going on, he stopped and told
13 us we're both crazy and went back into his room.

14 Q So he said -- he told you you both are crazy --

15 A Yes.

16 Q -- and went back in his room.

17 A Yes, sir.

18 Q You would threaten these children in front of Leah,
19 wouldn't you?

20 A No.

21 Q No?

22 A (No response)

23 Q And you did not stop the abuse in that house towards
24 this woman and her children until June the 7th, 2010, did
25 you?

Ronald Dipietro - Cross by Mr. Delaney

156

1 A I never did what now?

2 Q You didn't stop the abuse, the beatings in that
3 house, until June the 7th --

4 A I wasn't there.

5 Q -- of 2010.

6 A I was only there half the time. There was nothing
7 like that going on.

8 Q There was nothing like that going on?

9 A No. That's her words, not mine.

10 Q Other -- other than the time that -- only time was
11 where her son came in and you guys was a mutual --

12 A We've had numerous disagreements, me and Leah did,
13 nothing violent violent, just disagreements. I guess if
14 you have a girlfriend or a wife, you have disagreements.
15 Everybody does. None were physical.

16 Q Now, let's talk about June the 7th, 2010. Okay?

17 A Okay.

18 Q Just a few hours -- go back just a few hours prior to
19 that. When you went to bed that night, just before you
20 went to bed, you were mad, weren't you? You were angry,
21 weren't you?

22 A No.

23 Q And that's what you told Captain Hines. You told him
24 you were mad and you were angry because she was cheating
25 on you and that's why you broke the phones that night in

Ronald Dipietro - Cross by Mr. Delaney

157

1 the house. Right?

2 A After I got up. When I went to bed it was peaceful.

3 Q You went to bed mad that night, didn't you?

4 A No, I didn't.

5 Q You woke up mad that morning, didn't you?

6 A Didn't wake up mad until I seen what was on the
7 phone.

8 Q When you woke up mad, -- when you heard this woman
9 jiggling a door handle to the bathroom. Correct?

10 A Waking up like that would not make me mad. Never has
11 before.

12 Q And you got even madder when you come out and you see
13 in your mind that she was cheating on you with these text
14 messages. Right?

15 A I didn't know anything like that until I picked up
16 the phone.

17 Q You --

18 A But I did sleep in my clothes.

19 Q When you got up, you went into the bathroom, didn't
20 you?

21 A (Inaudible)

22 Court Reporter - I'm sorry --

23 Mr. Anthony - Objection.

24 Court Reporter - I didn't get the answer. I'm
25 sorry. They were talking at the same time.

Ronald Dipietro - Cross by Mr. Delaney

158

1 The Court - What's the objection to?

2 Mr. Anthony - He's needs to be allowed to finish
3 the question.

4 The Court - Okay. Good enough. I understand.
5 You've got to allow him to finish the question -- or the
6 answer.

7 Mr. Anthony - I'm sorry, I meant the answer to
8 the question.

9 The Court - Yes, I knew what you meant.

10 A Kind of lost my path.

11 Q You went into the bathroom that morning and you went
12 in there and you confronted that woman, didn't you?

13 A Confronted her in the living room.

14 Q Confronted her in that bathroom and you picked her up
15 in that bathroom and you slammed her down, didn't you?

16 A No, I didn't.

17 Q You didn't pick her up in that bathroom and slam her
18 down.

19 A No, I didn't.

20 Q And then take her out into the living room and do the
21 exact same thing to her. You picked her up and you
22 slammed her down.

23 A No, I didn't.

24 Q Because that's what you like to do. You like to pick
25 her up and slam her, didn't you?

Ronald Dipietro - Cross by Mr. Delaney

159

1 A Well, I may be a big man but a hundred and forty
2 pounds would be pretty darn heavy to lift up.

3 Q Pretty -- pretty hard to lift up that woman.

4 A Well, I get lifted up and moved every day and it
5 takes three people.

6 Q That was your M-O, wasn't it, Ron? You would pick
7 her up and you'd slam her down and you'd pick her up and
8 you'd shake her, wouldn't you?

9 A No, nothing like that.

10 Q And at times that you would like to -- she's sitting
11 in chairs, you'd like to come around to the front of the
12 chair, grab the front of the chair and flip her out of the
13 chair.

14 A I did turn the living room chair over.

15 Q With her in it?

16 A She was in the chair, refused to get out and I wanted
17 her attention. We were in the middle of trying to get my
18 clothes so I could get out of the house, and the only
19 thing I do is grab the top of the chair and lean back. It
20 was as recliner.

21 Q And you flip her out of the chair?

22 A She never flipped out of the chair. She went back;
23 it was as recliner.

24 Q And you do this in front of her children, wouldn't
25 you?

Ronald Dipietro - Cross by Mr. Delaney

160

1 A Her daughter come out and seen her leaning back in
2 the chair.

3 Q And her son?

4 A I don't know if her son ever seen anything like that.

5 I don't recall fighting in front of her son like that.

6 Q You don't?

7 A No.

8 Q Now, back to June 7th. You didn't restrain her; you
9 didn't put her on the couch; you didn't tell her to please
10 stay here. Ron, that's not what was going on that day.

11 You caught her cheating and you were angry, and you
12 slammed her not once but twice, didn't you?

13 A No, I didn't, but I was angry at the fact that she
14 was blaming me for the same thing she was doing.

15 Q And when you -- when you slammed her that second
16 time, when you had her down on the ground, you had your
17 hand over her face, didn't you, so she couldn't scream?

18 A No.

19 Q That's how she got that mark on her face.

20 A No. She got that mark when I pushed her back away
21 from me.

22 Q But that wasn't the mark from you trying to protect
23 yourself?

24 A Pushed her back off like this.

25 Q From her being so enraged --

Ronald Dipietro - Cross by Mr. Delaney

161

1 A And I believe it was my right hand on my thumb,
2 caught her right like that when I was pushing her back.

3 Q When you had your hand over her mouth trying to
4 prevent her from screaming?

5 A No, was not on top of her like that.

6 Q And she goes outside to leave, doesn't she?

7 A She ran outside to do what she usually did when we
8 had a disagreement and I was the one to leave.

9 Q She went outside; you didn't leave; she left, didn't
10 she?

11 A I was trying to leave.

12 Q She came back in because she didn't have her car
13 keys, did she?

14 A I don't know if she had them or not.

15 Q And when she came back in, that's when she gets
16 slammed again, doesn't she?

17 A No. She came back in and never came near me.

18 Q When she came back and she got slammed again, didn't
19 she?

20 A No. No. She kicked the front door in, went down
21 across the floor, tumbled and ran back into the room or
22 walked back into the room briskly.

23 Q Grabbed the gun and shoots you.

24 A I don't know if she went back there to do whatever.

25 Next thing I know I look over my shoulder, I've got things

Ronald Dipietro - Cross by Mr. Delaney

162

1 in my hand and she's got the gun.

2 Q After you slammed her for the third time, she didn't
3 make it back to that bedroom, wasn't she? (sic) She
4 grabbed that gun --

5 A Never slammed her; she went back there on her own
6 recourse.

7 Q She grabbed that gun; she came back out, didn't she?
8 You saw her with the gun --

9 A She -- she went back in the room and I don't know
10 what she went back there for. I didn't know she had the
11 gun until I looked over my shoulder.

12 Q When you saw her with that gun, you called her a
13 bitch, didn't you?

14 A No.

15 Q Called her some other names, didn't you?

16 A No. I just said, Leah, no, that's final.

17 Q You started --

18 A Heard a pop, then I hit the ground.

19 Q You started back at it, didn't you?

20 A If I started back at her, how'd I get shot in the
21 back?

22 Q You started back at her.

23 A That must be a magic gun that shoots around corners.

24 Q You had already slammed her three times that morning.

25 A (Indicating no) Not at all.

Ronald Dipietro - Cross by Mr. Delaney

163

1 Mr. Delaney - Court's indulgence.

2 Q So she had a scratch on her nose that came from you
3 trying to push her away. Right?

4 A Yes, sir.

5 Q How'd she get the bruises on her arms?

6 A I don't know.

7 Q You don't know?

8 A Have no clue. I grabbed her around the wrist. If
9 any place she should have bruises on her wrists.

10 Q So she should have bruises on her wrists?

11 A Where I grabbed her and sat her down. I had to hold
12 her wrists to keep from getting hit myself.

13 Q What about bruises on her elbow? What about bruises
14 on her arm?

15 A Think about it. She's throwing herself against the
16 front door to get in the front door. She comes in and
17 tumbles across the carpet. Wouldn't that explain that?

18 Q What about the knot in the back of her head? Did she
19 use her head?

20 A I wasn't aware that there was a knot in the back of
21 her head.

22 Q What about the marks, the bruises on her back? She
23 used her back to push in the back door or did she get that
24 when she tumbled and fell when she rolled inside?

25 A I'm not sure how anybody could open the door --

Ronald Dipietro - Cross by Mr. Delaney

164

1 cannot answer -- cannot answer how anybody opens a door.
2 Only thing I can speculate is the way I would do it if I
3 was opening the door, and I would throw my side or my back
4 into the door. That's the way I -- I have no idea how she
5 would do it.

6 Q But you think she got these bruises and knots on her
7 was throwing herself into the door and then doing some
8 type of military roll when she gets in the house?

9 A I don't know if it was more of a military roll or
10 more of where she tripped her feet, lost her footing,
11 something to that effect.

12 Q They weren't inflicted by you?

13 A No. I was nowhere near her when she came in the
14 house. I was in the corner over there grabbing my discs
15 and she was in towards the kitchen area coming through the
16 door, the living room door led in, went straight back to
17 the hallway into the bedroom.

18 Q These injuries to her arm, her back, back of her head
19 --

20 A Can I ask you --

21 Q -- none of these were -- I'm asking you this
22 question, Ron. None of these injuries on her back, her
23 arms, her head were inflicted by you. Right?

24 A No.

25 Q You don't know how she got them, other than the door

Ronald Dipietro - Re-direct by Mr. Anthony

165

1 scenario.

2 A I have no idea.

3 Mr. Delaney - No further questions.

4 The Court - Any re-direct, sir?

5 Mr. Anthony - Yes, sir.

6 Re-direct Examination

7 by Mr. Anthony -

8 Q You were asked about incidents where you may have
9 been -- you were asked if you inflicted any violence on
10 Ms. Forrest during the course of your relationship. Were
11 there ever any incidents where she tried to become violent
12 with you?

13 A Yes, there was.

14 Q All right. Is there one -- one that stands out in
15 particular?

16 A Well, she discovered how fast I could run away from
17 her.

18 Q All right, and how did that happen?

19 A She had a kitchen knife like the guy in Halloween
20 would hold a knife, that movie, and she was running after
21 me with it.

22 Q Okay. And when did this incident occur?

23 A Maybe a month, a month and a half before I was shot.

24 Q And was this -- what -- what was going on that
25 precipitated this?

Ronald Dipietro - Re-direct by Mr. Anthony

166

1 A Had a disagreement.

2 Q And during the course of that disagreement she got a
3 knife?

4 A Yes.

5 Q And what did she do with the knife?

6 A Well, she charged me in the kitchen area and I side
7 stepped her and of course she swung at me with the knife.
8 She hit the ground and got right back up and I went out
9 the door. She came --

10 Q This was at Street.

11 A Yes.

12 Q And were you able to get away from her?

13 A Yes, I could run pretty quick even though I was big.

14 Q All right. And talking -- talking about these phone,
15 other than the phone that you found text messages on, was
16 -- did you damage any other phones that night or that
17 morning, early that morning?

18 A Just the house phone.

19 Q Okay. And you testified you did that when you were
20 knocking off the -- the knocked it off --

21 A Right, it was --

22 Q -- back-handed it off the table.

23 A Right. I was in the house by myself at that point in
24 time.

25 Q Okay. And just so we're clear, did you damage any

Ronald Dipietro - Re-direct by Mr. Anthony

167

1 phones that night before you went to bed?

2 A No.

3 Q All right. Did you have any reason to damage any
4 phones that night before you went to bed?

5 A No.

6 Q As far as Ms. Forrest going in to the bathroom before
7 you discovered her in the living room, do you have a
8 recollection of that today, Mr. Dipietro?

9 A No, I really don't.

10 Q Okay. But you know that is something you told
11 Investigator Hines.

12 A It might've been something, but it's just, you know,
13 it -- I don't remember.

14 Q Now two years later you just -- you don't remember
15 her going in the bathroom.

16 A I just don't remember her being in the bathroom.

17 Q Okay. And what -- what is your first recollection of
18 the encounter that night that escalated into this
19 shooting? Where was she first?

20 A Walking around the corner and standing about the same
21 place where she shot me. I'm looking at her on the
22 computer and having the phone by her.

23 Q Okay. So your first recollection today as to where
24 you saw her is in the living room at the computer.

25 A Yes, sir.

Ronald Dipietro - Re-direct by Mr. Anthony

168

1 Q You're not disputing that you said she went in the
2 bathroom, you just don't have a recollection of that --

3 A I may have said that back then. I don't -- you know,
4 it's been a long time. It's been almost two years. I
5 just don't recall that part of it.

6 Mr. Anthony - If I could have just a moment,
7 please. (Pause)

8 Q Well, the reconciliation that you testified about,
9 her throwing your clothes out in the yard around the 20th
10 of May, --

11 A Yes, sir.

12 Q -- the reconciliation where you started seeing her
13 again and that led to you actually spending nights back
14 over there on Street again, who initiated night?
15 Whose idea was it for y'all to get back together, her or
16 you?

17 A Pretty much hers.

18 Mr. Anthony - All right, thank you. That's
19 everything on re-direct.

20 The Court - Any re-cross?

21 Mr. Delaney - No, Your Honor.

22 The Court - All right, good enough. Ladies and
23 gentlemen, we've ended the testimony of Mr. Dipietro. We
24 are going to adjourn for the evening and begin again
25 tomorrow morning at 9:30. So just like today, if you'll

169

1 be timely out of respect for your fellow jurors, we'd
2 appreciate it. Remember the admonition that I gave you
3 earlier and that is don't discuss the case. Somebody's
4 going to ask you to discuss the case. Don't discuss the
5 case. We'll, see you back here tomorrow morning. Y'all
6 have a great evening.

7 (Jury exits the courtroom)

8 The Court - Anything further today for the
9 record?

10 Mr. Anthony - No, sir. I don't believe the
11 State has anything else.

12 The Court - Anything from defense?

13 Mr. Delaney - No, Your Honor.

14 The Court - Okay. How many witnesses do you
15 anticipate calling tomorrow?

16 Mr. Anthony - I expect with my case in chief,
17 I'll have four.

18 The Court - Four?

19 Mr. Anthony - Yes, sir.

20 The Court - Good enough. Length of those?

21 Mr. Anthony - Probably half day would be my
22 guess at least. I'll know -- don't know how long he'll
23 cross examine, but I'm guessing about a half a day.

24 The Court - Okay. Good enough. And, Mr.
25 Delaney, you still anticipating five, six, seven

1 witnesses?

2 Mr. Delaney - Yes, Judge, no more -- no more
3 than that. I think we'll go towards the lower end.

4 The Court - Good enough. All right, gentlemen,
5 well, y'all have a great evening and I'll see y'all
6 tomorrow morning.

7 (Court in recess for the day at 5:05 p.m.)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)
THE STATE,)
PLAINTIFF,)
VERSUS)
LEAH FORREST,)
DEFENDANT.)

IN THE FAMILY COURT
SIXTEENTH JUDICIAL CIRCUIT
DOCKET NO.: 10-GS-44-00932

TRANSCRIPT OF RECORD

UNION, SOUTH CAROLINA
APRIL 11, 2012

B E F O R E:

THE HONORABLE ROBIN B. STILWELL

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

JOHN ANTHONY, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

ERIK DELANEY AND MELISSA INZERILLO, ESQUIRE
ATTORNEY'S FOR THE DEFENDANT

PAMELA FAUCETTE
COURT REPORTER

TRANSCRIBED BY
LISA S. CARTER
COURT REPORTER

I N D E X

WITNESSESPAGEDr. Charles Morrow:

DIRECT EXAMINATION BY MR. ANTHONY 6

CROSS EXAMINATION BY MS. INZERILLO 15

Captain Robert Hines:

DIRECT EXAMINATION BY MR. ANTHONY 20

CROSS EXAMINATION BY MR. DELANEY 96

REDIRECT EXAMINATION BY MR. ANTHONY 142

RE-CROSS EXAMINATION BY MR. DELANEY 149

BART CAVE:

DIRECT EXAMINATION BY MR. ANTHONY 151

CROSS EXAMINATION BY MS. INZERILLO 161

BRANDON HOWARD:

DIRECT EXAMINATION BY MS. INZERILLO 168

CROSS EXAMINATION BY MR. ANTHONY 176

FORREST:

DIRECT EXAMINATION BY MS. INZERILLO 188

CROSS EXAMINATION BY MR. ANTHONY 192

MOTION HEARD

165-166

EXHIBITSSTATE'S EXHIBITSPAGE

36-	PHOTO	29
37-	PHOTO	29
38-	PHOTO	29
39-	PHOTO	29
40-	PHOTO	29
33-	DIAGRAM OR SKETCH	40
31-	SPENT SHELL IN BAG	41
42-	PHOTO	44
43-	PHOTO	44
44-	PHOTO	44
45-	PHOTO	44
18-	PHOTO	45
19-	PHOTO	45
20-	PHOTO	45
21-	PHOTO	45
29-	CASING (BULLET)	49
27-	CELL PHONE 4/11/12	56
28-	CELL PHONE 4/11/12	59
32-	SPENT SHELL (BULLET)	61
30-	2 BULLETS	63
1-	MIRANDA FORM STATEMENT	79
35-	CD	83

STATE'S EXHIBITPAGE

34- TWO PHOTOS OF CELL PHONES

90

47- REPORT

156

DEFENDANT'S EXHIBITPAGE

1- PHOTO

129

2- PHOTO

129

3- PHOTO

129

1 **(TRIAL BEGAN 9:30 A.M.)**

2 THE COURT: Take in your seats ladies and gentlemen.
3 Good morning. I hope everybody had a good evening. Alright.
4 Well I've been advised that we have all of our jurors. Are
5 we ready to bring the jury in and resume testimony?

6 MR. ANTHONY: Your Honor, I was just going to ask
7 the court reporter to mark a few things.

8 THE COURT: Sure. That's fine.

9 MR. ANTHONY: If you can give me a couple of
10 minutes. I can go ahead if you want me to?

11 THE COURT: No. No. I'll keep my panel dry. You
12 do what you need to do and let me know when you're ready to
13 bring the jury in, okay?

14 MR. ANTHONY: Alright. It shouldn't be very long.
15 It's not much.

16 **(SHORT PAUSE)**

17 MR. ANTHONY: I think we're ready, Your Honor.

18 THE COURT: Okay. Good enough. Would you bring
19 the jury in, please.

20 **(JURY ENTERS COURTROOM)**

21 THE COURT: Good morning, ladies and gentlemen.
22 I hope y'all had a good night last night. We're ready to
23 resume testimony today. Before you start I just want to tell
24 you something. I feel a little bit of conspicuous up here
25 sometimes with this computer and you're see me on it. I want

DR. CHARLES MORROW- DIRECT EXAMINATION BY MR. ANTHONY 6

1 you to know that usually I have a young lawyer who works for
2 me, who gets ready my charges and prepares everything that
3 I'm gonna need at the conclusion of this case. Well she just
4 took a job last week, Monday with the Attorney General's
5 office, which means I'm without a clerk. So if you see me on
6 this computer what I'm doing is I'm looking at the evidence
7 and I'm fashioning my charge that I'm going to give you based
8 on the evidence that I see. So I don't want you to think
9 that I'm sending love letters to my girlfriend or placing
10 bets my bookie or anything, okay? I working on this case
11 even when you see me on this computer and I'm always paying
12 attention I can promise you that. Alright, having said that,
13 Mr. Anthony, your case, sir.

14 MR. ANTOHNY: Thank you, Your Honor. The State
15 next witness would be Dr. Morrow.

16 (Witness complied with the Court's request.)

17 (Whereupon,

18 DR. CHARLES MORROW

19 first being duly sworn, testified as follows:)

20 DIRECT EXAMINATION BY MR. ANTOHNY:

21 Q. Would you state your name, please.

22 A. Charles Morrow, MD.

23 Q. And Dr. Morrow, how are you employed?

24 A. I'm the Trauma Director for the Spartanburg
25 Regional Medical System.

DR. CHARLES MORROW- DIRECT EXAMINATION BY MR. ANTHONY 7

1 Q. And how long have you had that position?

2 A. Roughly ten years.

3 Q. And in that job, what are your responsibilities?

4 A. I practice trauma surgery and surgical critical
5 care on a daily basis. I also do the administrative
6 maintenance of the trauma program there.

7 Q. And could you tell the jury your education and
8 training in the field of trauma surgery?

9 A. I did four years of medical school and then five
10 years of general surgery training and then did a fellowship
11 in trauma critical care prior to joining the Hospital System
12 in Spartanburg.

13 Q. And how long have you been a surgeon?

14 A. Since 2000.

15 Q. And do you hold any certificate and licenses in the
16 field of surgery?

17 A. I do. I'm certified in general surgery as well as
18 added certification in surgical critical care.

19 MR. ANTOHNY: Your Honor, at this time we'd submit
20 Dr. Morrow as an expert in the field of trauma surgery and
21 critical care.

22 THE COURT: Any objection, sir?

23 MS. INZERILLO: No, Your Honor.

24 THE COURT: Okay. Ladies and gentlemen the State
25 has offered this doctor as an expert witness and the reason

1 a party would want to have someone qualify as a expert
2 witness is because an expert witness can testify to things
3 that a lay witness can't -- can't necessarily testified to.
4 That is offer opinions that a lay witness couldn't offer. An
5 expert witness may become and expert witness by virtue of his
6 or her education, experience, and expertise. Now when you
7 listen to the testimony of an expert witness just because
8 someone has been qualified as an expert witness doesn't mean
9 that you take and accept that testimony or that evidence any
10 differently than any other evidence or testimony that you
11 would take. Just like any piece of evidence that you
12 receive, just like any testimony that you receive, you
13 determine what value to place on a expert witness' testimony.
14 You determine whether it's credible. You determine
15 ultimately what weight to place upon it. So the reason I
16 tell you all that is so that you understand that it's just
17 another piece of evidence for your consideration when you
18 return to jury room and begin your deliberations. Mr.
19 Anthony?

20 MR. ANTOHNY: Thank you, Your Honor.

21 Q. Dr. Morrow, I want to take you back to June 7,
22 2010, did you come and see the victim in this case Mr.
23 Dipietro on that day?

24 A. I did.

25 Q. And how did you come to see him?

DR. CHARLES MORROW- DIRECT EXAMINATION BY MR. ANTHONY 9

1 A. He was brought in by our trauma system and so our
2 hospital notifies us through the beeper system that we have,
3 in this case, a gun shot wound victim coming in and so our
4 team assembles in the emergency room to see him.

5 Q. What was, basically, your role just in general
6 throughout the estate of Spartanburg Regional Medical Center,
7 what was your role in Mr. Dipietro treatment in this case?

8 A. I was -- I was -- I was his attending physician.
9 So, I was overall in charge of his care. I oversaw the sub
10 specialist that saw him as well, the neuro surgeons, and
11 we're a trained facility so we also have surgery residents
12 who participated in this care and oversaw their work as well.

13 Q. And that's, basically, your job at Spartanburg
14 Regional is when a trauma patient comes in, you're
15 responsible for their case throughout their stay?

16 A. That's correct.

17 Q. Alright. When Mr. Dipietro came in on June 7th,
18 what injuries did he have?

19 A. To summarize it, he had a gun shot wound to the
20 back of his neck. According to my notes it was just to the
21 right of the back of the neck in this area. That gun shot
22 wound did not exit. It went in and if you look at the path
23 of the bullet on the cat scan that we took, it went through
24 the vertebral body which is, you know, the neck. It went
25 through the neck and stopped just on the left side. And it

DR. CHARLES MORROW- DIRECT EXAMINATION BY MR. ANTHONY 10

1 went through the canal where the spinal cord sits. He had a
2 second gun shot wound that was just through the soft tissue
3 and it was more down towards the side of flank or hip down in
4 of this area and it didn't actually enter the abdominal
5 cavity where the organs are it just went through the soft
6 tissue on the side right there.

7 Q. And what was the impact, going back to the next
8 shot, what was the impact that the shot through the neck had
9 on his spine?

10 A. Right. So it went through the spinal cord and
11 severed it. So at that time he became paralyzed.

12 Q. What would have been the effect of the shot as far
13 as a severed spinal cord, what is the immediate effect of a
14 bullets severing your spinal cord?

15 A. Right. So from -- from the level that the spinal
16 cord is severed, they're no longer impulses from the brain
17 delivered to the muscles that controls. And so he would have
18 been paralyzed from that point on.

19 Q. And so ---

20 A. Whatever -- whatever level your injury occurs.

21 Q. So you're saying and you get shot and your spinal
22 cord severs, what's going to happen to you?

23 A. You're going to fall.

24 Q. And how quickly will you fall?

25 A. It's just like that. It doesn't take minutes or

DR. CHARLES MORROW- DIRECT EXAMINATION BY MR. ANTHONY 11

1 hours. You get hit, you fall.

2 Q. And how likely would it be that after receiving a
3 shot to the spinal cord that you would receive a shot to your
4 abdominal area while you're still standing up?

5 A. I would think it pretty unlikely. You -- I guess
6 if you could get off a second shot that quickly. But it's
7 not like he would be standing for two or three more minutes
8 or even one more minute. So it is possible but it would seem
9 unlikely that you could get a second shot off while he was
10 still standing if the neck was the first shot.

11 Q. And is there anything that you would see about the
12 abdominal shot that would be inconsistent with him being shot
13 through the abdominal while he was on the ground?

14 A. No that could happen. That -- that -- You can
15 explain that shot if someone were just laying on the ground
16 and got shot that way. That would be reasonable to assume it
17 could happen that way.

18 Q. Okay. When somebody has a severed spinal cord what
19 -- is there anything that he can do about the spinal cord
20 injury itself?

21 A. No. There's tons of research on that right now.
22 It's really a hot topic but in reality there's really nothing
23 to be done. It's -- once that injury occurs all you can do
24 is supportive care after that.

25 Q. And so when somebody like Mr. Dipietro comes in and

DR. CHARLES MORROW- DIRECT EXAMINATION BY MR. ANTHONY 12

1 they have a severed spinal cord what concerns do you have,
2 what medical concerns do, you know, needs to be addressed
3 with a patient like him?

4 A. The immediate concern with his particular gun shot
5 is, you know, when can't do anything about the spinal cord
6 but your carotid arteries and vertebral arteries those are
7 the four main arteries that goes to your brain, are all right
8 there in your neck as is your trachea as is your esophagus.
9 And injury to any of those things can be life threatening
10 beside from the spinal cord. So we have to assess him for
11 those and unfortunately he didn't have that. Then the next
12 most immediate thing is that once you sever your spinal cord
13 your body losses not only the tone in your legs and you fall
14 but it also loses the tone in the -- in the -- in the blood
15 vessels and so your blood pressure drops. And in his case,
16 he came in not because he lost tons of blood and having low
17 blood pressure from that but because he had lost the tones in
18 his vascular system from the gun shot wound he had a low
19 blood pressure from that. So we had to treat that. Long
20 term you worry about people with spinal cord injuries because
21 they are at high risk for phenomena. They are at high risk
22 for bed sores. They are high risk for all kinds of
23 infections that are going to plague them for the rest of
24 their life.

25 Q. And so what did you do to try and maintain or what

DR. CHARLES MORROW- DIRECT EXAMINATION BY MR. ANTHONY 13

1 did you do to try and maintain Mr. Dipietro's blood pressure?

2 A. The initial thing you do on all these patients is
3 give them a trial of IV fluids and if they've lost some
4 blood, give them blood. But, ultimately once you've replaced
5 whatever's they've lost you have to do something to
6 artificially give that tone back to the vascular system. In
7 his case we put him on an IV medication it's very similar to
8 giving someone adrenaline and it just tightens up the
9 vascular system so the blood pressure comes back up.

10 Q. And are there any concerns that have to be
11 addressed in regards to the patient's breathing with this
12 type of incident?

13 A. Yes, depending on the level of the injury, it can,
14 in his case, took out the legs but the higher you go the more
15 likely is that you're gonna -- you're gonna loose
16 intravasation to other muscles and it if gets high enough, it
17 can lose intravasation to the muscle that help you breath.
18 Your diaphragm, the rib cage and those patients get really
19 weak and are just not able to breath on their own and they
20 end up having to go on as ventilator.

21 Q. And was Mr. Dipietro was he on the ventilator
22 during part of his treatment?

23 A. I'll be honest with you, when I reviewed the chart
24 I don't remember. It seems like he may have been on the
25 ventilator for a short period of time.

DR. CHARLES MORROW- CROSS EXAMINATION BY MS. INZERILLO: 14

1 Q. Okay. Alright. How long was he in -- how long did
2 he stay a Spartanburg Regional approximately?

3 A. I would -- I would have to look back. I remember
4 the day he was admitted but I don't remember the total number
5 of days that he was actually in our hospital.

6 Q. I will just show you -- I'm going to show you a
7 copy of the discharge summary of Mr. Dipietro. Does that --
8 does that refresh your recollection to how long he was there?

9 A. Yes. Yes. So according to this he was admitted on
10 the 7th and then discharged on the 12th. So a total of five
11 days in the hospital.

12 Q. And where was he kept during the time he was in the
13 hospital?

14 A. The majority of that time would have been in the
15 intensive care unit.

16 Q. And under what -- what kind of condition does a
17 person like Mr. Dipietro have been under in intensive care?

18 A. Obviously, initially it would have been critical
19 and then over the next period of days, we would've downgraded
20 that condition to stable and then ultimately to a point where
21 he could be transferred to a rehab facility.

22 Q. And where was he -- where was he transferred to
23 after his time at Spartanburg Regional?

24 A. Mission Hospital in Asheville.

25 Q. Alright. And was there any lab work done on Mr.

DR. CHARLES MORROW- CROSS EXAMINATION BY MS. INZERILLO: 15

1 Dipietro when he was brought into the emergency room?

2 A. Oh yeah. You can't come to a hospital without
3 getting lots of lab work.

4 Q. Was there -- was there anything done to determine
5 whether he had alcohol in his system?

6 A. I believe I saw one test on admittance where
7 alcohol and it was negative for any alcohol. I did not see
8 any test for, we -- we -- occasionally we'll test for drugs
9 in your urine and I did not see a test for that.

10 MR. ANTOHNY: If I can have one moment. Okay.
11 Thank you. That's everything -- that's everything on direct.

12 MS. INZERILLO: May it please the Court, Your
13 Honor?

14 THE COURT: Yes, ma'am.

15 MS. INZERILLO: Good morning, Dr. Morrow?

16 DR. MORROW: Good morning.

17 CROSS EXAMINATION BY MS. INZERILLO:

18 Q. Okay. I believe you noted that in Mr. Dipietro
19 case there was no exit wounds of the neck entry or the lower
20 back entry, is that right?

21 A. No. If I -- if I said it that way I misspoke.
22 There was no exit wound from the gun shot wound to the neck.
23 But there was an entrance in and an exit to the flank or hip
24 or side abdominal.

25 Q. Alright. And from your review of the case, the

DR. CHARLES MORROW- CROSS EXAMINATION BY MS. INZERILLO: 16

1 entry wound to the neck that is the -- was the one that shot
2 and paralyzed Mr. Diepietro?

3 A. That's correct.

4 Q. Okay. And as his attending physician you indicated
5 that you're were essentially in charge of his care, is that
6 right?

7 A. Yes, ma'am.

8 Q. So all reports that were generated in the case, you
9 would review, making sure he had proper care he needs, is
10 that correct?

11 A. Yes, ma'am.

12 MS. INZERILLO: Your Honor, may I approach?

13 THE COURT: Yes, ma'am.

14 Q. Dr. Morrow, if I showed you one of the reports in
15 his case would that refresh your recollection of his exit
16 wounds to the left hip?

17 A. Let me take a chance to read this. This is, um,
18 nurses notes -- is this a print out of?

19 Q. Ah, yes.

20 A. Okay.

21 Q. From the file of Spartanburg Regional submitted.

22 A. Okay. So I can -- there's a highlight area and I'm
23 happy to read it out loud to you.

24 Q. Let me show you where I -- here where, um, let's
25 see here -- the nurse noted that, patient also noted to have

DR. CHARLES MORROW- CROSS EXAMINATION BY MS. INZERILLO: 17

1 an entrance with no exit on his left hip, is that right?

2 A. I read that and that's incorrect.

3 Q. Okay. So those notes aren't correct?

4 A. That would -- that would seem to be incorrect.

5 Q. Okay. Now you indicated that when he -- when he
6 got to you guys at the hospital, really the concern wasn't
7 the amount of blood loss it was, in fact, his blood pressure
8 had dropped ---

9 A. That's correct.

10 Q. --- is that right? Okay. So that's essentially
11 what you guys tried to address first was to get the blood
12 pressure back up amongst other things you needed to take care
13 of?

14 A. That ultimately became the primary concern.

15 Q. Okay. And addressing sort of the other injuries
16 that, you know, given the total care that he needed, you did
17 do vascular scans of his arteries and his neck to make sure
18 none of them were damaged or nicked or anything like that?

19 A. Right. Yes.

20 Q. Okay. And none of them were under this attack?

21 A. That's correct.

22 Q. Now Mr. Anthony ask you about the wounds -- the gun
23 shot wound to the shoulder being the one that paralyzed which
24 would make him, essentially, immediately fall to the ground,
25 is that right?

DR. CHARLES MORROW- CROSS EXAMINATION BY MS. INZERILLO: 18

1 A. That's correct.

2 Q. And if the gun shot, was the first, so if he was
3 shot here and then here, he would still fall when he was shot
4 the second time, is that right?

5 A. That's correct.

6 Q. Okay. And by here, I mean, if he was shot in the
7 lower back or the abdomen area he'd still be standing there?

8 A. That's correct. That shot to the left hip, flank,
9 abdomen, whatever we want to call that, that -- that was a
10 minor wound that probably would not have even admitted him to
11 the hospital for that.

12 Q. Because he didn't hit anything it just sort of
13 caught of ---

14 A. Just through the skin.

15 Q. And then -- so if he was shot here he would be
16 standing. If you're shot in the neck that's what made you
17 fall?

18 A. That's right.

19 Q. Okay. In your review of the patient you didn't
20 note any defensive wounds on his face that needed additional
21 care, did you?

22 A. I do not recall seeing anything that suggested that
23 we saw that.

24 Q. Okay. Any defensive wounds on his hands or his
25 arms?

DR. CHARLES MORROW- CROSS EXAMINATION BY MS. INZERILLO: 19

1 A. I don't recall seeing anything in the notes that
2 suggested that.

3 Q. Okay. And by the defensive wounds that could be
4 scratches, bruises, anything like that?

5 A. Right.

6 Q. Your, um, sort of involvement in this case started
7 once he came to the hospital, correct?

8 A. That's correct.

9 Q. So it's fair to say you're weren't in the house?
10 You didn't witness anything that happened?

11 A. That's correct.

12 Q. So you didn't know Mr. Dipietro before you provided
13 care as a regular doctor before this happened?

14 A. That's correct.

15 Q. So you don't know anything about Mr. Dipietro how
16 he was before he entered Spartanburg Regional?

17 A. That's correct.

18 MS. INZERILLO: I don't any other questions, Your
19 Honor. Thank you.

20 THE COURT: Any redirect, sir?

21 MR. ANTOHNY: No -- no redirect.

22 THE COURT: Okay. Good enough. Doctor I
23 appreciate you being here, sir. You may step down. Thank
24 you very much.

25 MR. ANTOHNY: We ask that Dr. Morrow be excused?

1 THE COURT: Any objection?

2 MS. INZERILLO: No, Your Honor.

3 THE COURT: Okay. Thank you. Doctor, you may be
4 excused. Have a great day, sir.

5 DR. MORROW: Thank you.

6 MR. ANTHONY: Thank you, doctor.

7 THE COURT: You may call your next witness.

8 MR. ANTHONY: Next witness would be Captain Hines.

9 (Witness complied with the Court's request.)

10 (Whereupon,

11 ROBERT HINES

12 first being duly sworn, testified as follows:)

13 DIRECT EXAMINATION BY MR. ANTHONY:

14 Q. Would you state your name, please.

15 A. Yes, sir. It's Robert Hines.

16 Q. Mr. Hines, how are you employed?

17 A. Employed with Union County Sheriff's Office.

18 Q. How long have you been employed there?

19 A. Twenty one years.

20 Q. What's your current position at the sheriff's
21 office?

22 A. My current position at the sheriff's office is I'm
23 the director over Union County 9-1-1 and I'm also the
24 director of Union County Jail Division, where I hold the
25 position of the rank of a captain.

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

21

1 Q. And do you still have responsibilities -- well let
2 me just ask you, in the past, did you serve as a criminal
3 investigator for the sheriff's office?

4 A. Yes, sir. Prior to being promoted to the rank of
5 a captain I was a criminal/forensic investigator with the
6 sheriff's office.

7 Q. And approximately how long did you do that for the
8 sheriff's office?

9 A. Seven years with the sheriff's office and three
10 years with the city police department.

11 Q. And are you still, even though you got these other
12 jobs now, do you still have the responsibilities to do
13 criminal investigations?

14 A. Yes, sir. As a ranking officer with sheriff's
15 office we are required to take call. Be available for our
16 road deputies if we have a major call beyond the scope of
17 what a normal road deputy would be able to handle. Such as
18 suicides, major burglary, murders, major assault cases,
19 something that would require a deputy to spend a long time
20 on. Unfortunately, we don't have the staff that could
21 accommodate that. So, the ranking officers take call and we
22 are on call every so often where we would go, be called out,
23 and go and respond to the scene and basically take over.

24 Q. And were you on call the night of June 7th?

25 A. Yes, sir.

1 Q. And did you respond to in
2 Jonesville?

3 A. Yes, sir.

4 Q. And where -- where is Street? How do you get
5 to Street of you were driving up 176 and 9 in
6 Jonesville, what's it located near? How would you get to it?

7 A. Well, I probably would take them up to Highway 18
8 that goes into the city ---

9 Q. I'm sorry I said 176, I meant 18 ---

10 A. Yes, sir.

11 Q. How would you

12 A. I'd go up 18 into the City of Jonesville. There at
13 the Kangaroo Express, everybody knows where the Kangaroo
14 Express is. The Kangaroo Express sits here on the corner of
15 the intersection of the red light and the road that runs
16 right next to the Kangaroo Express is Street.

17 Q. And how far down is Street to the Kangaroo is
18

19 A. Probably hundred and twenty, hundred and fifty
20 yards.

21 Q. Alright. When you got to Street, what
22 happened? What was the first thing you noticed when you got
23 there? What did you do when you got there?

24 A. Well, whenever I get a call such as this on my way
25 to -- on my way to the scene, I always call dispatch to try

1 to get some information from the dispatchers. The
2 dispatchers are trained to get certain pieces of information,
3 ascertaining information from whomever their speaking to on
4 the phone. I do that to kinda of give me a heads up. Kinda
5 of know what to expect prior to me getting there. When I
6 arrived I found several of the police cars there, sheriff
7 deputy cars, an ambulance getting ready to leave. Found one
8 of the our patrol cars there with the back passenger door
9 opened. One of our corporal, Corporal Russell Vinson was
10 kinda of leaning in towards the back of the vehicle, a back
11 passenger of the vehicle, portion of the car, speaking with
12 someone. I could tell that it was a female. I got out of my
13 patrol car, kinda of made my way towards that particular
14 patrol car where Corporal Vinson was conversing with someone.
15 I kinda of stood back a little bit just listened, kinda of
16 get a que of what was going on. Corporal Vinson acknowledged
17 me, he turned around. Kinda of walked over to where I was.
18 He and I spoke briefly. He kinda gave me a real quick run
19 down of what had happened. I could see kinda off a little
20 bit one of the, ah, other deputies, Jeff Lawson, was kinda
21 off a little bit across the road from the house of the home
22 kinda of walking around in a circular path
23 or pattern. I knew he was looking for something. Jeff
24 Lawson acknowledged that I was there as well. He later
25 walked over towards me and the three of us, myself, Corporal

1 Vinson and Jeff Lawson began talking. At that point I found
2 out that Jeff Lawson was looking for a weapon. Specifically
3 .22 long rifle that had been used in the assault. They had
4 supposedly been discarded or thrown across the street into
5 this wooded kudzu area and at that point, Corporal Vinson
6 began telling me about the conversation that he, at that
7 point, I found Leah Forrest out, was in the back seat of the
8 car. He kinda told me a little bit about what they had
9 talked about. I ask Corporal Vinson had she been Mirandized,
10 he said, yes. He had fully given her, her Miranda warnings.
11 I went kinda of around Corporal Vinson and Jeff Lawson and
12 kinda of made my way to the back of the vehicle. Corporal
13 Vinson accompanied me. I was kinda of leaning towards the
14 door of the back of the car area here. The door was open and
15 Corporal Vinson was kinda of leaning on the door area. I was
16 kinda leaning in a little bit. Ms. Forrest was sitting there
17 in the back passenger side, kinda of with her feet dangling
18 out of the car. I introduced myself to her. Again advised
19 of her rights and we began speaking.

20 Q. Well before you got to her, had you actually gone
21 into the residence?

22 A. Yes, sir. When I got there, when I was waiting on
23 Jeff to come over to talk to me I had kinda of made my way
24 into the home and looked around real quick. Went in through
25 the garage because that's where Jeff said that, that's kinda

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

25

1 of how they made entry into the home. Jeff and I actually
2 walked into the house. We went into the garage door -- a
3 garage area into the side door into the kitchen area.

4 Q. Alright. Had anything -- had anything been done as
5 far as trying to observe the layout of the crime scene when
6 you went into the house? Anything had already been done?

7 A. Yes, sir. We ---

8 Q. What was that?

9 A. We, ah, maintained a deputy inside the home so we
10 never breached the crime scene. A deputy was actually inside
11 the home. It was Sergeant Jeff Wright. Sergeant Wright was
12 actually physically inside the home in the kitchen, living
13 room area. When I walked in he, basically, was guarding the
14 crime scene. The crime scene was kinda of worked before I
15 got there. Jeff Lawson has a good bit of investigative
16 experience. I feel very comfortable with him on my crime
17 scenes. So I knew my crime scene was well taken care of. He
18 had actually started processing some of the crime scene to
19 the degree of taking pictures. Started placing placards or
20 triangular plastic combs around or throughout the home where
21 he and Sergeant Wright were able to identified certain pieces
22 of evidence and evidence can be really anything. In this
23 particular case it was blood. It was spent shells. It was
24 bullets. It was fragments. It was broken phones, cell
25 phones, home phones, stuff like that.

1 Q. And once you looked around the scene what -- what
2 did you do at that time?

3 A. That's when we went back outside of the home. We
4 exited out of the front door. The front door was open. We
5 noted the front door had some damage to the door jam. We
6 went out the door, as I mentioned earlier, when I got there
7 the EMS was leaving. They were actually pulling off that's
8 how they brought Mr. Dipietro out of the home, the front
9 door, across the yard, to the back of the ambulance and they
10 were leaving. So Jeff Lawson and I went out the front door
11 because it was open and went down the steps and went back
12 towards vehicle where Ms. Forrest was sitting.

13 Q. Okay. Well did deputy Vinson, did you observe him
14 doing anything to document Ms. Forrest's condition that
15 morning?

16 A. Yes, sir. When I was -- when we made our way back
17 essentially the second time to the vehicle, Corporal Vinson
18 was in the process of photographing -- photographing Ms.
19 Forrest in the back seat of her -- of his -- of the patrol
20 car.

21 Q. And you said deputy Vinson was taking some pictures
22 of Ms. Forrest?

23 A. Yes, sir.

24 Q. Alright. Were you able to see -- what was he
25 taking photos of in particular?

1 A. Different areas on her -- her body.

2 Q. And did you notice any injuries to her on that
3 morning?

4 A. Yes, sir.

5 Q. What did you notice?

6 A. Well when I initially went up and started talking
7 to her I noticed a red scratch thin area on her nose area.

8 Q. Okay. Did you notice anything else?

9 A. No, sir.

10 Q. Okay.

11 A. Not at that moment.

12 Q. Not -- okay. When you saw the deputy, Corporal
13 Vinson taking photos did you notice anything in particular?

14 A. Yes, sir. As I was making my way towards the
15 vehicle -- um -- um -- I saw Corporal Vinson was talking some
16 photographs of Ms. Forrest to include her face area, her
17 elbow, I remember her sitting in the car like this, um, and
18 then she also kinda of pulled her shirt up a little bit and
19 turned around and he took some pictures of her back area.

20 Q. Okay. And did you notice any injuries in those
21 areas?

22 A. I -- I notice some bruising. Yes, sir.

23 Q. Okay. And what -- what type bruises did you
24 observe?

25 A. The one on the nose appeared to be fresh. Really

1 that was the only one that she was complaining of. The
2 entire time we were talking to her was here. She kept making
3 sure we saw this. The one on the nose -- on the elbow it
4 appeared to be dark brown and some purplish blue to it which
5 told me that it was kinda of -- it was an older bruise. The
6 one on the back was the same thing was a darker brown, kinda
7 of bluish tint to it which indicated it was an older bruise.

8 Q. I'm gonna show you what's been marked for
9 identification, States exhibits thirty six, thirty seven,
10 thirty eight, thirty nine, forty and forty one. I'd ask that
11 you just look at those photos and tell me if you are familiar
12 with what they depict?

13 A. Yes, sir.

14 Q. Alright. What are those pictures of?

15 A. Ms. Forrest.

16 Q. Okay. And when -- when was those photos made?

17 A. The morning of June 7, 2010.

18 Q. Alright. And are those the photos you observed
19 deputy Vinson take of her?

20 A. These are positions that I saw him snapping photos
21 of. Yes, sir.

22 Q. Okay. Alright. And do they fairly and accurately
23 depict her condition in the car that morning?

24 A. Yes, sir.

25 MR. ANTHONY: We moved thirty six through forty one

1 into evidence, Your Honor.

2 THE COURT: Any objection?

3 MR. DELANEY: No objection, Judge.

4 THE COURT: Alright. Without objection. The same
5 moved into evidence.

6 (Whereupon, State's Exhibit Numbers 36 through 40
7 was admitted into evidence without objection.)

8 Q. After -- after these photos had been taken of Ms.,
9 Forrest, what was the next thing that you did in regards to
10 you dealing with her?

11 A. Ah, we actually began speaking. I had already
12 introduced myself to her. I had already provided with
13 Miranda's. I wanted to kinda of know from her side of the
14 story so we began talking.

15 Q. Alright. Well let me just back up. You said
16 provided her with Miranda's?

17 A. Yes, sir.

18 Q. Okay. What -- what exactly does that mean? What
19 do you tell somebody when you give them their Miranda's?

20 A. The Miranda's are indicated on a card and I would
21 read it as such that you have the right to remain silent.
22 Anything you say can be used against you in a court of law.
23 You have a right to talk to an attorney and have him or her
24 present with you while you're being questioned. If you can
25 not afford to hire an attorney, one will be appointed to

1 represent you before you answer any questions if you wish.
2 You can decide at any time to exercise these rights and not
3 answer any questions or make any statements. Do you
4 understand each of these rights that I've explained to you?
5 And she stated that she did. Have these rights in mind, do
6 you wish to talk to me now. She said she didn't have a
7 problem with it.

8 Q. Okay. Okay. So when you began to speak with her,
9 um, how -- how did she appear to you? What was her condition
10 at that time?

11 A. She had been speaking with Corporal Vinson for a
12 little bit before I talked to her but when she and I actually
13 started talking she was, um, appeared nervous. While talking
14 to me she had been crying. You could tell that she had been
15 crying some. She wasn't crying at the time. She, like I
16 said, nervous.

17 Q. And did you detect any odor on her?

18 A. With her being inside the vehicle, um, you know, it
19 was kinda of closed up. She was in the vehicle. I could
20 smell the alcohol, like an alcoholic beverage inside the
21 vehicle coming from her while talking with her because the
22 way she was sitting, she was sitting inside the vehicle so I
23 was kinda of like leaning down into the vehicle while talking
24 with her.

25 Q. Okay. Now, what -- what did she tell you when you

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

31

1 had this conversation with her that morning?

2 A. Ah, she, basically, explained to me that she had,
3 um, um, she'd gotten up to use the restroom and -- but Ronald
4 had shut the bedroom door. She was having trouble finding
5 the door knob, ah -- during -- looking for the door knob she
6 woke Ronald up and he began cussing her. Leah stated that
7 she was able to get the door open and when she went to the
8 restroom she used it. Leah stated that while she was using
9 the restroom, Ronald came in and began cussing her and even
10 began assaulting her. Leah stated that he picked her up and
11 slammed her on the ground causing her to hit her head on the
12 something knocking her unconscious. Leah stated that she did
13 not know what she hit her head on nor how she fell
14 unconscious. Later, Leah, had stated that she was in the
15 living room and he was on top of her holding her face area
16 because she was screaming. Leah stated that he let her up
17 and she opened the front door and walked outside to get in a
18 vehicle to leave but realized that she did not have the keys.
19 So she turned around and came back in when Ronald locked the
20 front door. So she went to the side door and found it
21 unlocked. Once back inside she found Ronald standing next to
22 the computer doing something. Leah stated that she went into
23 the bedroom and got a rifle from the closet and came back in
24 the kitchen or living room area and loaded it. Leah stated
25 that she pointed it at Ronald and when he turned and looked

1 at her he told her "Bitch, you'll never be able to use this
2 computer again". Leah stated that she was standing -- Leah
3 stated that he was standing up during this time and she
4 thought he was making a move towards her so she shot him even
5 though he was more than fifteen feet away. Leah stated that
6 she knows she hit him once in the shoulder when he fell to
7 the floor next to the television. Leah stated that she fired
8 the weapon twice but didn't know -- did not know if she hit
9 him twice. Once she finished shooting him, she walked over
10 to Ronald laying on the ground face down, began kicking and
11 stomping him about his side and back area. Later, Leah had
12 said she had called 9-1-1 and when she was able to locate her
13 cell phone even though she had immediate access to it because
14 she was using it to send text message to a man name Randy.

15 Q. And that's essentially what she told you that
16 morning?

17 A. Yes, sir.

18 Q. Alright. Did she tell you anything about what she
19 had done with the gun?

20 A. She mentioned to us that the weapon that she had
21 used, um, she thrown across the street into a kudzu patch
22 area and when we explained to her that we had -- one deputy
23 when I got there but two deputies over in that area was
24 unable to locate it, she mentioned that there was two young
25 black males that was walking up the street and that saw her

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

33

1 when she threw the weapon into the kudzu patch area that must
2 have got her weapon.

3 Q. And so after she -- afer you had this conversation
4 with her there at car, what happened after that?

5 A. About that time we, um, I started having some of my
6 other investigators and all pull up. Captain McNeil who was
7 the actually captain over the investigators, he pulled up
8 about that time. So -- saw that he was getting there, I, um,
9 went ahead and was talking to Leah and explained to Leah
10 because she had told me several times and she told 9-1-1 that
11 she had shot him. I told her that it's just standard policy
12 that we complete what's called a GSR kit or gun shot residue
13 kit. I explained to her what the GSR kit is because, I -- it
14 can be somewhat, I guess, intimidating. So my practice is
15 that I always explain to someone what a GSR kit is. She
16 explained to me that she knew what a GSR kit was with no
17 problem, as a matter of fact, this is the hand that I used.
18 I said, okay. I left from the car and went to my car. I
19 retrieved a GSR kit from the trunk of my vehicle. I went
20 back to the patrol car, opened up the envelope and started
21 completing the GSR kit on her. Explaining each process as I
22 proceeded.

23 Q. Alright. Then after you -- after you finished the
24 GSR kit, what happened after that?

25 A. I went, um, -- well I finished my GSR kit. I fixed

1 it together and put everything, all my evidence back in the
2 envelope. I secured the envelope and I explained to the
3 deputy that, um, I explained to Leah that she was under
4 arrest and what I was charging her with and that she was
5 going to be transported to the Union County jail. And she
6 was transported at that moment or to the Union County jail.
7 I went and found Captain McNeil, who I said had pulled up and
8 I, basically, he and I kinda of leaned over the hood and talk
9 about what we had.

10 Q. Now before -- before you had her transported, did
11 you learn anything about what had happened about the gun?

12 A. Yes, sir.

13 Q. What did you learn about the gun as for as it's
14 location of the rifle?

15 A. It was brought to my attention that the weapon
16 according to Ronald who spoke with the deputies that she had
17 kept the weapon inside a closet in the master bedroom or
18 their bedroom. The deputies were in the house. They went to
19 the master bedroom area, closet, and they actually found the
20 weapon that was used and then they brought it to my attention
21 once they retrieved it from the closet. Before they
22 retrieved it, photograph it, and then brought -- got the
23 weapon from the closet.

24 Q. And so after -- you said Captain McNeil arrived?

25 A. Yes, sir.

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

35

1 Q. Okay. What happened then?

2 A. We kinda of leaned on the hood of his truck. I
3 explained to him exactly what all we had. What all I had
4 found out. What Leah had explained to me or told me,
5 Corporal Vinson, Jeff Wright, Jeff Lawson, brought him up to
6 speed, basically, on everything. So he could get a
7 understanding of what kind of crime scene I had and to offer
8 suggestions or assistance in anyway he could.

9 Q. So what did you two decide to do next after he got
10 there ---

11 A. Well ---

12 Q. --- after Captain McNeil got there?

13 A. Yes, sir. We kinda of walked into the house a
14 little bit while we were talking, looked around, kinda of
15 showed him some of this, you know, some of the crime scene.
16 At that point, I suggested that we needed to get to
17 Spartanburg because I was concerned about his well being.
18 One, was he going to make it. Two, was he going to be in
19 surgery. I needed to get -- to be able to talk to him before
20 they sedated him because I didn't know how -- any idea how
21 long he was going to be under. So we decided to go ahead and
22 leave. I drove in my patrol car to the Jonesville Fire
23 Department. I got all my books and everything that I would
24 need camera and stuff. We got in the vehicle with -- Captain
25 McNeil's truck and together we drove to Spartanburg Regional.

1 Q. And as you were trying to leave the house what
2 happened when you tried to secure the front door?

3 A. When we were trying to leave the house we tried to
4 secure the house up. We locked the back door, the side door.
5 We went out, exited the front door and we were unable to --
6 we could pull the door shut but were unable or we could lock
7 the door knob but it wasn't latching. The door jam had been
8 busted but we pulled it as good as we could.

9 Q. And so where did you and Captain McNeil go?

10 A. Spartanburg Regional Hospital.

11 Q. And did you see Mr. Dipietro there?

12 A. We did. Yes, sir.

13 Q. Okay. Where was he at the hospital when you saw
14 him?

15 A. He was in ICU.

16 Q. What was his -- his -- how did he appear? What was
17 his condition when you saw him there in ICU?

18 A. When we walked into the ICU -- the ICU Unit, there
19 was actually a nurse in there. She was on this side.
20 There's a bed here and here's his feet and this is his upper
21 portion. She was here, Captain McNeil was here, I was kinda
22 of here at the end next to his feet. We noticed, um, she was
23 fixing and cleaning him up. Fixing some, um -- fixing him
24 up. He had IV's in him. He had a tube down his nose. He
25 had blood on his face. He had at that time, he had a beard

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

37

1 or a Go-t. He had blood around his face area. He was
2 responsive but you could tell that they had given him some
3 feel good medicine.

4 Q. Okay. Alright. And did you try to talk to him
5 about what had happened?

6 A. Yes, sir ---

7 Q. --- at that time?

8 A. Yes, sir.

9 Q. Okay. And once you spoke to him at the hospital
10 what did you then?

11 A. We left from the hospital and drove back to the
12 sheriff's office because we had received information from him
13 that was value to the crime scene.

14 Q. And so what did you do when you got back to the
15 sheriff's office?

16 A. We got to the sheriff's office we obtained a
17 searched warrant. Got the search warrant signed by the
18 magistrate and we left from the sheriff's office here at the
19 courthouse and went back to the crime scene at
20 Street.

21 Q. Okay. When you got back to the crime scene what
22 was the condition of the house at that time?

23 A. As it was when we left.

24 Q. Had anything been disturbed?

25 A. No, sir.

1 Q. Okay. And so what did you do once you got back --
2 what was the purpose of going back to the house, I guess, is
3 the question?

4 A. We had advised Jonesville Police Department that we
5 were going to get a search warrant. They actually went to
6 the home and kinda of stayed there at the immediate vicinity
7 of the home. When we got back to the house with the search
8 warrant, we went there looking for a third bullet that was
9 shot that Mr. Dipietro explained to us.

10 Q. Okay. So based on your conversation with him you
11 thought there would be, ah -- you might be able to locate
12 another bullet?

13 A. Yes, sir.

14 Q. Okay. And have you done anything to lay out where
15 items were in the house?

16 A. I drew a sketch.

17 Q. Alright. I'm showing you what's -- what exhibit is
18 this?

19 COURT REPORTER: Thirty three.

20 Q. I'm showing what's been marked for identification,
21 States exhibit number thirty three. I'd ask if you can
22 identify this drawing?

23 A. Yes, sir.

24 Q. What is that?

25 A. Um, it's a sketch of the crime scene.

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

39

1 Q. What does it -- what does it show?

2 A. the interior portions of the home
3 to include the kitchen, the living -- den area, bedrooms,
4 closets, bathroom.

5 Q. And I know it's not scale but is it an accurate
6 depiction of the layout of the house?

7 A. To my best recollection of the crime scene. Yes,
8 sir.

9 MR. ANTHONY: All right. We'd move thirty five,
10 I'm sorry, thirty three into evidence.

11 THE COURT: Any objection?

12 MR. DELANEY: Judge, we have an objection to this
13 piece of evidence coming in.

14 THE COURT: Okay. What's the bases of your
15 objection?

16 MR. DELANEY: The bases would be and as you've
17 heard one, it's not scaled. I would argue that it's
18 misleading as far as the size of the house. Um, they have
19 pictures that they've taken of inside this house. Again, my
20 argument is one, it's not scaled. Two, looking at this of
21 what I know of inside this house and seen it, it's -- it's
22 not the scale and it's much, much bigger than what the house
23 really is.

24 THE COURT: Okay. I'm going to respectively
25 overrule your objection. I will allow it into evidence over

1 objection.

2 (Whereupon, State's Exhibit Number 33 was admitted
3 into evidence with objection by Mr. Delaney
4 which was overruled by the Judge.)

5 Q. Alright. What I'm going to do now is I'm just
6 going to take you through some evidence that was found while
7 you were doing the process of the house at the time. I'm
8 going to show you first of all what's been marked by
9 identification as State's exhibit number thirty one and ask
10 if you recognize that item?

11 A. Yes, this is an evidence bag that I had and I
12 indicated that's in my handwriting.

13 Q. Okay. And what did you put in that bag?

14 A. This is a spent shell.

15 Q. And, where did you find that shell?

16 A. Um, this particular shell, spent shell, was found
17 on an laminate floor, close to the threshold of the hallway
18 near a litter box, cat litter box.

19 Q. Okay. Alright. And was that -- what did you do
20 with it once you found it there?

21 A. We photographed it and then we placed it, um,
22 rubber gloves on and then I taped the evidence and I placed
23 it into a plastic evidence bag and sealed it.

24 Q. Okay. And what did you do with it after you put it
25 in the bag and sealed it? What happens to the bag once you

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

41

1 do something like that?

2 A. Once -- once it's all collected we would do a chain
3 of command or a chain of evidence and it is placed into a
4 secure vault area.

5 Q. Okay. Alright. Alright. Is it in the same
6 condition today as it was in when you took it ---

7 A. Yes, sir.

8 Q. --- on June 10th -- or on June 7th?

9 A. Yeah, 7th. Yes, sir.

10 MR. ANTHONY: Alright. Well we move exhibit thirty
11 one into evidence.

12 THE COURT: Any objection, sir?

13 MR. DELANEY: No objection. No, sir.

14 THE COURT: All right. Without objection. The
15 same moved into evidence.

16 **(Whereupon, State's Exhibit Number 31 was admitted**
17 **into evidence without objection.)**

18 Q. Alright. I'm going to show you now State's exhibit
19 number eleven and I'll go ahead -- I'll go ahead and give you
20 the laser. Can you point out on number eleven where that
21 item was found Captain Hines? Let me get out of everybody's
22 way. Okay. Compared to number one?

23 A. Yes, sir.

24 Q. Okay.

25 A. The cat litter box right here. That's the doorway

1 and this is kitchen floor, the living room floor area, den.
2 That's the threshold, the hallway.

3 Q. Okay. And so on this diagram that you've drawn of
4 the house, State's exhibit number thirty three -- just, since
5 the jury hasn't seen this before, just kinda of lay out for
6 them what you've drawn here?

7 A. Alright, sir. This area here would be the front of
8 the home. This is FD for front door. This is the garage
9 area. And then there is a BD for back door. Once you go in,
10 you would have the kitchen area. Here's a bar that
11 separates the two. Then, this would be, I guess,
12 respectively, the dining room area, I guess, area, it was a
13 pretty big area, open area, den. Then there is a what you
14 call a card table. And then there was a computer area here,
15 desk, computer desk, and then a chair and a couch. A
16 television, a huge television. A little night stand, night
17 table there. This is the wall area and then this the
18 hallway. This is a bedroom. This was a closet. This was a
19 bathroom. This was a master bedroom.

20 Q. Okay. Alright. And so on that diagram where would
21 that shell casing be found? If you could show the jury.

22 A. (WITNESS POINTS)

23 Q. Okay. Okay. So where you're pointing to right
24 there with the pointer that matches up to this area here ---

25 A. Yes, sir.

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

43

1 Q. --- on State's exhibit number eleven?

2 A. Yes, sir.

3 Q. Okay. And like if -- that white door looking thing
4 that if you just keep walking you'd run into, what is that?

5 A. That's a closet.

6 Q. That's a closet. Okay. Alright. And just to give
7 one more look here on exhibit three, where would that -- you
8 can't see the casings but where would it have been recovered
9 in relation to exhibit three?

10 A. Right there -- there's the cat litter box right
11 here and it would've been to the right around the corner.

12 MR. ANTHONY: If we could just have one moment.
13 I have to ask the court reporter just to mark a couple of
14 more pictures ---

15 THE COURT: Okay.

16 MR. ANTHONY: --- Your Honor.

17 Q. I'm going to show you now exhibits forty two, forty
18 three, forty four and forty five and I'm also going to show
19 you some pictures that I showed investigator Lawson
20 yesterday, eighteen, nineteen, twenty and twenty one. I'd
21 ask if you take a look -- first of all, look at the forty two
22 through forty five.

23 A. (WITNESS COMPLIES)

24 Q. Alright. Do you recognize the items in exhibits
25 forty two through forty five?

1 A. Yes, sir.

2 Q. And what are those?

3 A. Pictures I took of the crime scene.

4 Q. Okay. Alright. And do they fairly and accurately
5 depict the crime scene as it appeared the morning of June
6 7th?

7 A. Yes, sir.

8 MR. ANTHONY: Alright. We'd move forty two through
9 forty five into evidence.

10 MR. DELANEY: Without objection, Judge.

11 THE COURT: All right. Without objection. The
12 same is moved into evidence.

13 (Whereupon, State's Exhibit Number 42 through 45 was
14 admitted into evidence without objection.)

15 Q. And eighteen -- I show you eighteen through twenty
16 one and ask you to just look at those.

17 A. Yes, sir.

18 Q. What are those photos of?

19 A. Pictures of the crime scene.

20 Q. Alright. And do they also fairly and accurately
21 depict the appearance of the crime scene on June 10th -- on
22 June 7th?

23 A. Yes, sir.

24 MR. ANTHONY: Alright. We'd move those into
25 evidence. If I didn't move them in yesterday.

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

45

1 MR. DELANEY: No objection.

2 THE COURT: All right. Without objection. The
3 same moved into evidence.

4 (Whereupon, State's Exhibit Number 18 through 21 was
5 admitted into evidence without objection.)

6 Q. Alright. I did want to take you back just a minute
7 to this shell casing -- Your Honor, may I publish this to the
8 jury?

9 THE COURT: Yes, sir.

10 Q. I'm going to put -- I put exhibit number thirty one
11 on the screen, the shell casing. Um, just if you would
12 Captain Hines, tell the jury what is -- what is a shell
13 casing?

14 A. It's, basically, the shell, the empty shell of a
15 bullet when it's ---

16 Q. Okay. And what -- what happens when you fire a
17 rifle, what happens to create a shell casing?

18 A. The ---

19 Q. If you could just explain that.

20 A. If the trigger is pulled and the fire pin is
21 abruptly springing forward. The firing pin makes contact
22 with the back of the bullet where there is a firing cap. The
23 firing cap ignites setting off an explosion inside of the
24 bullet, ah, igniting the firing powder. The gun powder
25 projecting the lead from the shell.

1 Q. Okay. And then what happens to that casing that
2 the bullet is located in when the gun fires?

3 A. It depends on what type of a weapon that you are
4 shooting. If it's a auto or a semi-automatic weapon then the
5 shell is extracted or thrown out of the weapon. If it's a
6 pump, and you're manually pumping it, ejecting it out but if
7 it's a single shot then you have to manually open it up, pull
8 it out and then reload it and then load it back in.

9 Q. And you've looked at the .22 rifle in this case?

10 A. Yes, sir.

11 Q. Alright. And what would happen to a shell when
12 it's fired?

13 A. That particular weapon is a semi-auto so it will,
14 as long as you pull on the trigger, it will -- pull the
15 trigger, it will shoot. It will eject and then reload
16 another live bullet into the chamber. Pull the trigger,
17 shoot. It automatically ejects the spent shell out,
18 reloading another bullet into the chamber.

19 Q. So in your process of the crime scene, what's the
20 notions do you normally make about the location of a spent
21 shell from the weapon?

22 A. Well that's interesting because you have to look at
23 a couple of things. You want to see where the spent shell is
24 and the distance about where the spent shell is. And a spent
25 shell will probably -- usually eject if it's unobstructed

1 would usually object sometimes anywhere from four to seven
2 feet from the weapon when you're shooting, meaning that, I'm
3 shooting, it could go four foot, it could go up to seven.
4 Now that's not written in stone anywhere because there could
5 -- it could come out a foot. It could jump sometimes
6 eighteen feet. As of again, it just depends on where you're
7 at, if you got wind current, stuff like that. But we were
8 able to determine because that is a right side of the
9 objector on that particular weapon. We found the bullet, the
10 spent shell and we knew that it had come to the right so we
11 knew it was going to go back to the left. And from the area
12 where we found another bullet, an actually bullet in relation
13 to where the spent shell was, we were able to about decide or
14 determine where the shooter was.

15 Q. Well, you said that -- what direction would the
16 shell eject from that gun?

17 A. Out the right side.

18 Q. It ejects to the side?

19 A. That's correct.

20 Q. Okay. Not fall on the back, per say, to the side

21 ---

22 A. Yes, sir.

23 Q. --- where the person fired the gun?

24 A. Yes, sir.

25 Q. Okay. And I show you now -- I'm gonna show you --

1 I'm gonna show you exhibit number twenty nine or what's been
2 marked as twenty nine for identification. I'd ask that you
3 just identify the contents of that bag.

4 A. The contents of the bag includes a piece of lead,
5 consistent with a .22 round. A spent shell consistent with
6 a .22, and then a plastic baggy.

7 Q. Okay. Alright. And were those three items --
8 where were those three items collected?

9 A. The lead and the spent shell was found in the
10 living room area and the white powder -- the white bag, baggy
11 was found in the bedroom.

12 Q. Okay. And what did you do with all three of those
13 items when you collected them on June 7th?

14 A. It was then placed in a evidence property bag and
15 sealed.

16 Q. Okay. And then what did you do with the bag?

17 A. The bag was placed on the chain of evidence and
18 later turned into evidence -- into the evidence custodian and
19 placed into a secured vault.

20 Q. Alright. And do those items appear in the same
21 condition today as they did when you took them into custody
22 on June ---

23 A. Yes, sir.

24 Q. --- 7th ---

25 A. It's unopen.

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

49

1 Q. 2010? The bag still sealed?

2 A. Yes, sir.

3 MR. ANTHONY: Okay. Alright. We'd move twenty
4 nine into evidence.

5 MR. DELANEY: No objection.

6 THE COURT: Alright. Without objection. The same
7 is moved into evidence.

8 (Whereupon, State's Exhibit Number 29 was admitted
9 into evidence without objection.)

10 Q. I'm going to take you through -- let me just ask
11 you this. Is it your normal procedure to put three things in
12 one bag?

13 A. Um, we -- there's really not anything written or
14 unwritten saying that you can not. It depends on the piece
15 of evidence, obviously. For example, if I had a bloody sock,
16 I would not put a bloody sock in a plastic bag. I would want
17 to put the bloody sock in a secured package where it can
18 breath so it wouldn't mold or mildew. And I wouldn't put
19 something soiled or wet with something that was non-soiled or
20 wet.

21 Q. Well was there any reason why, anything in
22 particular that morning, why you put those three things
23 together or why you got some other things together into
24 evidence?

25 A. No, sir. This bag was available. I had it and,

1 obviously, I had plenty of room in it. It's not like I had,
2 you know, a shoe or something where I didn't have any other
3 room to put anything else in it. So, like I said, I had this
4 one and I was carrying it while I was photographing and
5 collecting evidence. This is the reason why.

6 Q. Okay. Alright.

7 A. There's nothing contaminating each other.

8 Q. Alright. Well I'm -- we'll go through a couple of
9 these items in this bag. First of all, we'll deal with this
10 item right here.

11 A. Mmm -- hmm.

12 Q. It's on the screen now. What is that, Captain
13 Hines?

14 A. That's a commonly referred to as a piece of lead.

15 Q. Alright. And what -- what is that piece of lead
16 consistent with being?

17 A. From a bullet. That's the part that once the
18 firing pin strikes the firing cap on the back of the bullet,
19 the powder inside the bullet is ignited forcing lead from the
20 bullet or the shell and that would be the bullet. If I was
21 shooting at something that's what would hit what I was
22 shooting at.

23 Q. Alright. And I'm going to show you now -- I'm
24 gonna show you now what's been marked as State's exhibit or
25 what is State's exhibit number forty five. What is that a

1 photo of?

2 A. That is the carpet in the living room or crime
3 scene area, um, a piece of lead that was in the evidence bag.

4 Q. Okay. So that item that I just showed you, that
5 piece of lead, it's depicted there on exhibit number forty
6 five?

7 A. Yes, sir. You always photograph the evidence
8 before you remove anything, before you touch anything. So,
9 obviously, I photograph and then I collect it.

10 Q. Okay.. Can you just point it out so everybody can
11 see where it is on the picture?

12 A. **(WITNESS POINTS)**

13 Q. Okay. Alright. I'm going to show you now exhibit
14 forty four and could you show it in that photo?

15 A. Yes, sir. Right there. **(WITNESS POINTS)**

16 Q. Okay. Thank you. And then I'm going to show you
17 one other picture. Just to give the jury and idea where it
18 is in this corner, I'm gonna to show you exhibit twenty four
19 and can you show the jury where it is using that photo?

20 A. Yes, sir. This is the yellow cord and there is the
21 bullet or the lead, excuse me.

22 Q. Okay. Alright. And now I will show you exhibit
23 number -- I'm going to show you exhibit number forty three
24 and what -- what is that a photo of?

25 A. This is the wall area of the living room of the

1 crime scene. This is a location here where a piece of lead
2 struck the wall.

3 Q. Okay. And what is that -- what is that in your
4 opinion is that consistent with?

5 A. A -- a -- gun shot. Some -- some -- somebody shot
6 something at that wall.

7 Q. And then I'll show you exhibit number twenty four
8 and if you would, can you use that photo to point out where
9 that gash in the wall is on the larger shot?

10 A. (WITNESS POINTS)

11 Q. And then once again that gash where is -- was the
12 bullet recovered in relation to that gash?

13 A. (WITNESS POINTS)

14 Q. Alright. Now I'm going to refer you back to
15 exhibit number twenty nine and ask you about this item, it's
16 on the screen now, what is that?

17 A. That is a spent shell.

18 Q. Okay. And where was that shell located?

19 A. That spent shell was located, um, right underneath
20 the couch.

21 Q. Okay. And I'm gonna refer you now back to exhibit
22 twenty -- thirty three, um, can you show the jury, first off
23 on the diagram, where the couch is in the living room area.

24 A. (WITNESS POINTS)

25 Q. Okay. So it's over on the left wall?

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

53

1 A. Yes, sir.

2 Q. It's facing it ---

3 A. Right here. Yes, sir.

4 Q. And then I'll show you number thirty or number
5 three again and ask if you can give the jury an idea on
6 number three if this is looking down into the living room,
7 where is -- where is the couch located there on number three?

8 A. Okay. That's one of our deputies, this is the
9 chair and this a couch.

10 Q. Okay. And so the shell casing that I just showed
11 you was found underneath that couch?

12 A. Yes, sir.

13 Q. And I'll show you, now, number seventeen and can
14 you give the jury a little better idea of where the couch is
15 looking at this photo?

16 A. That is the couch area there.

17 Q. Okay. Right -- right down from that recliner?

18 A. That's right. Here's the chair and here's a office
19 chair and the couch is right directly in front of this office
20 chair unto the left of this orange looking chair.

21 Q. Okay. Alright. And since -- since we're talking
22 about the chair. There's a marker on top of the chair. What
23 does -- what does that indicate?

24 A. That marker indicates an entrance -- an entrance of
25 the bullet. A bullet entrance entering it through -- here is

1 the hole there.

2 Q. Okay. Let me get out of the way so they can see
3 it. There's the hole?

4 A. Yes, sir. You can see it's kinda of a white speck
5 right there but that's the entrance ---

6 Q. Okay.. Let me -- let me try to zoom in on it here.
7 Okay. Go ahead.

8 A. Yes, sir. That's the, right there, that white spot
9 right there is a entrance bullet or a bullet entry.

10 Q. Alright. And then, um, I'm going to show you
11 number sixteen which is -- what is number sixteen?

12 A. That is the exit or if -- my rear end would be
13 sitting there, my back would be here and my head would be in
14 this area here, this is through and through. It entered here
15 and exits to there.

16 Q. Okay. And what would, obviously, it's a little
17 easier to tell when you're doing what you did or standing
18 right there in front of it as opposed to just looking at
19 pictures. What was the trajectory of that shot?

20 A. It was pretty much through and through, straight.

21 Q. And as far as the location of the chair in the
22 room, are you aware of where that chair was when Mr. Dipietro
23 was shot?

24 A. We were -- we are, yes, sir.

25 Q. And where -- where was the chair?

ROBERT HINES-- DIRECT EXAMINATION BY MR. ANTHONY

55

1 A. It was at the computer desk.

2 Q. Okay. So the -- where was the actually place for
3 the chair without showing you number three.

4 A. Um, it would've -- here was a card table right here
5 with a mount of clothes on top of it. Right on the other
6 side of those card table mount of clothes is a computer desk.

7 Q. Okay. Alright. And that chair would have been
8 moved just to attend to Mr. Dipietro?

9 A. Yes, sir. Yes, sir. We -- we always recommend
10 that our crime scene does not be disturbed, however, life
11 supercedes that. So they were in there trying to work on Mr.
12 Dipietro and do what they could to help him. So if they have
13 to move evidence they just have to move it. I'd much rather
14 sit here and explain to you guys why it was moved.

15 Q. Alright. I going to show you now exhibit number
16 twenty seven. Ask you if you recognize this item?

17 A. Yes, sir.

18 Q. Alright. What is that?

19 A. A Samsung AT&T black or dark blue cell phone.

20 Q. Okay. And where was that phone located?

21 A. It was located below -- about -- almost underneath
22 the computer desk.

23 Q. And what did you do with that phone when you found
24 it?

25 A. It was photographed and seized.

1 Q. Okay. Is the phone -- and initially what kind of
2 container was that phone placed in?

3 A. It was placed in a plastic evidence bag.

4 Q. Okay.

5 A. And sealed.

6 Q. And it was ---

7 A. Placed into evidence.

8 Q. It was, basically, kept -- kept in that bag until
9 yesterday?

10 A. Yes, sir.

11 Q. Okay. Does the phone appear to be in the same
12 condition ---

13 A. It does ---

14 Q. --- as it was on June 7th?

15 A. Yes, sir.

16 Q. Was it damaged like that when you got it?

17 A. Yes, sir. The screen was busted.

18 Q. Okay. Alright. We'd move twenty seven into
19 evidence.

20 THE COURT: Any objection?

21 MR. DELANEY: No objection.

22 THE COURT: Okay. Without objection. The same is
23 moved into evidence.

24 (Whereupon, State's Exhibit Number 27 was admitted
25 into evidence without objection.)

1 Q. Okay. I'm going to show you now exhibit number
2 twenty two. I'd ask if you recognize that?

3 A. Yes, sir.

4 Q. What is that a picture of, Captain?

5 A. Yes, sir. This is the living room carpet, berber
6 carpet that was in the living room. This is the leg of the
7 computer desk, the modem, the key board, cell phone, a top a
8 Gatorade bottle and a book.

9 Q. Okay. Now when you -- when you initially found
10 that key board and that phone, what -- where were they? What
11 kind of condition -- how were they positioned when you found
12 them?

13 A. Yes, sir. The key board was kinda of more over
14 here a little bit at an angle. The book was a little -- was
15 about in the same area there as that was. And the phone was
16 flipped around, upside down in this area here.

17 Q. Alright. And -- I'm gonna show you exhibit five.
18 Can you see the key board on that photo?

19 A. Yes, sir.

20 Q. Alright. And where is it?

21 A. The key board is there.

22 Q. Okay. It appears to be upside down?

23 A. That's correct.

24 Q. And that was the condition you found it in?

25 A. Yes, sir.

1 Q. Okay.

2 A. Again -- again it's not normal for us to disturb
3 any of our evidence or anything like that. We would love to
4 ideally photograph it as is, however, that's EMS working on
5 him at this point. So they move things, stagger things
6 around to get into him. So I take pictures from that, based
7 on that.

8 Q. And -- is there any -- did you note any substance
9 on that key board or on that notebook?

10 A. Yes, sir. We got blood belonging to Mr. Dipietro
11 on the book as well as on the key board?

12 Q. Alright. I'm going to show you now exhibit number
13 fifteen. What is that a photo of?

14 A. That's a photo of the same immediate area of the
15 crime scene or the living room area to include a cell phone,
16 some type of electronic, possibly the Xbox, key board.

17 Q. Alright. I'm gonna hand up a -- I'll hand up now
18 exhibit number twenty eight and ask you if you recognize this
19 item?

20 A. Yes, sir.

21 Q. Alright. What is that?

22 A. It's a red Samsung cell phone.

23 Q. Okay. And what did you do with that finding --
24 with that phone when you -- is that the same phone that's in
25 the picture?

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

59

1 A. That's correct. Yes.

2 Q. Same as in exhibit number fifteen?

3 A. Yes, sir.

4 Q. Okay. And what did you -- what did you do with
5 that phone when you located it on June 7th ---

6 A. We ---

7 Q. --- initially?

8 A. Yes, sir. We photographed it and placed it in a
9 plastic evidence bag, sealed it and was later placed into a
10 evidence vault.

11 Q. And is that phone still in the same condition it
12 was in ---

13 A. Yes, sir.

14 Q. --- when you -- when you recovered it?

15 A. Yes, sir. The screen was busted out of it.

16 MR. ANTHONY: Alright. We'd move twenty eight
17 into evidence.

18 MR. DELANEY: No objection, Judge.

19 THE COURT: Alright. Without objection. The same
20 is moved into evidence.

21 (Whereupon, State's Exhibit Number 28 was admitted
22 into evidence without objection.)

23 Q. Alright. And then thirty or I'm sorry, fifteen
24 that's the picture of the phone on the floor in the living
25 room?

1 A. Yes, sir.

2 Q. Okay. I'm gonna show you now twenty four and ask
3 if you could just pull it out the location of that phone on
4 the wider shot showing the whole corner of the room.

5 A. (WITNESS POINTS)

6 Q. Okay. Alright. Thank you. I'm going to show you
7 now exhibit number thirty two and ask if you recognize that
8 piece of evidence?

9 A. Yes.

10 Q. What is that?

11 A. This is a bullet, .22.

12 Q. Okay. And where did you find that bullet?

13 A. This bullet was located in the living room area
14 close to where the first spent shell was found near the cat
15 cage.

16 Q. And ---

17 A. The first ---

18 Q. Go ahead.

19 A. The first one was found near the litter box and the
20 next one -- this one was found next to the cat cage.

21 Q. The casing was found in the litter box?

22 A. That's correct. Spent shell.

23 Q. Okay. And what did you do with that bullet when
24 you found it?

25 A. We, of course, photograph it, placed it into a

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

61

1 sealed plastic bag and placed it into evidence.

2 Q. And does it appear in the same condition today as
3 it did on June 7th?

4 A. Yes.

5 MR. ANTHONY: We'd move thirty two into evidence.

6 MR. DELANEY: Without objection.

7 THE COURT: Alright. Without objection. The same
8 is moved into evidence.

9 (Whereupon, State's Exhibit Number 32 was admitted
10 into evidence without objection.)

11 Q And I'm showing you now exhibit number thirteen and
12 ask if you can tell -- tell the jury what that depicts?

13 A. Yes, sir. This is the cat cage area here and a
14 bullet which is what I've photographed and seized.

15 Q. That brighten up just a little bit. If you can
16 point it out again so everybody can see it.

17 A. Yes, sir. (WITNESS POINTS)

18 Q. Okay. Alright. And we're going back to this
19 picture exhibit number three. Can you use that photo to show
20 the jury where that bullet was found in relation to the rest
21 of the room?

22 A. Yes, sir. Here is the cat cage here, my marker
23 there, and the bullet, of course, is to the right of --
24 between the marker and the cage.

25 Q. Alright. And I'm going to show you now exhibit

1 number fourteen and ask if your recognize that -- what's that
2 a photo of?

3 A. Yes. This is the bar area of the kitchen, it
4 separates the kitchen and the living and dining room area
5 there and there's a marker near the -- a bullet.

6 Q. I'm going to show you now what's been marked for
7 identification exhibit thirty and ask if you recognize that?

8 A. Yes, sir.

9 Q. What -- what are -- what are those two items in
10 that evidence bag?

11 A. Yes, sir. These are two bullet, .22 Caliber
12 bullets.

13 Q. Okay. And where were they located?

14 A. Yes, sir. One was found here on the counter in the
15 kitchen on the bar. The second one was found in the doorway
16 leading into the master bedroom.

17 Q. Okay. What did you do with those two bullets when
18 you located them there at the residence?

19 A. Yes, sir. Both of these photographed and placed
20 into a plastic evidence bag, sealed, later placed into a
21 evidence vault.

22 Q. Alright. And are they in the same condition, have
23 the same appearance as they did?

24 A. Yes, sir. Unopen.

25 MR. ANTHONY: Alright. We move thirty -- thirty

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

63

1 into evidence.

2 MR. DELANEY: Without objection.

3 THE COURT: Alright. And so moved. Without
4 objection.

5 (Whereupon, State's Exhibit Number 30 was admitted
6 into evidence without objection.)

7 Q. Alright. I've already shown you number fourteen,
8 that's the picture of the bullet you found from the kitchen
9 cabinet, is that right?

10 A. Yes, sir.

11 Q. Okay. I'm going to show you now -- showing you
12 exhibit number nine and ask if you could tell the jury the
13 significance of photo?

14 A. Yes, sir. That is looking down the hallway into
15 what is commonly referred to, I guess, as the master bedroom.
16 This is the door going into the master bedroom area. There's
17 a placard there with a bullet located to the left -- can you
18 break that up a little bit?

19 Q. I'll see if I can do that, sir. I think that's
20 about as good as I'm going to be able to do.

21 A. Okay. To the left of the placard there is a .22
22 Caliber bullet laying there between here and the corner of
23 the door and that was -- that's the one that was collected
24 and placed into the evidence bag.

25 Q. Alright. And just so, to make it clear where this

1 is in relation to the rest of the house, I'm going to go back
2 to number thirty three and, can you show the jury on the
3 larger diagram of the home where that bullet was found?

4 A. Yes, sir. This the living room area, the door
5 here, the hallway, and here's the master bedroom.

6 Q. Okay. And is that -- is that the same bedroom
7 where the rifle was?

8 A. That's correct.

9 THE COURT: Mr. Anthony, how much longer do you
10 have on this witness?

11 MR. ANTHONY: We've got several things to do.

12 THE COURT: Okay. Let's -- why don't we take a
13 break because we've been at it about an hour and forty five
14 minutes and I'm noting from the body of the jury that we
15 might need to take a break. So let's take a break. Please
16 don't discuss the case. We'll come back in ten or fifteen
17 minutes.

18 **(JURY LEAVES COURTROOM)**

19 THE COURT: Alright. We will be in recess
20 essentially until the jury is ready to come back out and
21 officer you take a break too. It looks like you are still
22 under examination which means you can't discuss your ---

23 CAPTAIN HINES: No, sir.

24 THE COURT: --- discuss your testimony with anyone.

25 CAPTAIN HINES: Yes, sir.

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

65

1 THE COURT: Just about football, baseball, whatever
2 you want to talk about but you can't talk about your
3 testimony.

4 CAPTAIN HINES: I understand, sir.

5 THE COURT: Alright. Good enough.

6 (EVERYONE TAKES BREAK)

7 (JURY RETURNS BACK AT 11:38 A.M.)

8 DIRECT EXAMINATION IS CONTINUED BY MR. ANTHONY:

9 THE COURT: Alright. Mr. Anthony, you may
10 continue, sir.

11 MR. ANTHONY: Thank you, Your Honor.

12 Q. Captain Hines, we've got two more pictures to show
13 you of the crime scene. First off, I am going to show you
14 exhibit number twenty one and ask you just kinda of going
15 back what we were talking about a couple of minutes ago with
16 the bullet in the hallway. Do you see that the bullet, um,
17 in the entrance of the bedroom in that photo?

18 A. Yes, sir.

19 Q. Alright. Would you point that out please?

20 A. (WITNESS POINTS)

21 Q. Alright. Thank you. I want to take you now to
22 exhibit fourteen. We've already mentioned this in reference
23 to the phone there on the cabinet. Is there anything else
24 that you -- you observe there on that cabinet that day?

25 A. Yes, sir. There's a salt shaker.

1 Q. Okay. Alright. And going back to exhibit three,
2 can you show the jury on exhibit three where the -- where
3 that phone and where that salt grinder were located? Can you
4 use that picture to do that?

5 A. Yes, sir. As I said earlier here's the bar,
6 there's number three and the bullet would be to the right of
7 that and then the salt shaker would be behind number three.

8 Q. Okay. Alright. I'm going to show you now exhibit
9 eighteen. What is that photo of?

10 A. Yes, sir. This is the kitchen area. This is a bar
11 stool at the bar separating the kitchen and the living,
12 dining room area, that is a cordless phone, a house phone.

13 Q. Okay. And then I'll show you exhibit number twenty
14 and ask you what is that photo of?

15 A. Yes, sir. The stove which is in the kitchen area,
16 number seven, with a battery, a battery pack to a cordless
17 phone, a house phone?

18 Q. Okay. So you kinda of induced, I guess that number
19 eighteen, we're talking about number eighteen, that battery
20 in the phone in number twenty goes to that phone, is that ---

21 A. Yes, sir. Being that we didn't find any other
22 cordless phones that had damaged to it. Yes, sir.

23 Q. Okay. Alright. And as far as the location of the
24 stove going back to number three and I know you can't see the
25 stove in that picture but where do you recall the stove

1 being?

2 A. Your Honor, I don't remember where ---

3 Q. Okay.

4 A. Where that -- I ---

5 Q. Would it have been ---

6 A. It would've been -- I'm sure it probably would have
7 been if I remember him following the bar around and the bar
8 went into the wall and then to the left of that was the
9 kitchen sink and there was a window looking out in the front
10 yard and then it would have wrapped back around so the stove
11 would've been, if I was standing inside the bar, inside this
12 little area here, facing the living room then the stove would
13 have been behind me. I believe that was right.

14 Q. Alright. And I'm gonna show you now exhibit number
15 nineteen and ask you what is that a photo of?

16 A. Yes, sir. That is the floor in the kitchen area
17 with the refrigerator and battery to a cellular phone.

18 Q. Okay. What phone did that battery go with?

19 A. Um, I believe it was -- it was one of the cell
20 phones that we collected as evidence and I'm believing it
21 was, um, ---

22 Q. The one you had up there?

23 A. Yes, sir.

24 Q. The black cracked Samsung phone?

25 A. Yes, sir.

1 Q. Okay. So the battery from the cracked Samsung
2 phone was actually out of the phone when you processed the
3 house?

4 A. Yes, sir.

5 Q. Okay. And you identified in the bag with the three
6 items that we put into evidence which is exhibit number
7 twenty nine, you have a note on the bag that says, bag with
8 white powder found in, um, I think this is, bed and closet.
9 Is that what you've written there?

10 A. Bedroom.

11 Q. Bedroom?

12 A. Yes, sir.

13 Q. Okay. Alright. And what was -- what was the
14 significance of that bag at the time you took it?

15 A. That bag was actually laying on a dresser that was
16 in the master bedroom and it was in plain view. It appeared
17 by looking at it that it could've possibly contained some
18 type of residue of white powder substance.

19 Q. Alright. And did you do anything to find out --
20 have any analysis done on that bag?

21 A. It was further examined -- the room was dark with
22 it being in the early morning hours, it was collected, later
23 examined. I didn't feel like it was -- enough on it that
24 would even cause any interest at Sled.

25 Q. Okay.

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

69

1 A. We looked at it. We examined it.

2 Q. But you had already taken it?

3 A. Yes, sir.

4 Q. Okay. Alright. And you don't know what was on
5 that bag ---

6 A. No, sir.

7 Q. --- is that correct?

8 A. No, sir. It was never tested. As a matter of
9 fact that bag was sealed that morning and hasn't been
10 unsealed.

11 Q. Did you do any inspection of the bathroom area in
12 the home?

13 A. Yes, sir. We -- we walked through the entire home.
14 We opened up -- went into the bedroom where the gun was
15 found. I went in there physically, kinda of examined that
16 room, down the hallway. I went into the bathroom, examined
17 that room. Appeared into the back bedroom or the second
18 bedroom, didn't physically go into that bedroom. I went into
19 the living room. Dining room area. Kitchen. Yes, sir. Out
20 in the garage area.

21 Q. Okay. And did you notice anything remarkable in
22 the bathroom?

23 A. Nothing stood out whatsoever. No, sir.

24 Q. Was there any blood?

25 A. No, sir.

1 Q. Was there anything in the bathroom to make you
2 think that an assault or any kind of confrontation in that
3 bathroom connected to the shooting?

4 A. Never been in that bathroom before I can't say how
5 someone leaves it but working crime scenes for over twenty
6 one years, nothing appeared to me like an assault had
7 occurred. No, sir.

8 Q. Okay. Alright. Let's move on now. We'll go ahead
9 and move away from the house now.

10 A. Mmm -- hmm.

11 Q. After you got through working on the house that day
12 and collecting all this evidence and taking all those things
13 we were just talking about, what was the next thing you did
14 in connection with the case?

15 A. We left and went back to the sheriff's office, the
16 courthouse, where evidence was logged. Basically, given our
17 thoughts as far as everything that we had done that morning
18 at the crime scene. What we talked to Ronald about at the
19 hospital and later we went to the jail where we met with Ms.
20 Leah Forrest.

21 Q. And when -- when you went to the jail what was your
22 intentions as far as meeting with Ms. Forrest? What were you
23 going to do?

24 A. Went there for the sole purpose of interviewing Ms.
25 Forrest.

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

71

1 Q. Okay. And when you went to see her, did you do
2 anything to advise her of her legal rights before you
3 starting talking to her again?

4 A. Yes, sir. We sat down again a different
5 atmosphere, a couple of hours late. I went ahead and
6 reintroduced myself to her again. Explained to her what I
7 was there for. I mentioned that I told you this morning that
8 later on after I got some things settled down and had a
9 couple of things that I needed to do here at the home which
10 is that I would be back in a little bit to
11 talk with you. She understood. Got there -- I explained to
12 her that I provided her with her Miranda rights but I given
13 them to her reading them off of a card. This time I would
14 like to actually document that on paper. So I pulled out a
15 Miranda form. Went through the Miranda's with her. And it's
16 customary for practice, my practice that when I go through --

17 -
18 Q. Well I'm gonna -- gonna show you the form ---

19 A. Okay. Thank you.

20 Q --- here in just a second.

21 A. I go through the Miranda's. I read -- I explain
22 what the Miranda's are and then I start with number one. I
23 read the Miranda's to you. Basically, ask you do you
24 understand them ---

25 Q. Let me -- let me just stop you ---

1 A. Yes, sir.

2 Q. --- okay. For right now I will just hand you
3 what's been marked for identification, State's exhibit number
4 one.

5 A. Yes, sir.

6 Q. Okay. And what is that form?

7 A. This is an Interrogation Advise, of Rights form,
8 Miranda form.

9 Q. Okay. And if you would now that you might be able
10 to talk about it ---

11 A. Thank you. Yes.

12 Q. --- now that you have it. What -- what did you --
13 how do you use that form or how did you use that form
14 advising Ms. Forrest of her rights?

15 A. Yes, sir. I sit there, basically, as I said, I
16 explained to her what her rights are. I rank the place which
17 was UC jail, the Union County jail. The date 6/7/2010. The
18 time was at 1:50 p.m. I moved down, I explained to her as I
19 do everyone that I got some Miranda rights. I explain a
20 little bit about the Miranda's to them. Before we ask you
21 any questions you must understand your rights and I look at
22 her and I said, do you understand that? She acknowledges
23 that she does. Then I put a check mark beside it. You have
24 the right to remain silent. Do you understand what that
25 means? She said, I do. I put a check mark beside it.

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

73

1 Anything you say can be used against you in court. You
2 understand that? Yes. I put a check mark beside it. You
3 have the right to talk to a lawyer for advice before we ask
4 you any questions, have him with you during questioning. Do
5 you understand that? Yes. I put a check mark beside it. If
6 you decide to answer questions now without a lawyer present
7 you will still have the right to stop answering any time.
8 You'll also have the right to stop answering any time you
9 talk to the lawyer. You understand? Yes. I put check mark
10 beside it. So at that point once every one is checked, all
11 the sentences are checked, acknowledging that she understand
12 those and we move forward. If not, of course, we would stop,
13 regroup. Then we move down to the Waiver of Rights. The
14 Wavier of Rights is read to the person that I'm interviewing
15 and it reads as follow: "I have read this statement of my
16 rights and I understand what my rights are. I'm willing to
17 make a statement, answer questions. I do not want a lawyer
18 at this time. I understand and know what I am doing, no
19 promise or threats have been made to me and no pressure or
20 coercion of any kind has been used against me." After I read
21 that to them we really break that one down, basically,
22 sentence by sentence. If she acknowledges it then we initial
23 it. She signs, signature there and then at that point only
24 after that point has happened then we move forward.

25 Q. And is that what happened that afternoon?

1 A. Yes, sir.

2 Q. Okay. And then there on the second page, what is
3 the second page of exhibit number one, what is that?

4 A. Yes, sir. This is Union County Sheriff's office
5 Voluntary Statement form.

6 Q. Okay. And there's information at the top of that
7 form, how did you go about getting that information?

8 A. The date, the place, which is Union County Jail.
9 Time started at 1:50, um, Leah Forrest's name. Age, forty
10 two. Date of birth, . Born in Greer, South
11 Carolina. She lives at ---

12 Q. And those are all questions you're asking her?

13 A. That's correct. Yes, sir.

14 Q. And you wrote in the answers she gave you?

15 A. Well it's a combination of asking her, yes, sir,
16 and also having a copy of her booking sheet at the time that
17 she was booked in at the Union County Jail. I always make
18 copies of everything that they have at the booking area and
19 have that at my disposal in the interviews.

20 Q. Okay. Alright. So you filled out the top of the
21 forms?

22 A. Correct.

23 Q. Alright. And then what did you do in regards to
24 the advisement there in the middle of the statement form?

25 A. Yes, sir. Again this information was printed on

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

75

1 the document by our supplier and it's, basically, just
2 Miranda's again. We go through that with her. I went
3 through that with her. The person who identifies himself as
4 a CI which is criminal investigator and then we proceed with
5 talking or reading this out loud. Again she acknowledges
6 that she understands what her rights are and then we move
7 forward from there.

8 Q. Okay. And did -- did she tell you or did she give
9 you an indication when you talk to her that day that she
10 wanted to discuss the shooting with you?

11 A. Yes, sir.

12 Q. And did you do anything to threaten her or that
13 something bad would happen to her if she didn't talk or
14 promise her that something good would happen if she did talk?

15 A. Absolutely not. No, sir.

16 Q. Okay. When you -- after you finished advising of
17 all her rights how did -- how did the thing proceed as far as
18 the actually taking of the statement?

19 A. Basically, we kinda of recap everything that was
20 discussed that morning when she was in the back of the chair
21 of the home. We kinda of regrouped on that. Talked about
22 that a little bit. I explained to her that right from the
23 beginning I that I was there to interview her. That I was
24 seeking a statement, a voluntary statement. She complied.
25 Understood what that was. We talked about, like I said, what

1 happened in your -- from you tell me your side of the story.
2 And she talked. I explained to her that I needed her to
3 provide a written statement to me. She wouldn't provide me
4 with a written statement. I ask her would she have any
5 problem with me writing the statement. She said that's fine.
6 So I wrote her statement on her behalf. This is my
7 handwriting. As we would talk, I would write. So,
8 basically, I would say okay, Leah, tell me what happened this
9 morning and she would say, "I got up this morning to go use
10 the bathroom", hold it right there, I wrote, "I got this
11 morning to go use the bathroom." Alright, tell me what
12 happened then. "But I had trouble finding the door knob."
13 Okay. "I had trouble finding the door knob." "Because it
14 was dark." So -- that's basically how we proceeded through
15 the entire statement.

16 Q. And -- and while this statement was going on, how
17 -- what condition did Ms. Forrest appear to be in?

18 A. Um, Ms. Forrest was kinda of -- I kinda of felt
19 like I was wasting her time. Like I -- like I was there, um,
20 wasting her time. I mean, she just -- it's not that she
21 wasn't compliant because she was but it was just that, you
22 know, like she didn't really want me to be there. She was
23 complying with me, I mean, she didn't tell me, no. She
24 didn't say, "I don't want to talk to you or I'm not
25 cooperating." It wasn't like that. It was just like I kinda

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

77

1 of felt uneasy, like I said, like she was not, you know,
2 didn't want me there.

3 Q. Alright. What made -- what specifically made you
4 -- gave you that impression?

5 A. Well, I guess, it was kinda of her attitude towards
6 me. Real choppy, real short with me. I just felt like I was
7 bothering her, I guess.

8 Q. Okay. Alright. And so you went through that
9 statement -- that written statement you have up there,
10 exhibit number one, you went through that with her,
11 basically, telling you things and you'd write them down?

12 A. That's correct.

13 Q. Okay. During the time that she was saying this,
14 did you have any concern that she was under the influence of
15 anything or in any way unable to relay to you the things
16 she'd been through?

17 A. No, sir. Not -- not at all. Of course, you know,
18 if someone was under the influence of alcohol and/or drugs it
19 is common practice that we do not interview them. Basically,
20 because what they tell us is not useful anyway. I got that
21 -- I did not get that feeling at the scene that morning nor
22 at 1:50 p.m. when I was interviewing her at the jail.

23 Q. And when you got through taking the statement, what
24 did you do to allow her to review it and ratifying it as
25 being accurate?

1 A. After we completed the statement, after I wrote
2 everything that she wanted me to write, I read the statement
3 to her. At that point, she agreed with it. I take the
4 statement and I turn it around and I, basically, present it
5 to her. She read the statement. I told her that we could
6 change anything, take anything out, put anything in, scratch
7 anything out, expand on it, whatever you want to, now is your
8 opportunity. If you don't like the way a sentence is written
9 we can expand it, we can delete it, scratch it out, whatever,
10 anything. She said it sounded good to her. I was pleased.
11 So at that point I ask her to initial the very beginning of
12 the sentence that says, "I got up this morning", I ask her
13 to initial which she did, LF, Leah Forrest and then the very
14 last sentence, "over at the computer", LF. Acknowledging
15 that she read everything in the middle. Everything from the
16 beginning to the end. She read it. She agreed with it. On
17 the second page at the very beginning at the word "And", LF,
18 and then at the very last word, "argument", LF, meaning that
19 she read every bit of this in the middle and that she agreed
20 with it. Then at the bottom here it says, "Captain Hines
21 wrote this statement for me at my request. He read it to me
22 and I found it to say everything that I wanted to say." She
23 agreed that so she initial it as well. From there I
24 scratched everything or X everything so nothing could be
25 added in this area here. I initialed it there because I did

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

79

1 that. She signed her full name here and it was sworn by me
2 as a true document. And witness by one of my jailors,
3 Christy Richardson. And then on the second page she signed
4 it saying it's true. This is what she wanted it to read.
5 She agrees with it. Again witnessed by me and witnessed by
6 Christy Richardson.

7 Q. And does that statement you have there, is that
8 still in the same condition it was in when you took it from
9 Ms. Forrest on June 7th?

10 A. Yes, sir.

11 Q. Okay.

12 MR. ANTHONY: Your Honor, at this time we'd move
13 exhibit one into evidence.

14 THE COURT: Objection?

15 MR. DELANEY: No objection, Judge.

16 THE COURT: Alright. Without objection. The same
17 is moved into evidence.

18 (Whereupon, State's Exhibit Number 1 was

19 admitted into evidence without objection.)

20 Q. Captain Hines, if you would just read that
21 statement, the jury will have it but go ahead and just read
22 it to them?

23 A. Yes, sir. "I got up this morning to go use the
24 bathroom but I had trouble finding the door knob because it
25 was dark. Finally I found the knob and I opened the door to

1 go to the bathroom. Ronald woke up and began cussing me
2 because I woke him up. I went to the bathroom and Ronald
3 came in and slammed me on the floor. I hit my head on
4 something. The next thing I remember I was in the living
5 room and Ronald slammed me again on the floor. Ronald was
6 holding my face because I was screaming. I got up. Once he
7 released me and I walked outside to leave but I did not have
8 the keys so I came back inside the house. When I came back
9 in Ronald had my cell phone and said, "Let's look at your
10 text messages." After he read the messages from Randy he
11 broke that phone along with all the other phones. Ronald
12 came back to me and picked me up again and slammed me on the
13 floor. Ronald got up and walked over to the computer and
14 started moving, ah, started messing with it. I got up and
15 walked to the bedroom and got the rifle from my closet and
16 walked back into the kitchen. I loaded the weapon and
17 pointed it at him. Ronald was standing next to the computer
18 and he said, "Bitch you will never be able to use this
19 computer again." Ronald turned and saw me with the gun and
20 he turned and I thought he was coming after me again. So I
21 pulled the trigger and fired the weapon. I remember the
22 bullet hitting him in the shoulder. I don't remember hitting
23 him again but I do remember shooting at the floor. Once he
24 was on the floor I walked over to him and began kicking him
25 on his back and side area. After this I went and found my

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

81

1 other phone and I called 9-1-1 to report the argument.
2 Captain Hines wrote this statement for me at my request. He
3 read it to me and I found it to say everything I wanted it to
4 say."

5 Q. And during the time that you were dealing this for
6 Ms. Forrest, both that morning, earlier when you saw her and
7 that afternoon at the jail, was she offered medical
8 attention?

9 A. Several times. Yes, ma'am.

10 Q. And did she ever ask for any kind of medical
11 attention?

12 A. No, sir.

13 Q. After this, after you took the statement, did you
14 do anything else to follow up on this investigation?

15 A. She had -- she was still talking about the bruises.
16 So some more photographs were made of her.

17 Q. Alright. And what -- after got through dealing
18 with her, did you do anything in regards to hearing the 9-1-1
19 call?

20 A. Yes, sir. I filled out a request to our dispatch
21 to, one of my secretaries, one of four, that the call from
22 that morning, originate from 514, I mean, excuse me,
23 Street to be secured as evidence.

24 Q. Okay. And you're the supervisor of 9-1-1, is that
25 correct?

1 A. Director. Yes, sir.

2 Q. Alright. And how is -- how is the record keeping
3 work for 9-1-1? What's done when somebody makes a 9-1-1
4 call?

5 A. We have what's called a Freedom of Information Act
6 form that is completed and once it completed it's approved by
7 me and then I present it to Wanda and Wanda actually ---

8 Q. Well -- what -- I'm sorry. What I mean is, if
9 somebody calls 9-1-1 ---

10 A. Mmm - hmm.

11 Q. What is done to keep a record of that call being
12 made of what is actually said? That's my question.

13 A. I apologize. We have a recording system connected
14 to all of our phones at 9-1-1 that records every call coming
15 in and every call going out of that facility of the building
16 down there. And the -- the call that morning was -- came
17 into dispatch on a 9-1-1 emergency number. So, obviously, it
18 was recorded from the very beginning to the very end, the
19 conversation and it's stored on a computer generated server,
20 on a server and we, basically, go back to history and pull
21 for information we're looking for and burn it to a cd.

22 Q. Okay. Alright. And so you requested that, that
23 call to or from Street be pulled from the 9-1-1
24 computer records that morning?

25 A. Correct. Yes, sir.

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

83

1 Q. Okay. And I gonna show you what's been marked for
2 identification as State's exhibit number -- do you recognize
3 that?

4 A. Yes, sir.

5 Q. And what is that?

6 A. It's a cd with our logo on it, our emblem on it,
7 the request from The date of the call was
8 on June 7, 2010. It was the request for the 9-1-1 tape.

9 Q. Alright. And have you reviewed that -- the file on
10 that cd?

11 A. Yes, sir.

12 Q. And what does it contain?

13 A. It contains the first call was Ms. Forrest calling
14 to 9-1-1. Later hanging up the phone. And then dispatch
15 calling her back. So I've got two conversations.

16 MR. ANTHONY: Alright. Your Honor, we'd move
17 exhibit thirty five into evidence.

18 THE COURT: Any objection?

19 MR. DELANEY: No objection, Judge.

20 THE COURT: Alright. The same is moved into
21 evidence.

22 (Whereupon, State's Exhibit Number 35 was

23 admitted into evidence without objection.)

24 MR. ANTHONY: Alright. And, Your Honor, I've ask
25 that Captain Hines we allowed to step down and we'll publish

1 this to the jury.

2 THE COURT: Yes, sir.

3 (THE 9-1-1 TAPE WAS PLAYED FOR THE JURY)

4 Q. Did you do anything later on, you know, several
5 weeks after this shooting, did you do anything in regards to
6 making contact with Mr. Dipietro?

7 A. Yes, sir.

8 Q. Okay. What was that?

9 A. Oh, myself and the victim's advocate plan on going
10 up to visit Mr. Dipietro and talk with him.

11 Q. Alright. And what happened when you went up there
12 and try to interview him?

13 A. We went to, excuse me, we went to North Carolina to
14 Mission Hospital and met with him there at the hospital and
15 our goal was to take a statement from him, a more detail
16 statement because he was actually just getting stabilized
17 where he was able to be spoken to. And, any way, we started
18 an interview with my tape recorder and, unfortunately, my
19 tape recorder stopped recording.

20 Q. So you don't have that whole statement?

21 A. I got a little over three minutes, I think, of the
22 statement.

23 Q. In regards to the phone that's up there, the one in
24 the envelope?

25 A. Yes, sir.

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

85

1 Q. Which is number twenty eight. Did you do anything
2 as far as any kinda of further investigation related to that
3 phone?

4 A. Yes, sir. A search warrant was obtained and that
5 phone was transported to Sled by myself and taken to the
6 Sled, State Law Enforcement Division, computer crime section
7 and turned over to Agent Bart Cave, who was a Sled agent and
8 he was able to do forensic extraction, I believe is what they
9 call it, on the phone.

10 Q. Okay. In regards to the GSR kit you testified
11 about that, was there anything further done with it?

12 A. On the GSR ---

13 Q. Had you done a follow up or analysis done of it?

14 A. No, sir. A GSR ---

15 Q. Why was that?

16 A. The GSR kit was obtained and placed in the vault
17 where it remained until this morning as a matter of fact.
18 Nothing was ever done on it because, basically, we had a
19 statement, a written statement from Ms. Leah Forrest that --
20 stating that she shot him. She used this hand and she -- so
21 we had no reason at that point to send it down to Sled to get
22 it analysis. However, it was secured in a vault and if there
23 was a time or a reason that we should have or needed to send
24 it to Sled then we could send it to Sled.

25 Q. And did you do any further analysis of this phone

1 here or make any further inspections of this phone here,
2 State's exhibit number twenty six?

3 A. Yes, sir.

4 Q. Okay. What -- what went on concerning State's
5 exhibit number twenty six?

6 A. This phone was also looked into. A search warrant
7 was obtained and a -- on June 7, 2010, this phone was
8 utilized to contact 9-1-1. There was actually three logs on
9 that particular morning. There was the first log. The
10 second log was outgoing where this phone contacted 9-1-1.
11 And the third log was when she -- the phone hung up and
12 dispatch contacted her back. So there was an incoming call
13 from 864-429-1611 which is our non-emergency 9-1-1 line where
14 Amy called her back. Now the first log was a number that was
15 important to us because it -- she attempted from this phone
16 to make contact with a individual that Mr. Dipietro knew and
17 ---

18 MR. DELANEY: Judge, I'd object at this time as far
19 as the bases that this witness has to testify to this
20 information.

21 THE COURT: Alright, sir.

22 MR. ANTHONY: Well without -- without going into
23 who she was calling -- I would like to go forward and -- I
24 would not be -- at least testimony from him as to who she was
25 calling.

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

87

1 THE COURT: Okay -- or and it sound to me like may
2 be getting into the substance of some telephone calls as
3 well.

4 MR. ANTHONY: Yes. Yes, sir. I would not ask him
5 that.

6 THE COURT: Okay. Alright. With respect to any
7 forensic analysis of the phone the substance of telephone
8 calls then I'm going to sustain the objection and you can
9 proceed, sir.

10 Q. So you looked at the sent calls on the phone of the
11 morning of June 7th?

12 A. Correct.

13 Q. Is that correct?

14 A. Yes, sir.

15 Q. Calls made by the phone?

16 A. Yes, sir.

17 Q. Okay. And there were two calls, one to 9-1-1 and
18 then one where 9-1-1 called the phone back, is that -- is
19 that correct?

20 A. There -- Yes, sir. There was ---

21 Q. Okay. There was a call to 9-1-1 and then there was
22 a received call ---

23 A. That's correct.

24 Q. --- from 9-1-1?

25 A. Yes, sir.

1 Q. Okay. And then before that there was another call?

2 A. Yes, sir.

3 Q. And that call was made by the phone?

4 A. There was -- this phone was used to call out ---

5 Q. Okay.

6 A. --- to another phone number.

7 Q. Before it called 9-1-1?

8 A. That's correct.

9 Q. Okay. And were you able to determine the number
10 that was called from looking at the phone?

11 A. Yes, sir.

12 Q. And I'm not going to ask you who she called but you
13 were able to determine the number that the phone called,
14 before 9-1-1 was called?

15 A. Yes, sir.

16 Q. Okay. And did you -- what was that number?

17 A. I don't know it off the top of my head. No, sir.

18 Q. Well, did you document it?

19 A. Yes, sir. It was documented.

20 Q. Okay. Would reviewing this document refresh your
21 recollection as to the number that was called?

22 A. Yes, sir.

23 Q. Alright. And what -- what number was called?

24 A. The number ---

25 Q. Before 9-1-1 was called?

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

89

1 A. That's right. A number was called from this phone
2 out to 1-633-184-93591.

3 Q. Okay. What was the time of that call?

4 A. At 5:42 a.m.

5 Q. Okay. Then when was 9-1-1 called? Is that -- is
6 that not documented there too?

7 A. Yes, sir. One to emergency at 5:47 a.m.

8 Q. Okay. Alright. Now I'm going to show you -- did
9 you do anything to document or try to capture what was
10 showing as far as sent or receive calls on the phone on the
11 morning of June 7th?

12 A. Yes, sir.

13 Q. Okay. I'm gonna show you what's been marked for
14 identification, State's exhibit number thirty four and what
15 is that?

16 A. This is picture of this phone with the screen
17 activated with the call history brought up and then the first
18 indication is a date and the second one is Wednesday, I mean,
19 Monday, June 7, 2010.

20 Q. Okay. Alright. And is that how the screen
21 appeared when you fired up the phone?

22 A. Yes, sir.

23 MR. ANTHONY: Alright. We'd move thirty four into
24 evidence?

25 THE COURT: Any objection?

1 MR. DELANEY: No objection, Judge.

2 THE COURT: Alright. Without objection. The same
3 into evidence?

4 (Whereupon, State's Exhibit Number 34 was
5 admitted into evidence without objection.)

6 Q. Now if you -- unfortunately, did something bad
7 happen when you were trying to make this photo?

8 A. Yes, sir.

9 Q. What was that?

10 A. After numerous, numerous attempts of trying to
11 capture the call history on that phone, um, the phone for
12 some reason when you bring it up, for some reason it goes to
13 sleep or maybe hibernate quicker than most phones, in my
14 opinion. So I would finally get it -- I would get it set up
15 and I would try to get my camera set where it would stay and
16 I'm steady, control my breathing and try to take several
17 phone -- pictures of the phone and then the light would go
18 dark so I would push the back button and it would come back
19 light and I took another picture and it would go dark. I
20 pushed the back button, etc., etc., etc., well finally on --
21 I looked at it and that particular phone number was gone,
22 deleted.

23 Q. So you called it up and wrote it all down ---

24 A. Mmm - hmm.

25 Q. So you testified about it but if we turn the phone

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

91

1 on now you wouldn't be able to see that?

2 A. No, sir. I've got all kinds of pictures. You've
3 got two of them here and I've got several more on my phone
4 that they can look at.

5 MR. ANTHONY: Okay. Alright. Your Honor, I'd ask
6 to publish thirty four?

7 THE COURT: Okay. Go ahead.

8 Q. Alright. And just to show the jury, you can take
9 the pointer if you want to. You can clearly see this is a
10 fussy photo but the top right, the right, what is that, that
11 you're pointing at right now?

12 A. This is -- this was the last -- the last entry in
13 the call history.

14 Q. And that's a received call?

15 A. That's correct. Yes, sir. I'm sorry. It's a
16 received call.

17 Q. So the next line down is, it's what?

18 A. M-o-n, June 7, 2010.

19 Q. Okay. Then the written out, there's a -- the
20 second line down written out, what is that?

21 A. This is outgoing indicator for emergency. When
22 someone dials 9-1-1 from your cell phone it comes up
23 emergency.

24 Q. Okay. And then the one above that, what is that?

25 A. This is an incoming icon for a 864-429-1611 which

1 is' the non-emergency number from 9-1-1 as you heard on the
2 cd. This is where Amy called Ms. Leah back.

3 Q. And Amy is your dispatch?

4 A. That's correct. I'm sorry.

5 Q. Okay. Alright. And then the one below it, which
6 -- what is that?

7 A. Outgoing and it was that number that, that 1-86 ---

8 Q. The 866 number?

9 A. Yes, sir.

10 Q. Okay. And that's or I'm sorry, 633?

11 A. Yes, sir.

12 Q. Okay. Alright. And that was at 5:42 call ---

13 A. Right.

14 Q. You testified to?

15 A. Yes. That one was outgoing at 5:42. That was
16 outgoing at 5:47.

17 Q. Okay. Okay. Alright. One last thing I would like
18 for you to do. If you would just step down and I'd like for
19 you to take the rifle, exhibit number twenty five, and just
20 show the jury what -- how does somebody who never shot a .22
21 rifle, how do they load it up and how does it fire?

22 A. This being a Ruger .22, semi-auto, this weapon is
23 capable of holding a couple of bullets and all you would do
24 is just barely pop that little button here and then this
25 little black guard, basically, ejects out, flap opens and

ROBERT HINES- DIRECT EXAMINATION BY MR. ANTHONY

93

1 then you would just take the bullets and just slide it, lead
2 first or head first, into it and once you get it the number
3 that you want, you just merely close the flap back and then
4 you would -- you would pull back which would eject one or
5 load one, excuse me, into the chamber. And then the safety
6 is cleared. This one is not. Then you would just take the
7 safety off and then you would shot it and then this would
8 automatically eject. This gun shell would fly outward and
9 then you automatically load another one, pull the trigger,
10 it's the same scenario. It would fire, push backwards,
11 eject, load another. As long -- if you got ten bullets it
12 will shots ten times.

13 Q. Okay. And were there bullets in that, still in
14 that rifle when y'all recovered it?

15 A. Yes, sir. When I got this weapon, of course,
16 immediately made it safe, because it was -- ejected all live
17 ammunition and there were three bullets that were still
18 inside the weapon.

19 MR. ANTHONY: Alright. Thank you. That's
20 everything on direct.

21 THE COURT: Alright. Mr. Delaney, cross
22 examination.

23 MR. DELANEY: Judge, may I approach?

24 THE COURT: Sure. Yeah. Alright.

25 (LAWYERS APPROACHED THE BENCH)

1 THE COURT: Alright. Ladies and gentlemen all
2 we're talking about is timing and Mr. Delaney is going to
3 cross examine the captain. He said he was going to take him
4 about an hour or maybe a little less. So the question is do
5 we want to break for lunch now or do we want to go ahead and
6 get through examination and then go to lunch. The State's
7 gonna have probably two additional witnesses after this that
8 are going to be verily short, maybe about half the length of
9 the captain. So my question is by show of hands who wants to
10 go ahead and break for lunch for now and resume testimony
11 after we eat? Anyone? Anyone? So how many? One, two,
12 three, four, five, six, seven, eight. Eight to fourteen that
13 looks like a majority. It looks like a majority. Okay. So
14 what we'll do is we'll break for lunch. We'll take about --
15 it's 12:30, if y'all will please be back at 1:30, is that a
16 long enough lunch for y'all. That's sufficient?

17 MR. ANTHONY: Yes, sir.

18 THE COURT: Okay. We'll come back at 1:30 and
19 resume testimony. Y'all have a great lunch and please don't
20 discuss the case.

21 **(JURY LEAVES COURTROOM TO GO TO LUNCH AT 12:30 P.M.)**

22 THE COURT: Alright. We'll break for lunch.
23 Captain you can't discuss your testimony although you
24 obviously can go to lunch.

25 MR. ANTHONY: One thing that I would ask the Court

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

95

1 to cover, might want to cover just for the record is Ms.
2 Forrest now that her case is gone to trial, she's not on bond
3 anymore so -- nothing was said about that yesterday but I
4 thought I better bring that to the Court's attention today.

5 THE COURT: Okay. Alright. Good. So she's been
6 on bond, out on bond for approximately two years, is that
7 right?

8 MR. ANTHONY: Yes, sir.

9 THE COURT: Okay. Now incidents?

10 MR. ANTHONY: No, sir. Not that I'm aware of.

11 THE COURT: Okay. Well she came yesterday and she
12 came today so what I'm going to do is I'm going to allow her
13 remain on the bond. Okay?

14 MR. ANTHONY: Well I don't think -- I don't think
15 she has a bond, I think technically her, you know, unless her
16 bondsman says he'll stay on the bond, I don't think she has
17 bond.

18 THE COURT: I gotcha.

19 MR. ANTHONY: Just until the case has gone to
20 trial.

21 THE COURT: I understand. I understand. And I'm
22 going to allow her to remain on her bond. Okay.

23 (EVERYONE BREAKS FOR LUNCH AT 12:30 P.M.)

24 (EVERYONE RETURNS TO COURTROOM AT 1:35 P.M.)

25 THE COURT: Alright. Mr. Delaney, you ready to

1 proceed, sir?

2 MR. DELANEY: Yes, Your Honor.

3 THE COURT: Alright. Good enough. Bring the jury
4 in please.

5 (JURY RETURNS TO COURTROOM AFTER LUNCH AT 1:35 P.M.)

6 THE COURT: Alright. Ladies and gentlemen --
7 something stuck in my throat. Welcome back. Mr. Delaney?

8 MR. DELANEY: May it please the Court?

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION BY MR. DELANEY:

11 Q. There were no bullet holes found in the floor of
12 the house, is that correct?

13 A. Could you repeat that?

14 Q. No bullet holes found in the floor of -- the
15 residence of no bullets holes found in the
16 floor, correct?

17 A. No, sir. We found no bullet holes in the floor.

18 Q. None in the carpet?

19 A. No, sir.

20 Q. No bullet burns in the carpet?

21 A. No, sir.

22 Q. In the 9-1-1 call that was made, Leah says on that
23 -- says on that 9-1-1 call that she was being abused, slammed
24 to the ground. It sounds like at least six different times.
25 Would that be fairly accurate?

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

97

1 A. It was -- a couple of times. Yes, sir. I don't
2 know about six. I didn't count it.

3 Q. It could be as many as six times?

4 A. Possibly. Yes, sir. I didn't count it. I hadn't
5 counted that, how many times that she said that. No, sir.

6 Q. But without a doubt on the 9-1-1 call she's saying
7 she was abused, correct?

8 A. Yes, sir.

9 Q. And she talked about on the 9-1-1 tape about having
10 some seizures after being slammed?

11 A. I believe she did. Yes, sir.

12 Q. Okay. You had -- you said you had twenty one years
13 of experience?

14 A. Yes, sir.

15 Q. You had a lot of experience listening to, I think
16 you said you were director of 9-1-1 as well?

17 A. Yes, sir.

18 Q. You've heard a lot of 9-1-1 in your career, is that
19 right?

20 A. Yes, sir.

21 Q. 9-1-1 calls they can be kinda of interesting in a
22 way of what you're hearing from that person and what I mean
23 by that is you can get some information out of a 9-1-1 call
24 that just doesn't make a lot of sense, is that right? I will
25 try to clarify that a little more. And this would also

1 include in talking to people who had just been through a
2 dramatic event, um, you're going to get some information some
3 time that doesn't make sense, factually, correct?

4 A. I would -- I would probably agree with that.

5 Q. That -- what I mean by that is descriptions that
6 are given sometimes of a subject, you know, when that subject
7 is ultimately located, no where close to the description
8 that's give by someone on 9-1-1 or by the victim in the case,
9 right?

10 A. We've had situations like that. I guess I'm
11 following what you're asking is. People will call in
12 especially eye witnesses and stuff like that and give us
13 descriptions of vehicles and that's why it's always good to
14 get numerous calls so we kinda of make heads or tails out of
15 what we're looking for but usually with victims in cases what
16 we get, what information we get is, I mean, we're not usually
17 stirred away with victims and such.

18 Q. The only thing that could be effected would be
19 someone's recollection of time, how much time went by. That
20 can be effected, correct?

21 A. You talking about for like ...

22 Q. In your experience in dealing with spying tool for
23 example of a CDV call and you're talking to a victim in the
24 case it appears that person's been through some trauma or
25 whatever, any type of situation when someone just went

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

99

1 through something where's it's dramatic. Their recollection
2 of time and the sequence in that time, it doesn't always make
3 sense. Do you agree with that?

4 A. To a degree. Yes, sir, I would.

5 Q. Okay. And on this 9-1-1 call you heard Leah say,
6 I think it's documented some towards you made in this case is
7 to what she said about this rifle being thrown out in the
8 kudzu area, right?

9 A. Yes, sir.

10 Q. Okay. That rifle was never thrown out in kudzu,
11 was it?

12 A. The rifle that was used in the shooting ---

13 Q. Right.

14 A. --- was found in -- in the closet in the master
15 bedroom.

16 Q. Right. Right. It was found in the closet from
17 where you understand it was it taken from. It was taken from
18 the closet, used by Leah and put back in the closet, correct?

19 A. I was told that she normally houses or stores the
20 Ruger in a closet in the bedroom.

21 Q. Right.

22 A. Lo and behold we found .22 rifle Ruger in a closet
23 in the bedroom.

24 Q. Okay. And -- but this, you know, this gun being at
25 some point in the kudzu in the woods, there was no evidence

1 that was uncovered in your investigation that would
2 substantiate or corroborate that the gun was ever in the
3 kudzu, correct?

4 A. That's right. Yeah.

5 Q. And you also heard Leah in this 9-1-1 call saying
6 that something to the effect of she's got to get to work, is
7 that right?

8 A. Yes, sir. She did.

9 Q. And that's also something that doesn't make a whole
10 lot of sense, would you agree?

11 A. You asking was she ---

12 Q. Why would someone who, you know, just shot
13 somebody, you know, talking on 9-1-1, you know, saying I got
14 to get work. That doesn't make a whole lot of sense, does
15 it? I'm just asking.

16 A. Yeah. I don't have a problem with that, I guess,
17 is that's what you're asking me but she told me dispatcher
18 that she had to be at work at 10:00 and that she told me that
19 she was setting her -- before the shooting now, she was
20 setting ---

21 Q. I'm not asking before -- let me ask you again. I'm
22 not trying to confuse you with the question ---

23 A. Right.

24 Q. --- I just ---

25 A. I understand.

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

101

1 Q. But in your opinion, you know, her saying that she
2 had to go to work that morning, you know, that's kinda of
3 usual type of statement to be making on 9-1-1. Agree?

4 A. I do not agree. No, sir.

5 Q. Okay.

6 A. I mean, she admitted that she was setting her alarm
7 clock to go to be at work at 10:00.

8 Q. Okay.

9 A. But, you know, before the shooting.

10 Q. Okay. And you heard on the 9-1-1 call that she was
11 saying she had to get to work, right?

12 A. Yes, she did. Yes, sir.

13 Q. Alright. And on the 9-1-1 call, we also heard that
14 she said that a couple of hours went by before she called, is
15 that right?

16 A. She did. When she spoke Ms. Amy the dispatcher,
17 Ms. Amy ask her when did she shoot him, she said a couple
18 hours of ago. Yes, sir.

19 Q. Okay. Now Captain you were the lead investigator
20 in this case?

21 A. Yes, sir.

22 Q. This is your case?

23 A. Pretty much. Yes, sir. Yeah, I didn't do it
24 completely, solely on my own. No, sir. We believe in team
25 work. Yes, sir.

1 Q. And as a detective you've received law enforcement
2 training?

3 A. Yes, sir.

4 Q. Years of experience investigative crimes?

5 A. Yes, sir.

6 Q. And that training and experience has assisted you
7 and your work in this case, right?

8 A. Yes, sir.

9 Q. Okay. And as a detective you've learned the
10 importance of locating witnesses?

11 A. Yes, sir.

12 Q. Okay. Interviewing witnesses?

13 A. Many times, yes, sir.

14 Q. Obtaining statements?

15 A. Yes, sir.

16 Q. Because sometimes this type of information can
17 assist you while you investigating a case, right?

18 A. It's tools or evidence, yes, sir.

19 Q. And it's something may help you corroborate,
20 contradict what someone's saying, correct?

21 A. Yes, sir.

22 Q. You also learn the importance of collecting
23 evidence?

24 A. Evidence, yes, sir.

25 Q. Okay. And that includes processing that evidence?

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

103

1 A. Yes, sir.

2 Q. Preserving that evidence?

3 A. Yes, sir.

4 Q. Because that type of information can tell you how
5 the crime occurred, right?

6 A. It's a piece of the puzzle. Yes, sir.

7 Q. Tell you -- help tell you who was involved?

8 A. It could.

9 Q. How they were involved?

10 A. Yes, sir.

11 Q. When it happened?

12 A. Yes, sir.

13 Q. How it happened?

14 A. Yes, sir.

15 Q. And you've also learned that it's important to
16 document as many facts as possible, correct?

17 A. There are times when you want to indicate stuff.
18 Yes, sir.

19 Q. And when you document these facts you want to be as
20 accurate as possible, correct?

21 A. Try to be. Yes, sir.

22 Q. Detailed?

23 A. As much as possible.

24 Q. Thorough?

25 A. If possible. Yes, sir.

1 Q. Now you can't put down everything, correct?

2 A. No, sir.

3 Q. But you want to put down, you want to document
4 what's important and what the major facts are, correct?

5 A. Yes, sir.

6 Q. And you had conversation, um, a few weeks ago, a
7 month ago or so, with myself, Ms. Inzerillo, Mr. O'Kelly, and
8 according to that conversation you treated both sides fair,
9 correct?

10 A. I try to. Yes, sir.

11 Q. And treated both sides fair when it came to your
12 investigation?

13 A. Yes, sir.

14 Q. Both sides had an opportunity to tell their story?

15 A. Yes, sir.

16 Q. And as we've heard Leah gave a statement in this
17 case, right?

18 A. Yes, sir.

19 Q. Okay. And that statement was written by you?

20 A. Yes, sir, at her request.

21 Q. Alright. Witnessed by it appears a Crystal
22 Richardson?

23 A. Christy Richardson. Yes, sir.

24 Q. Okay. And again that was done on June 7, 2010?

25 A. Yes, sir.

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

105

1 Q. Okay. And signed by Leah stating it was true?

2 A. Yes, sir.

3 Q. Now you've also testified that she was definitely
4 not under the influence of alcohol or drugs at that time,
5 correct?

6 A. Was she impaired by alcohol or drugs, no, sir. I
7 wouldn't define her of being impaired. No, sir.

8 Q. So she was not under the influence of alcohol or
9 drugs?

10 A. I never said ---

11 Q. That was your testimony earlier today.

12 A. No, sir.

13 Q. She wasn't?

14 A. No, that wasn't on my testimony. When we were at
15 the house I had smelled some alcohol on her. Once she got to
16 the jail, the jail records would indicate that she, um,
17 admitted that she had drunk some alcohol and also that the
18 jail officers indicated on their paperwork that she had
19 admitted to having -- drinking some alcohol. Yes, sir.

20 Q. So you don't know when that was?

21 A. No, sir.

22 Q. And again your testimony you said she was not under
23 the influence of alcohol or drugs when she gave you the
24 statement, right?

25 A. At 1:00 at 1:50 p.m. was she to the point I

1 couldn't talk her, no, sir.

2 Q. Okay.

3 A. She was not. She was cooperative as I mentioned --
4 as I said this morning. You know, but she was -- if she
5 falling down drunk as some people say, um, unable to provide
6 cohered statements, no, sir, I would not have talked to her.

7 Q. Now you just said this was signed by Leah stating
8 that it's true, right?

9 A. Yes, sir.

10 Q. And she got up that morning, right?

11 A. Yes, sir.

12 Q. To go to bathroom and it was dark, is that right?

13 A. She said she had trouble finding the door knob
14 because it was dark. Yes, sir.

15 Q. Alright. And that woke -- she said that woke
16 Ronald up, right?

17 A. Yes, sir. I finally found the door knob and I
18 opened the door to go to the bathroom. Ronald woke up. Yes,
19 sir.

20 Q. And Ronnie started cursing at her, cussing out,
21 something like that?

22 A. Yes, sir. Began cussing me because I woke him up.

23 Q. Cursing at her because she woke him up?

24 A. Yes, sir.

25 Q. Okay. And after he cussed her out, she continued

1 to the bathroom, correct?

2 A. Yes, sir. I went to the bathroom and Ronald came
3 in ---

4 Q. And that point, Ronald comes into the bathroom?

5 A. Yes, sir.

6 Q. And slams me into the floor, right?

7 A. Yes. Mmm -- hmm

8 Q. Slams her to the floor in the bathroom?

9 A. I went to the bathroom and Ronald came in and
10 slammed me on the floor.

11 Q. Okay. And while slamming her, she hits her head on
12 something in the bathroom, right?

13 A. Yes, sir.

14 Q. Now according to her statement, she never told you
15 she hit him?

16 A. She never told what now?

17 Q. She never told you according to her statement that
18 she hit Mr. Dipietro?

19 A. Oh, no, sir.

20 Q. Called him any bad or ugly names?

21 A. No, sir.

22 Q. She was just going to the bathroom?

23 A. Yes, sir.

24 Q. The next thing according to her statement, you
25 remember she was going to -- she was going to the bathroom to

1 the living room, is that right?

2 A. Well it says the next thing I remember I was in the
3 living room.

4 Q. Yeah. And according to her statement she never
5 told you how she got in the living room, right?

6 A. She did not know. No, sir. She did not tell me
7 how she got from the bathroom into the living room. No, sir.

8 Q. But she says when she was in the living room she
9 was slammed to the floor again, right?

10 A. Ah -- in living room and Ronald slammed me again on
11 the floor. Yes, sir.

12 Q. He was holding her face while she was screaming?

13 A. Ronald was holding my face because I was screaming.
14 Yes, sir.

15 Q. She got up when he released her and then she went
16 outside, right?

17 A. Yes, sir.

18 Q. Now when she went outside, went to the carport
19 area?

20 A. She said I walked outside to leave but I did not
21 have the keys so I came back inside the house.

22 Q. Okay. Okay. And there is a carport area just
23 outside the house?

24 A. That's correct. Yes, sir.

25 Q. And that carport is attached to the house?

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

109

1 A. That's correct.

2 Q. Okay. And when she went outside she didn't have
3 keys, correct?

4 A. That's correct. Yes, sir.

5 Q. Okay. So she went back inside, correct?

6 A. Yes, sir.

7 Q. At that time she says Ronald has a phone, correct?

8 A. She did say that.

9 Q. And at that time he broke her cell phone?

10 A. He said -- Ronald had my cell phone and said lets
11 looks at your text messages. After he read the messages from
12 Randy he broke the phone along with all the other phones.

13 Q. And to breaking the phones he slammed her again,
14 correct, to the floor?

15 A. Ronald came back at me and picked up again and
16 slammed me on the floor. Yes, sir.

17 Q. And after being slammed to the floor she went to
18 get the gun, right?

19 A. Yes, sir.

20 Q. She goes and gets the gun after being beaten,
21 right?

22 A. She -- when Ronald got up and walked over to the
23 computer started messing with it, I got up ---

24 Q. Slow down just a little bit. She goes and gets the
25 gun after she's beaten, right?

1 A. She said I got up and walked to the bedroom and got
2 the rifle from the closet.

3 Q. She loads the weapon, correct?

4 A. Yes, sir.

5 Q. Points it at him ---

6 A. Yes, sir.

7 Q. --- correct?

8 A. Yes, sir.

9 Q. And Mr. Dipietro was standing next to the computer,
10 right?

11 A. Yes, sir.

12 Q. Called her a bitch, right?

13 A. That's correct. According to her. Yes, sir.

14 Q. And he called her a bitch and something to the
15 effect of she wouldn't be able to use the computer again,
16 right?

17 A. Yes, sir. According to Leah.

18 Q. Now according to her statement at this point she
19 had been picked up and slammed down to the ground by Mr.
20 Dipietro three times, correct?

21 A. According to her statement. Yes, sir.

22 Q. Three times before the shooting, correct?

23 A. Yes, sir.

24 Q. And this statement is in your handwriting, right?

25 A. Yes, sir.

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

111

1 Q. And before the shooting she told you she thought he
2 was coming at her a forth time, correct?

3 A. Yes, sir. She said that Ronald turned and saw me
4 with the gun and turned and I thought he was coming after me
5 again so I pulled ---

6 Q. So she pulled the trigger?

7 A. Yes, sir.

8 Q. Fired the weapon?

9 A. Correct.

10 Q. And she told you she remembered hitting him in the
11 shoulder, is that right?

12 A. Yes, sir.

13 Q. But she didn't remember hitting him again, right?

14 A. Yes, sir.

15 Q. But she -- and she told you she kicked him, right?

16 A. Once on the floor I walked over to him and began
17 kicking him on his ---

18 Q. Kicking him in the back on the side?

19 A. Yes, sir.

20 Q. While he was on the floor?

21 A. Correct, sir.

22 Q. And then she went and found the other phone, the
23 phone that wasn't broke, and called 9-1-1, correct?

24 A. Yes, sir.

25 Q. Alright. Now, Captain Hines, as part of your

1 investigation you received a report from Sergeant Wright, is
2 that right?

3 A. Ah, huh -- yes, sir.

4 Q. And you reviewed that report?

5 A. I'm sorry, sir.

6 Q. You reviewed that report?

7 A. Yes, sir. I've read. Yes, sir.

8 Q. Because he was the first on scene with the
9 department?

10 A. I believe he was the first supervisor. I believe
11 Jeff Lawson was actually, technically on the scene first but,
12 yes, sir, as far as leading ---

13 Q. One of the first?

14 A. Yes, sir.

15 Q. And you prepared a supplemental report in this
16 case, right?

17 A. Yes, sir.

18 Q. And that was written -- that report was written by
19 you?

20 A. Typed up, yes, sir.

21 Q. Okay. And filed with the Solicitor's office ?

22 A. Yes.

23 Q. Okay. And in the information in those reports came
24 from your investigation, correct?

25 A. Well the first page it was from Sergeant Wright.

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY: 113

1 Q. Okay.

2 A. Yes, sir. And the second two pages was information
3 I received through my investigation. Yes, sir.

4 Q. Okay. And as you testified before this is your
5 case, right?

6 A. I'm sorry.

7 Q. As you testified before, this your case, right?

8 A. I was the led investigator. Yes, sir.

9 Q. So the information in the supplemental report is
10 true, right?

11 A. It's true?

12 Q. It's true?

13 A. It was recorded by me as the facts that I found out
14 through the investigation.

15 Q. It's accurate?

16 A. I would believe so. Yes, sir.

17 Q. Detailed?

18 A. As much as possible.

19 Q. And in filling out the report you tried to do it in
20 a way that is fair, right?

21 A. When the reports are written up through
22 investigation, yes, sir. Through my investigation. I mean,
23 it's not -- I guess I don't understand what you mean fair.
24 I'm not trying to weigh sides or anything like that.

25 Q. You trying to be fair?

1 A. Well I'm just reporting what's in there.

2 Q. And you're putting in -- you tried to include all
3 the important facts in this report, correct?

4 A. If possible. Yes, sir.

5 Q. Because you're trying to get -- what you're trying
6 to get at while investigating the case is the truth, right?

7 A. Yes, sir.

8 Q. Now in that report you have Mr. Dipietro's name,
9 right?

10 A. Yes, sir.

11 Q. Address?

12 A. Yes, sir.

13 Q. You have the weight of Ron Dipietro as two hundred
14 and ninety (290) pounds, correct?

15 A. Yes, sir.

16 Q. Listed at 5'9 inches tall, right?

17 A. Yes, sir.

18 Q. You have city on there, state on there, correct?

19 A. Yes, sir.

20 Q. And there's a special section about injuries,
21 right?

22 A. Yes, sir.

23 Q. And you checked, yes, right?

24 A. Yes, sir.

25 Q. And it was a gun shot wound to the shoulder, I

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

115

1 think in the report to defy that as a gun shot wound to
2 shoulder and into the butt area, is that correct?

3 A. Yes, sir.

4 Q. Okay. There is a special section for the victim
5 using alcohol, is that right?

6 A. Yes, sir.

7 Q. And you checked, yes.

8 A. Yes, sir.

9 Q. And the same information for Leah in on this form,
10 right?

11 A. Yes, sir.

12 Q. Leah is listed as 5'1 inches tall?

13 A. Yes, sir.

14 Q. One hundred and fifty (150) pounds?

15 A. Yes, sir.

16 Q. And for the special section on visible injuries the
17 block is left blank, correct?

18 A. Yes, sir.

19 Q. Complaint of non-visible injuries is left blank,
20 correct?

21 A. Yes, sir.

22 Q. And then your report as a narrative section, is
23 that right?

24 A. Yes, sir.

25 Q. And according to the narrative section you arrive

1 on the scene, right?

2 A. Yes, sir.

3 Q. And as you've already testified you had a
4 conversation with Leah at that time?

5 A. Yes, sir.

6 Q. And Mr. Dipietro has already been taken to the
7 hospital by EMS, is that right?

8 A. Yes, sir.

9 Q. And you read her, her rights?

10 A. Yes, sir.

11 Q. She understood her rights?

12 A. Yes, sir. She said, she did.

13 Q. She answered the questions?

14 A. Yes, sir.

15 Q. You questioned her about the event ---

16 A. Yes, sir.

17 Q. --- correct?

18 A. Yes, sir.

19 Q. And during that questioning conversation you had
20 with her and what you documented in your supplemental report
21 that was consistent with the statement she gave you at the
22 jail, correct?

23 A. Yes, sir. The statement that I talked to her that
24 morning in front of the residence. Also the statement that
25 I took from her at the jail were consistent.

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

117

1 Q. Okay. According to your supplemental report she
2 was using her phone to text message a man named Randy.
3 That's documented in your report, correct?

4 A. I believe that's right. Yes, sir.

5 Q. And later that morning you and Captain McNeil went
6 to Spartanburg Regional Hospital, right?

7 A. Yes, sir.

8 Q. And you had a conversation with Ronald Dipietro,
9 right?

10 A. Yes, sir. After I advised him of his rights.

11 Q. And that conversation was documented?

12 A. Yes, sir.

13 Q. And that was documented in your supplemental
14 report?

15 A. Yes, sir.

16 Q. And before your conversation with Mr. Dipietro, you
17 read him his rights?

18 A. Yes, sir.

19 Q. Understood his rights?

20 A. Yes, sir.

21 Q. Told you what happened?

22 A. Yes, sir.

23 Q. How it happened?

24 A. Yes, sir.

25 Q. When it happened?

1 A. Pretty much.

2 Q. Who was involved?

3 A. Yes, sir.

4 Q. You wanted the truth?

5 A. I'm sorry.

6 Q. You wanted the truth?

7 A. I ask him. Yes, sir.

8 Q. He told you the truth?

9 A. To the best what he could tell me. Yes, sir.

10 Q. Ronald stated to you he heard Leah -- this was on
11 June 7th, right?

12 A. That's correct.

13 Q. He stated to you that he heard Leah get a text
14 message, is that right?

15 A. Yes, sir.

16 Q. Getting text message while in bed, right?

17 A. Mmm -- hmm.

18 Q. But Leah told him she was setting the alarm. She
19 was setting her alarm to get up and go to work, correct?

20 A. Yes, sir. That's right.

21 Q. But her phone was on vibrate?

22 A. Yes, sir.

23 Q. And Ronald stated that Leah got up looking for the
24 door knob?

25 A. Yes, sir.

1 Q. He ask her what she was doing?

2 A. Yes, sir.

3 Q. She stated, going to the bathroom?

4 A. That's right.

5 Q. Ronald then tells you that she opened the door and
6 went to the bathroom?

7 A. Yes, sir.

8 Q. And then he says after a while he gets up looking
9 for her, right?

10 A. Yes, sir.

11 Q. And he found her in the kitchen?

12 A. Yes, sir.

13 Q. Found her in the kitchen texting?

14 A. Yes, sir.

15 Q. Says he got the phone from her hand?

16 A. Yes, sir.

17 Q. Ask her who she was texting?

18 A. Yes, sir.

19 Q. He got the phone and he told you he saw that she
20 was texting a man named, Randy, right?

21 A. Yes, sir.

22 Q. And at that point he said, Leah starting hitting
23 him?

24 A. Right.. Wanting her phone back. Yes, sir.

25 Q. He says he pushed her away several times?

1 A. Yes, sir.

2 Q. And that's how he scratched her nose, correct?

3 A. That's correct.

4 Q. Okay. He walked over to the computer, right?

5 A. Yes, sir.

6 Q. He said he disconnected the hard drive?

7 A. That's correct. Yes.

8 Q. And told her you would not be able to talk to him
9 again, right?

10 A. Yes, sir.

11 Q. And you documented that Ron, Mr. Dipietro, said he
12 was leaving, right?

13 A. He said he was getting his stuff and leaving. Yes,
14 sir.

15 Q. And you document that he says Leah came back to the
16 front door, kicking it open, right?

17 A. Yes, sir.

18 Q. And you also documented here that the night before
19 this incident Ronald was mad, right?

20 A. Where you at on that one?

21 Q. I think it's toward the bottom portion of your
22 supplemental report. It's two thirds of the way down. May
23 I approach, Your Honor.

24 THE COURT: Yes, sir.

25 A. What was your question again?

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

121

1 Q. The night before evening of June 6, 2007, the night
2 before the shooting, Ronald Dipietro told he was mad, didn't
3 he?

4 A. I ask Ronald about the phones in the house which
5 were broken and he said that the night before the incident he
6 got mad and busted them because he knew she was using the
7 cellular phones to cheat on him.

8 Q. He was mad and busted the cellular phones because
9 she was cheating on him, right?

10 A. He knew that she was cheating on him.

11 Q. Now on August 25, 2010, Mr. Dipietro told you a
12 little different story, right?

13 A. How so?

14 Q. --- we'll get into that. You recorded it?

15 A. Did my best. Yes, sir. Tried.

16 Q. So you went up there on the 25th?

17 A. Yes, sir.

18 Q. You went up told him you were going to record his
19 story again, right?

20 A. Yes, sir. Yes, sir.

21 Q. And again during that recorded story he told you
22 the truth, right?

23 A. Yes, sir.

24 Q. And in the story that you documented in your
25 supplemental report, he told you it was the truth, right?

1 A. I ask him -- Yes, sir. I wanted -- I'm always
2 looking for the truth. Yes, sir.

3 Q. And let's talk about that recorded story. On the
4 morning of June 7th on August 25th, Ronald Dipietro tells you
5 he was awoken by some noise and some lights on in the house,
6 right?

7 A. I believe that was right. Yes, sir.

8 Q. Not by Leah getting a text message in bed, right?

9 A. I don't ---

10 Q. He woke and he says that he woke up and walked into
11 the living room, is that correct?

12 A. Walked out to the living room.

13 Q. Okay. Not kitchen, the living room, correct?

14 A. Yes, sir.

15 Q. Okay. And Leah was sitting on the computer, right?

16 A. Sitting at the computer.

17 Q. Okay. And it looked to him as if she were texting,
18 right? Is that what he told you?

19 A. You don't happened to have a transcript, do you?

20 Q. I do. Give you a second too?

21 A. Yes, sir. Alright, sir.

22 Q. Okay. And, um, it says that he sees Leah sitting
23 at the computer, right?

24 A. Yes, sir.

25 Q. Not in the kitchen. Not standing in the kitchen

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

123

1 texting because she's sitting at the computer, right?

2 A. Yes, that's ---

3 Q. And she's texting and it appears as if she's using
4 the computer at the same time, is that right?

5 A. It say, it looked to me as if she was texting
6 somebody at the same time talking to somebody on the
7 computer.

8 Q. Okay. And it says that they had a couple of words,
9 is that correct?

10 A. Yes, sir.

11 Q. And, basically, he said that I'm done with this.
12 I'm outta here?

13 A. Yes.

14 Q. Something to that effect, is that right?

15 A. Yes.

16 Q. Okay. And at that point he says he grabs the phone
17 from her, right?

18 A. Yes, sir.

19 Q. And he looked at a message from her phone, correct?

20 A. Yes, sir.

21 Q. Okay. And at that time he throws it against the
22 wall, correct?

23 A. Yes, sir.

24 Q. Okay. And at that point, she says -- he says, Mr.
25 Dipietro, says that Leah goes ballistic and tries to attack

1 to him, right?

2 A. Yes, sir.

3 Q. And he had to restrain her, right?

4 A. Yes, sir.

5 Q. But then there was he describes it as a little
6 battle, right?

7 A. Yes, sir.

8 Q. A little battle that went back and forth into the
9 bathroom and then back into the living room, correct?

10 A. Yes, sir.

11 Q. And then he says that he pushes her down on the
12 couch?

13 A. Yes, sir.

14 Q. And told her -- and told her to please stay there
15 while I get my stuff, correct?

16 A. That's correct.

17 Q. And then Ronald states that she ran out the kitchen
18 door, correct?

19 A. She got up and ran out the kitchen door. Yes, sir.

20 Q. And she kicked the -- then she comes back and kicks
21 the front door of the house, right?

22 A. Yes, sir.

23 Q. And goes straight back to the bedroom?

24 A. Yes, sir.

25 Q. --- is that right? And at that point is where the

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

125

1 tape stops?

2 A. Recording stops. Yes, sir.

3 Q. Okay. And you never wrote, filled out, any type of
4 written of report after that conversation on August 25th,
5 correct?

6 A. No, sir.

7 Q. As far as what he said after the tape cut off?

8 A. No, sir.

9 Q. Alright. Captain, let's talk about the information
10 that you gather in this case. You heard the 9-1-1 tape as we
11 talked about where Leah talks about being beaten, right?

12 A. Yes, sir.

13 Q. You read her statement -- you wrote her statement
14 where she talks about being slammed to the floor, right?

15 A. Yes, sir.

16 Q. You saw the pictures of from the patrol car with
17 injuries to her body, right?

18 A. Yes, sir.

19 Q. You saw pictures of her from the jail with injuries
20 to her body, right?

21 A. Yes, sir.

22 Q. And you know from your years of experience and
23 training there are things or injuries that are not visible,
24 correct?

25 A. Yes, sir.

1 Q. That would include injuries to the head, injuries
2 that could be concussions, those types of things?

3 A. Yes, sir.

4 Q. Okay. Injuries that you can have to your back that
5 don't always show up in terms of visible signs?

6 A. Yes, sir.

7 Q. Now, Mr. Dipietro told you how Leah got that mark
8 on her face, right?

9 A. Consistently. Yes, sir.

10 Q. And he told you that he got -- she got that, the
11 mark on her, from him trying to keep her away from him,
12 correct?

13 A. Yes, sir. He said that he, in order for him to get
14 her off of him, he put his hand in her face and pushed her
15 away ---

16 Q. Right.

17 A. --- and his thumb scraped her nose.

18 Q. Now, Mr. Dipietro did not tell you how she got the
19 injury on her arm, did he?

20 A. He did not. No, sir.

21 Q. Okay. Did he tell you how she got those marks,
22 bruising on her back?

23 A. No, sir.

24 MR. DELANEY: May I approach, Your Honor.

25 THE COURT: Yes, sir.

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

127

1 Q. Along with bruising there are red marks on her
2 neck, is that correct?

3 A. On the shoulder blade. Yes, sir.

4 Q. Those are fresh marks on her back, correct?

5 A. I didn't say they -- I don't -- I had trouble
6 believing that they were fresh, um, marks. Yes, sir.

7 Q. Okay. And you're a doctor?

8 A. No, sir.

9 Q. And he didn't tell you how she got those marks on
10 her back, right?

11 A. No, sir.

12 Q. It looks like we got some red there, as well?

13 A. Yes, sir.

14 Q. Didn't say anything to you about that, did he?

15 A. No, sir.

16 Q. He didn't give you any information on how she got
17 that on her back?

18 A. No, sir.

19 Q. Now out at the jail, there was some pictures taken
20 of Leah, is that right?

21 A. Correct.

22 Q. Okay. And you had Ms. Shugart, Michelle Shugart,
23 the victim advocate, take those photos at your request, is
24 that correct?

25 A. That's correct. I had requested that the victims

1 advocate be present and I stepped out of the room because I
2 knew that it was going to require Ms. Forrest to remove her
3 shirt.

4 Q. Okay. And can you look at what's been marked as
5 defendant's exhibit number one, two, and three? It's marked
6 as defendant exhibit number one, two and three?

7 A. Yes, sir.

8 Q. Is that fair and accurate depiction of the
9 photographs that were taken at the jail on June 7, 2010?

10 A. The pictures were taken by Ms. Shugart on June 7,
11 2010. Yes, sir.

12 Q. And is that a fair and accurate depiction?

13 A. Yes, sir.

14 MR. DELANEY: Your Honor, at this time we'd like to
15 offer those pictures -- defense exhibits into evidence.

16 THE COURT: Any objection, sir?

17 MR. ANTHONY: Yes, sir. He hadn't testified that
18 he saw those pictures -- what those pictures show.

19 THE COURT: I believe he testified they are a fair
20 and accurate representation of her at the time that they were
21 taken.

22 MR. ANTHONY: He testified that somebody else took
23 and he left the room when they were made.

24 THE COURT: I understand. I'm gonna -- I'm gonna
25 allow them over objection. The same admitted.

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

129

1 (Whereupon, Defendant's Exhibit Numbers one, two
2 and three was admitted into evidence with objection but was
3 overruled by Judge.)

4 Q. And it appears that Ms. Shugart took photo of the
5 back of Ms. Forrest's head?

6 A. Yes, sir.

7 Q. Is that right?

8 A. Yes, sir.

9 Q. Okay. Also some additional photographs were taken
10 of her back, is that right?

11 A. Yes, sir.

12 Q. Okay. And also her arms, is that right?

13 A. Elbow area. Yes, sir.

14 Q. Would that have been the photographs that was taken
15 in the back of her head, is that correct?

16 A. Yes, sir.

17 Q. Okay. And it's your testimony earlier today that
18 Leah was asked, I believe, you testified that Leah was asked
19 on several occasions did she need medical attention?

20 A. Yes, sir.

21 Q. And it was your testimony that she refused?

22 A. Leah did not refuse medical attention. She said
23 she didn't need medical attention.

24 Q. She said she didn't need -- you ask her?

25 A. Yes, sir. We ask her. Several people ask her.

1 Q. Several people ask her?

2 A. Yes, sir. She was asked by me. She was asked by
3 dispatcher on the phone. She was asked by the jail officers.

4 Q. When you -- you don't document anywhere in your
5 reports that you made in this case that you ever ask her or
6 if she ever refused medical attention, is that correct?

7 A. No, sir. I didn't document that I had ask her.
8 Again she didn't refuse. I mean, there were never present.
9 She didn't refuse medical attention. She was asked. But no,
10 sir, I did not document. Now the jail does. They document
11 that as well as 9-1-1.

12 Q. And you don't document anywhere in anything that
13 you've prepared and in this case that any pictures were ever
14 taken of Leah, is that right?

15 A. I'm sorry what was ---

16 Q. Did you ever document in any of your reports that
17 any pictures were ever taken of Leah?

18 A. I documented that photographs were taken. Yes,
19 sir.

20 Q. You did?

21 A. I -- which one -- which pictures are you talking
22 about?

23 Q. Pictures of Leah.

24 A. Ah -- no, sir.

25 Q. Okay. Part of your investigation, you never got

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

131

1 any call record that show Leah sent a text message the
2 morning of the shooting, correct?

3 A. Did you say that she sent a text message?

4 Q. Yes. Sent any text messages the morning of the
5 shooting. You don't have any records that corroborate that,
6 correct?

7 A. We -- we got information -- we got stuff off the
8 phone.

9 Q. Right. But my question, is the morning of the
10 shooting, June 7, 2010, that morning, you don't have any
11 records that show that Leah sent any text message that
12 morning, correct?

13 A. No, sir. Not text message.

14 Q. Right.

15 A. No, sir.

16 Q. And you never downloaded information, I guess, go
17 back over, more specifically any text messages that morning
18 she had text a man name, Randy, anything like that correct?

19 A. No, sir.

20 Q. And you never downloaded information from the
21 computer to see if Leah had a conversation that morning with
22 Randy, correct?

23 A. That's correct.

24 Q. You never got the cell phone records of Ronald
25 Dipietro, correct?

1 A. Um -- the -- yes, sir. We got the phone that
2 Ronald was using.

3 Q. The cell phone records of Ronald Dipietro?

4 A. No, sir. Not the cell phone records.

5 Q. Right. Never requested his records, right?

6 A. No, sir.

7 Q. But you got Leah's records, right?

8 A. Yes, sir. The phone that was used to call 9-1-1.

9 Q. And that's -- you call that being fair?

10 A. This phone is -- is -- Ms. Leah Forrest but Ronald
11 used the phone. So we went into the phone with the
12 understanding that Ronald used the phone and Leah had the
13 phone as well. So we wasn't being prejudice. We went into
14 one phone with the understanding that both individuals had
15 access and utilized the phone.

16 Q. You knew Leah was beaten and never requested that
17 EMS check her out, right?

18 A. Did I -- after the several times that she said she
19 didn't need ---

20 Q. I'm asking you, did you ever request, as the
21 leading investigator in this case, did you ever request that
22 EMS check Leah out?

23 A. No, sir. I never called EMS personally and said
24 she does not want you coming but will you come and check her
25 out. No, sir.

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

133

1 Q. Mmm -- hmm. Never took her to the doctor, right?

2 A. No, sir.

3 Q. No medical attention for Leah Forrest that day,
4 correct?

5 A. No, sir. I mean, she was asked medical questions
6 at the jail which is standard policy.

7 Q. Right. Yeah. The standard medical questions at
8 the jail but other than that no medical attention that day,
9 correct?

10 A. No, sir.

11 Q. And her refusing medical attention that's not
12 documented anywhere in any report that you prepared in this
13 case, correct?

14 A. She never -- never refused medical attention. No,
15 sir.

16 Q. You never interviewed her kids, right?

17 A. No, sir. Didn't realize that there were kids until
18 sometime later.

19 Q. You never realized there were kids until sometime
20 later?

21 A. Yes, sir.

22 Q. You never went door to door to see if anybody heard
23 or saw anything, right?

24 A. We did, that morning.

25 Q. You did?

1 A. Yes, sir. That morning we had ---

2 Q. Well Leah lives on Street. She lives down
3 kinda at the corner house down at the end?

4 A. That's right.

5 Q. And there's a house that sits directly across from
6 her house, correct?

7 A. Not directly across. It's -- if you're coming out
8 her front door it's more like eleven o'clock ---

9 Q. Okay.

10 A. --- not twelve o'clock.

11 Q. And street is a very narrow street?

12 A. I would say that. Yes, sir.

13 Q. And so the houses across the street are very close
14 to Leah's house. The house that is sitting, you said to the
15 eleven o'clock, that house isn't to far from where Leah's
16 house is, right?

17 A. No, sir. I guess not.

18 Q. And there's also a house that sits right to the
19 left of Leah's house, if you're walking out of the front door
20 of the house, it's just to the left, correct?

21 A. Right. You walk out on her front porch to the left
22 there is a house. To the right there's a curb ---

23 Q. There's a curb?

24 A. That's right. In a wooded area.

25 Q. And you said that -- it's your testimony that on

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

135

1 the morning of June 7, 2010 that you, I guess, canvas the
2 neighborhood or went around and talk to some people?

3 A. No, sir. I didn't say we talking to people. We
4 were looking for two young black males that were in the area
5 at supposedly saw Ms. Leah throw the weapon into the woods.

6 Q. Alright. What about -- what about going to door to
7 door, did you go to the neighbors house at eleven o'clock?

8 A. No, sir.

9 Q. Okay. And did you go to the neighbors house that
10 lives right next door to Leah on the left?

11 A. No, sir. I did not.

12 Q. Okay. So you never went door to door to see if
13 anyone heard or saw anything, right?

14 A. No, sir. I did not. No, sir.

15 Q. You never took pictures of this front door, right?

16 A. Did not. No, sir.

17 Q. Okay. You described that there was damage to the
18 door jam, correct?

19 A. Yes, sir.

20 Q. Okay. And that the door wasn't latching. You
21 could -- you could shut it but it wasn't latching, correct?

22 A. That's correct.

23 Q. You could actually lock the door, um, by the handle
24 handle, you just kinda of push it open?

25 A. That's correct.

1 Q. Would that be where ---

2 A. Yeah, the door knob would lock and the little
3 trigger, I don't know what you call it, it would come in and
4 out ---

5 Q. Okay.

6 A. --- but there was nothing to hold it in the door
7 jam.

8 Q. You never ask Ronald Dipietro how many times he
9 damaged that door in the past, did you?

10 A. No, sir. We talked about the door and actually
11 that's the reason why initially there was no pictures done of
12 the door because we didn't know the door was in play until we
13 secured the home, left, went to Spartanburg found out from
14 Ronald, come back to the house, armed ourselves with a search
15 warrant, went back to the house.

16 Q. You didn't take any pictures at that time?

17 A. No, sir.

18 Q. Okay. And you never ask him about busting that
19 door jam, right?

20 A. We ask him how the door got broke. Yes, sir.

21 Q. The damage to that door could've been done prior to
22 June 7, 2010, correct?

23 A. They would've had to leave the wood chips and all
24 that laying in the floor for two days, two months, two years.

25 Q. Now we're talking about wood chips now?

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY:

137

1 A. Yes, sir.

2 Q. Now where have you mentioned in any report you ever
3 made in this case of wood chips?

4 A. No, from the door.

5 Q. I know. I understand.

6 A. That's what -- the part from the wood -- the door
7 jam.

8 Q. Right.

9 A. I mean, that's -- that's -- that -- that would have
10 been on the floor but ...

11 Q. Did you see any wood chips?

12 A. There was, ah, debris like laying at the door.

13 Q. Yeah?

14 A. Yes, sir.

15 Q. And that's what you're testifying to almost two
16 years later?

17 A. Yes, sir.

18 Q. And that's not document in any report ---

19 A. No, sir.

20 Q. --- in this case?

21 A. No, sir.

22 Q. You never had crime scene to look for footwear
23 impression on this door, right?

24 A. We -- we examined the door because that's how we --
25 when we left the house the door could not be secured and we

1 pulled the door shut as best as we could. We didn't notice
2 anything that stood out. No, sir.

3 Q. Alright. Didn't have crime scene look for footwear
4 impression on the door, correct?

5 A. I was crime scene. Yes, sir.

6 Q. So you didn't look for footwear impression on the
7 door, correct?

8 A. We did. We looked for something that would have
9 been a reason or purpose for why the door was like it was but
10 like I said nothing stood out. No, sir.

11 Q. You didn't document that anywhere in a report that
12 you did in this case, correct?

13 A. No, sir.

14 Q. Okay. You just took the word of Ronald Dipietro,
15 right?

16 A. Yes, sir.

17 Q. You never took pictures of the bathroom, right?

18 A. No, sir. We didn't find anything that stood out in
19 the bathroom, either.

20 Q. You never tested the white substance that I think
21 you testified as a white residue substance that was in this
22 plastic bag, correct?

23 A. There was a bag with a white film. Yes, sir.

24 Q. Mmm -- hmm.

25 A. I examined that. Didn't know for sure exactly what

ROBERT HINES - CROSS EXAMINATION BY MR. DELANEY: 139

1 it was. I had a feeling it could have been, you know,
2 powder, something but no, sir, I did not send that off
3 either.

4 Q. Okay. You could have, right?

5 A. Yes, sir.

6 Q. And drug reports come back all the time, tested
7 positive for extremely small amounts of cocaine, correct?

8 A. Yes, sir.

9 Q. Residue, correct?

10 A. Yes, sir.

11 Q. You didn't do anything about finger printing, any
12 type of lay prints on this back, correct?

13 A. No, sir.

14 Q. You testified, I believe, you didn't document that
15 the victims advocate took any pictures of Leah Forrest,
16 correct?

17 A. Did I document the victims ---

18 Q. Yeah?

19 A. No, sir.

20 Q. Okay. Her's are important, right?

21 A. Oh, yes, sir.

22 Q. You didn't document anywhere that the injuries that
23 she had on her photographs that were taken while she was in
24 the patrol car, right?

25 A. No, sir. What we document was that we got the

1 pictures, developed the pictures and include the pictures in
2 the case file.

3 MR. DELANEY: Court's indulgence.

4 Q. Alright. A couple of questions. I want to go back
5 to this supplemental report, okay?

6 A. Yes, sir.

7 Q. And in your supplemental report, I guess, we heard
8 testimony yesterday from Mr. Dipietro that when Leah Forrest
9 left the house she was outside for ten to fifteen minutes, is
10 that correct?

11 A. I think that was right.

12 Q. Okay. And on August 25th when you talked to him he
13 said that she was out there for like five, about five
14 minutes, is that correct? You still have that -- the last --
15 the last sentence where it says ---

16 A. Where's this at now?

17 MR. ANTHONY: I'm sorry what is he referring to?

18 Q. Can you read that?

19 A. Where are you at?

20 Q. The very last sentence within about -- pardon me,
21 I'm sorry, it was the transcription that was done ---

22 A. Alright. Yes, sir.

23 Q. --- on August 25th, I sorry. I know I said your
24 supplemental report but actually the ---

25 A. Yes, sir. It says within about five minutes or

ROBERT HINES - REDIRECT EXAMINATION BY MR. ANTHONY: 141

1 less she then kicked in the front door of the house went
2 straight back to the bedroom.

3 Q. Okay.

4 A. Yes, sir.

5 Q. Okay. So within about five minutes. Okay. And
6 then in your supplemental report it looks like about half way
7 down in your supplemental, you see the part where it says
8 Ronald stated that Leah opened the front door and went
9 outside and then it goes into a sentence just below there, it
10 says, he shut and locked the front door allowing him a few
11 minutes to get his clothes together.

12 A. Okay. Went outside. He shut and locked the front
13 door allowing him a few minutes to get his clothes. Yes,
14 sir.

15 Q. Okay so on the supplemental report has her being
16 outside, looks like a few minutes, and then in the
17 transcription about five minutes, right?

18 A. Yes, sir.

19 Q. Okay. The call that was made by Ms. Forrest in
20 this case to 9-1-1 that call arrived into the 9-1-1
21 headquarters at 5:47 a.m., is that right?

22 A. I believe that's correct.

23 Q. Okay. And it appears that the dispatch time in
24 this case was 5:49 a.m., is that right?

25 A. That is what my report had shown. I was actually

ROBERT HINES - REDIRECT EXAMINATION BY MR. ANTHONY: 142

1 going to pull my 9-1-1 report. The moment -- we put it in
2 our system at -- on June 7, 2010 at 05:46:16.

3 Q. Okay. Looks like then dispatch time was about 5:49
4 a.m.?

5 A. Probably so. Yes, sir.

6 Q. It looks like time arrived was 5:58 a.m., correct?

7 A. That's what Sergeant Wright indicated. Yes, sir.
8 That he would have gotten most likely from dispatch. That's
9 normally ---

10 Q. About ten minutes between that Leah called 9-1-1
11 and arrival at the correct?

12 A. Yes, sir.

13 MR. DELANEY: No further questions. Thank you.

14 THE COURT: Any redirect, sir?

15 MR. ANTHONY: Yes, sir.

16 RE-CROSS EXAMINATION BY MR. ANTHONY:

17 Q. Going to the statement that Ms. Forrest gave, you
18 were ask in some detail about her reporting that Mr. Dipietro
19 assaulted her in the bathroom, the living room, you can get
20 the exhibit you like ---

21 A. Yes, sir.

22 Q. Do you have that?

23 A. Yes, sir.

24 Q. Okay. If you'll turn to the actual statement
25 itself, there's a -- down at the bottom of the first page the

ROBERT HINES - REDIRECT EXAMINATION BY MR. ANTHONY: 143

1 last sentence -- the last sentence, the sentence that you
2 start at the bottom of the first page after she reports
3 another, Mr. Dipietro attacking her, what does she say then?

4 A. It says, Ronald came back at me ---

5 Q. No, no ---

6 A. --- Ronald got up ---

7 Q. Yeah ---

8 A. Ronald got up and walked over to the computer and
9 started messing with it. I got up and walked to the bedroom
10 and got the rifle from my closet ---

11 Q. Okay. So -- so at the time that she goes to get
12 the gun, what does, by her own statement she saying Mr.
13 Dipietro was doing?

14 A. She says, that he got up and walked over to the
15 computer ---

16 Q. Okay.

17 A. --- and started messing with it.

18 Q. And then after the shot -- going down -- if you
19 take her statement, the forth line up from the bottom, where
20 it starts -- the sentence starts, "I don't remember hitting
21 him again," would you read that again please?

22 A. Yes, sir. It says, "I don't remember hitting him
23 again but I do remember shooting at the floor."

24 Q. Okay. So by her own report and this was after she
25 shot him the first time, right?

1 A. Yes, sir.

2 Q. So by her own report after she shot him the first
3 time, she tried shooting at him again?

4 A. Yes, sir.

5 Q. Okay. And this was, obviously, the second shot
6 was, obviously, after the assault had stopped even by her own
7 report?

8 A. Yes, sir.

9 Q. Did you ever find any injuries and you've looked
10 the both sets of pictures, would you say that any of those
11 injuries that you've observed would be consistent with
12 somebody being slammed to the ground?

13 A. No, sir.

14 Q. And was there anything about any injuries to her
15 face that would be consistent with her being held down by her
16 face?

17 A. No, sir. Didn't see any red marks or bruising
18 around the face, mouth area. No, sir.

19 Q. And in the statements that you took from Mr.
20 Dipietro, the two times that you talked to him, did he ever
21 tell you that there was any violence on his part against Ms.
22 Forrest except just in trying to restrain her?

23 A. No, sir.

24 Q. Looking at your report, I want to -- you were asked
25 about a line in your report where it says you put in the

ROBERT HINES - REDIRECT EXAMINATION BY MR. ANTHONY: 145

1 report, I ask Ronald about the phones in the house that were
2 broken and he said the night before this incident he got mad
3 and busted them because he knew she was using the cellular
4 phones to cheat on him?

5 A. Yes, sir.

6 Q. And in saying that, could he have been referring to
7 the actual incident where he was shot that morning?

8 A. Yes, sir.

9 MR. DELANEY: Judge, I'd object to his speculation
10 at this point.

11 THE COURT: Okay. I'm going to overrule the
12 objection. I'll let you ask the question, sir.

13 Q. Could he have been referring to -- and could that
14 sentence be taken as a reference to him talking about what
15 had actually happened that morning when the shooting
16 occurred?

17 A. Yes, sir. That's exactly the way it was intended.

18 Q. Alright. That's what you took him to mean?

19 A. Exactly. Yes, sir. He was very detailed -- very
20 specific on that.

21 Q. And he never reported to you that any, I mean, as
22 far as any violence on either one of them's behalf before
23 they went to bed that night, did he?

24 A. No, sir.

25 Q. Okay. Okay. And that's also consistent with what

1 when we're talking about the phone, that's also consistent
2 with what he told you when he talked to you in August and
3 said he threw a phone against the wall?

4 A. Yes, sir.

5 Q. And looking at those photos of Ms. Forrest, what
6 injuries did she have that you would categorize as fresh new
7 injuries?

8 A. Definitely the nose and on the back -- on her back
9 I believe on the left side area. I saw some redness there
10 and the nose.

11 Q. And did she ever stress any desire to have any kind
12 of medical attention?

13 A. She never initiated a conversation where she wanted
14 EMS. We ask her several times, three or four times, do you
15 need an ambulance? Do you need EMS? Do you need to go to
16 the doctor?

17 Q. The substance that was in the bag, in your opinion
18 was that enough to send for any kind of analysis?

19 A. No, sir.

20 Q. And why was that?

21 A. Because there's barely nothing in there.

22 Q. And in reference in your supplemental report when
23 you were being asked on cross examination question about the
24 supplemental report, you were ask some heights and weights of
25 Mr. Dipietro and Ms. Forrest?

ROBERT HINES - REDIRECT EXAMINATION BY MR. ANTHONY: 147

1 A. That's correct. Yes, sir.

2 Q. Do you know where that information -- where you got
3 that information from?

4 A. From them. When I talked with them. Now Ms.
5 Forrest could have come from off the booking report at the
6 jail...

7 Q. Do you mean it would have come from -- you would
8 have ask Mr. Dipietro there at the hospital his height and
9 weight?

10 A. Yes, sir.

11 Q. Okay. Alright. And you were asked some questions
12 about your experience and the way your categorized some
13 things Ms. Forrest said on the 9-1-1 tape, and you were asked
14 about her throwing the gun into the field. You heard
15 sometimes people who becomes suspects in crimes when they
16 call 9-1-1, is that correct?

17 A. Oh, yes, sir.

18 Q. Okay. And in your experience as an investigator,
19 if you have done something illegal and is it sometimes
20 possible that the suspect will lie to 9-1-1 about what
21 they've done?

22 A. Yes, sir.

23 Q. And based on your dealings with Ms. Forrest and
24 listening to the 9-1-1 call and your dealings with her
25 personally, do you have any reason to think that she had

1 anything, um, in any kind of condition that night that would
2 affected her ability to be cognitive of the time?

3 A. No, sir. Like I said earlier, she was compliant
4 with me. She didn't -- we never -- I never had a reason to
5 think that she was able to process.

6 Q. Well on the 9-1-1 call she thinks cognitive to the
7 fact she needed to be at work that morning ---

8 A. That's correct.

9 Q. --- is that correct?

10 A. Yes, sir.

11 Q. Okay. And she actually had a time that she needed
12 to be at work?

13 A. Yes, sir.

14 Q. So she gave -- she gave the 9-1-1 person?

15 A. That's correct. Yes, sir.

16 Q. Okay. So she had a conception of time and -- and
17 so would there be any reason for you think when she said it
18 had been two hours since she shot Mr. Dipietro that she was
19 not giving accurate information?

20 A. No, sir. No, sir.

21 Q. Okay.

22 MR. ANTHONY: If I could have one moment.

23 Q. And as far as the phones go, the phone that's
24 damaged up there, the ones that's exhibit number twenty
25 eight.

ROBERT HINES- RE-CROSS EXAMINATION BY MR. DELANEY:

149

1 A. Yes, sir.

2 Q. That's -- that's the phone that was sent to Sled,
3 is that correct?

4 A. Yes, sir.

5 Q. Okay. That was because that was the phone the
6 suspected text messages were on from the other guy?

7 A. That's correct.

8 MR. ANTHONY: Thank you. That's everything on
9 redirect, Your Honor.

10 THE COURT: Alright. Re-cross, sir?

11 MR. DELANEY: Just briefly, Judge.

12 **RE-CROSS EXAMINATION BY MR. DELANEY:**

13 Q. And again you testified you're not a medical
14 doctor, correct?

15 A. No, sir.

16 Q. Okay. But you testified to the jury in your
17 opinion Leah had fresh and old injuries on her, correct?

18 A. Yes, sir.

19 Q. And your testimony from the photos that your
20 reviewed which show marks, bruising on her back, correct?

21 A. Yes, sir.

22 Q. Okay. That, that could not be consistent of being
23 slamming to the ground, correct?

24 A. Yes.

25 Q. Okay. And just want to refer your attention one

1 more time to the supplemental report that we're talking about
2 the conversation or what Ronald told to you about the night
3 before, when you said I ask Ronald ---

4 A. I ask Ronald -- yes, mmm -- hmm.

5 Q. Could you read that sentence again, I ask Ronald?

6 A. Yes, sir. I ask Ronald about the phones in the
7 house which were broken and she said that the night before
8 this incident, he got mad and busted them because he knew she
9 was using the cellular phones to cheat on him.

10 Q. You can't get much more specific than that,
11 correct?

12 A. That's ---

13 MR. DELANEY: Thank you ---

14 A. --- detailed.

15 MR. DELANEY: --- no further questions.

16 THE COURT: Alright. Officer, you may step down,
17 sir. Thank you. Alright. Mr. Anothony, you have two more
18 witnesses, sir?

19 MR. ANTHONY: Yes, sir. Can we take maybe ten ---

20 THE COURT: Yeah, that's what I was going to
21 suggest. We've been out it almost an hour and half. So
22 let's take a break and refresh a little bit and then come
23 back in. What we'll try to do is finish up those two
24 witnesses at a minimum today. Alright. Please don't discuss
25 the case.

BART CAVE- DIRECT EXAMINATION BY MR. ANTHONY:

151

1 (JURY LEAVES THE COURTROOM)

2 THE COURT: Alright. We'll recess for about ten or
3 fifteen minutes.

4 (EVERYONE TAKES A BREAK)

5 THE COURT: Alright. Mr. Anthony, you ready for
6 the jury, sir?

7 MR. ANTHONY: Yes, sir.

8 (JURY RETURNS TO COURTROOM AT 3:13 P.M.)

9 THE COURT: Alright. Good enough. Alright. Mr.
10 Anthony, you may your next witness, sir.

11 MR. ANTHONY: Our next witness is Mr. Cave.

12 BAILIFF: Mr. Who?

13 MR. ANTHONY: Mr. Cave.

14 THE COURT: Alright. Sir, how are you doing today?

15 MR. CAVE: Good.

16 (Witness complied with the Court's request.)

17 (Whereupon,

18 BART CAVE

19 first being duly sworn, testified as follows:)

20 THE COURT: Please state your full name for the
21 record.

22 MR. CAVE: Bart Cave.

23 DIRECT EXAMINATION BY MR. ANTHONY:

24 Q. Mr. Cave, how are you employed?

1 A. I work for the South Carolina Law Enforcement
2 Division for the computer crime, sir.

3 Q. What do you do you there?

4 A. I'm a evidence custodian network administrator,
5 cell phone forensic examiner, computer forensic examiner.

6 Q. Alright. How long have you worked for Sled?

7 A. Since December, 2005.

8 Q. How long have you been, it is, cell phone forensic
9 examiner? Is that the word or term you use?

10 A. Yes, sir.

11 Q. How long ago now?

12 A. Since 2007.

13 Q. And what does a cell phone forensic examiner do?

14 A. We take cell phones, GPS's, Ipad's, Ipod's, pretty
15 much any cellular portable device, and we can examine it
16 forensically. So that way data that's on there is not
17 normally seen by looking through the device we can take and
18 recover deleted items. It also gives us serial numbers, IBI
19 numbers, ways to identify the device that you normally
20 wouldn't be able to find by just looking at the device.

21 Q. And what kind of training have you had to do an
22 analysis of cell phones?

23 A. I've been to National White Collar Crime Center,
24 offers two classes that I've been to. I've also went to a
25 class provided by the secret service in Hoover, Alabama,

BART CAVE- DIRECT EXAMINATION BY MR. ANTHONY:

153

1 where they provide us a two week training class. And I just
2 recently went to a Cellebrite Forensic Class to certify me
3 for logically and physically extractions of cellular devices.

4 Q. And have you have testified in court before about
5 doing cell phone anaylsis? Have you been qualified as an
6 expert witness, before?

7 A. Yes, sir.

8 Q. And approximately how many times have you testified
9 before and have been considered an expert witness?

10 A. Four times.

11 MR. ANTHONY: Alright. Your Honor, at this time we
12 would submit Mr. Cave to the Court as an expert in cell phone
13 forensic anaylsis?

14 THE COURT: Any objection?

15 MS. INZERILLO: No objection.

16 THE COURT: Okay. Ladies and gentlemen this
17 witness is admitted as an expert witness. I can't remember
18 if it was today or yesterday that I gave you -- told you what
19 expert witness is but I just refresh your memory and let you
20 know that an expert witness even though he made be qualified
21 as expert witness is evidence just like any other evidence
22 that you receive in this case. You determine what weight to
23 place upon it. You determine what value it has just let any
24 other any other piece of evidence that you may receive in the
25 case. Go ahead, Mr. Anthony.

1 Q. Alright. I'm going to have you State's exhibit
2 number twenty eight and I'll ask if you seen this phone
3 before?

4 A. Yes, sir, I have.

5 Q. Alright. And when did you see that phone before?

6 A. Whenever it brought to our office and submitted
7 evidence for use to recover data from the device.

8 Q. Okay. Who brought it to y'all?

9 A. Robert Hines.

10 Q. Alright. And when was it brought to Sled?

11 A. January 25, 2012.

12 Q. Okay. And once the phone is submitted to you, what
13 did you do with it?

14 A. Took it back to our cell phone forensic area. Took
15 and figure out which cable we needed to use to connect it up
16 to using our cellebrite equipment. At that time I then went
17 through and dumped the information from the device and once
18 I dumped the information from the device, investigator Hines
19 was with me and we determine what was needed for the case.
20 At that time we created a report and then I copied it out and
21 put it on two disk for him for discovery and then we returned
22 that to him for -- return back to Union.

23 Q. Okay. You said a report was generated?

24 A. Yes, sir.

25 Q. What -- what does that report contain?

BART CAVE- DIRECT EXAMINATION BY MR. ANTHONY:

155

1 A. It contains the information of the investigator who
2 processed it. The phone information of the phone, make,
3 model, serial number, date and time that the contraction took
4 place, contacts, call logs, text messages, pictures, and it's
5 all depending on the model of the phone. In some phones it
6 will provide more information. Some phones it will provide
7 less.

8 Q. Basically, with that phone, exhibit number twenty
9 eight, you did a report that pretty much, it encumbrance --

10 A. Yes, sir.

11 Q. --- everything that you took off of it?

12 A. Yes, sir.

13 Q. Okay. I'm gonna first of all show you what's been
14 marked for identification, State's exhibit number forty six,
15 but I'd ask that you take a look at that report and just see
16 if you can tell us what it is?

17 A. This is a printed copy of the examination report
18 for the cell phone in question.

19 Q. Okay. And is that -- that report encumbrance
20 everything that you would've gotten off the phone?

21 A. Correct.

22 Q. Okay. Alright. I will show you now -- I'm gonna
23 show you now what's been marked for identification, State's
24 exhibit number forty seven which is pages thirty and thirty
25 one of that report. I'd ask if you could identify those

1 pages?

2 A. These are the SMS or text messages, however you
3 want to refer to them as of the incoming and outgoing
4 messages from the phone. It looks like it goes from June 6,
5 2010 from 16:00 to about 22:00 and it shows the content of
6 the messages that were sent between the two parties.

7 MR. ANTHONY: Okay. Alright. We would move number
8 forty -- what is it, forty seven into evidence.

9 THE COURT: Any objection?

10 MS. INZERILLO: No, Your Honor.

11 THE COURT: Alright. Without objection. The same
12 is moved into evidence.

13 (Whereupon, State's Exhibit Number 47 was
14 admitted into evidence without objection.)

15 MR. ANTHONY: I'd ask to be able to publish that
16 for the jury?

17 THE COURT: Yes, sir, you may.

18 Q. I'm gonna give you -- I'll hand you number forty
19 six just so you have a copy ---

20 A. That's fine.

21 Q. --- a copy up here to read from as well.

22 A. Alright.

23 Q. Alright. And what I want to do is I'm just ask you
24 a few things so the jury will know what we're looking at
25 here. Each one of these rows, what is represented by each

BART CAVE- DIRECT EXAMINATION BY MR. ANTHONY:

157

1 one of these rows on the record?

2 A. That's indicating that, um, either it's an incoming
3 or outgoing message and it's showing you the content of the
4 message.

5 Q. Okay.

6 A. It gives you the date and time that the message was
7 either sent or received and it shows you the parties name or
8 it has the name listed. It means they are a saved contact
9 into the phone.

10 Q. Okay. So each row is a message?

11 A. Yes, sir.

12 Q. So going to right here?

13 A. Yes, sir.

14 Q. This would be June 6, 2010 at what's the time,
15 16:44?

16 A. Yes, sir.

17 Q. Okay. And that's military time?

18 A. Yeah, it goes by a twenty four hour clock.

19 Q. So going over here to this line where it says
20 Randy?

21 A. Yes, sir.

22 Q. What would that represent?

23 A. That's -- that's the person's name and the contacts
24 that they sent the message to and on that case that's where
25 incoming message from Randy is coming in.

1 Q. Okay.

2 A. Because over in that column it says incoming ---

3 Q. Okay.

4 A. That means that message came into phone at that
5 date and time.

6 Q. So what was the message did the phone receive at
7 16:44 that Sunday afternoon?

8 A. "Hey sweetheart. Hope this message finds you
9 enjoying this beautiful Sunday afternoon," and it has a
10 smiley face.

11 Q. Okay. Okay. And then when you go down there's a
12 messages in the outbox is the next line, is that right?

13 A. Yes, sir.

14 Q. And what's the response?

15 A. "Very much sweetheart. Careful I might get to
16 thinking you're getting sweet on me. Lol."

17 Q. And then we have another inbox at 17:09, is that
18 right?

19 A. Yes, sir.

20 Q. What is that?

21 A. "It's got a RE, lol. I think my dark side scares
22 you very much, sweetheart."

23 Q. And then when we go over to the next one or the
24 next page we get to 17:10 on June 6th and there's a message
25 from another individual, is that right?

BART CAVE- DIRECT EXAMINATION BY MR. ANTHONY:

159

1 A. Yes, sir. That's, ah, Terry Bailey is where it
2 shows there and that's a different person that sent a text
3 message at that time. And so -- it pulls the message in the
4 order they come in. So that message, you know, came in after
5 the last message.

6 Q. Alright. And the context of that -- let me
7 brighten this just a little bit -- okay. The content of that
8 message is what now?

9 A. "What's up gorgeous? How's your day? Send me a
10 picture of you for my phone."

11 Q. Okay. And then there's a response from Terry
12 Bailey and I'll skip this one and there's a response to Terry
13 Bailey at 17:17, is that right?

14 A. Yes, sir.

15 Q. And what's that response and this is in the
16 outgoing so this is something that the phone would send?

17 A. Right. Who ever had the phone would reply back to
18 this message.

19 Q. Okay. What's the reply?

20 A. And that says, "Good going so far. I'll send you
21 one soon. Need one of you for mine."

22 Q. And so then we go to back up -- well there's one
23 more from Terry Bailey that was incoming, is that right?

24 A. Yes, sir.

25 Q. And Terry -- there's response and that response is

1 what?

2 A. "Okay."

3 Q. Okay. Alright. And then also on six besides from
4 these from Terry Bailey on this page here there's five more
5 of Randy, is that right?

6 A. Yes, sir.

7 Q. The first one here at 17:11?

8 A. Yes, sir.

9 Q. If you could -- what is that?

10 A. That's an outgoing message going back to Randy,
11 referring to the previous response. "Lol. Me scared. No.
12 I'm just bashful."

13 Q. Alright. And then going down to the other message
14 from Randy there's another outgoing message to Randy, is that
15 correct?

16 A. Yes, sir.

17 Q. Okay. What's the time on that?

18 A. 20:39.

19 Q. And what does that say?

20 A. "Okay, Mr. Brown, I am scared but not only of your
21 dark side, of you in general."

22 Q. And then there's another outgoing at 22:06, is that
23 right?

24 A. Yes, sir.

25 Q. Okay. What's the content of that one?

BART CAVE- CROSS EXAMINATION BY MS. INZERILLO:

161

1 A. "Good night, baby, sweet dreams."

2 Q. Okay. And at 22:49 there's a message received from
3 Randy?

4 A. At 22:40.

5 Q. I'm sorry, at 22:40, there's a message received
6 from Randy. What's the content of that message?

7 A. "You to, sweetheart. Good night, baby. Sweet
8 dreams."

9 Q. And then at 22:45 there's an outgoing to Randy and
10 what is that?

11 A. "You're going to make me fall over text message.
12 Lol."

13 MR. ANTHONY: If I can have one moment. Alright.
14 Thank you very much. That's everything on direct.

15 MS. INZERILLO: May it please the Court, Your
16 Honor?

17 THE COURT: Yes, ma'am.

18 CROSS EXAMINATION BY MS. INZERILLO:

19 Q. Mr. Cave, you just have the recitation of the text
20 messages, is that right? What you just read?

21 A. Right. Yeah, it's the whole -- it's the whole
22 report.

23 Q. Actually, I'm talking about State's forty seven.

24 A. Yeah, I have State's forty six which is the same
25 as that.

1 Q. Okay.

2 A. If I take this off.

3 Q. So investigating this case, you're not aware that
4 Leah and Randy grew up together and have known each other for
5 forty years?

6 A. No, sir.

7 Q. Okay. You don't know the context of any of these
8 message, is that right?

9 A. No, ma'am.

10 Q. Your job simply is to go through the phone, look at
11 these messages, properly download them and put them in a
12 report ---

13 A. Correct.

14 Q. --- is that right? So in terms of any
15 conversations perhaps Leah and Randy may have had, talking to
16 each outside of this, you wouldn't know that?

17 A. No, ma'am.

18 Q. Okay. Now I'm going to show you State's exhibit
19 forty seven -- May I approach, Your Honor?

20 THE COURT: Yes, ma'am.

21 Q. What time is the last text message sent or
22 received?

23 A. 22:45:46 seconds.

24 Q. So that's 10:45 the night before -- I'm sorry 10:45
25 on June 6th, is that right?

BART CAVE- CROSS EXAMINATION BY MS. INZERILLO:

163

1 A. Correct.

2 Q. Okay. Now you evaluated this phone because Captain
3 Hines brought it down to you and ask you pull information
4 from it, right?

5 A. Yes, ma'am.

6 Q. Okay. And that was the only phone that he ask you
7 to pull information from?

8 A. At that time, that is correct.

9 Q. Okay. He never brought down a search warrant or a
10 request to look through the computer, is that right?

11 A. No, ma'am.

12 Q. Okay. And you are certified, can do that, I mean,
13 you're a cell phone forensic expert ---

14 A. Correct.

15 Q. --- as well as computer forensic expert, right?

16 A. Yes, ma'am.

17 Q. And essentially when you pull items off of the
18 computer and I don't want to get the details because I know
19 you can probably educate me pretty well but essentially you
20 do the same thing, you can pull information off a computer?

21 A. Yes, ma'am.

22 Q. Through your -- the way and needs that you do it to
23 see what's on the computer that might not be visible to the
24 naked eye or if someone doesn't know where to look, you would
25 know where to look, you would know where to look to do your

MOTION

164

1 thing, right?

2 A. Correct.

3 Q. So if there's email messages, texts or anything
4 like that you can pull that off a computer, right?

5 A. Yes, ma'am.

6 Q. In the same idea -- the same way you pull them on
7 the cell phone?

8 A. Not exactly.

9 Q. But it's the same idea?

10 A. Right.

11 Q. You can pull text messages off of cell phones the
12 same why you pull emails

13 A. Right.

14 Q. -- and stuff off of computers, is that right?

15 MS. INZERILLO: No further questions, Your Honor.

16 THE COURT: Any redirect?

17 MR. ANTHONY: No, sir.

18 THE COURT: Alright. Thank you for being here. I
19 appreciate it. Any objection to this gentleman being
20 excused?

21 MS. INZERILLO: No, Your Honor.

22 MR. ANTHONY: No, Your Honor.

23 THE COURT: Alright, sir. Thank you. Appreciate
24 you coming. Call your next witness, sir.

25 MR. ANTHONY: Your Honor, that would be our

MOTION

165

1 evidence.

2 THE COURT: Okay. Good enough. So you rest at
3 this time.

4 MR. ANTHONY: Yes, sir.

5 THE COURT: Alright. Good enough. Alright.
6 Ladies an gentlemen we're going to take a short break.
7 There's certain matters of law that I have to take up when
8 the State rest and I need to take up several matters to
9 include matters of scheduling. So I'm going to ask you to
10 take a short break. Please don't discuss the case and we
11 should come back into the courtroom fairly briefly depending
12 on what additional we have for the day. Please don't discuss
13 the case.

14 **(JURY LEAVES THE COURTROOM SO MOTIONS CAN BE HEARD)**

15 THE COURT: Alright. Motions?

16 **(MOTIONS HEARD AT 3:32)**

17 MR. DELANEY: Judge, for the record at this time we
18 renew any Motions objection that we made earlier in this
19 trial and also for the record at this time taking the
20 evidence in like most favorable to the State, defense would
21 make Motion for a Directed Verdict in this case.

22 THE COURT: Okay. Alright. Based on the
23 applicable of standing and viewing the evidence in like in
24 favorable to the State, I respectively deny the Motion.
25 Standard, obviously, it's not the weight of the evidence but

MOTION

166

1 the existence of the evidence and I think the State has
2 provided sufficient evidence to overcome a Directed Verdict
3 Motion. Alright. Anything further? Okay.

4 MR. DELANEY: (SHAKING OF THE HEAD, NO)

5 THE COURT: Okay. I was thinking that we would
6 probably gonna -- I thought you had one more witness but may
7 be not. So do you have a witness -- does the defense have a
8 witness that you could put on the stand at this time.

9 MS. INZERILLO: We do, Your Honor, if the Court was
10 to continue.

11 THE COURT: Yeah, I'd like to go ahead and move
12 forward if you got a little momentum. I know it's 3:35 and
13 I'd like to make use of the time so that on Friday afternoon
14 at 18:00, when we're waiting for a jury to come we won't be
15 smacking ourselves in the back the head wishing that we had.
16 Okay. Alright. How long do you anticipate this witness
17 lasting?

18 MS. INZERILLO: Your Honor, my direct for the
19 witness is problem about twenty minutes long.

20 THE COURT: Twenty minutes. Okay. And do you have
21 another one cued up after that?

22 MS. INZERILLO: Yes, Your Honor. That should be
23 shorter.

24 THE COURT: Shorter. So let's try to do two
25 witnesses today if our -- if our target time is 4:30 there

MOTION

167

1 about's then lets try to get in those two witnesses this
2 afternoon and then come back. How about that?

3 MS. INZERILLO: Yes, sir.

4 THE COURT: Alright. Good enough. Can you bring
5 the jury back.

6 MR. ANTHONY: If I could just inquire?

7 THE COURT: Sure.

8 MR. ANTHONY: I haven't been given any kind of
9 identified information for these witnesses so if they are
10 adults I need to try to run an NCIC on them.

11 THE COURT: Okay.

12 MS. INZERILLO: Your Honor, could you just give us
13 a minute.

14 THE COURT: Yeah, sure. What I will do is take
15 about a five minute break and I'll come back in. I'll give
16 y'all the opportunity to talk shop for just a few minutes.
17 Okay. Oh, and Ms. Inzerillo, the medical report that you ask
18 the doctor about this morning, it's on my bench. I just
19 didn't want you to lose track of it if you needed it again.

20 MS. INZERILLO: Thank you.

21 **(JUDGE TOOK BREAK AT 3:35 P.M.)**

22 THE COURT: You ready?

23 MR. DELANEY: Thank you, Your Honor. Yes, sir we
24 are.

25 THE COURT: Bring them in.

BRANDON HOWARD- DIRECT EXAMINATION BY MS. INZERILLO: 168

1 (JURY RETURNS TO COURTROOM 3:45 P.M.)

2 THE COURT: Alright. Ladies and gentlemen as you
3 heard before when we left the State rested which means the
4 State has put into evidence all of the evidence that it
5 intends to put up in his case and chief. So now the defense
6 has the opportunity to put evidence into the record. We are
7 going to try to call two witnesses to the stand today. That
8 is the defense will call two witnesses to the stand. It is my
9 understanding they're each verily short. We're going to try
10 to be out of here before five but may be as early as four
11 thirty depending, we never know exactly how it's going to go
12 but that's what we're shooting for. So having said that, Mr.
13 Delaney, Ms. Inzerillo, your case.

14 MS. INZERILLO: May it please the Court, Your
15 Honor?

16 THE COURT: Yes, ma'am.

17 MS. INZERILLO: The defense calls Brandon Howard to
18 the stand.

19 (Witness complied with the Court's request.)

20 (Whereupon,

21 BRANDON HOWARD

22 first being duly sworn, testified as follows:)

23 DIRECT EXAMINATION BY MS. INZERILLO:

24 Q. Good afternoon Brandon?

25 A. Good afternoon.

BRANDON HOWARD- DIRECT EXAMINATION BY MS. INZERILLO: 169

1 Q. Brandon, do you know Leah Forrest?

2 A. Yes, ma'am.

3 Q. How do you know her?

4 A. She my mother.

5 Q. And do you know Ron Dipietro?

6 A. Yes, ma'am.

7 Q. And how do you know him?

8 A. He was my stepfather.

9 Q. Did you ever leave with them when they lived in
10 Jonesville?

11 A. Yes, ma'am.

12 Q. And when was that?

13 A. About three years ago.

14 Q. Three years ago from now, right?

15 A. Yes, ma'am.

16 Q. Okay. And when Ron live at house did he lived
17 there all the time or part of the time?

18 A. All the time.

19 Q. Okay. His clothes and everything were there?

20 A. Yes.

21 Q. How old you when you lived with your mom and Ron?

22 A. I was fifteen. I turned sixteen down there.

23 Q. And how old are you now?

24 A. Eighteen.

25 Q. Were you the same size when you lived with them in

1 the house as you are now?

2 A. No, ma'am.

3 Q. Were you shorter?

4 A. Yes, ma'am.

5 Q. Were you skinnier or bigger?

6 A. I was skinnier.

7 Q. Brandon, did you ever see Ron be violent with your
8 mom?

9 A. I did. Yes.

10 Q. Okay. Would he yell at her?

11 A. Yes.

12 Q. What would he yell?

13 A. There was times I've heard him scream in her face
14 that he would kill her. Slammed her around. Screaming at
15 her. Just

16 Q. Okay. Would he threaten her?

17 A. Yes.

18 Q. And what would he do when he threaten her?

19 A. He would scream, yell, slap -- most of the time he
20 was shaking her.

21 Q. I'm sorry. Keep going.

22 A. Things he would say was that he'd kill her. That
23 she had no reason

24 Q. She had no reason to what?

25 A. I don't know I can't remember.

BRANDON HOWARD- DIRECT EXAMINATION BY MS. INZERILLO: 171

1 Q. Okay. Now did I hear you say that he would shake
2 her?

3 A. Yes.

4 Q. Can you show me how he would shake her?

5 A. He would grab her by her arms and shake her.

6 Q. Would her feet on the ground or were they off the
7 ground?

8 A. Most of the time off.

9 Q. Was Ron taller than you mom?

10 A. Yes.

11 Q. Was he bigger than you mom?

12 A. Yes.

13 Q. Did you ever see Ron do anything else to your mom?

14 A. No.

15 Q. Did you ever see him flip her when she was sitting
16 in the chair?

17 A. Yes.

18 Q. Can you describe that for me?

19 A. He grabbed the bottom of the chair, picked it up,
20 and flipped it.

21 Q. So, for example this chair here, -- can you see?

22 A. Yes.

23 Q. When you say, grab the bottom, this bottom?

24 A. No, like the leg.

25 Q. Like the legs?

1 A. Yes.

2 Q. And when you say flipped it, how would he flip it?

3 A. Just straight back.

4 Q. So he would flip it back, like this?

5 A. Yes.

6 Q. Would she be in the chair?

7 A. Yes.

8 Q. Would he flip it all the way back to the ground?

9 A. Yes.

10 Q. Would she fall out of it?

11 A. Yes.

12 Q. How often did you see Ron be violent to your mom?

13 A. It wasn't often. I seen it maybe six or four or
14 five times.

15 Q. Okay. Over how many months?

16 A. Six.

17 Q. Is that how long you lived with them?

18 A. Yes.

19 Q. Was Ron ever violent towards you in front of your
20 mom?

21 A. Yes.

22 Q. Okay. Would he threaten you?

23 A. Yes.

24 Q. What would he say to you?

25 A. He has told me that he'd kill me as well.

BRANDON HOWARD- DIRECT EXAMINATION BY MS. INZERILLO: 173

1 Q. Would he ever put your hands on you?

2 A. Yes.

3 Q. What would he do?

4 A. He's grabbed me by the collar here and pushed me to
5 the ground.

6 Q. Okay. Did he grab you by the collar of your shirt,
7 your collar bone, show me exactly where?

8 A. It was more -- it was more like right there.

9 Q. Okay. So when you pointing right there is that
10 sorta of around the side of your neck?

11 A. Yes.

12 Q. His thumb is on your throat, right here ---

13 A. Yes.

14 Q. --- where your adam's apple is?

15 A. Yes.

16 Q. Would he squeeze you?

17 A. Sometimes.

18 Q. Okay. Now when he had his hand around the side of
19 your neck and his thumb on your adam's apple, did he have
20 strong hands?

21 A. Yes.

22 Q. And how did you feel when he did that?

23 A. Scared.

24 Q. Why were you scared?

25 A. He's a larger man than me.

1 Q. Okay. Did your mom see this?

2 A. Yes, she had seen it.

3 Q. What was it -- did he stop? Did he take his hand
4 away from your neck?

5 A. After my mom intervene. Yes.

6 Q. Okay. What did you mom have to do to him to get
7 him to let you go?

8 A. She grabbed the knife and slammed it into the bar.

9 Q. Okay. And then what did he do when she did that?

10 A. He let go and fled.

11 MR. ANTHONY: I'm sorry, I can't hear what the last
12 couple of answers.

13 Q. Say that last answer. What did he do when she did
14 that?

15 A. He let go and fled.

16 MR. ANTHONY: He let go and ---

17 MS. INZERILLO: He let go and fled.

18 A. Me.

19 MR. ANTHONY: Oh, okay.

20 Q. So he fled. He fled the house?

21 A. Mmm-hmm.

22 Q. Did he come back to the house?

23 A. Yes.

24 Q. Now he had his hand around your neck were your feet
25 on the ground or were you up off?

BRANDON HOWARD- DIRECT EXAMINATION BY MS. INZERILLO: 175

1 A. I was actually laying on the ground.

2 Q. Okay. When your put the knife in the bar, did she
3 have to say anything or did she just do that?

4 A. I can't remember.

5 Q. Brandon, did you ever call the police when this
6 happened?

7 A. No.

8 Q. Did you ever call police when Ronald would be
9 violent towards your mom?

10 A. No.

11 Q. Why not?

12 A. I was scared.

13 Q. Why were you scared?

14 A. Mainly because of his temper and if he found out I
15 was afraid he might follow through with what he said.

16 Q. Were you afraid he would follow on the threats to
17 you?

18 A. Yes.

19 Q. And were you afraid he would follow on the threats
20 to you mom?

21 A. Yes.

22 Q. Did you ever go to the doctor?

23 A. No.

24 Q. Okay. Did you ever go with your mom to the doctor?

25 A. No.

1 Q. And what not?

2 A. I've never seen her go to the doctor so

3 Q. Brandon, why -- you said you lived at the house for
4 six months?

5 A. Yes.

6 Q. Why did you leave the house?

7 A. I had a charge of simple possession and they kicked
8 me out and my father took me in.

9 Q. Okay. So you got kicked out of your mom's house?

10 A. Yes.

11 Q. And you went to live with your dad?

12 A. Yes.

13 Q. Did you get kicked out of school because of that?

14 A. I did.

15 Q. Are you back in school now?

16 A. Yes.

17 Q. Who do you live with now?

18 A. My mother.

19 MS. INZERILLO: I have no more questions, Your
20 Honor.

21 THE COURT: Okay.

22 CROSS EXAMINATION BY MR. ANTHONY:

23 Q. Mr. Howard, before the -- you moved out at the time
24 of the shooting, correct?

25 A. After or before. Yes.

BRANDON HOWARD- CROSS EXAMINATION BY MR. ANTHONY:

177

1 Q. So you weren't living there when the shooting
2 happened?

3 A. No, sir.

4 Q. Okay. How long had you been gone when the shooting
5 happened?

6 A. About a year.

7 Q. Okay. So the shooting happened in June of 2010,
8 you left in June of 2009?

9 A. Yes, sir.

10 Q. And you lived there, you said, six months?

11 A. Yes, sir.

12 Q. So you're saying you lived there the first six
13 months of 2009?

14 A. Yes, sir.

15 Q. And were you living when your mom moved into the
16 house? Did you two move in the house together?

17 A. No, sir.

18 Q. Okay. Who were you living before you moved in with
19 your mom?

20 A. With my grandfather.

21 Q. Okay. So you lived -- you lived with your
22 grandfather and then you moved in with your mom some -- in
23 January first part of 2009?

24 A. Yes.

25 Q. Okay. How long had she been living there when you

1 moved in?

2 A. I don't know.

3 Q. Okay. But she hadn't been living there long, had
4 she?

5 A. Not that I know of.

6 Q. And you stayed there for six months, is that
7 correct?

8 A. Yes, sir.

9 Q. Okay. And Ron was there too?

10 A. Yes, sir.

11 Q. And were there not nights that Ron went back to
12 Hendersonville and wasn't at the house?

13 A. Yes, sir.

14 Q. Okay. And that was -- was that pretty frequent?
15 Like during the week, would there be several nights a week
16 he'd been gone?

17 A. No, sir. He would leave may be once a month.

18 Q. And you said he would be, you'd see him being
19 abusive to Ms. Forrest?

20 A. Yes, sir.

21 Q. Your mom?

22 A. Yes, sir.

23 Q. Okay. And that he would shout at her, is that
24 right?

25 A. Yes, sir.

BRANDON HOWARD- CROSS EXAMINATION BY MR. ANTHONY:

179

1 Q. Threaten her?

2 A. Yes, sir.

3 Q. You know, and -- you said he would grab her and
4 shake her?

5 A. Yes, sir.

6 Q. And you said he would slam her, I think, you used
7 the word slam, is that correct?

8 A. Yes, sir.

9 Q. Exactly how did he do that?

10 A. By taking her by the arms and dropping her like
11 that.

12 Q. Okay. Where would he drop her to?

13 A. I don't know. There were times where it was on the
14 ground but there was also times where it's just on the bed.

15 Q. Okay. And Ron was a big man?

16 A. Yes, sir.

17 Q. Okay. And he was capable if he, I mean, if he
18 wanted to he could have hurt your mom?

19 A. Yes, sir.

20 Q. And he's capable if he wanted to, he could hurt
21 you?

22 A. Yes.

23 Q. But your mom never went -- you never saw your mom
24 go to a doctor?

25 A. No.

1 Q. With any of these injuries Ron supposedly inflicted
2 on her?

3 A. No.

4 Q. And you never did either?

5 A. No.

6 Q. And did you ever see your mom get mad at Ron?

7 A. Yes.

8 Q. Okay. What kinda of -- what would she do when she
9 got mad at Ron?

10 A. She would shout at him.

11 Q. Did you ever see your mom hit him?

12 A. No.

13 Q. So for six months you were there and you would see
14 Ron do these things to Ms. Forrest but you never saw your mom
15 -- never saw her try and hit him?

16 A. No.

17 Q. And you lived with Ms. Forrest now, is that
18 correct?

19 A. Yes.

20 Q. And when did you start living with her again?

21 A. Just recently.

22 Q. How recently?

23 A. About a month.

24 Q. And where do you live now?

25 A. With my mother.

BRANDON HOWARD- CROSS EXAMINATION BY MR. ANTHONY:

181

1 Q. I know. Where? What town? Where?

2 A. On Greenwood, South Carolina.

3 Q. Okay. And you -- you -- who were you living with
4 before you moved back in with your mom?

5 A. My father.

6 Q. And you're eighteen now?

7 A. Yes, sir.

8 Q. Is that right? Okay. And where does your father
9 live?

10 A. Piedmont, South Carolina.

11 Q. Why did you move back in with your mom?

12 A. I just miss my mom.

13 Q. And did you -- did you and your mom give come over
14 here together today?

15 A. Yes.

16 Q. And you'll go home with her tonight and stay?

17 A. Yes, sir.

18 Q. And who have talked to about testifying today?

19 A. Just her attorneys.

20 Q. And how many times have you talked to them?

21 A. Two.

22 Q. Has your mom talked to you about what you needed to
23 say to the lawyers?

24 A. No.

25 Q. She never has discussed any of things that you

1 testified about today with you?

2 A. No.

3 Q. You never discussed it, you and your mom?

4 A. Never.

5 Q. And you testified that you went back to live with
6 your -- well let me -- may be I didn't ask you this. After
7 you left Ms. Forrest house, where did you go to live?

8 A. My dad's.

9 Q. You went and live with your father?

10 A. Yes.

11 Q. Okay. And that was because Ron kicked you out of
12 the house?

13 A. Yes, sir.

14 Q. And you didn't want to leave the house, did you?

15 A. No, sir.

16 Q. Because you liked living with your mom?

17 A. Yes, sir.

18 Q. And he kicked you out of the house because of drug
19 use on your part?

20 A. Yes, sir.

21 Q. Okay. And actually you've been charged with a drug
22 offense, is that correct?

23 A. Yes, sir.

24 Q. Alright. And there were conversations between you
25 and Ron about -- after you got charged with that drug

BRANDON HOWARD- CROSS EXAMINATION BY MR. ANTHONY:

183

1 offense, you still lived there for a while, didn't you?

2 A. Yes, sir.

3 Q. You lived there probably a couple of months, didn't
4 you?

5 A. I can't remember.

6 Q. Okay. It was several, several weeks?

7 A. Yes, sir.

8 Q. I mean, you just didn't get charged with drug
9 offense and Ron tell you had to hit the road?

10 A. Yes, sir.

11 Q. Is that right?

12 A. No, sir.

13 Q. I mean, you were still allowed to live at that
14 house even with that charge offense having occurred?

15 A. Yes.

16 Q. Okay. And actually what happened was, after you
17 had already had that drug offense, Ron ask you if you could
18 pass a drug test, isn't that correct?

19 A. I don't know.

20 Q. Like several weeks after you had been charged, he
21 ask you if you could pass a drug test?

22 A. It's possible.

23 Q. And you told him you couldn't?

24 A. Yes, sir.

25 Q. You could not pass a drug test?

1 A. Yes, sir.

2 Q. And it's when you told him even after you had been
3 charged that you were still using drugs that he kicked you
4 out the house?

5 A. Yes, sir.

6 Q. Okay. And you didn't like that?

7 A. No.

8 Q. And I'm going to go back -- you said there was an
9 incident where she took a knife and put it into the bar, is
10 that correct?

11 A. Yes, sir.

12 Q. And what caused that?

13 A. Him having me into the ground, yelling in my face
14 that he would kill me.

15 Q. Okay. What did -- and what did she do with the
16 knife?

17 A. Just slammed it into the bar.

18 Q. And what did -- and she said that -- what did Ron
19 do when she did that?

20 A. That caused Ron to let go of me and leave the
21 house.

22 Q. Okay. But that was never reported to the police?

23 A. No, sir.

24 Q. And the -- and was there ever an issue between you
25 and Ron when you looked at pornography at the house?

BRANDON HOWARD- CROSS EXAMINATION BY MR. ANTHONY:

185

1 A. There was where they -- he said that I ordered
2 videos which I did not and he would swear up and down that I
3 did.

4 Q. Okay. Okay. He thought you had ordered some
5 pornographic movies ---

6 A. Yes.

7 Q. --- is that correct?

8 A. Yes.

9 Q. And he didn't like it because he's having to pay
10 for pornographic movies?

11 A. Yes.

12 Q. Okay. I'm gonna show you -- I'm gonna show you a
13 document, this is from the Department of Juvenile Justice,
14 Mr. Howard and this is what the Department of Juvenile
15 Justice provides concerning criminal charges for juveniles.
16 I want you to look at that and look at the dates on that and
17 see if that effects your recollection when you were charged
18 with the drug offense?

19 A. Yes, sir.

20 Q. Okay. Now when -- when does that indicate you were
21 charged with the drug offense?

22 A. March 1, 2010.

23 Q. Okay.

24 MR. ANTHONY: If I could have just one moment.k

25 THE COURT: Yes, sir.

1 Q. And would it be -- would it be fair to say Mr.
2 Howard in given that Mr. Dipietro kicked you out of his
3 house, given the fact that he didn't like to using drugs,
4 given the fact that he thought you were ordering pornography
5 and he's having to pay for it, I mean, would it be fair to
6 say that you probably, you didn't really like him very much?

7 A. Yes, sir.

8 Q. Okay. I mean, you don't really hide the fact? You
9 don't really like Ron to much?

10 A. No, sir.

11 Q. Okay. Alright. And, of course, you love your mom?

12 A. Well, of course.

13 Q. As a matter of fact you love your mom so much just
14 a month ago you moved back in with her?

15 A. Yes, sir.

16 Q. Okay. And it's also true now given what I've just
17 shown you, it's also true that you picked up this drug charge
18 in 2010, right?

19 A. Yes, sir.

20 Q. Okay. You picked it up in February of 2010?

21 A. Yes, sir.

22 Q. Which is a full year later than when you told the
23 jury you were living there?

24 A. Yes, sir.

25 Q. Okay. So Mr. Howard, when you came in here today

BRANDON HOWARD- CROSS EXAMINATION BY MR. ANTHONY: 187

1 and told this jury all this stuff about what Ron Dipietro did
2 to your mom and then you don't even know what days you lived
3 there, isn't that right?

4 A. Dates to me are insignificant. Actions is what I'm
5 going to remember.

6 Q. A year of time doesn't make any difference to you?

7 A. No, sir.

8 MR. ANTHONY: If I can have one moment. I have just
9 have a couple of things, Mr. Howard.

10 Q. Were you aware of the -- the rifle here that he
11 kept in the home?

12 A. Yes, sir.

13 Q. Okay. Did you ever shoot this rifle?

14 A. No, sir.

15 Q. Did you ever see your mom shoot it?

16 A. No, sir.

17 Q. Okay. Alright. You just knew that it was in the
18 house?

19 A. Yes, sir.

20 Q. Alright. And when you lived there, did you lock
21 the front door?

22 A. I believe so.

23 Q. Okay.

24 MR. ANTHONY: Alright. Thank you. That's
25 everything on cross.

FORREST- DIRECT EXAMINATION BY MS. INZERILLO: 188

1 THE COURT: Any redirect?

2 MS. INZERILLO: No, Your Honor..

3 THE COURT: Okay. Alright. Thank you, sir. You
4 may step down. Appreciate it. Any objection to this
5 gentleman being excused?

6 MS. INZERILLO: We're not going to objection with
7 him being ask to be excused.

8 THE COURT: Okay. Good enough. Alright. You can
9 take off, sir. Thanks for being here. You have another
10 witness to call?

11 MS. INZERILLO: Yes, Your Honor. At this time the
12 defense calls Forrest to the stand.

13 THE COURT: Okay.

14 (Witness complied with the Court's request.)

15 (Whereupon,

16 FORREST

17 first being duly sworn, testified as follows:)

18 DIRECT EXAMINATION BY MS. INZERILLO:

19 Q. are you nervous?

20 A. Yes.

21 Q. Can you tell us how old you are?

22 A. I'm twelve.

23 Q. You say twelve?

24 A. (SHAKING OF HEAD, YES)

25 Q. Is Leah your mom?

FORREST- DIRECT EXAMINATION BY MS. INZERILLO: 189

1 A. Yes.

2 Q. Do you know Ron?

3 A. Yes.

4 Q. Did you ever live with Ron and your mom?

5 A. Yes.

6 Q. Do you remember when that was?

7 A. Um, two years ago or one.

8 Q. Did you live with them in Jonesville?

9 A. Yes.

10 Q. And how old were you -- do you remember when you
11 lived with Ron and your mom?

12 A. I was ten or eleven.

13 Q. Okay. Did you ever hear your mom and Ron argue?

14 A. Yes.

15 Q. Okay. Do you know what they'd argue about?

16 A. No.

17 Q. Would they been screaming or would they be quiet?

18 A. They would, um, sometimes they would be screaming
19 at each other and sometimes they would be calm about it. I
20 guess. I don't know.

21 Q. Did you ever hear Ron threaten your mom?

22 A. Not really.

23 Q. Okay. Did you ever see Ron be violent towards your
24 mom?

25 A. He wouldn't be physical.

FORREST- DIRECT EXAMINATION BY MS. INZERILLO: 190

1 Q. Okay. Would he put his hands on her in anyway?

2 MR. ANTHONY: Objection. It's ask and answered.

3 THE COURT: Okay. I'm gonna ---

4 MR. ANTHONY: Misleading.

5 THE COURT: I'm gonna overrule the objection. You
6 can ask it.

7 MS. INZERILLO: Thank you, Your Honor.

8 Q. Would he put his hands on her in anyway?

9 A. Sometimes like he would grab her wrist and turn it
10 around and, um, he would grab -- not grab, like, -- when she
11 turned around he would do her shoulder and that's all.

12 Q. Now when he would grab her wrist, can you show me
13 how he would grab her wrist?

14 A. Like this, I mean, he would, um, her back wrist,
15 like that.

16 Q. Okay. When you say he would turn her back, would
17 he grab her wrist and spin her around? Kinda show me what he
18 would do.

19 A. Like when she turned around he would do this and
20 then he would turn her back around to face him.

21 Q. Okay. And then he would grab her shoulder?

22 A. (SHAKING OF THE HEAD, YES)

23 Q. Okay. Show me how he would grab her shoulder?

24 A. Like he was standing right there behind him.

25 Q. Okay.

FORREST- DIRECT EXAMINATION BY MS. INZERILLO: 191

1 A. I mean, yeah, behind her and then he'll like do
2 that and then he'll spin her around to face him again.

3 Q. Okay. Was he yelling at her when he did this?

4 A. Sometimes. Not all the time.

5 Q. Okay. Did you ever see Ron throw your mom in a
6 chair?

7 A. Yes.

8 Q. Okay. And can you tell me what you saw when you
9 saw that?

10 A. I was scared because I just, like -- when I saw
11 that I just, like, went back to my room because I didn't
12 really pay any attention at first. Sometimes the chair would
13 flip over and stuff like that. So that's all.

14 Q. But it scared you?

15 A. Mmm -- hum.

16 Q. Was Ron bigger than your mom?

17 A. (SHAKING OF THE HEAD, YES)

18 Q. Okay. Is Ron bigger than you?

19 A. Yes.

20 Q. When you lived with your mom and Ron in Jonesville,
21 did Ron live there all the time?

22 A. Sometimes he'll go up to his mom's at holidays.

23 Q. Okay. But when it wasn't a holiday would he live
24 at the house?

25 A. Yeah. He'll come back.

1 MS. INZERILLO: Okay. I have no further question.

2 THE COURT: Okay. Cross examination, sir?

3 CROSS EXAMINATION BY MR. ANTHONY:

4 Q. you actually were living in the house when
5 the shooting occurred, weren't you?

6 A. I was with my dad, um, at the beach.

7 Q. I understand. But when you got back -- when you
8 got back from the beach it was gonna be -- the plan would've
9 been for you to go back and stay in Jonesville with your mom,
10 right?

11 A. Yes, sir.

12 Q. Okay. And you -- this happened on the weekend so
13 you were with your dad but the week before you had lived
14 there in Jonesville, is that right?

15 A. Mmm - hmm. I was planning to go back. If that was
16 what you were asking. I was at the beach. I was gonna go
17 back to my mom's house.

18 Q. Okay. And before you went to the beach, you were
19 at your mom's house, right?

20 A. Mmm - hmm.

21 Q. And you live with your mom for maybe a month or so?

22 A. Two months, I think.

23 Q. A couple of months. Okay. Okay. And you've lived
24 with your mom for a probably a couple of months before --
25 before the shooting?

1 A. Mmm - hmm.

2 Q. Okay.

3 MR. ANTHONY: And just need to say yes or no.

4 A. Yes.

5 MR. ANTHONY: Because she's got to know what you're
6 saying. Okay. Thank you.

7 Q. So you spent, like, basically, for a month or two
8 and you were staying there pretty much every night in
9 Jonesville?

10 A. Sometimes on the weekends, I would go to my dad's.

11 Q. Okay.

12 A. Like one weekend I would stay and then the next
13 weekend I would go to my dad's.

14 Q. Yeah, like every other -- he had visitation ---

15 A. Mmm - hmm.

16 Q. Like you'd go visit him?

17 A. Mmm - hmm. Yes.

18 Q. Okay. And then Monday through Friday you'd be at
19 your mom's house?

20 A. Yes.

21 Q. Okay. And Ron, a lot of nights, would be there
22 too?

23 A. Yes.

24 Q. Okay. And you said that like during that up to
25 two months, sometimes you would hear them arguing, is that

1 right?

2 A. Yes.

3 Q. And sometimes Ron would take a wrist and kinda of
4 turn her around -- kinda of turn her towards him, is that ---

5 A. Yes.

6 Q. Okay. And -- and one time he, like you said, the
7 chair flipped over?

8 A. Yes.

9 Q. Is that right? Okay. And your mom was in the
10 chair?

11 A. Yes.

12 Q. Okay. Now was that something Ron did on -- did Ron
13 turn the chair over or did the chair just ---

14 A. It sometimes just flips by itself because it's a
15 rocky chair and it just does that.

16 Q. Okay. And is that what you call happen the time
17 you saw your mom flip over?

18 A. Yeah.

19 Q. Okay.

20 A. Like I went to my room because I really didn't
21 think anything about it.

22 Q. And that's -- that's pretty much what you saw
23 between the two of them? He'd grab her wrist and sometimes
24 he would kinda of spin her around?

25 A. Yes.

1 Q. And this was over about close to two months?

2 A. Yes.

3 Q. That's what happened between Ron and your mom?

4 A. No.

5 Q. Okay. Do you -- do you remember a time when your
6 mom got mad at Ron and threw all his clothes out in the drive
7 way?

8 A. If that happened, I wasn't there.

9 Q. Okay. Alright. Do you remember your mom saying
10 something about I just kicked Ron out today or I threw all
11 his clothes out in the driveway. You remember anything --

12 A. No.

13 Q. --- like that? Maybe a couple of weeks before --

14 A. No.

15 Q. Okay. And the week before the shooting, were there
16 a few nights out the week when Ron wasn't there?

17 A. Um, I really don't remember, like, sometimes he
18 would go to his dads or moms and sometimes we'll go with him.
19 But that's pretty all but ---

20 Q. Do you remember like in a week or two before the
21 shooting, your mom and Ron kinda of having some problems and
22 may be not spending as much time together?

23 A. They spent time together as much as possible.

24 Q. Okay. And are you living with your mom now?

25 A. My dad.

1 Q. Oh you live with your dad now. Okay. When did you
2 move back with your dad?

3 A. Um, after -- after all that stuff happened.

4 Q. After the shooting happened you moved back with
5 your dad?

6 A. I had to.

7 Q. And do you -- did you know the gun that -- the gun
8 was in the house?

9 A. Yep.

10 Q. And have you ever seen mom use it?

11 A. No. It was there for, like, safety reason she told
12 me.

13 Q. I'm sorry.

14 A. Safety reasons she told me.

15 Q. When you were living at the house, we're y'all able
16 to lock the front door?

17 A. Mmm - hmm.

18 Q. You didn't just say ---

19 MR. ANTHONY: you need to say yes or no.

20 A. Yes.

21 Q. Okay. Who are you staying with this week?

22 A. My mom.

23 Q. Is it spring break or something is that why you're
24 with your mom or why are with your mom this week?

25 A. Because, like -- last week was spring break but,

1 um, this week I'm suppose to go to school, but I'm here with
2 my mom because of court.

3 Q. Okay. So -- so -- did your mom want you to come
4 spend this week with her so she can have you come to court?

5 A. Um, no, not -- well yeah. I wanted to stay.

6 Q. Okay. And so you're living with your mom right now
7 -- last night you spent the night with your mom?

8 A. Yeah.

9 Q. And tonight you'll spend the night with your mom?

10 A. Mmm - hmm. Yes.

11 MR. ANTHONY: If I could have one moment. Just a
12 couple of more things,

13 Q. When you moved in with your mom had Brandon already
14 moved out?

15 A. Yes.

16 Q. Okay. And did you, you know, you testified about
17 seeing something's where Ron was mad at your mom. Did your
18 mom ever get mad at Ron?

19 A. Yeah.

20 Q. She did? Okay. What kind of things would she did
21 when she got mad at Ron?

22 A. She would just, like -- she wouldn't touch him in
23 anyway, like, like, um, sometimes they would be, like,
24 drinking ---

25 Q. Mmm - hmm.

1 A. --- and they would just, like, argue ---

2 Q. Mmm -hmm.

3 A. --- and that's pretty much it. Just like arguing
4 like normal couples.

5 MR. ANTHONY: Okay. Alright. That's everything
6 from cross. Thank you.

7 THE COURT: Any redirect?

8 MS. INZERILLO: No, Your Honor.

9 THE COURT: Alright. Thank you for being here. I
10 appreciate it. You may step down. Any objection to this
11 witness being excused?

12 MR. ANTHONY: No, sir.

13 THE COURT: Alright. Good enough. Okay. Ladies
14 and gentlemen, it is my understanding that's the last witness
15 we'll have today. Ms. Inzerillo, Mr. Delaney, how many
16 additional witnesses do you anticipate calling in your case.

17 MS. INZERILLO: Anticipate two, Your Honor.

18 THE COURT: Two and would they be longer I presume
19 than these?

20 MS. INZERILLO: One, yes. One would be short.

21 THE COURT: Okay. Alright. Good enough. Alright.
22 At this point Mr. Anthony do you intend to call any reply
23 witnesses?

24 MR. ANTHONY: Yes, sir. I'd say probably, pretty
25 likely we will have some reply witnesses.

1 THE COURT: How many do you anticipate calling?

2 MR. ANTHONY: I would say probably four or five and
3 they will all be verily brief.

4 THE COURT: Okay. Alright. Ladies and gentlemen.
5 You heard what I heard. So what we're going to do is come
6 back on the record tomorrow at 9:30. What we'll do is try to
7 get into the record, everything tomorrow. What you've been
8 hearing that we'll have six witnesses, one of whom we'll be
9 verily long. Probably will roll over into after lunch. Then
10 we're going to make a determination as to whether it's
11 appropriate to go to argument and charge tomorrow afternoon
12 or whether it's run to late. Usually, I don't like to argue
13 and charge and most circuit court judges don't like to argue
14 and charge after three or four o'clock. And the reason for
15 that is, is that once you start deliberating for all
16 intensive purposes you're stuck here which means if you take
17 five hours to come to a verdict or ten hours to come to a
18 verdict, you may be here passed midnight tomorrow. What I'd
19 rather do is give you a full day. So as I suggested to you,
20 if we get -- if we start getting close to three and perhaps
21 after three then probably what we'll do is come back on
22 Friday morning and start fresh an argument charge. And,
23 obviously, that can changed based on what happens tomorrow.
24 I just kinda of trying to let you know what's in my head and
25 how you can anticipate proceeding going forward. So I'll see

1 you back here at 9:30 tomorrow morning. Please don't discuss
2 the case and y'all have a great evening.

3 **(JURY LEAVE THE COURTROOM)**

4 THE COURT: Alright. Ladies and gentlemen we'll
5 come back on the record at 9:30. I don't know whether you do
6 or not but I don't necessarily expect it but I'll just ask
7 you hopefully, do you have any request for charge yet or are
8 you still getting those together?

9 MS. INZERILLO: Your Honor, we should have ours in
10 the morning.

11 THE COURT: Okay. That's fine.

12 MR. ANTHONY: I don't, Your Honor.

13 THE COURT: Okay. You don't have them yet or you
14 don't anticipate having them?

15 MR. ANTHONY: I don't -- I don't know that I'll
16 have anything really out of the usual in this case, Your
17 Honor.

18 THE COURT: Good enough. Good enough. Alright.
19 Well, then if you'll give me what you have tomorrow. What
20 we'll probably do is just see where we stand at or about
21 lunch time and we'll do an informal charge conference. We'll
22 just got back in chambers and just kinda talk about your
23 request and I'll kinda of give you some insight in to what I
24 anticipate charging so, so you'll know that. Like I said,
25 four to six reply witnesses, is that what you said you were

1 gonna to have?

2 MR. ANTHONY: I think four or five.

3 THE COURT: Four or five?

4 MR. ANTHONY: Probably, yes.

5 THE COURT: Alright. And I -- I -- I presume that
6 one of your witnesses is Ms. Forrest, is that correct?

7 MS. INZERILLO: Um ---

8 MR. DELANEY: We don't know about that yet.

9 THE COURT: Okay. Alright. Well if Ms. Forrest
10 would like to testify, I'm assuming that's going to take a
11 little bit of time so.

12 MR. DELANEY: Yes, Your Honor.

13 THE COURT: Based on what I'm hearing right now it
14 looks like we're going to bleed over into the afternoon with
15 testimony. I could be wrong.

16 MR. ANTHONY: I do have this one thing. I
17 mentioned to Mr. Delany and Ms. Inzerillo the combination on
18 this ---

19 THE COURT: Yes, sir.

20 MR. ANTHONY: I know they got their expert coming,
21 at least they told me they had their expert coming, and if
22 they can give me her notes anything she would review before
23 testifying I think I'm entitled to see ---

24 THE COURT: Mmm - hmm.

25 MR. ANTHONY: --- certainly I'd like -- I'd like to

1 at least produce them in the morning, you know, the quicker
2 they can give them to me the less of -- more efficient cross
3 examination would be, you know, the less time I'll need to
4 look through them and that kinda of thing.

5 THE COURT: Yes.

6 MR. DELANEY: We -- we discussed that with her and
7 she will have her notes when she gets here first thing in the
8 morning and we'll get those to Mr. Anthony.

9 THE COURT: Okay. Good enough. Alright. We'll
10 see y'all tomorrow morning. Have a great evening.

11 (COURT ADJURED AT 4:20)

12 (CONCLUSION OF HEARING HELD ON APRIL 11, 2012)

13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, THE UNDERSIGNED, LISA S. CARTER, OFFICIAL COURT REPORTER FOR THE FAMILY COURT OF THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT, UNION COUNTY, SOUTH CAROLINA, ON THE 11TH DAY OF APRIL, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

Lisa S. Carter

COURT REPORTER

JANUARY 21, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

IN THE COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUIT
11-GS-44-932

State of South Carolina)
vs.)
Leah Forrest)

Transcript of Record

(Pages 1 - 166)
Day 3

April 12, 2012 (Thursday)
Union, South Carolina

B E F O R E:

The Honorable Robin B. Stilwell

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

John Anthony, Deputy Solicitor
Union, South Carolina

Attorney for the Plaintiff

Erik Delaney, Assistant Public Defender
Union, South Carolina

Melissa Inzerillo, Esquire
York, South Carolina

Attorneys for the Defendant

SHIRLEY G. BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

I N D E X

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Blake Keeler				
By Mr. Delaney	5			
By Mr. Anthony		9		
Vicky Burris				
By Ms. Inzerillo	13			
By Mr. Anthony		44		
By Ms. Inzerillo			110	
By Mr. Anthony				124
Chad Gault				
By Mr. Anthony	137			
By Mr. Delaney		143		
By Mr. Anthony			145	
Jimmy Wilkins				
By Mr. Anthony	146			
Richard Gault				
By Mr. Anthony	149			
By Mr. Delaney		154		
Ron Bishop				
By Mr. Anthony	156			
Robbie Hines				
By Mr. Anthony	161			

EXHIBITS

EXHIBIT NO.	DESCRIPTION	ID	EV
S-26	Cell phone		165
S-48	Examination Report	66	68
S-49	Examination Report	79	79
S-50	Examination Report	85	86
S-51	Examination Report	89	
D-4	Text messages	110	111
D-5	Text messages	112	
D-6	Text messages	114	115

4

1 The Court - All right, y'all ready for the jury?

2 Mr. Delaney - We are waiting on -- we're just
3 getting our investigator, Judge, and we're getting one of
4 our just one of witnesses just down here from upstairs.
5 Just be a second.

6 The Court - All right, that's good. Who's your
7 first witness going to be?

8 Mr. Delaney - His name is Blake Keeler.

9 The Court - Long witness or short witness?

10 Mr. Delaney - Short witness. Short witness,
11 Your Honor.

12 The Court - Oh, Mr. Delaney, do y'all have
13 request for charge for me yet?

14 Mr. Delaney - Judge, that should be on it's way
15 down now.

16 The Court - I'm not worried. I was just asking.

17 Mr. Delaney - We're getting it off the printer
18 upstairs.

19 The Court - Okay.

20 Mr. Delaney - Judge, we are ready to go with our
21 first witness. I've been informed it's going to be about
22 ten or fifteen minutes before our charges are --

23 The Court - That's fine. All right, what we'll
24 do is go ahead and bring the jury in if y'all are ready.

25 Mr. Anthony - Can you get Captain Hines?

Blake Keeler - Direct by Mr. Delaney

5

1 The Court - Okay, you can bring the jury in,
2 please.

3 (Jury enters the courtroom)

4 The Court - All right, good morning, ladies and
5 gentlemen. Welcome back. I just want to note that y'all
6 have been very timely all week and I appreciate it. Y'all
7 were here 15 minutes before the bell rang, so I always
8 appreciate it, because not all juries are like that, I can
9 assure you. So without further ado we'll begin -- we'll
10 resume the trial of this case. Mr. Delaney?

11 Mr. Delaney - Thank you, Your Honor. Defense
12 would call Blake Keeler.

13 Blake Keeler, after being first duly sworn
14 testifies as follows -

15 Direct Examination

16 by Mr. Delaney -

17 Q Please state your name for the jury?

18 A Blake Keeler.

19 Q Blake, or Mr. Keeler, where do you live?

20 A Jonesville, South Carolina.

21 Q Okay, and what is your address in Jonesville, South
22 Carolina?

23 A Street.

24 Q Okay. And How long have you lived there?

25 A About four and a half years.

Blake Keeler - Direct by Mr. Delaney

6

1 Q Four and a half years? Okay. And did you live at
2 Street in June of 2010?

3 A Yes, sir.

4 Q Okay. And who did you live across the street from in
5 June of 2010?

6 A Ron and Leah.

7 Q And, Mr. Keeler, do you remember the morning of June
8 the 7th, 2010?

9 A Yes, sir.

10 Q And what specifically -- what did you hear that
11 morning?

12 A Um, I heard a loud noise that woke me up, you know.
13 I didn't know what it was. I got up, looked around the
14 house, looked out my front window and I saw across the
15 road the lights were on at the house.

16 Q Okay. So you heard -- didn't mean to interrupt you,
17 I just wanted to just make sure -- you heard, you said a
18 loud noise?

19 A Yes, sir.

20 Q Okay. Do you know what type of noise it was?

21 A It just -- I mean I was asleep, a noise that woke me
22 up.

23 Q Okay. And what did you -- what did you do at that
24 point?

25 A I got up, checked my house out, you know, make sure

Blake Keeler - Direct by Mr. Delaney

7

1 nobody's breaking in my house and then checked the
2 windows, looked out, saw --

3 Q What did you see when you looked out the window?

4 A Saw lights on over at the house, saw Leah outside.

5 Q Okay. Where was Leah outside?

6 A Carport area, driveway.

7 Q Okay. What was she doing in the carport area?

8 A Walking around. It was still dark outside, you know,
9 I couldn't really tell.

10 Q Okay. What did you do at that point?

11 A Went to lay back down.

12 Q Okay. What happens next?

13 A I dosed off and then I wake up to a diesel engine
14 running and my room was flashing with lights.

15 Q Okay. And you say you said you looked out the window
16 and you saw Leah in the carport area, go back in your room
17 and you dose off. Okay. And the next thing you're awake
18 to flashing lights and some noise outside?

19 A Yes, sir.

20 Q Did you go outside at that point?

21 A Yes, sir.

22 Q Okay. And what was outside?

23 A Cop cars, ambulance.

24 Q Okay. Was it two hours between the time that you
25 heard this noise, got up, saw Leah outside and went back

Blake Keeler - Direct by Mr. Delaney

8

1 to sleep?

2 Mr. Anthony - Objection, leading.

3 Mr. Delaney - I'm sorry.

4 The Court - All right, sustained.

5 Q How long was it -- was it two hours?

6 Mr. Anthony - Objection, leading.

7 Mr. Delaney - Well, I hadn't finished my
8 question.

9 The Court - Sustained. Okay. Go ahead, you can
10 rephrase the question.

11 Q How long was it, Blake, between the time that you
12 heard the noise, looked outside, went back and dosed off,
13 the best that you can remember?

14 A What time was it?

15 Q How long -- how long a time passed between the time
16 that you looked out to when you heard this noise, you went
17 back to bed, fell back to sleep? How long was it?

18 A I would say around thirty, thirty-five minutes maybe.

19 Q Wasn't two hours?

20 A No, sir.

21 Q Could it have been as little as fifteen minutes?

22 Mr. Anthony - Objection, once again, he is
23 leading.

24 The Court - Okay, I'm going to overrule that.
25 You can ask the question.

Blake Keeler - Cross by Mr. Anthony

9

1 Q Could it have been as little as fifteen minutes?

2 A Could have.

3 Mr. Delaney - No further question. Thank you,

4 Blake.

5 Cross Examination

6 by Mr. Anthony -

7 Q Well, Mr. Keeler, you live by yourself?

8 A Sir?

9 Q Do you live by yourself?

10 A No, sir.

11 Q Okay. Was somebody else living with you the --

12 A Yes, sir.

13 Q -- night in question? Are you married or --

14 A Engaged.

15 Q Engaged? Okay. So your fiance was there with you
16 spending the night there?

17 A Yes, sir.

18 Q Did you two live there together?

19 A Yes, sir.

20 Q Okay. All right, and this noise you heard, what --
21 did you have any idea what it was?

22 A No, sir.

23 Q And you only heard one noise.

24 A I heard a noise. I was sound asleep and woke up to
25 a loud noise.

Blake Keeler - Cross by Mr. Anthony

10

1 Q Can you give any kind of description of what it
2 sounded like?

3 A Just a noise that woke me up. I don't --

4 Q Okay. And did it wake your fiance up too?

5 A No, sir.

6 Q Okay. So you get up and look around your house. Is
7 that right?

8 A Yes, sir.

9 Q And make sure everything's good there.

10 A Yes, sir.

11 Q And then you look out the window --

12 A Yes, sir.

13 Q -- and you see Leah out on the carport.

14 A Yes, sir.

15 Q And I take it it didn't take too long to look around
16 your house and see Leah on the carport.

17 A No, sir. No, sir.

18 Q Okay. And then you just see her out there and she's
19 -- you say you thought she was -- she was walking around?

20 A Yes, sir.

21 Q Did you say you thought she was smoking or --

22 A I don't know, it was dark, it was early morning.

23 Q Okay, but you could just see her walking around.

24 A Yes, sir.

25 Q Okay, and so after that you just went back and laid

Blake Keeler - Cross by Mr. Anthony

11

1 down.

2 A Yes, sir.

3 Q Okay. And then you went back to sleep.

4 A Yes, sir.

5 Q And the amount of time that you were up, I take it
6 was a pretty short amount of time.

7 A Yes, sir.

8 Q Just a few minutes.

9 A Yes, sir.

10 Q Okay. And then you go back, you go to sleep and you
11 get woken up by police cars and ambulances.

12 A Yes, sir.

13 Q Okay. And do you know -- do you have any idea how
14 much time passed from the time you laid down to the time
15 the ambulances came?

16 A No, sir, I -- I don't have no clue.

17 Q Okay. You just know you dosed off.

18 A Yes, sir.

19 Q So you could've slept for a couple hours.

20 A I wouldn't say that long.

21 Q Okay. You could've slept for an hour or so?

22 A Could have.

23 Q Okay. All right, and I mean really when you dose --
24 when you go to sleep, you don't really have and conception
25 of how long you've been asleep.

Blake Keeler - Cross by Mr. Anthony

12

1 A Yes, sir.

2 Q Okay, but you just -- you just know you went to
3 sleep, you woke -- and these lights woke you back up.

4 A Yes, sir.

5 Q Okay. And I take it you didn't notice when the shot
6 -- when you heard the noise, whatever it was, you didn't
7 notice what time it was?

8 A No, sir.

9 Q Okay. Did you notice what time you were woken up by
10 the lights?

11 A Um, I knew it was -- it was late morning, because I'd
12 stayed up and I'd got up ready for work that morning, so
13 it could've been anywhere from 5:00 to 6:30, you know what
14 I'm saying.

15 Q Okay. You just know it was somewhere in that --

16 A Yes, sir.

17 Q -- that vicinity.

18 A Yes, sir.

19 Mr. Anthony - Okay. All right, if I could have
20 a moment.

21 The Court - Sure.

22 Mr. Anthony - (Pause) All right, thank you.

23 That's everything -- that's everything on cross.

24 The Court - Any re-direct, sir?

25 Mr. Delaney - No, Your Honor.

Vicky Burris - Direct by Ms. Inzerillo

13

1 The Court - All right, sir, you may step down.
2 I appreciate your being here, sir. All right, you may
3 call your next witness.

4 Ms. Inzerillo - Your Honor, at this time we call
5 Vicky Burris to the stand.

6 Mr. Anthony - Your Honor, I do have one matter
7 that I'd like us to approach on.

8 The Court - Sure, come on up.

9 (Bench conference was held in the presence of
10 the jury but out of the hearing of the jury which was not
11 reported.)

12 Vicky Burris, after being first duly sworn,
13 testifies as follows -

14 Direct Examination

15 by Ms. Inzerillo -

16 Q Ms. Burris, could you tell the jury about yourself?

17 A Yes, I'm a practicing social worker. I've been
18 practicing in South Carolina for about twenty-five years.

19 Q And what do you do now?

20 A I'm the Director of The Family Justice Center. It's
21 a domestic violence program in Georgetown, South Carolina.

22 Q Okay. Can you tell the jury -- I'm sorry -- how long
23 have you had that --

24 A About six weeks.

25 Q Okay. Can you tell the jury a little bit about your

Vicky Burris - Direct by Ms. Inzerillo

14

1 educational background?

2 A Yes, I have a bachelor's degree in education and a
3 master's degree in social work from the University of
4 South Carolina.

5 Q Are you licensed by the State of South Carolina?

6 A Yes, I'm licensed at the licensed independent social
7 worker level which is the third and highest level that you
8 can achieve in our state.

9 Q And what does that licenser allow you to do?

10 A Among many things, working with individuals,
11 counseling, doing therapy. I do assessments for mental
12 health issues, addiction problems and other -- other
13 issues.

14 Q Do you need any continuing education to maintain this
15 license?

16 A Yes. I have to achieve forty credits every two years
17 to maintain the license.

18 Q And are you current with all of your continuing
19 education?

20 A Yes.

21 Q Can you tell the jury a little bit about your work
22 background?

23 A Most of my work has been spent working with victims
24 of domestic violence, child abuse and sexual assault.

25 I've been the Director of The Women's Shelter in

Vicky Burris - Direct by Ms. Inzerillo

15

1 Greenville for five years, worked at The Child Advocacy
2 Center in Florence for three. I'm a certified forensic
3 interviewer of victims of child abuse, and the last
4 thirteen years previous to this position I was the
5 Executive Director of the South Carolina Coalition Against
6 Domestic Violence and Sexual Assault in Columbia.

7 Q And what type of things did you do in that position?

8 A The State Coalition is focused more on legislative
9 advocacy, public policy work in the area of domestic
10 violence, sexual assault and child abuse, so working with
11 members of the General Assembly assisting them in drafting
12 laws that would improve the situation for victims in the
13 state, public awareness work and a lot of training in
14 presentations and workshops around the state.

15 Q Okay, and in all of these jobs and your work history,
16 what was sort of the core of your job duties?

17 A I think that simply put, you can say I've been a
18 strong advocate for victim's rights in South Carolina,
19 particularly victims of domestic violence, sexual assault
20 and child abuse.

21 Q And your -- these previous jobs, did you have to
22 assess women to determine if they suffered from battered
23 spouse syndrome?

24 A Yes.

25 Q Would you consider that one of the core duties of the

Vicky Burris - Direct by Ms. Inzerillo

16

1 jobs that you've held?

2 A Yes.

3 Q In these various jobs, did you learn how to assess
4 women for PTSD?

5 A Yes.

6 Q And that's post traumatic stress disorder. Is that
7 right?

8 A Yes, that's right.

9 Q Did you take any additional courses in your
10 educational or continuing education specifically on PTSD
11 and battered spouse?

12 A Yes.

13 Q And can you tell the jury a little bit about that?

14 A Well, as part of my continuing education commitment
15 of forty hours that you have to obtain every two years to
16 maintain your license, your -- the focus of your work,
17 whatever specialty you're looking at, whether it's a
18 mental health professional, domestic violence advocate,
19 half of those hours are to be dedicated to improving your
20 skills in those areas, so to seek out classes and courses
21 on those particular issues, including post traumatic
22 stress disorder as it relates to adult victims as well as
23 children, would be one of the many classes that I've
24 taken.

25 Q Have you ever testified as an expert before?

Vicky Burris - Direct by Ms. Inzerillo

17

1 A Yes.

2 Q How many times?

3 A I was asked to serve on six different occasions and
4 actually testified in three different trials.

5 Q And what courts were those trials?

6 A Beaufort County, Oconee County and Greenville.

7 Q Was it in a courtroom like this? Was it in Family
8 Court or any other type of court.

9 A Two were in Family Court, divorce cases, and one was
10 a criminal court, a criminal case on criminal domestic
11 violence.

12 Q In the case in criminal court, which side did you
13 testify for?

14 A The prosecution.

15 Q Have you ever been hired to assess someone and not
16 found them to be PTSD --

17 A Yes.

18 Q -- and/or battered spouse?

19 A Yes. A number of occasions where I was not able to
20 determine a person had been a victim of domestic violence
21 or with suffering from PTSD.

22 Q Ms. Burris, are you getting paid to be here today?

23 A Yes.

24 Q How much?

25 A Sixty dollars an hour for preparation time and one

Vicky Burris - Direct by Ms. Inzerillo

18

1 hundred dollars an hour for court testimony time.

2 Q And what were you asked to do in relation to this
3 case?

4 A To meet with Ms. Leah Forrest to assess her for
5 confirmation of her experiences as a victim of domestic
6 violence and to determine whether or not in my opinion she
7 is suffering from PTSD, specifically battered women
8 syndrome.

9 Q Did the fact that you're being paid affect any
10 opinion that you formulated here today?

11 A No.

12 Ms. Inzerillo - Your Honor, at this time we
13 would move Ms. Burris to be certified as an expert in the
14 field of assessment of PTSD, battered spouse, due to her
15 educational and work background.

16 The Court - All right.

17 Mr. Anthony - No objection.

18 The Court - All right. Ladies and gentlemen,
19 this witness has been qualified as an expert witness.
20 I've already told you an expert witness may present
21 testimony to assist you in your analysis of the evidence
22 based on her educational experience and expertise.
23 However, you accept that testimony just like you accept
24 any other piece of evidence and you decide what weight to
25 put upon it. You may proceed.

Vicky Burris - Direct by Ms. Inzerillo

19

1 Ms. Inzerillo - Thank you, Your Honor.

2 Q Now, Ms. Burris, I asked you about battered spouse
3 and PTSD. Are those two things related?

4 A Post traumatic stress disorder is a psychological and
5 sometimes physiological response to a trauma that is so
6 severe that it overcomes the person's ability to cope with
7 it, and there are a number of symptoms that would indicate
8 that. Battered women syndrome is a sub-category of PTSD
9 and relates directly to the trauma of having been
10 battered.

11 Q Now, I know in our every-day lives we hear about PTSD
12 or post traumatic stress disorder when we deal with our
13 soldiers coming back to (sic) war. Is that sort of the
14 most every-day way we would hear about PTSD?

15 A I think that's most of what the general public knows
16 about it, the symptoms of PTSD. I think the media's
17 actually done a good job of highlighting what happens to
18 many soldiers returning after a trauma -- for the trauma
19 of war. It can also be a response of a victim to a rape
20 or an attempted rape or to a child who's been battered or
21 abused and suffered post traumatic stress disorder.

22 Q So PTSD can manifest in someone who hasn't seen the
23 horrors of war but has undergone other trauma?

24 A Yes.

25 Q Okay. Can you -- let's focus first on just PTSD.

Vicky Burris - Direct by Ms. Inzerillo

20

1 Can you explain to us what the PTSD is?

2 A Following the trauma, whether it's a physical
3 assault, whether it's a threat of a physical assault, a
4 sexual assault, battering incident or in some cases
5 witnessing a very traumatic event can bring on a set of
6 symptoms which most people will experience for some period
7 of time, loss of sleep, nightmares, flashbacks of the
8 trauma, possibly some physiological problems with eating,
9 sleeping, some depression, a lot of anxiety, sometimes
10 some phobia, some panic attacks will develop. The
11 diagnosis of PTSD, however, can only be made in the
12 context of time. In other words, if that person's
13 symptoms continue or even become worse over time over a
14 period of a year say, or eighteen months or even two
15 years, that person would very likely be suffering from
16 post traumatic stress disorder.

17 Q And when you're assessing someone for PTSD, is that
18 what you're looking for, these sort of long-time affects -
19 -

20 A A continuation of the situations, yes.

21 Q Okay. Now, you said it much better than I could.
22 And are those the symptoms of PTSD that you look for in
23 assessing someone?

24 A Yes.

25 Q And you said battered spouse was related to PTSD.

Vicky Burris - Direct by Ms. Inzerillo

21

1 Could you explain now specifically what battered spouse
2 is?

3 A It really is a form of post traumatic stress disorder
4 with very similar symptoms following the trauma, but the
5 symptoms are related directly to the domestic violence
6 experience. In other words, flashbacks would be
7 flashbacks of the actual incident of battering, of
8 whatever occurred there in terms of physical assault. The
9 thing that makes domestic violence difficult sometimes is
10 because often we don't see victims until after several
11 years of being in abusive relationship and their symptoms
12 have already developed and become very exacerbated.

13 Q So if I'm understanding you right, battered women
14 specifically is a sub-set of PTSD because it relates to
15 how someone reacts to the trauma of PTSD. Is that right?

16 A Yes.

17 Q Okay. So instead of, for example, a soldier
18 undergoing the trauma of war, battered spouse addresses
19 specifically a woman undergoing the trauma of repeated
20 threats, physical abuse, emotional abuse in a battered
21 setting. Is that right?

22 A Yes.

23 Q Does battered spouse syndrome, does it come in cycles
24 or involve cycles I should --

25 A I would say it is indicated by what we think of as

Vicky Burris - Direct by Ms. Inzerillo

22

1 three sets of symptoms. The first one is called the fight
2 response. That is -- the symptoms that go along with the
3 fight response are hyper-vigilance, kind of intense
4 physical setting all the time. This is where you'd see
5 your panic and anxiety disorders develop. It's a constant
6 state of not feeling safe and being hyper-vigilant in
7 watching for that -- for that danger. The next step
8 though is called the flight response. The flight response
9 symptoms typically are more your withdrawing, your
10 depression, the numbness or a dissociation. I can explain
11 that in greater detail if you want me to.

12 Q I would actually.

13 A Dissociation is the tendency -- it's a self-
14 protective device that allows a person to kind of withdraw
15 into a place where they're not feeling much, they're not
16 experiencing much. An example of that will be a child who
17 is enduring a sexual assault or form of sexual abuse. You
18 often hear children talking about how they left their
19 body, how they knew what was happening, but they were able
20 not to feel anything. They were able to numb themselves.
21 That's dissociation. That's probably the best way I can
22 say that. The other set of symptoms are referred to
23 cognitive and memory disorders that develop over time in
24 a traumatic situation, difficulty in remembering very
25 clearly the sequence of events that happened in a

Vicky Burris - Direct by Ms. Inzerillo

23

1 particular assault, not being able to clearly delineate
2 what happened or losing time. There'll be some memory
3 gaps in the description of the event.

4 Q Okay. On dissociation, on that specifically, does
5 that sort of numbness -- I'm going to say tuning out.
6 That's probably not the proper psychological term --

7 A That's a good way to say it.

8 Q The tuning out of the trauma, does that end as soon
9 as the trauma ends, or can it extend past the trauma?

10 A Yes, that's a -- yes. The symptoms, all of them
11 really can tend to continue for some period of time after
12 the trauma has abated. Now, when you re-experience yet
13 again another trauma, another physical assault, another
14 sexual assault, you will have an recurrence of intensity
15 of those symptoms, and over time they tend to become very
16 difficult to recover from. The longer the traumatic
17 situation continues, the more often it recurs, the longer
18 it's going to take for that person to recover once they
19 truly are removed from the situation.

20 Q Okay. And on the -- the fact that a person would
21 having difficulty remembering or sequencing events, you
22 explained that that can happen long-term. Can that also
23 happen immediately after a person experiences the trauma?

24 A It can, particularly if the trauma -- if it's a
25 severe physical trauma, if there's been or loss of

Vicky Burris - Direct by Ms. Inzerillo

24

1 consciousness.

2 Q Okay. So if they're -- if a woman undergoes a
3 beating and -- can she at the same time still be in the
4 tune-out sort-of phase of her mind after experiencing the
5 beating and have difficulty remembering events immediately
6 after the trauma when she's talking to people?

7 A Oh, yes. Yes, recounting the sequence of events or
8 trying to describe the trauma can be very difficult for a
9 person just coming out of a situation like that, yes.

10 Q And at the close of this situation, is it possible to
11 have someone exaggerate or minimize times or descriptions
12 or any -- anything like that, factually with what happened
13 during the trauma?

14 A Oh, yes. I think an example of that would be --
15 again, back to my child abuse post traumatic stress
16 disorder diagnosis is that even an adolescent will have
17 difficulty describing a sexual assault event or domestic
18 violence incident immediately following or even long-term
19 losing space, losing time, and let me go back to the issue
20 of dissociation. Dissociation again -- if I could remind
21 the court, it's a self-protective device that allows
22 people to check out and so in describing the event or
23 trying to give the story to someone, it may very well be
24 that that period of time that person dissociated is not
25 clear in the description.

Vicky Burris - Direct by Ms. Inzerillo

25

1 Q So if a person were recanting what happened, they may
2 not incorporate -- if they were dissociated for thirty
3 minutes or an hour afterwards, they may not incorporate
4 that into --

5 A The space in their memory, yes.

6 Q And you indicated that when a child witnesses or
7 undergoes a traumatic event, this same thing could apply
8 to them in terms of misplacing time, misstating time, that
9 type of thing.

10 A Yes.

11 Q Ms. Burris, why would an abuse woman -- a woman stay
12 in an abusive relationship?

13 A There are so many reasons I think why folks find it
14 difficult, you know, to leave a relationship like that.
15 I think it's important to remember that an abusive
16 relationship doesn't start out like that. Often victims
17 and perpetrators will describe their initial contact as
18 really overwhelming, very in-love experience, very
19 connected to each other, very bonded, that that is -- it's
20 a powerful kind of connection when you both feel very
21 close to each other. And it's not typically until later
22 in the relationship that the abuse begins. When I say
23 later, it can be a month, it can be a year, but I think
24 the victim is continually hoping that, you know, one more
25 time, one more chance we'll get back to that place, you

Vicky Burris - Direct by Ms. Inzerillo

26

1 know, where we were so in love and really caring for each
2 other and that that feels so good and she's hoping,
3 praying, that, you know, they'll get back to that point,
4 and so there's this tendency to give their relationship
5 another chance, another chance, another chance. In
6 addition to that, if there's any financial dependency at
7 all or a discrepancy in the income of the two people where
8 there's -- the perpetrator earns a greater amount than the
9 victim or the victim may not have an income, you've got
10 that financial tie. If they have children together,
11 sometimes that can be a factor. If there are any -- if
12 there's anything in a person's background that says
13 divorce is wrong and I need to -- I need to hang in here
14 and make this happen, there are lots and lots of reason
15 why women stay in these relationships. The other one is
16 fear. That's a huge issue, that if they've been
17 threatened, you know, if you leave I'll kill you. It
18 happens. You know, all of the women who were killed in
19 South Carolina in 2010, all of them in domestic incidents
20 that we know about had recently left a abusive
21 relationship or had left within the last year. So when
22 they say they're afraid to leave because they might --
23 they can endure the abuse but they don't want to die, and
24 when they leave, often that is the time when they're most
25 likely to be killed, and so victims often know that. You

1 know, just one more thing about that. For the average
2 person that can be really confusing, to see a person in an
3 abusive relationship stay there, tolerate it, continue to
4 give it one more chance, one more chance, but I would
5 liken it to this, most of us have had job experiences that
6 weren't very pleasant. We might've even been mistreated
7 at work, verbally abused, work demanded of us that was
8 beyond reasonable, even in some cases sexually harassed.
9 It is very unusual for any of us to as soon as we get an
10 indication of that to leave that job; we're tied to it,
11 you know. We might have families we're supporting. You
12 know, there's lots of reasons why we want to hang in there
13 and give this job a chance, and typically people won't
14 leave a really poor situation until it's beyond endurance.

15 Q If a woman who's been battered witnessed her children
16 being threatened or attacked, would that impact her
17 decision whether to stay or to leave?

18 A That's a very powerful experience for a battered
19 woman. In fact, most of the women who end of leaving do
20 so when either they truly believe their life is in danger
21 now and/or now their children are threatened or have been
22 hurt. Working in a shelter we saw that continually that,
23 you know, women would say, you know, I can handle this,
24 but now it's spilled over onto my children, now they're
25 threatened, now they're in danger, I can't stay.

Vicky Burris - Direct by Ms. Inzerillo

28

1 Q Is what you described, is that what's commonly called
2 learned helplessness?

3 A That phrase is one that developed in looking at what
4 happens to a battered woman over a period of time. She
5 may come into a relationship fairly confident, may feel
6 fairly good about herself; it's not necessarily true that
7 all victims of domestic violence come into a relationship
8 with previous experience or poor self esteem. Over time
9 though of experiencing verbal abuse, name-calling, the
10 put-downs, the attacks on a person's integrity or their
11 credibility, that continual breaking-down process leaves
12 a person feeling I think helpless.

13 Q And the -- the phrase is called battered spouse
14 syndrome or battered woman's syndrome, does it just
15 involve physical abuse?

16 A I think that's the most dangerous of course to the
17 person's well-being, but domestic violence is really about
18 control. It's not so much about anger and so it involves
19 a series or a pattern of behavior, is intent to control a
20 person. That might be the verbal abuse, the put-downs,
21 wanting that person to do something or wanting her to stop
22 doing something and feeling that the perpetrator has the
23 right to do that, to stop the person from doing something
24 or make them do something they want them to do. That
25 might involve threatening the children, using the

Vicky Burris - Direct by Ms. Inzerillo

29

1 children, isolating the person from support of family and
2 friends, a high degree of jealousy, kind of dictating the
3 way that person lives their life, where they go, what they
4 wear, who they talk to, and it can be on a continuum from
5 mild all the way to total imprisonment almost.

6 Q Do all battered women suffer from PTSD battered
7 spouse?

8 A No.

9 Q What might be the circumstances in those situations
10 when you would see PT -- when you would see PTSD or
11 battered spouse and circumstances when you wouldn't, when
12 the woman is battered?

13 A Well, I would say -- I would say there's no typical
14 responder to PTSD. It depends really on the person's
15 coping abilities. Some people may suffer serious post
16 traumatic stress disorder after one or two incidents and
17 then truly be experiencing the pain of post-traumatic
18 stress disorder. Other people may be in a relationship
19 for months before they begin to experience it, but as a
20 general rule what we see is the longer the relationship
21 last and the more serious the abuse, the more likely PTSD
22 is as a diagnosis.

23 Q Okay. Is there such thing as a typical battered
24 spouse victim?

25 A No. Through the years I think I've worked with both

Vicky Burris - Direct by Ms. Inzerillo

30

1 perpetrators and victims that come from every walk of
2 life, every socio-economic group, every racial group,
3 every religious group, christian, non-christian, blue-
4 collared workers, physicians, attorneys, businessmen,
5 business women. There's really no description of -- it
6 affects us in massive ways. I mean if you think about the
7 fact that in South Carolina law enforcement officers
8 respond to an average of thirty-five thousand calls a year
9 in this state alone. Those are the calls that were
10 actually made to the police and you'd think that doesn't
11 represent the majority of the cases. It's a huge issue
12 affecting people in every walk of life.

13 Q I think when the average person thinks of a battered
14 spouse, they think of a meek, quiet person scared of their
15 own shadow. Would you -- is that how you see a battered
16 spouse? Is that the typical battered spouse victim?

17 A Not at all, no. We shelter about four hundred people
18 a year in the shelter in Greenville. That was back when
19 I was there. I'm not sure what the numbers are now. We
20 had them in from every personality type. I think that
21 when folks from the general public see a woman who is more
22 assertive, may fight back, may be a difficult personality,
23 or, you know, doesn't appear to be a person who would
24 accept this behavior, that can be pretty confusing, but
25 again, you've got personalities from, you know, your

Vicky Burris - Direct by Ms. Inzerillo

31

1 strong, assertive person all the way to what you described
2 was kind of meek, withdrawn person.

3 Q Are there instances where the abused person can exert
4 some power in the relationship?

5 A I would say it would be kind of the pseudo power.
6 They might, for instance, feel very strong in confronting
7 the batterer about whatever, knowing that it might prompt
8 a physically abusive incident but reaching the point where
9 they feel so angry or so hurt that they can't contain it
10 anymore. You know, I would say too that in this field
11 there's a strong tendency for folks to focus on the person
12 who is the victim. It's important to know that because
13 there is no typical battered woman, there's no typical --
14 the reason that we -- that I'm bringing this up is that
15 the problem is perpetrated by the abuser. It doesn't
16 matter if the woman is -- has a job or doesn't have a job,
17 whether she's passive, meek, strong, a fighter, whatever.
18 The perpetrator is going to perpetrate violence on that
19 person no matter what they do. We've had women -- I've
20 worked with women who've woken up out of a deep sleep by
21 a irritated person who then battered them or who battered
22 them because they had a bad day at work or she didn't have
23 dinner ready on time or the baby was crying. I mean --
24 the problem is with the person who perpetrates the abuse.
25 There is no excuse.

Vicky Burris - Direct by Ms. Inzerillo

32

1 Q Now, Ms. Burris, initially I had asked you what we
2 had asked you to do with Leah and that was to assess her.
3 Is that right?

4 A Yes.

5 Q And did you do that assessment of Leah?

6 A Yes.

7 Q And did you come to an expert opinion in this case
8 regarding Leah?

9 A Yes.

10 Q Okay. Can you tell the jury what that opinion was?

11 A In my opinion she is suffering currently from post
12 traumatic stress disorder, specifically battered women
13 syndrome, currently.

14 Q Okay, let's talk a little bit about how you got to
15 this opinion. Okay? Did you evaluate Leah?

16 A Yes.

17 Q Okay. How many times?

18 A I had a two and a half hour interview with her face
19 to face, an hour on the phone. I examined the incident
20 reports, the pictures and consulted with the information
21 which you all shared and also the 9-1-1 call -- the 9-1-1
22 tapes and the text message reports.

23 Q Were you free to evaluate her as many times as you
24 needed?

25 A Yes.

Vicky Burris - Direct by Ms. Inzerillo

33

1 Q Can you tell the jury the typical way that you
2 conducted evaluations?

3 A Usually I'll just begin by asking a person to tell me
4 what happened in the incident that has brought them to
5 this place and allow them to tell the story in their own
6 way, in their own words, and then I will proceed to begin
7 to ask some questions, clarifying questions about the
8 incident, clarifying questions about the time-frame, how
9 they're doing now, what they're -- how they're feeling
10 following this incident and this is the process and as
11 they describe that and as they begin to report that to me
12 I just make note and make sure that it's consistent with
13 the information I have about PTSD.

14 Q And did you do that in this case with Leah?

15 A Yes.

16 Q And does that method yield for you any audio or
17 visual clues that you're looking for to determine if
18 someone's suffering PTSD or battered spouse?

19 A Yes, the -- the physiological stance of a person, the
20 person's tone of voice, how they report the story and in
21 Ms. Forrest's case, you know, she had a lot of difficulty
22 sequentially describing what happened and said I don't
23 remember that; I don't remember how it got from the
24 bedroom to the living room; I don't -- I can't -- I'm not
25 having a clear memory of how long it took. I think I was

Vicky Burris - Direct by Ms. Inzerillo

34

1 losing consciousness some. I'm -- During the period of
2 time where she would be describing to me what happened,
3 she would become very tearful, very emotional and then
4 snap of out it, tune out, as she said, you know, so I'm
5 watching for that, because -- then she became very
6 unemotional and was reporting to me in a very factual way
7 without emotion. There were periods where she was very
8 quiet, where she would -- I call it fold in on herself,
9 kind of withdraw physically as if she were trying to
10 remember and then come out of that again, so there were
11 some clues to me in the actual interviews of what she was
12 experiencing.

13 Q And you had mentioned that you listened to the 9-1-1
14 tape in this case. Did you hear those same type of audio
15 clues when you listened to the 9-1-1 tape?

16 A Yes. There were periods where she would -- her voice
17 would be breaking and then she would come back to again
18 this very factual reporting place, that dissociation from
19 the emotion and the feeling part of it, more to a very
20 factual kind of reporting, almost like reporting weather
21 type of stance.

22 Q And again explain why that is important to you when
23 you're assessing a person for PTSD?

24 A Yes. Well, I think that it's very important to get
25 back to that whole self protective -- the word self

Vicky Burris - Direct by Ms. Inzerillo

35

1 protection. In reporting the abuse, it was clear to me
2 that she would begin to experience the pain of what
3 happened and the trauma of what happened and would allow
4 herself to become tearful but then I think in a -- I think
5 what happens in situations like those, there's a fear that
6 I'm going to lose complete control, so I -- you know, it's
7 almost an automatic switch back and forth from this very
8 emotional state to this very factual reporting state, and
9 it's a -- it's a indication of the person's ability to
10 protect themselves from that emotion through dissociation.

11 Q And so when you interviewed Leah, you saw these same
12 control struggles, I would say --

13 A Yes.

14 Q -- when she was relating the events to you?

15 A Yes. And the -- the difficulty in -- the --
16 described that night, she described that night to me on
17 several different -- in several different ways and had a
18 lot of difficulty accurately sequencing the events and
19 remembering everything that happened.

20 Q Now, we've talked about PTSD, but more specifically
21 on battered spouse and we talked about how battered spouse
22 -- there's obviously prior abuse, these cycles that
23 abusive women tend to go through. Did Leah describe the
24 prior abuse?

25 A In this relationship?

Vicky Burris - Direct by Ms. Inzerillo

36

1 Q Yes.

2 A Yes. Yes, and in every abusive relationship there
3 tends to be a kind of a pattern that develops and it
4 follows a real similar cycle where there's a period of
5 tension, there's a lot of fighting; there's a lot of
6 verbal sparring that's going on, a lot of conflict that
7 ultimately results in a battering incident or a physical
8 assault. Typically though, right after that -- and this
9 is where it gets confusing I think for victims -- is that
10 there's a period of calm. In some relationships it even
11 replicates that honeymoon period, where they kind of get
12 back to, that I love you, you know I'll never leave you,
13 that connection is restored, you know, they're both doing
14 what they can to make up. That pattern tends to repeat
15 itself over and over again. It's almost like a trap in a
16 way, and some couples are on a weekly cycle. Now, the way
17 that Ms. Forrest described it to me was that she was in a
18 regular way very hurt by what she reported as Mr.
19 Dipietro's involvement with on-line contact with other
20 women as she reported it to me, and would confront him
21 pretty assertively about that, and that would ultimately
22 result in a pretty serious fight and that's when she would
23 experience the punching, pushing, the throwing on the
24 ground, that kind of thing. So there'd be a physical
25 assault and the way she described it to me it was

Vicky Burris - Direct by Ms. Inzerillo

37

1 happening about every two or three months for that year
2 and a half preceding this particular night of the
3 shooting.

4 Q Okay. And was that important to you in terms of
5 looking for whether she suffers from battered women
6 syndrome?

7 A That and the fact that in each of those instances
8 there would be a physical encounter, incidents of physical
9 abuse of some degree or another, some more serious than
10 others I think.

11 Q Did she describe emotional abuse to you?

12 A Yes, lots of -- well, the emotional abuse of knowing
13 that he was interested -- in her experience believing that
14 he was interested in other women, that continual process
15 of dealing with his unfaithfulness in her -- in her
16 experience.

17 Q You mentioned that in a lot of relationships the
18 relationship starts off well and then sort of essentially
19 goes downhill from there. Did Leah describe the beginning
20 of her relationship with Ron in this way?

21 A She did. She told me that she thought she'd found
22 her best friend, that she felt -- she believed it was the
23 love of her life, that were lovers, happy, connected
24 friends.

25 Q And you mentioned that there a lot of times is a

Vicky Burris - Direct by Ms. Inzerillo

38

1 financial discrepancy in a household. Did Leah describe
2 a financial discrepancy in her household with Ron?

3 A What she told me was that she brought home about a
4 hundred and fifty dollars a week and that he made
5 significantly more. I don't remember that she reported
6 what his income was.

7 Q Now, is it significant to you if a batterer not only
8 abuses a victim, a spouse, his girlfriend, but also begins
9 abusing, for example, children or other people who live in
10 the house?

11 A One of the indicators of the validity (sic) is as we
12 assess families where domestic homicide has occurred is
13 whether or not the violence has spilled over onto other
14 people, and the more that's true, the more dangerous that
15 situation is. In other words, if it's -- if it involves
16 the children, threats to the children, physical assaults
17 on the children or people outside the family, you know,
18 whether it be neighbors, co-workers, other friends, if
19 violence is not isolated just to that relationship, if it
20 begins to spill out over into other people, that would be
21 an indication of a higher level of danger.

22 Q Okay. Now, moving to PTSD, I think you had explained
23 that PTSD has sort of a long-term symptoms. Did you note
24 any of those symptoms in Leah?

25 A Yes. When I questioned her about how she was feeling

Vicky Burris - Direct by Ms. Inzerillo

39

1 now, you know, she spontaneously began to report symptoms
2 of PTSD, nightmares, great deal of difficulty sleeping,
3 waking up every couple of hours in a flashback of that
4 event, of that battering incident, specifically, feeling
5 hopeless, depressed. She also described what I believe
6 are a form of panic attacks, this increased anxiety, real
7 fearful with no apparent reason to feel that way
8 immediately, but feeling she said like she can't breathe,
9 like she has an elephant on her chest. I mean that's an
10 indication to me of a person who's experiencing a panic
11 attack.

12 Q And you've mentioned that she had nightmares and was
13 experiencing flashbacks. Was she flashing back to June
14 7th? Did she explain that or to other battering instances
15 in her relationship with Ron?

16 A Her report to me was that her flashbacks were of that
17 night, that June 7th incident. It may be that she herself
18 could clarify that for you, but that was her report to me,
19 that her flashback was reliving that experience.

20 Q Someone who suffers from PTSD and battered spouse,
21 does that affect the way they perceive their abuser in
22 terms of -- do they perceive their abuser to be stronger,
23 bigger, tougher, smarter than they are?

24 A Real interesting question. The way that victims
25 often describe their abusers are not consistent with the

Vicky Burris - Direct by Ms. Inzerillo

40

1 reality. In other words, they tend to see them as much
2 more powerful possibly than they are, that there's no
3 getting away from this, that they're kind of omniscient;
4 this person can almost read their mind, can tell what
5 they're thinking, what they're feeling and attribute --
6 they tend to attribute -- just as a general statement tend
7 to attribute a lot more power to the person than maybe is
8 true for them.

9 Q In your opinion, did the fact that Leah suffers from
10 battered spouse, PTSD, would that have affected the way
11 she perceived the events that happened on June 7th, in
12 terms of how she would view Ron in his actions that day?

13 A I can tell you that her description of that event
14 again was an indication -- the way she described it to me
15 was a terrifying experience, that she felt that she was
16 losing consciousness; she really was afraid for her life
17 that night and that of her daughter.

18 Q Did she explain to you that at the time she picked up
19 the gun she was afraid for her life?

20 A I don't remember that she reported -- what she
21 reported to me was that there was a slight reprieve in
22 this battering incident where he was distracted, unplugged
23 the computer or do something with the computer, and at
24 that moment is when she got the gun.

25 Q Okay. And was she afraid of Ron --

Vicky Burris - Direct by Ms. Inzerillo

41

1 A Yes.

2 Q -- at the time?

3 A By her description to me, yes.

4 Q Okay. To you does it make a difference that there
5 was a reprieve or that he had temporarily stopped?

6 Mr. Anthony - Objection to the vagueness of that
7 question.

8 The Court - Okay. I'm going to overrule the
9 objection. You may ask it.

10 Q In terms of her perception of her danger, the amount
11 of danger that she was --

12 A Of the danger she was in, yes.

13 Q Right.

14 A It's my opinion that it was her intent to stop this
15 process, to stop what was going on. And I think that if
16 I could add that the fact that now her daughter's life had
17 been threatened as well, I think as is often the case, the
18 thing had escalated this process, pushed it to another
19 point.

20 Q Now, Ms. Burris, we've gone over pretty extensively
21 everything that you've done in this case. Okay? Let's
22 take a minute to go over a little bit of what you didn't
23 do in fairness. Okay? Did you interview Mr. Dipietro?

24 A No.

25 Q Would that have made a difference in your assessment?

Vicky Burris - Direct by Ms. Inzerillo

42

1 A Unlikely it would've made a difference in my
2 diagnosis. That was based more on her symptoms and what
3 she's experiencing.

4 Q And why is that? Why would that not have -- or why
5 would it have been unlikely to have made a difference?

6 A Clearly there's two different stories that have been
7 presented here from the records that I've read, but her
8 description to me of the symptoms she continues to
9 experience were in great measure how to make the
10 diagnosis, and the fact that the flashbacks related
11 directly back to that night, I'm not sure how an interview
12 with him might've influenced my diagnosis. Possible, I
13 guess, but unlikely.

14 Q Did you -- well, let me ask it this way. Have you
15 seen cases where there are no prior doctor's reports,
16 where someone goes to the doctor and reports being
17 battered to a doctor or calls the police reporting being
18 battered? Is it unusual to not see those in a case?

19 A Not unusual at all. Probably in more than half the
20 cases that I've been involved in there were no police
21 reports; there were no doctor's reports. Victims are
22 often very hesitant and again don't report unless it's
23 reached a certain high level of validity (sic) in my
24 experience. It's a very embarrassing situation. It's
25 scary, too, because often, you know, women are told if you

Vicky Burris - Direct by Ms. Inzerillo

43

1 tell anyone, this will happen, or I will hurt you or I'll
2 have to leave or you know, so that they're warned against
3 telling the doctor in emergency room what really happened
4 about ran into the door. More often the case there's no
5 documentation unfortunately.

6 Ms. Inzerillo - No further questions, Your
7 Honor.

8 The Court - Ladies and gentlemen, is there
9 anyone among you who needs to take a break before we start
10 the cross examination?

11 (No response)

12 The Court - Nobody? Nobody's going to bail me
13 out?

14 (Jury laughing)

15 The Court - Okay. How long you anticipate cross
16 examination to take?

17 Mr. Anthony - I don't know the exact -- exact
18 number of minutes but it will be very lengthy. It'll take
19 a while.

20 The Court - All right. Well, let us take a
21 break. Please don't discuss the case.

22 (Jury exits the courtroom)

23 The Court - All right, ladies and gentlemen,
24 we'll take a short break and then we'll come back in and
25 resume testimony.

Vicky Burris - Cross by Mr. Anthony

44

1 (Recess taken)

2 The Court - Okay, we ready to resume?

3 Mr. Anthony - Yes, sir.

4 The Court - Okay, good enough. Bring the jury
5 in, please.

6 (Jury returns to the courtroom)

7 The Court - All right, Mr. Anthony, your
8 witness, sir.

9 Mr. Anthony - Thank you, Your Honor.

10 Cross Examination

11 by Mr. Anthony -

12 Q Good morning, Ms. Burris.

13 A Good morning.

14 Q Just a couple of things I'd like to talk to you about
15 PTSD just to start. You agree I take it that PTSD is not
16 something that is present in every case where a woman
17 shoots a man.

18 A Let's see if I can -- It is not the case --

19 Q It's not present in the whole spectrum of cases where
20 women shoot men -- PTSD and battered woman syndrome is not
21 always going to be present.

22 A I would not think so, no.

23 Q Okay. So it's possible and that would also extend to
24 domestic relationships. It's possible to have a domestic
25 male/female relationship where the woman commits an act of

Vicky Burris - Cross by Mr. Anthony

45

1 violence against the man where the woman is not suffering
2 from battered woman syndrome.

3 A That would be true in my opinion.

4 Q Okay. And because -- and it's also true that just
5 because there's some degree or some level of violence in
6 a relationship that a PTSD and battered woman syndrome
7 diagnosis is not always going to be present.

8 A I don't -- you're saying in a hundred percent of
9 those kind of cases --

10 Q Yes, I mean that there can be -- I mean there could
11 be violence between domestic partners without necessarily
12 having a PTSD, post traumatic stress disorder or battered
13 woman situation. Is that true?

14 A Yes.

15 Q Okay. And people be can be motivated to -- to commit
16 acts of violence against other people for a whole variety
17 of reasons. Is that correct?

18 A I would say yes to that as well.

19 Q I mean they -- they can do it because they're scared.
20 Is that right?

21 A Yes, you can --

22 Q And you can be battered and you can have a legitimate
23 fear of a person. Is that correct?

24 A Yes.

25 Q And you -- and that can motivate you to shoot them or

Vicky Burris - Cross by Mr. Anthony

46

1 --

2 A Yes.

3 Q -- defend yourself in some way. Is that correct?

4 A Yes.

5 Q On the flip side of that you can just be angry at a
6 person because they're say, leaving a relationship that
7 you want them to stay in and you would commit a act of
8 violence against them for that reason. Is that -- that's
9 possible?

10 A That's possible. I don't think it's true in this
11 case, but possible.

12 Q But that kind of thing happens.

13 A Yes.

14 Q Okay. And you could be mad at somebody because they
15 caught you in a act of unfaithfulness and that could
16 create the kind of anger that would motivate a person to
17 shoot a domestic partner. Is that not true?

18 A Yes.

19 Q Okay. So every -- every case is -- has to be judged
20 individually. Isn't that correct?

21 A Absolutely, yes.

22 Q Okay. And for every case there's different sets of
23 motivations as far as what's causing the person who might
24 act violently towards another person would do. Is that --
25 would you agree with that?

Vicky Burris - Cross by Mr. Anthony

47

1 A Yes.

2 Q Okay. And PTSD is something that can have a wide
3 number of causes. Is that correct?

4 A It's related to the experience of trauma --

5 Q Okay.

6 A -- of some sort.

7 Q Okay. And the trauma can be a number of things. Is
8 that correct?

9 A There can be a number of different type of traumas
10 that could cause PTSD.

11 Q Okay. Okay. You could have the kind of trauma that
12 occurs, say when a soldier's in battle and has to shoot --
13 you know, is in a fire (sic) fight type situation. That
14 is the kind of thing that can trigger PTSD? Is that
15 accurate?

16 A Yes.

17 Q The experience, say a woman might have in a sexual
18 assault situation. That can trigger PTSD. Is that
19 accurate?

20 A Yes.

21 Q Okay. The experience of a woman in a domestic
22 violence situation might have, that can trigger PTSD. Is
23 that accurate?

24 A Yes.

25 Q Okay. And the common denominator basically is the

Vicky Burris - Cross by Mr. Anthony

48

1 sudden traumatic activity you're engaged in. Is that an
2 accurate way to put it?

3 A A trauma typically involves a threat to the person's
4 life or well-being, a physical assault of some kind. It
5 can be the result of witnessing very traumatic violent
6 event as well, but it's more often associated with
7 experiencing a personal trauma, assault of some kind where
8 they -- where the victim feels that their life or limb is
9 in danger.

10 Q Okay. Could trauma also be associated with
11 committing a violent act?

12 A I'm not sure if I understand your question.

13 Q Well, if you -- if you commit a violent act against
14 another person, not -- not necessarily because you feel
15 threatened, just because -- for whatever motivation you
16 might have, you commit a violent act. That would still be
17 a traumatic experience for you, wouldn't it?

18 A It's less likely that a person who commits a trauma
19 would be experiencing post traumatic stress disorder based
20 on that event. In other words, they might be experiencing
21 it from previous experience, but the act of perpetrating
22 violence against a person would not typically warrant post
23 traumatic stress disorder. The person who's the aggressor
24 is less likely to feel -- it's the person who's been
25 assaulted, whose personal space has been violated, who

Vicky Burris - Cross by Mr. Anthony

49

1 feels in danger.

2 Q Okay. And your diagnosis of Ms. Forrest, it stems
3 from the report that she gave you. Is that correct?

4 A Yes.

5 Q Okay. I mean you read the material from the file I
6 take it, from the police reports? Is that correct?

7 A Yes.

8 Q Okay. But primarily what you are relying on is the
9 interview that you did with Ms. -- the two interviews.
10 You said you did one in person and one over the phone. Is
11 that right?

12 A Yes.

13 Q Okay. And so you're -- you're relying basically on
14 what she reported to you to say that you think she's a
15 battered woman. Is that correct?

16 A That and the examination of the 9-1-1 call, the
17 listening to the tapes, reading the police reports,
18 looking at pictures, all of the -- all of the information
19 that was given to me was a part of that, but her
20 description of the symptoms that she continues to
21 experience was significant, yes.

22 Q Okay. And these symptoms that you're talking about,
23 that includes loss of sleep, flashbacks, the panic
24 attacks, the depression. Am I missing anything or were
25 there some other things?

Vicky Burris - Cross by Mr. Anthony

50

1 A Nightmares, difficulty with her -- with eating,
2 having some digestive difficulties, which is not unusual,
3 you know, and the -- the cognitive and memory issues that
4 were apparent to me in my conversations with her.

5 Q And when you say memories, you mean that she -- she
6 couldn't -- she told you she didn't remember a lot about
7 what she did?

8 A The sequence of events of that night, I think was
9 June the 7th, were difficult for her to replicate. She
10 had difficulty because she was losing loss of memory of
11 several of the events through that evening. For instance,
12 she couldn't remember how the fight moved from where it
13 originated to the living room. She didn't know how much
14 time had passed, how long this fight lasted.

15 Q Okay. All right. And all of those -- I mean you've
16 been involved in the criminal justice system before.

17 A Yes.

18 Q I mean -- so -- so you kind of have some idea how
19 people who are charged with crimes might behave I take it.

20 A To some extent I would think, yes.

21 Q Okay. And wouldn't you say that it's also possible
22 that somebody who is charged with a crime, that one
23 possible way to be self protective in trying to make the
24 best case you can for yourself would be to say you don't
25 remember various things?

Vicky Burris - Cross by Mr. Anthony

51

1 A I don't know that that would be of a benefit in
2 describing the incident. I don't know that that would --

3 Q Well, it might be a benefit if you know that being
4 completely truthful would subject you to admitting to
5 committing a crime, wouldn't it?

6 A Perhaps.

7 Q Okay. I mean if you knew that you had committed a
8 crime and you were trying to give an account of what you
9 did that didn't encompass actually being responsible for
10 the crime, it might be convenient for you to say you don't
11 remember stuff, wouldn't it?

12 A Well, I'm thinking about Ms. Forrest's interview with
13 me and the description of the event leading up to the
14 shooting or crime that you're referring to.

15 Q Yes, ma'am.

16 A I'm not sure that her lack of memory would be
17 relevant in what she described to me as leading -- all the
18 events that she described would have been -- would have
19 been understandable in terms of her fear; even leaving out
20 pieces, I was still able to get a pretty good picture of
21 what went on that evening and the fear that she was
22 feeling, so I don't know that leaving pieces out, you
23 know, purposefully would have served any purpose at all.

24 Q Okay. And along those same lines, I mean the
25 prospect of being charged with a crime, it -- it also

Vicky Burris - Cross by Mr. Anthony

52

1 could cause some of these symptoms she relayed to you,
2 couldn't it?

3 A I don't believe that you would develop those symptoms
4 based on being charged with a crime, no.

5 Q Well, you don't think being charged with attempted
6 murder might cause somebody to lose a little sleep?

7 A I don't know that they would develop post traumatic
8 stress disorder after having been accused of a crime, no.

9 Q Okay. What I'm saying is, I mean you're making your
10 assessment this woman -- that Ms. Forrest has post
11 traumatic stress disorder partly on because of the fact
12 she told you she can't sleep. Right?

13 A Well, it's a constellation of symptoms.

14 Q Well, I understand there's other things, but that's
15 one of them. Correct?

16 A Right.

17 Q Okay. Well, but my question is, wouldn't you agree
18 that the prospect of, you know, having an attempted murder
19 charge hanging over your head might cause a person to have
20 difficulty sleeping.

21 A Yes.

22 Q Okay. And you were talking about panic attacks. Is
23 that correct? She reported panic attacks?

24 A What she described was behavioral, what I interpreted
25 that as a panic attack.

Vicky Burris - Cross by Mr. Anthony

53

1 Q Okay. Well, wouldn't the prospect of being convicted
2 of attempted murder be something that could trigger panic
3 attacks in a person?

4 A I've not known that to happen. I suppose it's
5 possible.

6 Q Okay. And you said she reported depression. Is that
7 correct?

8 A Yes.

9 Q Okay. The prospect of being convicted of attempted
10 murder might depress a person, might'n it?

11 A I would say yes.

12 Q Okay. And these symptoms that you're describing, I
13 mean they're all pretty commonly -- well, there's a couple
14 more here. You said she have difficulty eating. Is that
15 correct?

16 A (Indicating yes)

17 Q Okay. That might also be triggered by the fact that
18 you're -- you've been charged with attempted murder.
19 Correct?

20 A These symptoms in and of themselves individually
21 could certainly be related to facing a charge that you're
22 referring. The length of time that these symptoms have
23 continued to affect her would not likely be continuing
24 based on being charged with a crime.

25 Q Okay, but you're only -- but you're only basis for

Vicky Burris - Cross by Mr. Anthony

54

1 saying these symptoms have continued to affect her for a
2 long time is that she told you they have. Right?

3 A She reported that to me, yes.

4 Q Okay. I mean there's not any kind of like projected
5 medical records or anything that show that Ms. Forrest is
6 having any of these problems that she told she's having.
7 Is that correct?

8 A I didn't see any medical records, no.

9 Q Okay. So it's just she told you this has been going
10 on for a long time. Is that correct?

11 A Since this incident and some cases before, yes.

12 Q Okay. And if she's being truthful about that, maybe
13 she, you know, did -- then that makes it more likely she's
14 got post traumatic stress disorder. Is that correct?

15 A Yes.

16 Q But then again that's a pretty big if, if she's being
17 truthful about that. Correct?

18 A I don't know that she would -- struggling with what
19 you're saying about truthfulness. What would -- what
20 would be a benefit of reporting these symptoms in this
21 interview in a spontaneous way was unprompted by me. I
22 don't know how that would relate to her being truthful or
23 not. There wouldn't be any benefit to her to be reporting
24 these symptoms.

25 Q Well, it is possible that she might've been told when

Vicky Burris - Cross by Mr. Anthony

55

1 she went to see you that you were going to be checking her
2 out for whether she has post traumatic stress disorder and
3 whether she's a battered woman. Isn't that possible?

4 A It's possible.

5 Q Okay.

6 A It's unlikely.

7 Q And is it also possible -- you think it's unlikely
8 that her lawyers might've told her, you know, we want this
9 doctor -- or this social worker to check and see if you've
10 got post traumatic stress and you're battered? You think
11 that that was unlikely she came to you knowing there's a
12 chance of that?

13 A I think that is unlikely.

14 Q Okay. Well, --

15 A You have to ask her attorney, but --

16 Q Well, the symptoms that you've just described -- I
17 mean they're not -- it's not like they're hidden in some
18 vault somewhere, is it?

19 A No.

20 Q I mean you can get on the internet and probably
21 google post traumatic stress disorder and come up with
22 every one of these symptoms you just told the jury about.
23 Right?

24 A If you had heard of post traumatic stress disorder or
25 knew about it or about that you were, that would've been

Vicky Burris - Cross by Mr. Anthony

56

1 to your advantage to be diagnosed that way.

2 Q Okay. So it wouldn't be too hard to figure out what
3 you need to say you're afflicted with when you go to see
4 the social worker who's going to decide if you have that
5 particular affliction.

6 A You could certainly educate yourself ahead of time
7 about post traumatic stress disorder --

8 Q Okay.

9 A -- if that were something that you knew about --

10 Q Okay.

11 A -- or familiar with.

12 Q Okay. And if you were charged with attempted murder
13 and saw this as maybe your ticket out of that, you might
14 go do a good bit of research trying to figure out exactly
15 what it was this social worker was going to be asking you
16 questions about and trying to determine if you had this
17 particular condition, might'n you?

18 A It's possible.

19 Q Okay. Now, you did not interview Mr. Dipietro.
20 Right?

21 A No.

22 Q Okay. So you can't make any kind of real credibility
23 judgment in this case as to who might be the more credible
24 person. Is that correct?

25 A I did not interview him. I didn't do an assessment

Vicky Burris - Cross by Mr. Anthony

57

1 there, no.

2 Q Okay. And you had a conversation with Ms. Forrest.

3 Is that right?

4 A Yes.

5 Q And you -- or actually you had two. Correct?

6 A Yes.

7 Q And you got an account from her of this incident. Is
8 that right?

9 A Yes.

10 Q And you testified that there's a lot of things that
11 she did -- she said she couldn't remember, but you did get
12 some account of what she says happened on June 7th of
13 2010.

14 A Yes.

15 Q Okay. And you took some notes from that. Is that
16 correct?

17 A Yes.

18 Q Do you have those up there?

19 A Do I have the notes?

20 Q A copy of the notes?

21 A Yes.

22 Q Okay. Well, I want to refer you to those notes. On
23 the first page you've got a note that says threatened to
24 kill her daughter. Is that correct?

25 A Yes.

Vicky Burris - Cross by Mr. Anthony

58

1 Q And you seem to attach -- and I don't want to
2 misconstrue your testimony on direct, but it sounded like
3 you attached a fairly high degree of significance to the
4 fact that she told you that Mr. Dipietro threatened to
5 kill her daughter.

6 A Threatened to kill her and her daughter.

7 Q Okay. All right. And exactly what was the
8 significance of that? Why did that matter?

9 A In many cases a victim of domestic violence will
10 resort to -- or escalate their response to the perpetrator
11 based on the fact that their child was now involved, a
12 child was now threatened, so that might cause them to take
13 an action against the perpetrator that they might see as
14 stopping that threat or ending that violence.

15 Q Okay. Okay. And you're aware that on the night this
16 happened, the daughter was not in the house.

17 A I'm aware of that.

18 Q Okay. You said that you reviewed the police reports
19 and the 9-1-1 tape?

20 A Yes.

21 Q Okay. So you -- you're aware that Ms. Forrest made
22 a 9-1-1 call, this tape. Correct?

23 A Yes.

24 Q And you're aware that she gave a statement right
25 after the shooting that morning to Captain Hines. Is that

Vicky Burris - Cross by Mr. Anthony

59

1 correct?

2 A Yes.

3 Q And that's documented. You read what was written
4 down that she said. Correct?

5 A Yes.

6 Q And you're aware she gave a written statement or
7 there was a statement written out for her about 2:00
8 o'clock the afternoon of the shooting or the afternoon
9 after the shooting. Is that correct?

10 A Yes.

11 Q Okay. And you are aware I take it that in none of
12 those statements did Ms. Forrest ever say anything about
13 Mr. Dipietro threatening her daughter?

14 A I'm aware.

15 Q Okay. So the day this happened, she had three
16 chances to talk about this and she never said a word about
17 her daughter. Is that correct?

18 A That's not in any of the reports that I read. That's
19 correct.

20 Q Okay. And she comes to see you on -- or you meet
21 with her on March 16th, 2012 and she tells you that he
22 said he was going to kill her daughter.

23 A Yes.

24 Q Okay. And did you consider the possibility of given
25 -- given what's in the police reports and what's on the 9-

Vicky Burris - Cross by Mr. Anthony

60

1 1-1 tape, did you give any consideration of the
2 possibility that might just be a total fabrication on her
3 part?

4 A No.

5 Q All right. I want to talk to you just a minute about
6 some of the things that she may or may not have said to
7 you when you talked to her. Did she report to you that --
8 well, let me just back up. It sounds like she did tell
9 you that at some point she went outside. Is that correct?

10 A Yes.

11 Q Okay. And then she told you that she went back in
12 the house. Is that correct?

13 A Yes.

14 Q All right. Did she tell you that when she went back
15 in the house she kicked in the front door?

16 A She told me that that had been reported, but that she
17 did not do that. She went into the side door of the house
18 is how she reported it to me.

19 Q Okay. And did she tell you that when she -- when she
20 went back into the house that Mr. Dipietro had packed up
21 a number of his clothes and had them sitting on the card
22 table in the living room?

23 A She told me that he -- that he had reported that he
24 was leaving. She said something to that effect that he
25 was preparing to leave or that he was going to leave.

Vicky Burris - Cross by Mr. Anthony

61

1 Q Okay. So she told you when you interviewed her on
2 March 16th that she knew he was getting ready to leave the
3 house.

4 A Yes.

5 Q Okay. And as to the actual shooting of Mr. Dipietro,
6 what -- what did she tell you about that -- about actually
7 shooting him?

8 A That she had gone to get the gun. She told me what
9 it was, the type of gun it was, and that as she walked
10 back out she shot him.

11 Q Okay. Did she tell you she shot him twice?

12 A I read that in the police report.

13 Q She didn't tell you she shot him twice?

14 A No.

15 Q Did she tell you that she shot him while he was on
16 the ground?

17 A I think that when she described the shooting, she
18 just said that she shot him.

19 Q Okay.

20 A She didn't go into details with me.

21 Q She did not give you the detail that she shot at him
22 while he was on the ground?

23 A No, --

24 Court Reporter - She needs to speak up just a
25 little bit, Judge.

Vicky Burris - Cross by Mr. Anthony

62

1 Q Did she -- did she tell you that after she shot him,
2 she went up to him and took his head and rammed it into a
3 computer -- keyboard laying on ground -- on the floor?

4 A She told me that -- she didn't tell me that. She
5 told me that she had kicked him and hit him.

6 Q She didn't tell you she rammed his head into the
7 keyboard?

8 A She didn't say that.

9 Q Did she tell you that she beat him with his own
10 phone?

11 A No.

12 Q Did she tell you that she had -- before she called 9-
13 1-1 she called a New York area code?

14 A No.

15 Q Okay. She did tell you I take it that when she goes
16 back in the house he's at the computer. Is that correct?

17 A Yes.

18 Q Okay. That's reflected in your notes, when she goes
19 back in the house he's at the computer and she gets the
20 gun? Is that right?

21 A Yes.

22 Q Okay. So even by her account, at the time she goes
23 to get the gun, the actual attack by Mr. Dipietro that she
24 -- the attack she alleges, it had stopped.

25 A I believe that in her description to me she was not

Vicky Burris - Cross by Mr. Anthony

63

1 convinced that it was over, that there had been a slight
2 reprieve here, but that there had been several reprieves
3 during that battering incident and that it was her intent
4 to stop it.

5 Q Okay. Well, that was -- her intent it was to stop.
6 Okay. And -- but she did tell you that -- it can be
7 categorized as a ending or a reprieve or whatever, the
8 fact of the matter is, when she went back into the house,
9 Mr. Dipietro did not resume his attack. Is that correct?

10 A No. I think she went to get the gun when she went
11 back into the house.

12 Q Okay. Yes, she went to get the gun --

13 A During that reprieve --

14 Q -- and he was at the computer.

15 A (Indicating yes)

16 Q Okay. So the attack -- just to go back to my
17 question again, the attack is not resumed?

18 A Not at that point.

19 Q Okay. Not at that point. And when it was resumed,
20 it was resumed by her, wasn't it?

21 A That's when she shot him is my understanding.

22 Q Okay. She reported to you that Ron -- you had --
23 well, you have in your notes Ron drank a 12-pack of beer?

24 A The night before.

25 Q Okay. All right. Are you aware that the hospital

Vicky Burris - Cross by Mr. Anthony

64

1 blood test on Mr. Dipietro showed that he had no -- no
2 blood alcohol concentration at all?

3 A I didn't see that.

4 Q All right. In -- in your testimony you talked about
5 certain traits that women who are battered have. Is that
6 correct?

7 A Symptoms?

8 Q Symptoms, common --

9 A Yes.

10 Q -- areas of commonality in battered women. Is that
11 right?

12 A Yes.

13 Q And that's basically how you classify them, as
14 battered women. Correct?

15 A The symptoms?

16 Q Yes. Yes, ma'am. I mean -- I'm sorry. Let me just
17 make it a little clearer. There's a set of symptoms and
18 you make an assessment of an individual woman and if those
19 symptoms are present, you -- you give a diagnosis. Is
20 that -- that basically how this works?

21 A Simplified, yes.

22 Q Okay. Okay. Kind of like -- like a -- well, just
23 like anybody categorizes something. You make a
24 classification.

25 A Make a determination.

Vicky Burris - Cross by Mr. Anthony

65

1 Q Okay. And, one, a couple of words that I heard in
2 your -- in your direct examination were fear. That -- I
3 mean -- sort of a common symptomatic trait that you would
4 often attach to a battered woman?

5 A I don't know if I would say a hundred percent of the
6 time, but certainly there is a great deal of fear that
7 women who are abused live with. Yes.

8 Q Okay. I mean it'd be hard to imagine a battered
9 woman that wasn't scared, wouldn't there?

10 A Be hard to measure?

11 Q Imagine?

12 A Oh.

13 Q I mean just -- of all the people you've said were
14 battered women, I mean --

15 A It depends on the severity of the situation, you
16 know. The woman who's pushed and shoved and punched,
17 verbally abused, might have less fear than a person who's
18 being battered or hit with something or depending on the
19 severity of the situation, I would think that would be
20 relevant to their level of fear.

21 Q Okay. So I mean I imagine being abused might have
22 something to do with how scared you are, but there's going
23 to be fear at some -- some level. Is that a fair
24 statement?

25 A I think that's fair.

Vicky Burris - Cross by Mr. Anthony

66

1 Q Okay. And then the other -- the other -- the other
2 term of I heard you use was helplessness?

3 A That's true in some situations.

4 Q Okay.

5 A Feeling of not being able to deal with it, not being
6 able to overcome it, get away from it, stop it.

7 Q Okay. Would you also categorize battered women, sort
8 of one other trait's maybe isolation? Is that -- is that
9 something else you --

10 A One of the things that can happen in an abusive
11 relationship is, and again, it's not possible to say that
12 all of these happen a hundred percent of the time, but
13 there's certain number of cases where, you know, the
14 abuser makes an attempt to isolate the person from their
15 friends and family and control their comings and goings,
16 and that's true in a certain number of cases. I don't
17 think you can say it's true in a hundred percent, this
18 kind of relationship.

19 Q Okay, but it's -- it would be symptomatic of --

20 Court Reporter - She needs to speak up a little
21 bit, Judge. I'm having trouble hearing her.

22 A That'd be one of the things I would be looking for.

23 Q Okay. All right.

24 (Document marked for identification as State's
25 Exhibit Number 48)

Vicky Burris - Cross by Mr. Anthony

67

1 Q Now, I'm going to show you what's been marked for
2 identification as State's Exhibit Number 48, and I'm going
3 to ask if you are familiar with those --- that set of
4 documents I just handed you.

5 A This is the recording of the document that reflects
6 the text messages.

7 Q Okay. Okay, and I've actually handed you pages 9
8 through 12 of those text messages. Is that correct?

9 A And I have to say I don't have my glasses on.
10 They're down in my pocketbook, so for reading purposes --

11 Q All right, yes, well, if we could, let's get Ms.
12 Burris her glasses.

13 A Sorry. (Pause) Much better.

14 Q All right. I've handed you pages 9 through 12 of
15 these messages. Is that correct?

16 A Yes.

17 Q Okay. And did you review these messages?

18 A (Indicating yes) I did.

19 Q All right. Okay.

20 Mr. Anthony - Your Honor, we'd move 48 into
21 evidence.

22 The Court - Any objection?

23 Ms. Inzerillo - Your Honor, we would have an
24 objection as to entered through this witness. She cannot
25 provide the foundation. The only thing she can assess is

Vicky Burris - Cross by Mr. Anthony

68

1 that she did review these messages, but she can't provide
2 any other information about how they're generated,
3 information contained therein or anything that would get
4 to the admission of the evidence.

5 Mr. Anthony - Well, as I advised the Court
6 earlier in the case I laid the foundation for these
7 records yesterday with Agent Cave. That's from -- it's
8 from his report. It's a selection from his report that is
9 relevant to the case.

10 The Court - Okay. All right. So yours is on -
11 - is foundation or authentication, not relevance?

12 Ms. Inzerillo - That's correct, Your Honor.

13 The Court - Okay. All right. In that event I
14 am going to respectfully overrule the objection. I do
15 note for the record that there was a discussion among
16 counsel wherein there was a question as to whether a
17 witness from SLED would have to be called back for
18 purposes of authentication of the documents, however I
19 think there was a consensus among the attorneys that he
20 would not have to be, therefore, based on those
21 conversations and based on the fact -- of relevancy I will
22 allow the exhibit into the record.

23 Mr. Anthony - Thank you, Your Honor.

24 The Court - Yes, sir.

25 (Document marked into evidence as State's

Vicky Burris - Cross by Mr. Anthony

69

1 Exhibit Number 48.)

2 Q All right, Ms. Burris, what I'm going to do is I'm
3 going to give you another copy of this Exhibit and I'm
4 going to put this Exhibit up for the jury can see. All
5 right, if you will just take a minute and look through
6 these messages -- if you need just a second, I'll give you
7 a second just to read through them before we start talking
8 about them. (Pause)

9 A I think I can -- we can discuss it.

10 Q Okay. Now, these messages are -- okay, there we go.
11 Now, the -- kind of the general thrust of these messages
12 I would -- what I would ask you, would you not say the
13 general thrust of these messages is that there is a fairly
14 heated argument going on throughout the course of these
15 messages between Mr. Dipietro and Ms. Forrest?

16 A Correct.

17 Q Is that a fair characterization?

18 A Yes.

19 Q Okay. And let's see if we can get this a little
20 clearer. All right, and if we start out here at the
21 bottom of page 9 and this a message from -- from Ms.
22 Forrest to Mr. Dipietro, and she's -- and I'm -- I'm going
23 to apologize in advance for some of the words we're using
24 here, but it is what it is. She's telling him something -
25 - something about a ticket and insinuating something about

Vicky Burris - Cross by Mr. Anthony

70

1 he's going to ask a whore to marry her. Is that correct?

2 A It's clear that what these messages say to me is that
3 she believed that he was involved with another woman --

4 Q Okay.

5 A -- and that -- that was a source of great conflict
6 between them --

7 Q Okay.

8 A -- and that's consistent with her reports to me about
9 their relationship overall.

10 Q Okay. And well, when we flip this over, you have a
11 denial from Mr. Dipietro, I didn't do it. You have a
12 message from her about, be sure to call your whore from
13 your mama tonight; he says I didn't do it, it wasn't me;
14 she goes on to make some other reference to there's
15 nothing funny about what you and your whore did to me, dig
16 the knife in a little deeper. So she -- she makes another
17 reference to that. Is that correct?

18 A Right, yes.

19 Q All right. All right. And this -- this just kind of
20 escalates over -- over the course of the 19th. You can --
21 just can't quite get all this in -- okay, there we go. We
22 got 5 -- 5/19/10 in the 16 -- these messages right along
23 here, they just kind of escalate, and then finally we get
24 down to number 55.

25 A Is that on page 10?

Vicky Burris - Cross by Mr. Anthony

71

1 Q Yes, it's on page 10.

2 A (Indicating yes)

3 Q And you get a message from Ms. Forrest to Mr.
4 Dipietro, thirteen messages unaccounted for, pack your s,
5 and I'm done. Is that correct? That's what she tells
6 him?

7 A I see that.

8 Q Pack up. Okay. And he makes -- he makes a very
9 derogatory response to her, he accuses her of trying to
10 hack his facebook account. Is that correct?

11 A Right.

12 Q And then they have a very insulting exchange where
13 she calls him a bastard and he calls her a whore. Is that
14 right?

15 A Yes.

16 Q Okay. And then her response is -- her response is to
17 go live with his -- and she used the derogatory term for
18 Desiree who I -- appears to be his other woman and told
19 her (sic) you can't get it up, you think she's going to
20 want you now. That's what she says to him. Correct? Is
21 that correct?

22 A I'm -- yes, I see that.

23 Q And his response then is, well, you win, I'll have
24 all my stuff out by 10:00 a.m. Right?

25 A Um, which number are you looking at?

Vicky Burris - Cross by Mr. Anthony

72

1 Q I'm looking -- we don't have that up on the screen,
2 but it's number 61.

3 A Okay.

4 Q And that's what Ron says to her, you win, I'll have
5 all my stuff out by 10:00 a.m. Correct?

6 A Yes.

7 Q Okay. And her response to him a minute later, less
8 than a minute later in the out-box, she responds to him
9 with, I think I'm gonna -- I guess that's gonna -- kill
10 your cat.

11 A I see that.

12 Q That's what Ms. Forrest says to Mr. Dipietro. I'm
13 going to kill your cat.

14 Ms. Inzerillo - Your Honor, my only objection at
15 this point would be to -- for counsel to recite exactly
16 what's written and not to assume that it means or does not
17 mean --

18 Mr. Anthony - All right, well, I apologize.

19 The Court - Okay, -- let me say, I'll sustain
20 the objection. I'm not so sure he mis-characterized it,
21 but if you'll just read it the way it appears.

22 Mr. Anthony - All right.

23 Q There's a v where there might ought to be a g. Would
24 you agree with that?

25 A I would assume that's what that is. I can't --

Vicky Burris - Cross by Mr. Anthony

73

1 Q Okay. And that's how -- that's what Ms. Forrest said
2 to Mr. Dipietro. I'm going to kill your cat.

3 A I see.

4 Q Okay. And then she says, good, then you can be with
5 your whore. Is that correct?

6 A Yes.

7 Q All right. And then when we go over to page 11, if
8 you look at that sheet, that -- those calls run from
9 number 64 to number 81. Is that right?

10 A Yes.

11 Q Okay. And then the two on the preceding page, page
12 10, 62, and 63, they're also Ms. Forrest message to Mr.
13 Dipietro. Is that correct?

14 A Yes.

15 Q Okay. So from number 62 to number 81, Ms. Forrest is
16 sending text messages to Mr. Dipietro. Correct?

17 A Yes.

18 Q So she sends him 19 straight text messages. Is that
19 correct?

20 A Yes.

21 Q Without one response from him.

22 A That's what this shows.

23 Q Okay. And I'm not -- I'm not going to do every one -
24 - go through every one of them, but she is -- she's
25 communicating to him basically that she's done with him.

Vicky Burris - Cross by Mr. Anthony

74

1 Isn't that correct?

2 A That's what it says.

3 Q As a matter of fact, right here in number 70 she
4 says, I'm done, it's over. Correct?

5 A Yes.

6 Q And then she says in line 71, all your s is packed
7 and in the yard. Is that correct?

8 A Yes.

9 Q Okay. And she proceeds on down the page and once
10 again, we won't go through every one of these, but you
11 have at line number -- line number 76 -- I don't have --
12 all right, when we go to line number 73, go live with your
13 f-ing whore, I'm done, don't want you, don't need you.
14 Right?

15 A (Indicating yes)

16 Q That's what she tells him. Correct?

17 A That's what it says here.

18 Q Okay. And then -- then she says, your Xbox and
19 clothes are in the middle of the driveway, leave keys and
20 phone. Is that correct?

21 A Yes.

22 Q Okay. And she -- then she's threatening to have him
23 picked up by the police. I hope you're on the way here,
24 I'd hate to have you picked up for stolen vehicle.
25 Correct?

Vicky Burris - Cross by Mr. Anthony

75

1 A Yes.

2 Q All right, so we have all these text messages that
3 indicate she's -- she sends him 19 straight messages
4 telling him basically that she's kicking him out of that
5 house. Is that right?

6 A Yes.

7 Q And does that indicate to you fear?

8 A When you talk about fear, it can -- it's not an
9 emotion that necessarily is going to stay the same levels
10 throughout the relationship. Her report to me was that
11 one of the major sources of conflict between them was his
12 interest in other women and his continual pursuit of other
13 women. This to me is an indication or a confirmation of
14 that, that that was a source of great conflict that didn't
15 always -- it may not have always resulted in an incident
16 of domestic violence and that she regularly confronted
17 him. This was by her report to me that she would confront
18 him regularly in this way every time she discovered yet
19 another woman that he was involved with.

20 Q Okay.

21 A So --

22 Q And that -- that would be -- that would be the kind
23 of thing that would trigger anger, wouldn't it?

24 A Yes, and it did. She was angry.

25 Q That's right. She was -- she was angry, and

Vicky Burris - Cross by Mr. Anthony

76

1 obviously from these text messages, these are the text
2 messages of an angry person. Is that correct?

3 A Yes.

4 Q And probab -- and also -- this -- you know, by her
5 report to you, since she basically said she didn't like
6 him -- you know, she didn't like having to be worried of
7 him seeing other women, it also might fairly be
8 characterized as the manifestation of a jealous person.
9 Is that correct?

10 A I think when a man and woman are involved in a
11 relationship and living together, supposedly this is a
12 loving relationship, that one or the other's continual
13 involvement with someone outside the relationship would be
14 a great source of pain for one thing. I think most humans
15 understand -- would understand that and also anger, yes,
16 but it's --

17 Q Okay.

18 A If it was supposedly a committed relationship and
19 there was no agreement they both could see other people,
20 that would be a great source of anger.

21 Q But there's certainly no indication from those
22 messages that she -- there's nothing you can draw from
23 those messages that would make you think she was in any
24 way scared of Mr. Dipietro?

25 A At that particular moment in time, in regard to that

Vicky Burris - Cross by Mr. Anthony

77

1 particular subject, perhaps not. Perhaps at another time
2 terrified of him.

3 Q But --

4 A This particular --

5 Q -- at that point in time she had -- and this -- these
6 text messages are something that's just a product of her
7 account two years after the fact. Correct?

8 A These -- these text messages happened before the
9 shooting, so --

10 Q Yes.

11 A -- their relationship was fraught with conflict and
12 anger and fighting over and above those periods of time
13 when she may have been very fearful of him. That's a
14 combination of things. There's no -- it's not my opinion
15 that in this relationship Ms. Forrest maintained a very
16 high level of intimidation or fear, that that would rise
17 and fall depending on the situation and the thing that --
18 the thing that created much anger and rage in her was his
19 continual unfaithfulness to her, and that's what she
20 confronted and continued to.

21 Q But these messages occur -- as you said, these
22 messages occurred before the shooting. Right?

23 A Right.

24 Q So when she sends these messages, she's not charged
25 with attempted murder. Correct?

Vicky Burris - Cross by Mr. Anthony

78

1 A No.

2 Q So there is no inhibition, no potential inhibition on
3 her to try to tailor how she is in those messages, like
4 there was when she talked to you two years later.
5 Wouldn't that be fair to say?

6 A I think it's fair to say that these messages don't
7 indicate at this particular time that she was feeling
8 fearful of him.

9 Q Well, my question though is wouldn't it be fair to
10 say that these messages give you a truer picture of who
11 Leah Forrest is and what her state of mind is than an
12 interview you did with her two years later after she'd
13 been charged with attempted murder?

14 A I don't know that I agree with you.

15 Q Okay. All right, thank you. We'll move on. Well,
16 let me mention one other thing. After she sends the 19
17 text messages, want to just take you over -- we have one
18 message highlighted here on page 12, and ask that you take
19 a look at that. What -- what does that -- who is that a
20 message to?

21 A Looks like it's a message that was sent to someone
22 named Randy --

23 Q Okay.

24 A -- that says working hard. Is that the one you're
25 referring to?

Vicky Burris - Cross by Mr. Anthony

79

1 Q Yes, ma'am, it is. All right.

2 (Document marked for identification as State's
3 Exhibit Number 49.)

4 Q I'm going to hand up what we've marked State's
5 Exhibit Number 49 and these are pages 13 through 15 of the
6 SLED report. Once again, I'd ask you, Ms. Burris, did you
7 review those papers?

8 A Yes. (Indicating yes) Yes, I have the entire list
9 I think.

10 Mr. Anthony - All right, we would move Exhibit
11 49 into evidence at this time?

12 The Court - Any objection?

13 Ms. Inzerillo - No, Your Honor.

14 The Court - All right, without objection the
15 same is moved into evidence.

16 (Documents marked into evidence as State's
17 Exhibit Number 49.)

18 Q All right, and what I -- I want to do the same thing,
19 Ms. Burris, and will give you a copy of this. I'm going
20 to put the Exhibit out for the jury and if you need a
21 minute to review those --

22 A Yes. (Pause) All right.

23 Q Okay. Would he be -- having reviewed those, would it
24 be fair to characterize these text messages as messages
25 where Ms. Forrest is talking to Mr. Dipietro about

Vicky Burris - Cross by Mr. Anthony

80

1 reconciliation?

2 A (Indicating yes) Yes.

3 Q Okay. And would it be fair to say that sort of the
4 principal mover in this -- in this reconciliation between
5 them is Ms. Forrest?

6 A Most of these are sent from her.

7 Q Okay.

8 A Yes.

9 Q Okay. Because we start off here on 1/14 with Mr.
10 Dipietro writing her and this is on the 23rd. There's
11 prior messages mostly from the 20th, but Mr. Dipietro
12 writes her, I want my stuff and you to leave me alone. All
13 those messages are child -- childish, you know what I came
14 into this with and what is rightly mine, when we get this
15 done, I don't want anymore contact. That's what he tells
16 her. Is that correct?

17 A Yes.

18 Q Okay. And then her response to him is, I know you
19 just hurt me really bad, Ron, I love you with everything
20 in me. Is that right?

21 A Yes.

22 Q Okay. And so we -- we kind of go down with this list
23 of text messages where basically she's texting Mr.
24 Dipietro wanting to get -- wanting him back. Isn't that
25 correct?

Vicky Burris - Cross by Mr. Anthony

81

1 A Yes.

2 Q And she's got here, Ron, please talk to me, but then
3 she changes like right here at the bottom we go from, Ron,
4 please talk to me, to since you were here for half the
5 month, I want half the bill money or you're getting
6 nothing else, I can be a bitch, too. Is that correct?

7 A Yes.

8 Q And then when you go to the next one you get messages
9 like, Ron, please, can we talk, answer me, please, Ron,
10 you're all I have, I'm sorry, you know, isn't that -- and
11 that's what she's saying. Correct?

12 A Yes.

13 Q Then Ron, he texted her back and says, I don't feel
14 safe near you, so we will have to make an agreement, and
15 then she says, Ron, I'm not going to do anything, I love
16 you and I just want this to end peacefully. Is that --
17 that's what we've got here. Correct?

18 A Yes.

19 Q I want my best friend back; I miss him. Correct?

20 A Yes.

21 Q So, that's basically what we have during this period
22 of time is Ms. Forrest sending these text messages to Mr.
23 Dipietro wanting to reconcile. Is that correct?

24 A Yes, that's --

25 Q Apparently, after -- you know, she's already kicked

Vicky Burris - Cross by Mr. Anthony

82

1 him out of their residence. Is that correct?

2 A Yes.

3 Q So the threats that he -- any threat he might've
4 posed to her had passed. Correct?

5 A This moment in time? During this exchange? Is that
6 -- during this period of time?

7 Q Well -- at this -- at this point in time he wasn't
8 posing a threat. Correct?

9 A It would not appear so.

10 Q And it appears that from what he was saying, that he
11 was more than happy just to -- to get away from her.
12 Correct?

13 A It's not at all unusual in a relationship like this
14 for the couple to reconcile, separate, reconcile,
15 separate. That's not inconsistent at all with this type
16 of relationship in my experience.

17 Q Well, in this type of relationship, who do you expect
18 to normally be the one who is instigating the
19 reconciliation?

20 A Well, it depends. I mean it -- it just is not
21 isolated to one or the other, in my experience. I mean it
22 can be either party. I mean -- if you go back to what I
23 talked about earlier that, you know, there is a bond often
24 within this couple, that they're wanting to get back to
25 that love experience, that -- and it's clear to me that

Vicky Burris - Cross by Mr. Anthony

83

1 that's what she's thinking about is how it was with them
2 when they first connected, that she wants that
3 relationship back, but that, you know, periodically
4 because of the conflict that just went through with regard
5 to the other women, problem with his infidelity to her,
6 that -- that seems to be the -- the instigator for many of
7 the conflicts and the fights. That's what -- her
8 confrontation of him and his unfaithfulness is what often
9 would lead to a pretty serious confrontation and a fight.

10 Q And would you say that attempting to get the person
11 you just kicked back -- kicked out of your house to
12 reconcile with you would be an indication that you were
13 not in fear of that person?

14 A I would say that she was not in fear at that moment
15 in time. I would agree with that. That she wanted to
16 reconcile, she wanted to have that relationship back the
17 way it was. She says something in that that says I want
18 my best friend back. That's how she described their
19 earlier connection. She's -- it's clear she's seeking to
20 try to get that back.

21 Q And it's quite possible that she wanted -- she could
22 see -- as her best friend because he never done anything
23 bad to her, isn't there? I mean that's why you might
24 think of somebody that way, because they really hadn't
25 ever done anything bad to them?

Vicky Burris - Cross by Mr. Anthony

84

1 A I don't agree with that.

2 Q You don't think that that's conceivable?

3 A It's possible.

4 Q That when she was saying those things she was just
5 being honest, just decided she wanted him back in the
6 house?

7 A I have -- my experience with victims of domestic
8 violence is that often they're still very much in love
9 with the person who's hurt them. They still consider that
10 person someone they love and have -- you know, trying
11 really hard to move past conflicts to get back to what
12 they very first had when they got together. That's -- it
13 doesn't necessarily mean that he's not done anything to
14 hurt her.

15 Q Okay. And once again, we're -- you're making that
16 answer on an assumption that she's a victim of domestic
17 violence.

18 A That and the other ways in which she was hurt by him,
19 the unfaithfulness, the interest in other women, in
20 addition to the periodic upheavals that would end in a
21 physical confrontation.

22 Q Okay. But -- but I mean -- having a partner who
23 cheats on you is not -- is not a justification for
24 shooting them, is it?

25 A I wouldn't say justification.

Vicky Burris - Cross by Mr. Anthony

85

1 Q Well, it's not going to put you in the kind of fear
2 that's going to make it all right for you to shoot them in
3 self defense. Because they cheat on you doesn't make it
4 all right -- I mean it might make you want to shoot them,
5 but it doesn't make it all right for you to shoot them,
6 does it?

7 A That's not my understanding of why she shot him.

8 Q Okay. But you just said that this -- haven't you
9 just testified that her anger towards him is a result of
10 jealousy because she thinks he was seeing other women?

11 A I think that was one of the things.

12 Q Okay. All right.

13 Mr. Anthony - Mark this.

14 (Document marked for identification as State's
15 Exhibit Number 50.)

16 Q I'm handing you what's been marked for identification
17 as Exhibit Number 50, and this is pages 19 -- 19 and 20,
18 SLED report. Did you review that in doing your assessment
19 of the case?

20 A (No Response)

21 Q Did you review that -- those pages?

22 A I actually read the entire document --

23 Q Okay.

24 A -- that SLED gave, so these are familiar to me.

25 Q Okay.

Vicky Burris - Cross by Mr. Anthony

86

1 A Had a chance to look at them before --

2 Mr. Anthony - We move -- we move 50 into
3 evidence.

4 The Court - All right, any objection?

5 Ms. Inzerillo - No, sir.

6 The Court - All right, without objection same is
7 admitted into evidence.

8 (Document marked into evidence at State's
9 Exhibit Number 50.)

10 Q I'm going to hand you a copy of these records. So as
11 we move on here, when you read these conversations, it
12 appears from these, would you agree, that there has been
13 something of a reconciliation between the two by them by
14 this time?

15 A (Indicating yes)

16 Court Reporter - She needs to speak up, Judge.

17 A Yes.

18 Q And we see here Ms. Forrest -- and this is May the
19 24th -- Ms. Forrest sending a text to Mr. Dipietro, you
20 off work yet; Mr. Dipietro responds, off in five minutes.
21 Ms. Forrest says, okay, baby, be careful on your way up
22 the mountain. Is that correct?

23 A Yes.

24 Q Okay. And that would tend to indicate that he -- Mr.
25 Dipietro apparently still hadn't moved back in with her,

Vicky Burris - Cross by Mr. Anthony

87

1 but they have -- they've done some sort of reconciliation.

2 Is that correct?

3 A Yes.

4 Q All right. And then you have this stream of text
5 messages. She texted him, how are you doing in the race;
6 his response is, still racing. She responds to him, well,
7 let me know how you do. He says, I won, but a lot of
8 controversy. She responds to him, that's great, call me
9 in the morning and tell me all about it, love and miss
10 you. Is that correct?

11 A Yes.

12 Q Okay. And so then a little bit later on we've got
13 her sending him a text, I'm going to the grocery store,
14 you need anything, and then she finishes it up with don't
15 you ever think I don't want you or love you, I do want
16 you, I do love you with everything -- everything in me,
17 and you know, are -- then, are you there yet, good luck in
18 the race tonight. Correct?

19 A Yes.

20 Q So that seems to be an indication that things had
21 gotten better for them. Is that correct?

22 A Yes, I think it's confirmation that they've gone
23 through this cycle and they've had an intense conflict, a
24 real confrontation and then cycling into what I've talked
25 about as the honeymoon period or the kindness, but that --

Vicky Burris - Cross by Mr. Anthony

88

1 this is really an indication to me that that's where they
2 were in their -- in the cycle of their relationship.

3 Q Okay. And this is a honeymoon period that was
4 primarily instigated by Ms. Forrest. Would you agree with
5 that having looked at these last two exhibits.

6 A It appears that they are both involved in this loving
7 communication back and forth.

8 Q Okay. But I believe you said with that last set of
9 text messages that I showed you that you thought she was
10 sending more messages than him. Is that correct?

11 A Yes.

12 Q Okay. And he'd actually sent messages saying he
13 didn't -- he didn't want to be with her anymore and she
14 just kept telling him she loved him. Right?

15 A Yes, and in this set it appears that he's kind of
16 returned to a loving place with her.

17 Q Okay. And would you say that the -- this -- the
18 battered spouse cycle can work both ways. Correct? I
19 mean a woman can batter a man. Correct?

20 A It can happen.

21 Q Okay. So from these text messages, this
22 reconciliation could be a manifestation of her being the
23 batterer and him being the person who's been battered.

24 A I don't know that it -- this tells me that. I think
25 what this tells me is that they had an intense conflict as

Vicky Burris - Cross by Mr. Anthony

89

1 indicated by the previous messages and now they've moved
2 into whatever has happened face-to-face and person-to-
3 person. This doesn't tell us that. This tells what the
4 text said and it appears by these text that they've moved
5 back into what I think of as a -- as a loving honeymoon
6 period in their relationship.

7 Q Okay, but you certainly couldn't say from those texts
8 that Ms. Forrest is scared of Mr. Dipietro?

9 A Not at this -- not during this interchange.

10 Q All right. And you certainly wouldn't say during
11 these interchanges that Ms. Forrest is helpless?

12 A Not during these inter -- these periods.

13 Q All right. Okay. I have one more set of text
14 messages I want to show you.

15 (Document marked for identification as State's
16 Exhibit Number 51.)

17 Q All right, I'm going to show you Exhibit Number 51
18 and ask if you also recognize these as are part of the
19 text messages?

20 A Yes.

21 Q All right.

22 Mr. Anthony - All right, we move 51 into
23 evidence.

24 Ms. Inzerillo - No objection.

25 The Court - All right, without objection, same

Vicky Burris - Cross by Mr. Anthony

90

1 is moved into evidence.

2 Q And these messages are somewhat different -- I gave
3 you -- I gave you a copy of them, but -- I gave you the
4 Exhibits. Right? Give you another copy. I'll take the
5 Exhibit. Now, in this set of messages Ms. Forrest starts
6 to get texts and send text to another -- another couple of
7 males. Is that how this appears?

8 A Yes.

9 Q Okay. Because we have on June 1st text to Randy,
10 hope you're having a wonderful day, and then we have
11 another text to Randy, hope you're having a great day. Is
12 that correct?

13 A Yes.

14 Q And then this is -- at the same time she's sending
15 text to Ron. All right, sends text to Ron, cops are out
16 everywhere; Ron responds, okay, you okay; she responds,
17 yes, I'm back at the house now, so she's -- she's
18 apparently still -- has some friendly communication with
19 Ron at this time, wouldn't you say?

20 A Yes.

21 Q And then like in addition to sending text to Randy,
22 right after she gets off here with Ron, she sends one to
23 Terry Bailey, so Mr. Bailey, how's everything in your
24 world. Is that correct?

25 A Yes.

Vicky Burris - Cross by Mr. Anthony

91

1 Q All right. And then, you know, she still at the same
2 time getting these messages -- getting these messages from
3 Ron, Ron and her apparently are getting together to have
4 to dinner, because you've got here, cooking dinner now, so
5 we ain't got to worry later and they text back and forth
6 about what they're going to eat, but then when you get
7 over to the next page while she's talking to Ron about
8 what they're going to eat, we get ano -- she sends another
9 messages to Terry Bailey. Right?

10 A Yes.

11 Q All right, don't -- don't know how to answer anyone,
12 by the way, this is Leah. And then, you know, Ron sends
13 her one, what time you getting off tonight and then Terry
14 Bailey responds to her, I been sick -- sick today.
15 Correct?

16 A Yes.

17 Q All right, and she gives him a, ah, I hope you get to
18 feeling better. Is that right?

19 A Yes.

20 Q And then Terry says, well, thank you, we need to get
21 together sometimes. Right? And she says, yes we do.
22 Correct?

23 A Yes.

24 Q And then he says, look forward to gorgeous self, and
25 she comes back, me too. So we got her sending these text

Vicky Burris - Cross by Mr. Anthony

92

1 messages, which I think it'd be fair to characterize as
2 flirtatious, wouldn't you?

3 A Yes.

4 Q Okay. To Terry Bailey, and then, like within about
5 thirty minutes of sending a text message -- okay -- yes,
6 right after we get done with this last test message to
7 Terry Bailey, we're back with her -- actually it's within
8 a minute, 14:42, 14:43, of the -- the text to Terry
9 Bailey, she's got another e-mail to Randy, hum, so your
10 finger's broke or just -- she uses another word -- over-
11 pics -- oh, so -- so there's a message to another guy
12 right after she's gotten through sending a message to
13 Terry Bailey. Correct?

14 A Yes.

15 Q And then Terry Bailey starts back, let's plan
16 something soon, and she says, I'll have to wait until my
17 daughter goes to her dad's, sounds good. Correct?

18 A Yes.

19 Q Okay. And then Randy sends something, just been
20 swamped, so -- and he's asked her, so your finger's broke
21 or just -- the -- uses a word and then he says -- or she
22 says, okay, sweetum's. So that's between her and Randy.
23 Right?

24 A Yes.

25 Q All right. And then Terry Bailey comes back, and

Vicky Burris - Cross by Mr. Anthony

93

1 Randy back to Terry, Terry Bailey comes back. So are you
2 happily married with your fine self. That's what Terry
3 Bailey asked her. Right?

4 A Yes.

5 Q All right, and her response is -- let's see, I've got
6 to move this up just a little bit. So her response
7 becomes, no, not married and not happy. That's what she
8 tells him. Right?

9 A Right.

10 Q Okay. And then -- then we get Randy back in the
11 picture, and Randy says, I'm at work, but will try to send
12 you a quicky, or no, I'm sorry, she sends that. She -- so
13 she's talking to Terry and she's talking at the same time
14 to Randy about sending him a picture and then she sends
15 Randy another message, you need a camera so you can send
16 me one too. Correct?

17 A Yes.

18 Q So she's soliciting -- she's talking about going --
19 telling Terry that she's not married and not happy and
20 they need to get together when her daughter goes off for
21 the weekend and she's talking to Randy about trading
22 pictures with him. Correct?

23 A Yes.

24 Q So this behavior, if you're in a situation, a woman's
25 in a situation where they're fearful of a person and

Vicky Burris - Cross by Mr. Anthony

94

1 they're raising fidelity issues with that person, would it
2 seem likely to you that a person who -- or reasonable to
3 you that a person who is fearful of the person they're
4 with would be out flirting with other guys like this?

5 A I don't know if one engaged the other. I think you
6 can be in a relationship where there's significant
7 problems, fear, abuse and it appears here as though she's
8 got some flirtations going on with somebody else, at least
9 through the text messages.

10 Q Well, Ms. Burris, if you're scared of a man, you're
11 a woman and you're scared of a man and you think the man
12 is going to do violence to you, wouldn't you -- wouldn't
13 you expect most women to feel like one thing that would
14 precipitate that violence would be them cheating on a man?
15 I mean isn't that -- I mean isn't pretty much common sense
16 that that is a very common precipitator of violence in
17 this world between domestic partners?

18 A Is unfaithfulness? Yes.

19 Q Yes. Isn't that pretty much -- don't people just
20 pretty well know that that's something that can lead --
21 that cheating can lead to violence? Don't people just
22 know that?

23 A I'm not sure if I agree with that. What I think is
24 that unhappy relationship can precipitate someone, right
25 or wrong, turning to other people as friends, as

1 flirtatious kind of --

2 Q But you're not -- you're not really talking --
3 talking about this relationship just being unhappy though.

4 Right? You characterized her as being battered.

5 Correct?

6 A Unhappy would be minimization probably, yes.

7 Q Okay. So this isn't -- yes, unhappy is a
8 minimization. She's not happy. That's not your -- your
9 testimony's not that she's just unhappy. Your testimony
10 is that she's battered. Correct?

11 A She has been a victim of domestic violence, yes.

12 Q Okay. And you -- you would figure, wouldn't you,
13 that someone who's being battered would be even more
14 concerned about that common sense relation between
15 cheating and violence. Right?

16 A Not been my experience. With working with victims of
17 domestic violence that they necessarily equate -- the
18 violence is perpetrated by the perpetrator and whatever
19 the reason is, someone else might justify it, well, I can
20 see why he would batter her because she was seeing other
21 people, or I can see why he battered her because she was
22 drinking, or I can see why -- none of that justifies
23 violence. There's no connection. In other words, what
24 you're saying to me if I'm hearing you correctly is that,
25 were she really fearful of his abuse, she would be

Vicky Burris - Cross by Mr. Anthony

96

1 avoiding these kinds of contacts with other men.

2 Q Yes, ma'am, that's what I -- that's what I'm asking
3 you. Wouldn't you think that?

4 A That is not direct -- that's not a direct assumption
5 in my opinion.

6 Q You don't think --

7 A No, sir.

8 Q -- you don't think that a person who's being abused
9 would be more likely not to cheat?

10 A No. That's not been my experience in this work.

11 Q Okay. And you also would not categorize someone
12 engaging in the types of friendships she's engaging in
13 here as being isolated?

14 A No, that wouldn't -- that wouldn't be what I would be
15 referring to as isolation. I --

16 Q Go ahead.

17 A I would like to refer to the text messages if you
18 don't mind in a more extended way. There are a number in
19 my -- in my possession here that indicate that she was --
20 she indicated at some point she was looking for another
21 place to live. It says, I think it's on June the 3rd,
22 particularly, if you want to look, that she said I think
23 I'm going to do you a favor and find another place to
24 live. My daughter and I are going to look for another
25 place to live. So, there's this back and forth. I mean

Vicky Burris - Cross by Mr. Anthony

97

1 you're pointing out what he's talking about leaving,
2 finding another place to live, but there's also a text
3 message series where she's talking about leaving right
4 before the event. I can -- it's on June the 3rd, a
5 message from her to Ron is we don't stand a chance in hell
6 in this town if you're going to believe a bunch of lies,
7 I'll do you a big favor and start looking for another
8 place for me and my daughter to live.

9 Q Okay, and do you have any reason to think based on
10 what you read before about where she threw all his stuff
11 out on the yard that she was any more serious about ending
12 the relationship in that message than she was when --
13 about when she was throwing his clothes out in the yard?

14 A If you could ask that again.

15 Q Do you really think that that -- what message -- I
16 mean the message is preferenced, if you're going to
17 believe a bunch of lies, I'll do you a big favor -- I mean
18 so -- doesn't that indicate that that's just a way of
19 basically trying to tell him that he needs to quit
20 listening to other people? I mean isn't that the point
21 she's making here?

22 A No, the point is that I think these folks were taking
23 turns in leaving each other, that he would leave and then
24 she would -- she reported to me that a week before the
25 incident -- the shooting incident, she had been looking

Vicky Burris - Cross by Mr. Anthony

98

1 for an apartment, that she felt that, done, it was
2 working, she was going to leave.

3 Q Well, she didn't -- well, apparently from the two
4 weeks earlier when it got time for somebody to leave, she
5 just threw all his stuff out, so why would she seriously
6 think about leaving?

7 A Well, I don't know that the two are related. I think
8 that they both left and came back or threatened to leave
9 and came back. Again, not inconsistent with the
10 relationship at this time at all.

11 Q Is it -- moving on to a few other things I need to
12 ask you about. Would it affect your opinion about Ms.
13 Forrest -- well, let me put it this way. Was it ever
14 reported to you that Ms. Forrest had chased Mr. Dipietro
15 with a knife on a prior occasion?

16 A No.

17 Q Okay. Would that affect your opinion about whether
18 she was a battered woman?

19 A Probably have to have a lot more information about
20 that particular incident to be able to tell you -- give
21 you the answer for that. I don't know.

22 Q I mean that would -- that would make it more -- that
23 would be the kind of behavior that is more common of the
24 batterer in relationship to the battered person, wouldn't
25 you say? Chasing a person with a knife?

Vicky Burris - Cross by Mr. Anthony

99

1 A I don't know that that would automatically indicate
2 that he was not violent with her because she was violent
3 with him. That would not -- it wouldn't automatically say
4 that to me. You know, the night of this incident the only
5 two people who really know what actually happened are Mr.
6 Dipietro and Ms. Forrest. You know, my job is to assess
7 whether or not the night of the incident that she suffered
8 abuse intense enough to create a fear for her life, and
9 that's what my determination was.

10 Q Okay. Okay. Did -- were you aware that she had
11 called police to the residence about a year before? Did
12 you know that?

13 A No.

14 Q Okay. Would her willingness to call the police to
15 the residence also indicate to you a lack of fear on her
16 part of Mr. Dipietro?

17 A Her willingness to call the police?

18 Q Yes, ma'am.

19 A I would -- I would have to know more about that
20 incident.

21 Q Well, say she called to the police because he had
22 taken a car that they held in common and wouldn't bring it
23 back? Would that be indicative that she was scared of
24 him?

25 A I don't think I have enough information about that to

Vicky Burris - Cross by Mr. Anthony

100

1 really give you an opinion there.

2 Q Okay.

3 A Wouldn't necessarily mean she wasn't. It might not
4 mean that she -- she could also have been --

5 Q Would it be -- going back to the actual crime itself,
6 do you find it common for people suffering from battered
7 women to behave in a way where they show contempt for
8 their batterers after they've acted in fear against them?

9 A Don't know if there is a kind of a standardized
10 response to that. You know, what I could say is that
11 given what I believe she experienced that night, it's very
12 possible that at that moment in time she realized he was
13 helpless and she was not, that she was angry, that she was
14 vindictive, that she was vengeful towards him. That's --
15 and didn't feel remorseful at that moment in time.

16 Q Okay. Okay, and so and it would also be possible
17 that she didn't feel -- she was angry and vindictive and
18 didn't feel remorseful before she shot him, too, isn't it?

19 A I think when she got the gun and shot him, her
20 thought was to stop him. It didn't matter whether he was
21 leaving or coming. What had happened just before that
22 was she was battered, she -- her daughter was threatened,
23 I think escalated this situation to a lethal level.

24 Q All right, and you could have -- you could have that
25 thought, that thought that I need to stop him and not be

Vicky Burris - Cross by Mr. Anthony

101

1 justified in doing what you did. Correct?

2 A I'm not justifying shooting. That's not my -- what
3 I'm doing is trying to make an explanation of what was
4 happening within her at that moment in time as best as I
5 can determine.

6 Q Okay, but what I'm saying is you could have a
7 thought, I need to stop him and still have a malicious
8 intent to shoot somebody. Correct?

9 A Malicious intent. I think it was more of -- more a
10 thought of stopping it. I don't know that there was time
11 or that the circumstances would've allowed for
12 premeditated kind of a malicious intent. I think it was
13 spontaneous. I think it was a reaction to what had been
14 going on. I think it was intended to stop him

15 Q Okay. And just because you have that thought, I need
16 to stop him, that does not necessarily -- you don't have
17 a right -- a legal right to go out and do whatever you
18 want to do to commit -- to commit an assault against
19 somebody just because you're having a thought, I need to
20 stop this person. Is that correct?

21 A Right.

22 Q Okay, so -- but you would not consider it, I take it
23 -- you're saying that it is -- you're saying that -- well,
24 strike that. I'm sorry. Would you expect a person who is
25 battered to make a call or attempt to make a call to the

Vicky Burris - Cross by Mr. Anthony

102

1 person she suspects the man she just shot is seeing before
2 she calls 9-1-1? Is that consistent with what you'd
3 expect from a battered woman?

4 A That she would make a call to someone else before she
5 called the police?

6 Q Before she called 9-1-1.

7 A I'm not sure if I really am qualified to give you an
8 answer on that. I don't know what that would mean or not
9 mean about her state of mind.

10 Q Well, it might mean they were happy with what they've
11 done, might'n it?

12 A I don't believe she was happy with what she'd done.

13 Q Well, I -- my question was it might mean that you
14 were happy with what you'd done, though, might'n it?

15 A Anything's possible when you put it in that way, but
16 in this case I do not believe that that was her thought.

17 Q So there -- there's a possibility that --

18 Mr. Anthony - If I could just have one moment,
19 Your Honor.

20 Q And if you're in fear of a -- of a person and it's
21 clear to you they're trying to leave, wouldn't the
22 reasonable thing to do be to let them leave?

23 A I don't think at that moment in time there was a
24 thought of -- of whether he left or not, but if it -- that
25 wasn't -- that wasn't really I don't think relevant or it

Vicky Burris - Cross by Mr. Anthony

103

1 was a belief that -- that even if he did leave, there was
2 not an end to this, that was not necessarily going to end
3 it, that she wanted to end it. I don't even know that she
4 gave it that much thought in that moment in time. It's my
5 opinion is that one thought was -- and I think there's
6 enough doubt about what happened there in regard to her
7 motivation to not be able to make that determination --

8 Q You said you thought she wanted to end it.

9 A She wanted it to stop, she wanted the abuse to stop,
10 that had been going on that evening.

11 Q Well, that -- that she says was going on.

12 A That particular -- right.

13 Q Okay. Did she tell you about him catching her with
14 the text messages on her phone? Did she tell you that?

15 A She told me that he was angry, that he believed she
16 was texting someone. That night?

17 Q Yes, yes.

18 A Yes.

19 Q When she talked to you, did she tell you that night
20 that he caught her -- her with the text messages?

21 A Apparently he had been sleeping and she got up and
22 had her phone with her and he -- it woke up -- he woke up
23 and his assumption was that she was texting someone else
24 and he wanted to know more about it, and that's what
25 started the process.

Vicky Burris - Cross by Mr. Anthony

104

1 Q Okay. And so that's the kind of thing that -- that
2 could just make somebody mad, isn't it?

3 A On his side? Mr. Dipietro --

4 Q No, her. That could make her -- it could be mad
5 (sic) you know, when you get caught flirting with some --
6 two other guys. That could be the kind of thing that
7 would made her mad. Isn't that right?

8 A Angry, certainly could have.

9 Q Okay. And she was already mad because she thought he
10 was cheating on her. Correct?

11 A Well, certainly they'd been in and out of periods of
12 conflict about that issue.

13 Q Okay. Okay. So there's plenty of ill-will on her
14 part just based on her account of what happened. Correct?

15 A She was very unhappy and angry about that, yes.

16 Q Okay. So you can set all her allegations of domestic
17 violence aside and you would still have a pretty strong
18 brew of animosity over there with Ms. Forrest, would it?

19 A Certainly have a very conflicted situation, yes.

20 Q Okay. And you have -- you have the kind of situation
21 that I'm sure in your experience could trigger violence.

22 A In a couple where that was already an issue. In many
23 couples it might trigger rage, trigger anger, it might
24 trigger lots of verbal back and forth, but in a non-
25 violent person, a person who doesn't particularly react

Vicky Burris - Cross by Mr. Anthony

105

1 with violence, it -- possible that it could, but in many
2 cases does not. Whereas, in a couple where there's
3 already a certain level of physical abuse, almost anything
4 and certainly this could prompt an incident. Say it that
5 way.

6 Q Okay. Okay. But there's plenty -- plenty of reason
7 that basically -- there's plenty of reason why somebody in
8 her position would've shot -- regardless -- regardless of
9 what he was doing to her before she shot him. Isn't that
10 correct?

11 A I don't think you can leave out her report of his
12 abuse of her in the context of this night.

13 Q Well, -- well, but my question is just -- there was
14 plenty of reason for somebody like her to shoot somebody
15 like him regardless of any of these domestic violence
16 allegations. Isn't that correct? Knowing what you know
17 about the situation.

18 A That it would be likely, did you say?

19 Q No, I'm just --

20 A There would be --

21 Court Reporter - I'm sorry, they're talking at
22 the same time. I can't get a clear record.

23 A I don't think there's a reason -- I don't think it's
24 reasonable to shoot somebody in any event, but --

25 Q Well, I'm not saying it would be reasonable. I'm

Vicky Burris - Cross by Mr. Anthony

106

1 saying just based on your experience how people behave,
2 when you have a woman who has been caught cheating and who
3 thinks the person who caught her cheating was cheating
4 himself, that's the kind of factual scenario that can lead
5 to violence whether there's -- whether there's been any or
6 not. Right?

7 A It could be the initial outbreak of violence. I
8 guess it could warrant that.

9 Q Okay. Okay. All right.

10 Mr. Anthony - If I could have just one moment,
11 Your Honor.

12 Q All right, just a couple more things I want to cover
13 with you, Ms. Burris. I appreciate you answering my
14 questions this morning. Did she report to you -- when you
15 talked to her, did she talk about anything going on in the
16 bathroom of the residence?

17 A What she reported was, when she got up in the night
18 to go to the bathroom, had her phone with her and that
19 that's what woke up Mr. Dipietro and initiated the fight
20 and that it started right there at the bedroom/bathroom
21 area.

22 Q Okay. All right. And I want to refer you to your
23 notes. You have on the -- at least what was given to me
24 is the fourth page. You took a history from her.
25 correct, as far as her marital history.

Vicky Burris - Cross by Mr. Anthony

107

1 A Yes.

2 Q All right. And she reported that her second marriage
3 was to a man named James Howard. Is that correct?

4 A Yes.

5 Q And she reported to you that she was married to him
6 for five, six years?

7 A Yes.

8 Q And they have a son, Brandon. Correct?

9 A Yes.

10 Q And she reported to you that she had stabbed Mr.
11 Howard.

12 A Yes.

13 Q Is that correct?

14 A Yes.

15 Q And that she reported to you that there were no
16 charges made against her for stabbing Mr. Howard. Is that
17 right?

18 A I think that -- I think that we continued that
19 discussion and there was a charge but not a -- not a
20 conviction. I'm sorry, I don't remember, but I do know
21 there was -- there was -- what she reported to me there
22 was no -- there was no adjudication of that incident.
23 There wasn't a trial -- or I don't remember exactly. She
24 did report to me that she had stabbed him.

25 Q All right. And you wrote -- but you wrote that she

Vicky Burris - Cross by Mr. Anthony

108

1 told you no charges made.

2 A Yes. Yes.

3 Q I'm going to show you a document. This is a document
4 from Beaufort County, South Carolina. I'd ask that you
5 review that.

6 A This is an incident report.

7 Q Yes, ma'am.

8 A Where it says Howard was arrested for CDV?

9 Q Yes.

10 A That was the action. I'm looking at the arrest of
11 Mr. Howard --

12 Q Well, if you go down.

13 A -- CDV? And she was arrested? So they were both
14 arrested.

15 Q Well, I believe -- I believe L. Howard would've been
16 Ms. Forrest.

17 A Oh, okay. I'm sorry.

18 Q Would've been her name at the time. Correct?

19 Court Reporter - I've having trouble hearing
20 her, Judge.

21 A I'm sorry. I'm trying to read and think. Okay.

22 Q All right. So --

23 A Was there any action following --

24 Q So Ms. Howard actually was arrested for criminal
25 domestic violence for stabbing Mr. Howard in the back with

Vicky Burris - Cross by Mr. Anthony

109

1 a ten-inch butcher knife.

2 A (Indicating yes) She reported that.

3 Q Okay. And she was arrested for criminal domestic
4 violence? Is that --

5 A Yes, that's -- Yes.

6 Q Okay. And did she report to you that she wasn't
7 convicted of that?

8 A I think she said there was no -- the charges were
9 dropped or there was no follow-up to that. That's --

10 Q Okay. I'm just asking what she said.

11 A That's what she reported. No conviction.

12 Q All right.

13 Mr. Anthony - If I could just have one moment.

14 All right, that's everything on cross. Thank you.

15 The Court - Re-direct?

16 Ms. Inzerillo - I do have some re-direct, Your
17 Honor, but I wouldn't be opposed to doing it after lunch.

18 The Court - How long do you anticipate that to
19 take?

20 Ms. Inzerillo - It'd probably take 15 to 20
21 minutes maybe.

22 The Court - Okay. I don't want Ms. Burris to
23 have to wait through lunch and then come back. Why don't
24 we try to get through -- take a break when this witness is
25 done testifying.

Vicky Burris - Re-direct by Ms. Inzerillo

110

1 Ms. Inzerillo - Yes, Your Honor.

2 The Court - Okay. So you can proceed.

3 Re-direct Examination

4 by Ms. Inzerillo -

5 Q Ms. Burris, I just want to a couple more things as
6 well. Okay?

7 Ms. Inzerillo - May I approach the witness, Your
8 Honor?

9 The Court - Yes, ma'am.

10 (Document marked for identification as
11 Defendant's Exhibit Number 4.)

12 Q Ms. Burris, I know Mr. Anthony went through some text
13 messages with you. I'm going to show you what's been
14 marked as Defendant's Exhibit 4. Now, Ms. Burris, you had
15 testified that as part of your review in this case, you
16 did look over all the text messages, right, in the file.

17 A Yes.

18 Q Okay. Do you recognize Defendant Exhibit 4 as some
19 of the text messages that you reviewed?

20 A Yes.

21 Ms. Inzerillo - Your Honor, the defense at this
22 time would move defense Exhibit 4 into evidence?

23 Court Reporter - Any objection, sir?

24 Mr. Anthony - No, sir.

25 The Court - All right, without objection, the

Vicky Burris - Re-direct by Ms. Inzerillo

111

1 same is admitted into evidence.

2 (Document marked into evidence as Defendant's
3 Exhibit Number 4.)

4 Q Now, Ms. Forrest indicated to you in your assessment
5 of her -- I'm sorry -- Ms. Forrest indicated to you some
6 abuse that she suffered. Is that right?

7 A Yes.

8 Q Okay. And did she indicate to you that one of the
9 ways that Mr. Dipietro would abuse her would be to slam
10 her onto the floor?

11 A Yes.

12 Q Okay. And you see this text message and I'm pointing
13 you down to second from the bottom essentially where it
14 says, how long do I have to pay for that, I've forgiven
15 you for slamming me on the floor and all the times you hit
16 me. Is that right?

17 A Yes.

18 Q Now, did you take this text message into
19 consideration when coming to your assessment that Leah
20 suffers from battered women syndrome?

21 A Yes.

22 Q Okay. And what about that text message confirmed
23 that assessment?

24 A Where she says forgiving you for slamming me on the
25 floor and all the times you hit me were consistent with

Vicky Burris - Re-direct by Ms. Inzerillo

112

1 her report to me about the cycle that this couple was in
2 and their relationship. When she says all the times, that
3 means it was more than once and that would've been
4 consistent with her report to me that these conflicts
5 would brew over his pre-occupation with other women and
6 that when she would confront him aggressively that that
7 would initiate a battering incident and that it happened
8 every two or three months. According to my calendar, I'm
9 thinking about six times over the course of the year
10 before this incident.

11 Q Okay. And what's the date of that text message?

12 A That looks like May the 23rd.

13 Q Of what year?

14 A 2010.

15 (Document marked for identification as
16 Defendant's Exhibit Number 5.)

17 Q Okay. Ms. Burris, I'm going to show you what's been
18 marked as defense Exhibit 5.

19 A Okay.

20 Q Is that also a part of the text messages that you
21 reviewed in determining that Leah was a battered spouse?

22 A Yes.

23 Ms. Inzerillo - Your Honor, at this time we'd
24 move defense Exhibit 5 into evidence.

25 The Court - Any objection?

Vicky Burris - Re-direct by Ms. Inzerillo

113

1 Mr. Anthony - No, sir.

2 The Court - All right, so entered.

3 Q Ms. Burris, once again I'm going to change out copies
4 with you. Okay? Now, Ms. Burris, you have explained on
5 direct that one of the reasons a battered person could
6 stay with her abuser was because of financial dependence.
7 Is that right?

8 A Yes.

9 Q And is there anything in this line of text messages
10 that you took into consideration on that point?

11 A Well, it's a series of texts about the bills being --
12 are due and --

13 Q Okay. Essentially, and correct me if I'm wrong, does
14 this show that Leah texted Ron on May 30th saying, baby,
15 all the bills are due, I have two hundred, that's not
16 going to cover them all?

17 A Yes.

18 Q Okay. And then he texted back, baby, we have money,
19 stop worrying. Right?

20 A Yes.

21 Q Okay. And then the next two -- I'm sorry -- after
22 that she says, baby, I've been trying to save, but
23 groceries at Sam, I've got two hundred left, I paid for
24 the cat, too, don't forget.

25 A Yes.

Vicky Burris - Re-direct by Ms. Inzerillo

114

1 Q Okay. Was this significant -- this exchange
2 significant to you in any way in coming to your assessment
3 that Leah is a battered spouse?

4 A Well, clearly she's explaining to him that she can't
5 pay anymore because she's covered the groceries and paid
6 for the cat and that's all she has and looking to him to
7 help her with the rest, assuming -- my understanding she
8 really didn't have the money to do that is an assumption
9 from my part.

10 Q Do these text messages -- are they consistent with
11 what Leah described as the financial inequity in the home?

12 A Yes.

13 Q Okay. And by that I mean that he made more money
14 than she did.

15 A Yes.

16 Q Okay. All right. This should be the last one, Ms.
17 Burris.

18 (Document marked for identification as
19 Defendant's Exhibit Number 6.)

20 Q I'm going to show you what's been marked as defense
21 Exhibit 6.

22 A Okay.

23 Q Okay. Do you recognize this document as part of the
24 text messages that you reviewed?

25 A Yes.

Vicky Burris - Re-direct by Ms. Inzerillo

115

1 Q Did you take this into account in your assessment of
2 Ms. Forrest as a battered spouse?

3 A I'm not sure if I can go back to this particular set,
4 you know, in total -- you know, certainly would be a
5 pattern --

6 Q Okay. But this was part of that what you reviewed
7 that in your assessment?

8 A Yes. (Indicating yes)

9 Ms. Inzerillo - Your Honor, at this time we move
10 defense Exhibit 6 into evidence?

11 The Court - Any objection?

12 Mr. Anthony - If I could just have one moment.

13 (Pause)

14 (Discussion is held between counsel which was
15 not reported.)

16 Mr. Anthony - Yes, that's fine.

17 The Court - All right, without objection, same
18 is admitted in evidence.

19 (Document marked into evidence as Defendant's
20 Exhibit Number 6.)

21 Mr. Inzerillo - Thank you, Your Honor.

22 Q Now, Mr. Anthony asked you several questions about
23 Ms. Forrest being angry over Mr. Dipietro's cheating on
24 her?

25 A Yes.

Vicky Burris - Re-direct by Ms. Inzerillo

116

1 Q Okay. Now, turning your attention to about three
2 lines up, four lines up, again, this is her texting Ron.
3 Right?

4 A Yes.

5 Q And she's saying this can be fixed if we both try.
6 Right?

7 A Yes.

8 Q So does that indicate to you an attempt at
9 reconciliation?

10 A Yes.

11 Q Okay. And then the next thing she says is, you know
12 I was just about over the Sherry thing, then you did it to
13 me again, do you know how bad that hurt me, then seeing
14 Desiree back on your friend list again was like a knife to
15 the heart, what have I done to deserve all this pain.

16 A Yes.

17 Q Okay. Is it fair to say that that would indicate
18 hurt as well as some -- in addition to some of the angry
19 texts that we've seen?

20 A Oh, yes.

21 Q Okay. Now, Ms. Burris, we had talked about when a
22 person undergoes a traumatic event, that at times their
23 recollection can be impaired, can be exaggerated or
24 minimized.

25 A Yes.

Vicky Burris - Re-direct by Ms. Inzerillo

117

1 Q Knowing that, is it unusual for someone, a battered
2 person to report additional facts later, say something
3 perhaps as they're recollecting the event that they did
4 not say initially?

5 A That would not be unusual.

6 Q Okay. So when Leah reported to you that Ron
7 threatened to kill her and her bitch of a daughter the day
8 of the shooting, did it stand out to you as unusual that
9 that was not in any of the reports?

10 A No.

11 Q Okay, and why is that?

12 A Well, I think that depending on where the report is
13 made and circumstances around it, for instance,
14 immediately following the trauma, an interview for
15 instance at a law enforcement center by a uniformed
16 patrolman might not produce the same kind of detail that
17 would be given in more of relaxed setting where the person
18 was feeling less tense at that time or could be a number
19 of different influences over the way in which that report
20 is made and then not to mention the fact that details of
21 the event can merge as time goes on as well as they can
22 disappear in a post traumatic stress disorder situations,
23 so I wouldn't find that unusual.

24 Q So the fact that she added that when she spoke to you
25 but did not tell law enforcement that, was that an

Vicky Burris - Re-direct by Ms. Inzerillo

118

1 indication to you that she was lying?

2 A No.

3 Q When you assessed Leah, were you free to say she is
4 not suffering from battered spouse and PTSD?

5 A Yes.

6 Q Okay. And in your assessment of Leah, is it your
7 opinion that she was being truthful in what she told you?

8 A Yes.

9 Q Okay. Now, Mr. Anthony had also questioned you on
10 the events of the day of the shooting, and I'm going to
11 have you refer to your notes as well, because you need to
12 refresh your recollection.

13 A On March 16th?

14 Q Yes, ma'am, from those notes. And in your notes, do
15 you indicate that Leah told you that when she returned to
16 the house the beating continued?

17 A Yes.

18 Q Okay. And after that do you note that he quit to
19 unplug the computer, Leah got the gun?

20 A Yes.

21 Q Okay. Now, you made these notes at the same time
22 you're interviewing Leah.

23 A Yes.

24 Q So you didn't go home and make these notes later or
25 a month later or --

Vicky Burris - Re-direct by Ms. Inzerillo

119

1 A No.

2 Q Okay. So she did report that to you when she
3 initially talked to you, that when she re-entered the
4 house there was some more violence, he beat her again --

5 A (Indicating yes)

6 Q --- essentially before she got the gun.

7 Mr. Anthony - Objection, leading.

8 The Court - All right. I'll sustain the
9 objection.

10 Q When Leah recounted the events, did she recount
11 another episode of violence before she got the gun?

12 A I think what she said was that when she went into the
13 house, side door, she'd expected that he was not going to
14 assault her again. That was her expectation, possibly
15 this was over, but the -- and what she said to me was, but
16 it wasn't.

17 Q Okay. So she --

18 A That was how she phrased it, that it wasn't over.

19 Q Okay. And then what did she tell you?

20 A Then the next thing she said was, he did then stop to
21 go -- he quit to go unplug the computer or do something to
22 the computer. I wrote down what -- that's what she said,
23 quit to unplug the computer, and that's when she went to
24 get the gun.

25 Q So when she explained to you that she thought the

Vicky Burris - Re-direct by Ms. Inzerillo

120

1 violence was over and it wasn't, was that an indication to
2 you that she was now back in fear of Mr. Dipietro?

3 A Yes.

4 Q And did that -- tell you that she was in fear of Mr.
5 Dipietro when she went to get the gun?

6 A Yes.

7 Q And I believe you indicated that really looking at
8 this through Leah's eyes, it's insignificant whether Mr.
9 Dipietro was getting ready to leave.

10 A That's my opinion, that at that moment in time it
11 wasn't relevant to whether she went forward with this
12 shooting or not.

13 Q Is it irrelevant because of the fear that she was --
14 that was experiencing?

15 A Yes, the fact that she wanted it to stop. That was
16 her -- I believe that was her primary thought.

17 Q Okay. And when you say she wanted it to stop, do you
18 mean she wants the beatings to stop?

19 A Yes.

20 Q Now, is it your understanding from your discussions
21 with Leah that if Mr. Dipietro left and moved out of the
22 house, that he would come back?

23 A I believe that -- demonstrated pretty clearly that
24 there was a pattern among this couple, either threatening
25 to leave or leave and then reconciling and threatening to

Vicky Burris - Re-direct by Ms. Inzerillo

121

1 leave and then leaving and reconciling. So I think that
2 pattern probably is -- was a factor in what she decided to
3 do that night, that if he left, probably that he'd come
4 back.

5 Q Okay. Also on cross examination you pointed out to
6 Mr. Anthony a particular text message that Leah sent about
7 I'm going to get -- my daughter and I are going to go get
8 a place to live.

9 A Yes.

10 Q Can you explain to the jury why the fact that Leah
11 herself was threatening to leave, why that stuck out to
12 you?

13 A What we know about domestic violence relationship is
14 that quite often when the victim either attempts to leave,
15 threatens to leave or leaves, that's when the violence
16 could escalate to a more dangerous level. So that's what
17 caught my attention, that she -- I think it was June 3rd,
18 I made a note about that particular text message that she
19 had said I'm going to look for another place to live, my
20 daughter and I are going to find another place to live.

21 Q And that was four days before the shooting. Is that
22 right?

23 A Yes.

24 Q Okay. Now, did you have a conversation with Leah
25 about her prior relationships with Mr. Howard?

Vicky Burris - Re-direct by Ms. Inzerillo

122

1 A Yes.

2 Q What did she indicate to you about the nature of that
3 relationship?

4 A She said that was a very violent relationship. He
5 was a very violent man towards her.

6 Q Okay. And did she describe particularly the types of
7 violence?

8 A I don't remember that she gave me as much detail
9 about that, other than to say he was very violent towards
10 her, very hurtful. This was the -- a marriage before this
11 relationship, yes.

12 Q And did she explain to you that when she stabbed Mr.
13 Howard it was because it was during a beating incident?

14 A I don't remember that she gave me the details of that
15 incident.

16 Q Okay. Is it unusual for a person to go from one
17 battered relationship to another?

18 A Unfortunately not. I don't know what all the factors
19 are that lead to that, but clearly she had the unfortunate
20 experience of being married to a batterer and then finding
21 herself back into a relationship with another abusive
22 person.

23 Mr. Anthony - Well, I'd object to the
24 characterization. That's for the jury to decide.

25 The Court - I understand. It's overruled.

Vicky Burris - Re-direct by Ms. Inzerillo

123

1 Q All right. Ms. Burris, you indicated that as part of
2 the file that you reviewed, that you reviewed pictures of
3 Leah. Is that right?

4 A Yes.

5 Q I'm going to show you -- (pause)

6 A I have the copies in my file here.

7 Ms. Inzerillo - Beg the Court's indulgence for
8 a moment. (Pause) Thank you, Your Honor.

9 Q In reviewing this picture, did you take into account
10 her injuries in coming to your assessment?

11 Mr. Anthony - I'd object. This is beyond the
12 scope of cross.

13 Ms. Inzerillo - Your Honor --

14 The Court - How's this within the scope of cross
15 examination?

16 Ms. Inzerillo - Your Honor, she was asked, of
17 all the things that she reviewed, as part of coming to her
18 assessment and he asked that in cross examination,
19 challenging that assessment.

20 The Court - Okay. You can ask her -- you can
21 ask her pointed questions, but the re-direct is limited to
22 the scope of cross examination. And I think this may be
23 going afoul of that scope. You can ask her again what she
24 took into consideration, but going back to the evidence I
25 think is beyond the scope of cross examination, and on

Vicky Burris - Re-cross by Mr. Anthony

124

1 that basis I'll sustain the objection.

2 Ms. Inzerillo - Thank you, Your Honor.

3 Q Did you review the injuries that she sustained in
4 coming to your assessment?

5 A Yes.

6 Q Okay.

7 A The pictures that were given to me, yes.

8 Ms. Inzerillo - Okay. I have no further
9 questions, Your Honor.

10 The Court - All right, any re-cross, sir?

11 Re-cross Examination

12 by Mr. Anthony -

13 Q You testified on re-direct that it is not unusual in
14 your experience for people who've been battered to re --
15 to report facts that they hadn't reported before. Right?

16 A Yes.

17 Q Okay. And you would also say that that is -- or
18 would you also say that that is every bit as consistent
19 with having committed a crime and trying to present your
20 side of the story in a favorable way?

21 A I believe what I had said was that it was consistent
22 with a person suffering post traumatic stress disorder.

23 Q I understand, but could it also not be consistent
24 with somebody who's committed a crime and who is trying to
25 report what they did in a favorable way?

Vicky Burris - Re-cross by Mr. Anthony

125

1 A I'm not sure if I can put those two things together.

2 Q Okay. You don't think it's possible if somebody gets
3 charged with a crime and they go to talk to somebody about
4 it and they try to put it in the most favorable light
5 possible for themselves? You don't think that's possible?

6 A Yes.

7 Q Okay. And that could've been what was happening
8 here, couldn't it, when you talked -- when you talked to
9 Ms. Forrest?

10 A I suppose it's possible.

11 Q Okay. You saw the text message from Mr. Dipietro --
12 or I'm sorry -- the text message from Ms. Forrest to Mr.
13 Dipietro where she makes the allegation about him slamming
14 her to the floor --

15 A Yes.

16 Q -- on re-direct? There's nothing in those text
17 messages where Mr. Dipietro ever admits or discusses doing
18 anything to Ms. Forrest, is there?

19 A No.

20 Q And as a matter of fact, Mr. Dipietro -- in none of
21 those text messages does he ever make any threats against
22 Ms. Forrest?

23 A Not that I was able to find.

24 Q Although Ms. Forrest does make threats against Mr.
25 Dipietro. Isn't that correct?

Vicky Burris - Re-cross by Mr. Anthony

126

1 A You'll have to remind me --

2 Q Well, she threatens to kill his cat. Wouldn't you
3 call that a threat?

4 A Yes.

5 Q Okay. And she reported to you she went -- she left
6 the house and she came -- she came back in and said that -
7 - what you're testifying to is that when she came back in
8 there was more violence between Mr. Dipietro and herself?

9 A What she said was I thought it was over, but it
10 wasn't, and my assumption was that there was continued
11 assaults against her when she said that.

12 Q Okay, so you don't know.

13 A I don't.

14 Q I mean it's not clear what -- from what she told you
15 two years later, what you're saying is, she never said
16 that the assault started back up when she came back in the
17 house.

18 A That's right. She didn't say it that way. She said
19 he quit to go unplug the computer and so between those two
20 sentences, I made an assumption that there was probably
21 some -- but yes, she did --

22 Q But it could be that she went back in the house and
23 he was just over there unplugging the computer and she
24 went straight back to the bedroom and got the gun.

25 A Could -- it's possible.

Vicky Burris - Re-cross by Mr. Anthony

127

1 Q Okay. And she -- she did not tell you she kicked in
2 the front door?

3 A No.

4 Q And she was out of the house and went back in.
5 That's clear.

6 A Yes.

7 Q Okay. Did she tell you that she just worked maybe
8 a hundred yards from -- from the -- where she lived?

9 A I don't know that she gave me the distance; she told
10 me it was close.

11 Q Okay. And you know she worked in an all night
12 convenience store.

13 A Yes.

14 Q Okay. So it would've been completely possible if she
15 really thought that Mr. Dipietro was going to do something
16 to her, she was out of the house, he was in the house, she
17 could -- there was no reason she had to go back in that
18 house, was there?

19 A I believe she said she didn't have her shoes on, and
20 she didn't have her pocketbook or her keys.

21 Q No, but she didn't need -- but she lived within --
22 did she tell you she lived within walking distance of
23 where she worked?

24 A She didn't give me the distance. I just know it was
25 close.